

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

937

TP 15-00390

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF CARL A. MONTI, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
SERVICE EMPLOYEES INTERNATIONAL UNION, ALF-CIO,
LOCAL 200 UNITED, RESPONDENTS.

LAW OFFICE OF LINDY KORN, PLLC, BUFFALO (CHARLES L. MILLER OF
COUNSEL), FOR PETITIONER.

LAW OFFICES OF MAIREAD E. CONNOR, PLLC, SYRACUSE (MAIREAD E. CONNOR OF
COUNSEL), FOR RESPONDENT SERVICE EMPLOYEES INTERNATIONAL UNION, ALF-
CIO, LOCAL 200 UNITED.

Proceeding pursuant to Executive Law § 298 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Shirley Troutman, J.], entered March 4, 2015) to review a determination of respondent New York State Division of Human Rights. The determination adopted the recommended order of the Administrative Law Judge dismissing petitioner's complaint.

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

Memorandum: In this proceeding pursuant to Executive Law § 298, petitioner seeks to annul the determination of respondent New York State Division of Human Rights dismissing his complaint following a public hearing. Our review of the determination, which adopted the findings of the Administrative Law Judge (ALJ) who conducted the public hearing, is limited to the issue whether substantial evidence supports the determination (*see Matter of Bowler v New York State Div. of Human Rights*, 77 AD3d 1380, 1381, lv denied 16 NY3d 709). The assessment of credibility by the ALJ, moreover, is "unassailable," and the determination must be confirmed if the testimony credited by the ALJ provides substantial evidence to support it (*Matter of Berenhaus v Ward*, 70 NY2d 436, 443; *see Matter of Jones v New York State Div. of Human Rights*, 122 AD3d 1387, 1387-1388). We conclude that substantial evidence supports the ALJ's determination that petitioner failed to establish a prima facie case of retaliation (*see Jones*, 122 AD3d at 1387-1388), and that petitioner's termination was based upon legitimate, nondiscriminatory reasons (*see Matter of Pace Univ. v New*

York City Commn. on Human Rights, 85 NY2d 125, 128-129).

Entered: October 2, 2015

Frances E. Cafarell
Clerk of the Court