

**JAN 26 2009**

**ERIE COUNTY  
CLERK'S OFFICE**

At a Special Term of the Supreme  
Court, State of New York, at the  
courthouse in Buffalo, New York, on  
the 26<sup>th</sup> day of *JANUARY*,  
2009

STATE OF NEW YORK :  
SUPREME COURT : COUNTY OF ERIE

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In the Matter of the Petition of

SUSAN M. RIDGEWAY

Petitioner,

DECISION and ORDER

v.

INDEX NO. 11305/2008

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS AND 3M COMPANY,  
Respondents.

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**APPEARANCES:**

SUSAN M. RIDGEWAY, Petitioner pro se  
ROBERT C. WEISSFLACH, ESQ., for Respondent 3M Company

**PAPERS CONSIDERED:**

the NOTICE OF PETITION and VERIFIED PETITION, with  
annexed exhibits;

the ANSWER of Respondent State Division of Human Rights,  
together with its certified record of investigation of petitioner's  
October 4, 2007 complaint;

the VERIFIED ANSWER TO VERIFIED PETITION of Respondent  
3M Company;

the NOTICE OF MOTION TO DISMISS PETITION of Respondent  
3M Company and the supporting AFFIRMATION OF ROBERT C.  
WEISSFLACH, ESQ., with annexed exhibits;

RESPONDENT 3M COMPANY'S MEMORANDUM OF LAW IN  
OPPOSITION TO PETITION;

RESPONDENT 3M COMPANY'S MEMORANDUM OF LAW IN  
OPPOSITION TO PETITION AND IN SUPPORT OF MOTION TO  
DISMISS; and

the untitled December 10, 2008 submission of Petitioner, with  
associated Exhibits "A" and "B."

By this proceeding brought pursuant to Executive Law § 298 and CPLR article 78,

petitioner Susan M. Ridgeway seeks to annul the August 14, 2008 Determination and Order After Investigation (the determination) of respondent New York State Division of Human Rights (SDHR). The determination found "no probable cause to believe" petitioner's October 4, 2007 complaint of race- and sex-based discrimination and unlawful retaliation on the part of her employer, respondent 3M Company. Both respondents have submitted answers to the petition in which they assert that the determination was reached following a full and fair investigation by SDHR and is not arbitrary, capricious, or an abuse of discretion. Thus, each answer prays for a judgment dismissing the petition on its merits. In addition, the answer of respondent 3M Company raises various objections in point of law, of which this Court is concerned with two: 1) that the petition is barred by the applicable statute of limitations; and 2) that the Court lacks personal jurisdiction over respondent 3M Company because petitioner failed to serve the company in a proper and timely manner. On the basis of materials submitted by the parties, this Court renders the following determinations:

#### **TIMELINESS OF THE PETITION**

There is no merit to respondent 3M Company's objection in point of law based upon the statute of limitations. Pursuant to Executive Law § 298, and by the specific terms of the challenged determination, the petition for judicial review of the SDHR determination dismissing the discrimination complaint had to have been filed within 60 days after service of the determination (*see Matter of Gil v New York State Div. of Human Rights*, 17 AD3d 365, 366 [2d Dept 2005]). Service is complete upon mailing (*see Matter of Dudish v New York State Div. of Human Rights*, 15 AD3d 823, 824 [3d Dept 2005], *lv denied* 5 NY3d 701 [2005]). An affidavit of service establishes that the determination was mailed by SDHR to petitioner on the date of its issuance, August 14, 2008. It is further established that petitioner filed her notice of petition and petition on October 14, 2008, the 61st day later. However, it further appears that October

13, 2008 was a legal holiday, rendering timely the filing of the petition the next day (*see General Construction Law § 25-a (1)*). Therefore, respondent 3M Company's second objection in point of law is dismissed.

#### **PROPRIETY AND TIMELINESS OF SERVICE UPON RESPONDENT 3M COMPANY**

The manner of service of process upon a corporation such as 3M Company is governed by CPLR 311 (a) (1), which authorizes service either upon a responsible official of the corporation or upon the Secretary of State of New York pursuant to Business Corporation Law §§ 306 and 307. Here, it appears that respondent 3M Company's first notice of the commencement of this proceeding came on October 21, 2008, when the company received a postcard from this Court advising of the return date for the petition. Thereafter, on November 18, 2008, 3M Company received a copy of the notice of petition, petition, and the attachments to the petition via regular mail (albeit with no return acknowledgment requested) and/or certified mail (no return receipt requested), neither of which type of mailing constitutes an authorized method of service. Concerning the timeliness of such service, CPLR 306-b requires that service upon the respondent in a proceeding such as this "shall be made not later than fifteen days after the date on which the applicable statute of limitations expires." Thus, such service was to have been made by October 29, 2008. Here, however, respondent 3M Company first became aware of the proceeding in mid-November 2008, albeit as a result of court notification. Thereafter, respondent 3M Company was the recipient of unauthorized service by mail only. According to CPLR 306-b, "[i]f service is not made upon a [respondent] within the time provided in this section, the court, upon motion, shall dismiss the [proceeding] without prejudice to that [respondent], or upon good cause shown or in the interest of justice, extend the time for service." Here, despite being under a 15-day deadline for effecting authorized service upon respondent 3M Company, petitioner was weeks late in effecting unauthorized service upon the

