

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

807

CA 16-02140

PRESENT: WHALEN, P.J., SMITH, CARNI, CURRAN, AND SCUDDER, JJ.

IN THE MATTER OF NEAL J. GOLDWATER,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
FIRST NIAGARA FINANCIAL GROUP, INC., AND
FIRST NIAGARA RISK MANAGEMENT, INC.,
RESPONDENTS-RESPONDENTS.

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

HODGSON RUSS LLP, BUFFALO (JOSHUA FEINSTEIN OF COUNSEL), FOR
RESPONDENTS-RESPONDENTS FIRST NIAGARA FINANCIAL GROUP, INC., AND
FIRST NIAGARA RISK MANAGEMENT, INC.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Donna M. Siwek, J.), entered January 25, 2016 in a CPLR
article 78 proceeding. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking to annul the determination of respondent New York State
Division of Human Rights (Division) that there was no probable cause
to support petitioner's allegations that respondents First Niagara
Financial Group, Inc. and First Niagara Risk Management, Inc. (First
Niagara respondents) discriminated against him on the basis of age and
sex and that his termination was the result of unlawful retaliation.
Contrary to petitioner's contention, the Division's determination is
supported by a rational basis and is not arbitrary and capricious (see
Matter of Witkovich v New York State Div. of Human Rights, 56 AD3d
1170, 1170, lv denied 12 NY3d 702; cf. *Matter of Mambretti v New York
State Div. of Human Rights*, 129 AD3d 1696, 1696-1697, lv denied 26
NY3d 909). Upon our review of the record, we conclude that " 'the
Division properly investigated petitioner's complaint . . . and
provided petitioner with a full and fair opportunity to present
evidence on his behalf and to rebut the evidence presented by' " the
First Niagara respondents (*Witkovich*, 56 AD3d at 1170).

Entered: June 9, 2017

Frances E. Cafarell
Clerk of the Court