

**Matter of Bussa v New York State Div. of Human Rights**

2014 NY Slip Op 31290(U)

May 15, 2014

Sup Ct, New York County

Docket Number: 400079/2014

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: KERN  
Justice

PART 55

ANTONINO BUSSA

INDEX NO. 400079/A

-v-

MOTION DATE \_\_\_\_\_

NEW YORK STATE DIVISION OF HUMAN RIGHTS, et al.

MOTION SEQ. NO. 001

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

**FILED**

MAY 20 2014

COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 5/15/14

PK, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED .....  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
In the Matter of the Application of

ANTONINO BUSSA,

Petitioner,

Index No. 400079/2014

For an Order Pursuant to Article 78  
of the Civil Practice Law and Rules,

**DECISION/ORDER**

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS  
and EDUCATIONAL ALLIANCE, INC.,

Respondents.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered	<b>FILED</b>
Notice of Motion and Affidavits Annexed.....	1	
Verified Answer.....	2	MAY 20 2014
Replying Affidavits.....	_____	
Exhibits.....	3	<b>COUNTY CLERK'S OFFICE NEW YORK</b>

In this Article 78 proceeding, petitioner Antonino Bussa (“petitioner”) seeks to reverse the determination made by respondent the New York State Division of Human Rights (“DHR”) that there is no probable cause to support the allegation that Educational Alliance, Inc. (“Educational Alliance”) unlawfully discriminated against petitioner by refusing to hire him because of his disability. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. On or about April 26, 2013, petitioner submitted his resume to Educational Alliance during the CUNY Big Apple Job and Internship Fair. Thereafter,

Educational Alliance asked petitioner to come in to interview for a position as a Group Leader for P.S. 140's Summer After School Program. Educational Alliance alleges that it initially asked petitioner in for an interview as his resume showed he had prior experience working at various camps. However, his resume did not specify the age groups he worked with at these camps. Petitioner appeared for an interview on May 13, 2013. Thereafter, on or about June 25, 2013, petitioner was told that Educational Alliance had selected another candidate for the position.

On or about June 26, 2013, petitioner filed a verified complaint with DHR alleging that Educational Alliance engaged in unlawful discriminatory practice relating to employment on the basis of petitioner's disability in violation of Article 15 of the New York Executive Law. Specifically, petitioner's complaint alleged that Educational Alliance refused to hire him because he suffers from Cerebral Palsy. In response, Educational Alliance denied petitioner's allegation that he was not hired because he was disabled and asserted that it did not hire petitioner for the position as he did not have experience working with the age range of children attending the Summer After School Program at P.S. 140. In support of its position, Educational Alliance submitted, among other things, a copy of the Group Leader's job posting and petitioner's resume.

The DHR commenced an investigation into petitioner's allegations of discrimination and determined that petitioner failed to proffer evidence refuting the reason articulated by Educational Alliance for not hiring petitioner. Thus, DHR concluded that there was no probable cause to believe that Educational Alliance had engaged in or was engaging in the unlawful discriminatory act complained of and dismissed petitioner's complaint. Petitioner then commenced the instant proceeding pursuant to Article 78 challenging the DHR's dismissal of his complaint.

On review of an Article 78 petition, “[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious.” *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1<sup>st</sup> Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v. Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974) (“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard”). “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted). Further, a court should defer to DHR when “[t]he record demonstrates that petitioner had a full and fair opportunity to present her case and that DHR’s investigation was neither abbreviated nor one-sided.” *Kim v. New York State Div. of Human Rights*, 107 A.D.3d 434 (1<sup>st</sup> Dept 2013).

In the instant action, this court finds that DHR’s dismissal of petitioner’s complaint on the ground that there is no probable cause to support petitioner’s allegation that Educational Alliance unlawfully discriminated against petitioner based on the fact that he is disabled was made on a rational basis. As an initial matter, both petitioner and Educational Alliance were given a full and fair opportunity to present their case. Additionally, the DHR, taking into consideration the record submitted by the parties, had a rational basis for coming to its conclusion that petitioner was not hired by Educational Alliance as he did not have the required

