

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

**585**

**CA 17-01991**

PRESENT: SMITH, J.P., DEJOSEPH, CURRAN, AND WINSLOW, JJ.

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IN THE MATTER OF SHARON SCHWERTFAGER,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS, NEW YORK  
STATE, STATE UNIVERSITY OF NEW YORK AND STATE  
UNIVERSITY COLLEGE AT FREDONIA,  
RESPONDENTS-RESPONDENTS.

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

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (JOSEPH M. SPADOLA OF  
COUNSEL), FOR RESPONDENTS-RESPONDENTS NEW YORK STATE, STATE UNIVERSITY  
OF NEW YORK AND STATE UNIVERSITY COLLEGE AT FREDONIA.

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Appeal from an order and judgment (one paper) of the Supreme  
Court, Chautauqua County (Frank A. Sedita, III, J.), entered January  
18, 2017 in a proceeding pursuant to Executive Law § 298. The order  
and judgment dismissed the petition.

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

Memorandum: Petitioner commenced this proceeding pursuant to  
Executive Law § 298 seeking to annul the determination of respondent  
New York State Division of Human Rights (SDHR) that there was no  
probable cause to believe that petitioner's employer, State University  
of New York at Fredonia, incorrectly sued as State University College  
at Fredonia (respondent), discriminated and retaliated against her.  
We reject petitioner's contention that Supreme Court erred in  
dismissing the petition.

Initially, we note that petitioner did not address her  
discrimination claims in her memorandum of law or at oral argument in  
the motion court, nor did she address them in her brief on appeal.  
Consequently, any issues with respect to those claims have been  
abandoned (see *Hahey v Pelusio*, 156 AD3d 1381, 1382 [4th Dept 2017];  
*Cleere v Frost Ridge Campground, LLC*, 155 AD3d 1645, 1646-1647 [4th  
Dept 2017]).

Contrary to petitioner's contention, the determination of SDHR is  
supported by a rational basis and is not arbitrary and capricious (see  
*Matter of Witkowich v New York State Div. of Human Rights*, 56 AD3d

1170, 1170 [4th Dept 2008], *lv denied* 12 NY3d 702 [2009]; *cf. Matter of Mambretti v New York State Div. of Human Rights*, 129 AD3d 1696, 1696-1697 [4th Dept 2015], *lv denied* 26 NY3d 909 [2015]). Contrary to petitioner's further contention, upon our review of the record, we conclude that SDHR " 'properly investigated petitioner's complaint . . . and provided petitioner with a full and fair opportunity to present evidence on [her] behalf and to rebut the evidence presented by [respondent]' " (*Witkovich*, 56 AD3d at 1170).

Entered: May 4, 2018

Mark W. Bennett  
Clerk of the Court