

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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TP 09-01846

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, CARNI, AND LINDLEY, JJ.

IN THE MATTER OF YU ZHANG, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
CHRISTOPHER C. DAHL, PRESIDENT, STATE
UNIVERSITY OF NEW YORK AT GENESEO, AND
STATE UNIVERSITY OF NEW YORK AT GENESEO,
RESPONDENTS.

YU ZHANG, PETITIONER PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF
COUNSEL), FOR RESPONDENTS CHRISTOPHER C. DAHL, PRESIDENT, STATE
UNIVERSITY OF NEW YORK AT GENESEO, AND STATE UNIVERSITY OF NEW YORK AT
GENESEO.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Monroe County [William P. Polito, J.], entered August 18, 2009) to annul a determination of respondent New York State Division of Human Rights. The determination dismissed petitioner's complaints alleging of unlawful discrimination and retaliation by respondents Christopher C. Dahl, President, State University of New York at Geneseo, and State University of New York at Geneseo.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination of respondent New York State Division of Human Rights (hereafter, SDHR) dismissing his complaints alleging unlawful discrimination and retaliation. We conclude that the determination is supported by substantial evidence and thus must be confirmed (see generally *Rainer N. Mittl, Ophthalmologist, P.C. v New York State Div. of Human Rights*, 100 NY2d 326, 331; *Matter of Mohawk Val. Orthopedics, LLP v Carcone*, 66 AD3d 1350, 1351). Although petitioner established a prima facie case of discrimination, we conclude that respondents State University of New York at Geneseo (SUNY Geneseo) and Christopher C. Dahl, the president of SUNY Geneseo, rebutted the presumption of discrimination by presenting nondiscriminatory reasons to support their decision not to grant tenure to petitioner (see generally *Ferrante v American Lung*

Assn., 90 NY2d 623, 629). Petitioner failed to establish that those reasons were merely a pretext for discrimination (see generally *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305; *Ferrante*, 90 NY2d at 629-630). In addition, petitioner failed to establish that SUNY Geneseo and Dahl engaged in retaliation after petitioner filed his complaint for unlawful discrimination (see Executive Law § 296 [7]).

Petitioner contends that SDHR failed to comply with various time limits set forth in Executive Law § 297. Those time limits, however, are directory rather than mandatory, and in any event petitioner has not demonstrated substantial prejudice as a result of the minimal delays (see *Union Free School Dist. No. 6 of Towns of Islip & Smithtown v New York State Human Rights Appeal Bd.*, 35 NY2d 371, 380-381, rearg denied 36 NY2d 807; *Matter of 121-129 Broadway Realty v New York State Div. of Human Rights*, 43 AD2d 754). We have considered petitioner's remaining contentions and conclude that they are without merit.

Handwritten signature or initials

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y.

I, PATRICIA L. MORGAN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this **FEB 11 2010**

Patricia L. Morgan

Clerk