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EXHIBIT

State of New York
Court of Appeals

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DHR EXTERNAL RELATIONS
Decided and Entered on the
ninth day of May, 2019

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2019-198

In the Matter of Charles Rochester,
Appellant,

v.

New York State Division of Human Rights et
al.,

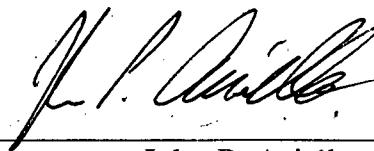
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is dismissed upon the ground that the orders sought to be appealed from do not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



John P. Asiello
Clerk of the Court

EXHIBIT

D
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Hon. Rudolph E. Greco, Jr.
Justice

IAS PART 32

In the Matter of the Application of
CHARLES ROCHESTER.

X

Petitioner,

- against -

NEW YORK STATE DIVISION OF HUMAN
RIGHTS and FORTUNE SOCIETY.

Respondents.

Index. No.: 12880/2016

Motion Dated: September 7, 2017
Seq. No. 2
Cal. No.

FILED & RECORDED

NOV 08 2017
COUNTY CLERK
QUEENS COUNTY

X
The following papers numbered 1 to 10 were read on this petition to grant a public hearing, or alternatively to allow transfer to Federal jurisdiction, (sic).

	Papers Numbered
Notice of Motion, Affidavit in Support, Exhibits.....	1-3
Answer, Exhibits, Certified Administrative Record.....	4-7
Reply, Exhibits.....	8-10

This Court's previous order scheduling the instant motion/petition for a conference/hearing dated October 28, 2017 (J. Greco) is hereby vacated *sua sponte*, and, upon the foregoing papers, as well as oral arguments by the parties¹, petitioner appearing *pro se*, the following is this Court's decision:

This proceeding arises from a determination by the respondent, without a hearing regarding a complaint filed by petitioner on March 28, 2016. The Determination and Order finding "no probable cause to believe that respondent [Fortune Society] has engaged in, or is engaging in the unlawful discriminatory practice complained of" was a three page document signed by Director Yearwood-Drury on September 23, 2016. It was supported by a Final Investigation Report and Basis of Determination dated August 17, 2016, submitted by Rodlind Purrini a Human Rights Specialist I and reviewed and approved by Cynthia B. Mendoza-Garcia a Human Rights Specialist II. Petitioner argues that this determination was arbitrary, capricious and biased especially in light of the

¹The court notes that respondent Fortune Society does not seem to have appeared in this proceeding and did not appear for the conference/hearing.

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General Counsel's Office

investigator's knowledge that he and one of his interviewers had an acrimonious relationship.

Briefly, petitioner's complaint to the Division of Human Rights ("The Division") was precipitated by a job interview that did not result in his hire by the Fortune Society ("Fortune"). His complaint alleges that Fortune subjected him to unlawful discriminatory practices in relation to employment and that it did not hire him based on his age, arrest and conviction record, and disability. However, he also indicates that he and one of his interviewers had a history, an acrimonious one at that, in which they shared a common criminal past, addiction and disability. He likens this to a conflict of interest and states that the interviewer should have recused himself from the process. The court opines that this relationship is actually at the heart of this matter.

As noted in the Determination and Order petitioner was not hired because Fortune found that he "did not have the depth of work experience in case management, counseling, and group facilitation that... was necessary to succeed in [the] challenging position" (see *Determination and Order, supra*). Further, petitioner's past work experience was only as a trainee or intern and the presumed support and assistance that he had in those positions was not available to him with respect to the open position. The Determination and Order indicated that both parties acknowledged they knew each other and petitioner never requested recusal nor voiced his uneasiness in continuing with the interview. It was noted that petitioner did not allege that he was asked any questions that would imply a discriminatory animus.

"Where, as here, the New York State Division of Human Rights... renders a determination of no probable cause without holding a hearing, the appropriate standard of review is whether the probable cause determination was arbitrary and capricious or lacked a rational basis" (*Gordon v New York State Div. of Human Rights*, 126 AD3d 697, 698 [2nd Dept. 2015] citing *Ramirez v New York State Div. of Human Rights*, 4 NY3d 789 [2005], *Matter of Vora v New York State Div. of Human Rights*, 103 AD3d 739 [2nd Dept. 2013], *Matter of Orosz v New York State Div. of Human Rights*, 88 AD3d 798 [2nd Dept. 2011]). The Court finds respondent's determination of no probable cause was not arbitrary and capricious and was rational. The record reflects a well-reasoned determination based upon a review of documents submitted as well as conferences with both parties involved, and a review of other comparative data.

"To the extent that the petitioner contends that the Division's investigation was one-sided..., the Division has broad discretion in the conduct of its investigations, (see *Matter of Orosz, supra* at 798 citing 9 NYCRR 405.6, *Matter of Maltsev v New York State Division of Human Rights*, 31 AD3d 641 [2nd Dept. 2006], *Matter of Brazile v Actinapura*, 225 AD2d 764 [2nd Dept. 1996]). The record reflects here petitioner had a full opportunity to present his case, make submissions and participate in a conference, (see e.g. *Matter of Orosz, supra*, *Matter of Rauch v New York State Div. of Human Rights*, 73 AD3d 930 [2nd Dept. 2010], *Matter of Maltsev, supra* at 641, *Matter of Cornelius v New York State Div. of Human Rights*, 286 AD2d 329 [2nd Dept. 2001]). This Court rejects petitioner's bias argument.

The court notes that The Division's "determinations are entitled to considerable deference

due to its expertise in evaluating discrimination claims" (*Matter of Cornelius*, *supra* at 330; *see also Matter of Sidoti v New York State Div. of Human Rights*, 212 AD2d 537, 538 [2nd Dept. 1995]). This Court affords The Division such deference.

The petition is denied in its entirety and this proceeding is dismissed. This court also notes petitioner's requests for a public hearing and transfer of this matter to federal court are unsupported. There is no basis cited upon which this relief can be granted.

A copy of this decision with notice of entry shall be served upon respondents within twenty (20) days of the date of entry hereof.

Dated: 10.05.2017

Rudolph E. Green, Jr.
J.S.C.

Barney J. Pfeffer

ED & RECORDED

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COUNTY CLERK
QUEENSB COUNT

EXHIBIT E

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M256249

E/rr

MARK C. DILLON, J.P.
BETSY BARROS
ANGELA G. IANNACCI
LINDA CHRISTOPHER, JJ.

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2018-01008

DECISION & ORDER ON MOTION

In the Matter of Charles Rochester, appellant,
v New York State Division of Human Rights,
et al., respondents.

(Index No. 12880/16)

Motion by the appellant, in effect, to waive the filing fee on an appeal from an order of the Supreme Court, Queens County, entered November 6, 2017, and to enlarge the time to perfect the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branch of the motion which is to enlarge the time to perfect the appeal is granted and the time to perfect the appeal by causing the original papers constituting the record on the appeal to be filed in the office of the Clerk of this Court (see 22 NYCRR 670.9[d][2]), and by serving and filing a brief on the appeal is enlarged until November 13, 2018; and it is further,

ORDERED that the motion is otherwise denied.

DILLON, J.P., BARROS, IANNACCI and CHRISTOPHER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

October 12, 2018

MATTER OF ROCHESTER v NEW YORK STATE DIVISION OF HUMAN RIGHTS