

**Wilson v Classic Media**

2009 NY Slip Op 33267(U)

July 21, 2009

Sup Ct, NY County

Docket Number: 403131/08

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN  
Justice

PART 11

Wilson

*Pitheeve*  
Plaintiff,

- v -

Classic Media, et al  
Defendant.  
*Respondent*

+ 109981/08  
INDEX NO.: 403131/08

MOTION DATE: 4-3-09

MOTION SEQ. NO.:

MOTION CAL. NO.:

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
	_____
	_____
	_____

Cross-Motion: [ ] Yes [X] No

Upon the foregoing papers, it is ordered that this motion proceeding is decided  
*in accordance with the attached Memorandum Decision and Order*  
*+ Judgment.*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: July 21, 2009

J  
J.S.C.

Check one: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 11

-----X  
ANDRELLA E. WILSON,

Index No. 403131/08

Petitioner,

-against-

CLASSIC MEDIA and NEW YORK STATE DIVISION  
OF HUMAN RIGHTS,

Respondents.  
-----X

JOAN A. MADDEN, J.:

Adrella Wilson ("Petitioner"), appearing *pro se*, brings this Article 78 petition, which the Court converts to a petition for review under N.Y. Executive Law § 298, to (1) annul the determination issued by the New York State Division of Human Rights ("NYSDHR"), which concluded that no probable cause existed to believe that Classic Media, Inc. ("Classic") discriminated or retaliated against Petitioner; (2) find that such probable cause exists; and (3) provide monetary or other such relief as the Court deems appropriate. Respondents Classic and NYSDHR oppose the petition, is denied and dismissed for the reasons below.

Background

Petitioner worked for Classic from August 23, 2005, to December 4, 2006, as an Accounts Payable Clerk. On November 8, 2006, Petitioner sent an email to Classic's Human Resources Coordinator Laurie Ohlsson alleging that Classic was subjecting her to a hostile work environment, that her co-workers were harassing her, and that management was not taking any action to resolve the matter (Ruzich Affid. Ex. B). In

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the subsequent investigation, Petitioner alleged inter alia that her co-workers sabotaged her work by manipulating the accounts-payable system (see, e.g., O’Keefe Affirmation in Opposition to Petitioner’s Article 78 Petition (“O’Keefe Affirm.”) Ex. F, Sub-Exhibits C/C, C/D), preventing Petitioner from accessing Classic’s accounting system on one occasion (Ruzich Affid. Ex. B), and somehow eliminating her emails (O’Keefe Affirm. Ex. F, Sub-Exhibits C/H, C/I). In one incident, Petitioner claimed a co-worker asked her “accusatory questions” regarding where his missing laptop was (O’Keefe Affirm. Ex. F, Sub-Exhibit C at 3).

Petitioner claims that Classic and its employees committed these and many other alleged acts out of prejudice against her religion, race, and national origin (Ver. Complaint to NYSDHR), although the parties dispute whether Petitioner raised the allegations of prejudice during her work for Classic (compare id. (stating that Petitioner raised the issue of racial bias with Human Resources and the Chief Financial Officer), with Ruzich Affid. ¶ 10 (stating that Petitioner never did so)). Classic concluded the investigation by determining that Petitioner was not subject to any kind of discrimination or harassment, although communication issues caused significant personal friction between Petitioner and her co-workers (Ruzich Affid. ¶¶ 17, 18). Classic terminated Petitioner after she allegedly continued to provoke her co-workers and allegedly neglected her job duties (Id. at ¶¶ 19, 20).

On July 9, 2007, Petitioner filed a Verified Complaint with the NYSDHR, which claimed that in addition to the alleged harassment, Classic retaliated against her because she constantly objected to allegedly discriminatory practices (O’Keefe Affirm. Ex. F, Sub-Exhibit A). This retaliation involved a possible conspiracy between Classic and one

of Petitioner's prior employers, against whom Petitioner had filed a previous NYSDHR complaint (O'Keefe Affirm. Ex. F, Sub-Exhibit C at 4). To evince this conspiracy, Petitioner cited Classic's decision in January of 2006, shortly after it hired her, to include the question, "Did you ever file a claim against a previous employer," in its questionnaires to new hires (Id.). After Classic submitted its Position Statement responding to Petitioner's Complaint, the NYSDHR asked Petitioner to submit a rebuttal, which she did on September 14, 2007 (O'Keefe Affirm. Ex. D).

On November 15, 2007, the NYSDHR issued a Determination and Order After Investigation ("the Determination"), which dismissed the complaint on the ground that the NYSDHR's investigation was unable to establish a causal relationship between Classic's treatment of Petitioner and the alleged prejudice (O'Keefe Affirm. Ex. E). The NYSDHR wrote that "[w]hile the record suggests that [Petitioner] had personality conflicts with several of her co-workers, . . . [t]he record suggests that [Classic] terminated her employment for the non-discriminatory reasons that they considered many of her interactions with co-workers to be inappropriate and because they believed that she had neglected her job duties" (Id.). Thus, the NYSDHR's "investigation failed to substantiate" Petitioner's conspiracy allegations (Id.). The Determination concluded:

PLEASE TAKE NOTICE that any party to this proceeding may appeal the Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination.

