

At a Term of the Supreme Court of the State of New York, County of Allegany, held at the Courthouse in the Village of Belmont on the 11th day of June, 2007.

PRESENT: HON. THOMAS P. BROWN, Acting Supreme Court Justice

STATE OF NEW YORK:

SUPREME COURT:

COUNTY OF ALLEGANY:

KENNETH A. WITKOWICH,)
))
) Petitioner)
))
) FOR A JUDGMENT PURSUANT TO ARTICLE)
) 78 OF THE CIVIL PRACTICE LAW AND RULES)
))
) against)
))
) NEW YORK STATE DIVISION OF)
) HUMAN RIGHTS and)
) ALFRED STATE COLLEGE,)
))
) Respondents)
))
) -----

DECISION AND JUDGMENT

Index No. 33517

Appearances of Counsel

Gleason, Dunn, Walsh & O'Shea (Clay J. Lodovice, Esq., of counsel) for petitioner Witkovich
Caroline Downey, Attorney at Law, Acting General Counsel (Marilyn Balcacer, Attorney at
Law, Senior Attorney, of counsel) for respondent New York State Division of Human Rights
Andrew M. Cuomo, Attorney General (Michael A. Siragusa, Esq., Assistant Attorney General,
of counsel) for respondent Alfred State College

Introduction

Petitioner Witkovich, who now resides in another county, is a former employee of respondent Alfred State College. He was so employed from July 1st, 2004 until Alfred State College terminated his employment on October 28th, 2004. While employed by Alfred State College he was the Chief of the Campus Police Department and Director of Public Safety.

Alleging that he suffers a disability as recognized by the Americans with Disabilities Act, petitioner Witkovich claims that the College's termination of his employment constituted an unlawful discriminatory practice. Pursuant to New York State's Executive Law section 290 et seq., he filed a complaint with the respondent New York State Division of Human Rights.

Pursuant to CPLR Article 78, petitioner Witkovich seeks a judgment reversing the determination and order after investigation rendered by the Regional Director of the State Division of Human Rights dated December 13th, 2006, which concluded that there is no probable cause to believe that Alfred State College engaged in an unlawful discriminatory practice.

In this Article 78 proceeding, petitioner Witkovich contends that the determination by the State Division of Human Rights as to no probable cause was factually-unwarranted, arbitrary, capricious and irrational.

Analysis

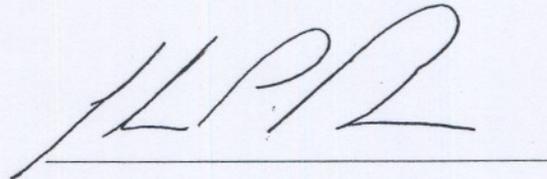
Contrary to the contentions of the petitioner, there is a rational, non-perfunctory, and carefully-articulated basis in the record for the administrative conclusion of the Division of Human Rights of "no

probable cause". A fair and reasonable inference from the record is that the petitioner's termination by Alfred State College was based upon legitimate, non-pretextual, independent, and non-discriminatory reasons. Since the administrative determination has a rational basis, and is neither arbitrary nor capricious, particularly in view of the sensitive security position the petitioner held while employed by Alfred State College, such finding must be sustained (Matter of Borenstein vs New York City Employees' Retirement System, 88 NY2d 756, 760; Matter of Pell vs Board of Education, 34 NY2d 222, 230-231; Pascual vs New York State Division of Human Rights, 37 AD3d 215 (1st Dept.: 2007)).

Accordingly, it is hereby

ADJUDGED that the application of the petitioner for a reversal of the determination of the respondent Division of Human Rights as to no probable cause is denied; and it is further

ADJUDGED that the petition is dismissed, without costs.



HON. THOMAS P. BROWN
Acting Supreme Court Justice

Dated: June 11th, 2007
Village of Belmont, New York