company, service that coincided in time with respondent's motion to dismiss the petition for lack of personal jurisdiction. Given that, this Court sees no basis for extending petitioner's time for service nunc pro tunc in the exercise of its discretion (*see Eggleston v. A.C. and S., Inc.*, 17 AD3d 1167, 1167-1168 [4th Dept 2005]; *Tarzy v Epstein*, 8 AD3d 656 [2d Dept 2004]; *Winter v Irizarry*, 300 AD2d 472, 473 [2d Dept 2002]). Indeed, petitioner has not sought an extension of time for service, and thus she has not even attempted to establish either good cause for an extension or that the interests of justice warrant such an extension (*see generally* CPLR 306-b; *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106 [2001]). Additional considerations here include the expiration of the statute of limitations and, as outlined in the next point, the lack of merit of the petition. Under the circumstances, the petition must be dismissed in accordance with respondent 3M Company's first objection in point of law, i.e., for a lack of personal jurisdiction by the Court over respondent 3M Company.

#### MERITS OF THE PETITION

Although the petition must be dismissed on a threshold procedural ground, the Court nevertheless will address its substance. By the subject SDHR complaint, petitioner alleged that she was the recipient of unwarranted discipline by her employer and thereby was treated differently from her coworkers on account of her race and sex. Petitioner further alleged that she was retaliated against for filing two prior complaints of discrimination against her employer (both of which earlier complaints likewise resulted in findings of no probable cause by SDHR). The third and most recent complaint of discrimination has its genesis in a supervisor's accusation that petitioner, a production employee at 3M Company's plant in Tonawanda, had exaggerated her own reported production on September 18, 2007 to the detriment of her coworkers' reported production. In particular, petitioner had reported that she had produced four pallets of packaged and boxed heavy-duty sponges within two minutes – an impossibility,

according to her supervisor. Five days after the alleged incident of false reporting, following the return of petitioner's regular supervisor from vacation, petitioner met with the accusing supervisor and the regular supervisor in the presence of two union representatives. The upshot of that meeting was that petitioner received a disciplinary "verbal warning" concerning her work performance. Notably, petitioner's regular supervisor, who like petitioner is a woman and African-American, denies that she was pressured by anyone to give that verbal warning to petitioner. Five days after that meeting, as a subsequent step in the employee grievance process, a second meeting was convened among petitioner, her regular supervisor, two higher-ups in the company, and two union representatives. That meeting resulted in a compromise whereby petitioner agreed to work on improving her relationship with the co-worker who originally had reported the matter to the accusing supervisor. In consideration of that promise, the employer removed all notation of the verbal warning from petitioner's personnel file. Nonetheless, petitioner filed the subject complaint of race and sex discrimination and retaliation.

As to that complaint, SDHR specifically found:

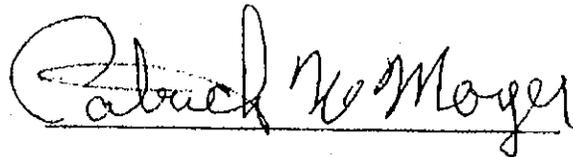
The record does not support complainant's allegations that she was treated differently because of her race and sex or that she was retaliated against for filing prior complaints of discrimination. The record shows that [3M Company] disciplined complainant for making a reporting error, which she had previously been warned about. The evidence reveals that complainant and her union negotiated to have the warning removed from her personnel file."

The papers before the Court, including the not insubstantial investigative file of SDHR, establish that the challenged determination of no probable cause for petitioner's most recent complaint of discrimination against her employer is not arbitrary and capricious or otherwise lacking a rational basis (*see Matter of Goston v American Airlines*, 295 AD2d 932 [4th Dept 2002]; *Matter of Singer v Staff Leasing Of Central N.Y.*, 295 AD2d 953 [4th Dept 2002]). Moreover, it is apparent that SDHR's investigation of the subject complaint was not abbreviated or one-sided (*see Singer*, 295 AD2d at 953, citing *Matter of Bazile v Acinapura*, 225 AD2d 764,

765 [2d Dept 1996], *lv denied* 88 NY2d 807 [1996]), and that the agency provided petitioner with a full and fair opportunity to present evidence on her own behalf and to rebut the evidence presented by her employer (see *Goston*, 295 AD2d at 932-933). Therefore, contrary to petitioner's instant allegations, the record before the Court establishes that SDHR adequately investigated the complaint of discrimination and arrived at a reasonable determination thereof.

Accordingly, the petition brought pursuant to Executive Law § 298 and CPLR article 78 is DISMISSED.

SO ORDERED:

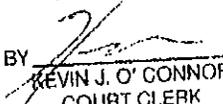


HON. PATRICK H. NeMOYER, J.S.C.

**GRANTED**

JAN 26 2009

BY

  
KEVIN J. O'CONNOR  
COURT CLERK