(Id.) (emphasis omitted).

Petitioner filed an Article 78 petition appealing the Determination in the Supreme Court, Bronx County on January 14, 2008 (Ver. Pet.). Petitioner served Classic her Request for Judicial Intervention, Notice of Petition, and Verified Petition on March 27,

2008 (O’Keefe Affirm. Ex. F). On July 8, 2008, Classic served Petitioner with a Demand for a Change of Place of Trial pursuant to CPLR 511(b) (see O’Keefe Affirm. ¶ 12), and filed a Motion to Change the Place of Trial with this Court on July 21, 2008 (id. at ¶ 15). This Court granted the motion by decision and order dated October 3, 2008.

Petitioner argues that more than sufficient evidence exists to support a finding of probable cause, and also expressed concern that the NYSDHR was corrupt (Ver. Pet. ¶ 3). Petitioner alleges the NYSDHR “attempted to change [her] address without proper consent . . . ,” and expresses suspicion that Classic and the NYSDHR “are co-conspirators to obstruct Justice . . . because of racial discrimination and or retaliation” (Id.).

Classic argues that the Petition is untimely since, under N.Y. Executive Law § 298, a “party seeking review of a determination of the Division of Human Rights has sixty (60) days after service of the order to file a petition with the Supreme Court in the county in which the determination and order was issued.”

Classic further asserts that although Petitioner served a Notice of Petition on it, the Supreme Court, Bronx County has no record that Petitioner filed that document, and that while the record before this court contains the original Petition and the original Request for Judicial Intervention, each bearing the stamp of the Bronx County Clerk’s Office, it does not contain a stamped Notice of Petition. Classic argues that as Petitioner never properly filed her Notice of Petition, the Court should dismiss the petition as untimely or, in the alternative, on the grounds that the determination is neither arbitrary or capricious.

The NYSDHR files an Answer opposing the petition and attaches a copy of its Original Certified Record.

In her reply, Petitioner does not deny that she failed to file a Notice of Petition, but asserts that respondent Classic is acting with malicious intent and maintains that her “claim clearly states grounds for relief to be granted” (Reply Affd. ¶ 6). She also requests, for the first time, that the Court “postpon[e] this action until [her] [f]ederal [c]ase is resolved . . . .”<sup>1</sup> which the Court construes as a request to stay this proceeding pursuant to CPLR 2201.

#### Discussion

Parties who have submitted complaints to the NYSDHR may appeal the NYSDHR’s determinations via judicial review pursuant to the New York Executive Law § 298, which provides in pertinent part:

Such proceeding shall be initiated by the filing of a notice of petition and petition in such court. . . . Upon the filing of a notice of petition and petition, the court shall have jurisdiction of the proceeding and of the questions determined therein . . . . A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within sixty days after the service of such order.

(emphasis added).

The standard for review of NYSDHR’s probable-cause determination is whether it is arbitrary and capricious, or lacking a rational basis. McFarland v. New York State Div. of Human Rights, 241 A.D.2d 108 (1st Dep’t 1998)(citation omitted), see Holland v. Edwards 282 A.D. 353, 359 (1st Dep’t 1953), aff’d, 307 NY 38 (1954).

In this case, Petitioner’s extensive documentary submissions fail to provide evidence of discrimination by Classic. At best, some of the emails arguably show that

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<sup>1</sup> In her Reply Affidavit, Petitioner also asserts that Classic’s Amended Verified Answer to Petitioner “was not filed timely with the courts” (Reply Affid. at 1). However, although Classic filed on July 22, 2008, an Order to Show Cause to stay when its Answer was due since its Motion to Change the Place of Trial was pending, it nonetheless filed an Answer on August 11, 2008, which was before the return date of August 14, 2008, that Petitioner had placed on the Notice of Petition which she sent them.

Classic may not have been managing its own accounts payables optimally. Other submissions show that Classic had technological problems, but fail to evince that these problems were even negligent, and certainly do not demonstrate that Classic had intentionally orchestrated these problems to discriminate against Petitioner. Other submissions while suggesting that management did not quickly address Petitioner's concerns in a way that she wanted, do not show any discriminatory intent. Thus, the submissions fail to establish that racial discrimination motivated Classic's treatment of Petitioner. Accordingly, it cannot be said that NYSDHR's determination was irrational.

Based on this determination, the court need not reach the Statute of Limitation's argument raised by Classic. Petitioner's other allegations, such as that NYSDHR was corrupt, are unavailing as they lack any ostensible factual grounding.

Finally, to the extent that it appears in her Reply that Petitioner seeks to stay this proceeding under CPLR 2201 pending the resolution of her federal action, such relief is denied.

#### Conclusion

In view of the above, it is

ORDERED and ADJUDGED that the petition is denied and dismissed.

Dated: July 21, 2009

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