

**Matter of Katz v New York City Civil Serv. Commn.**

2012 NY Slip Op 31026(U)

April 17, 2012

Supreme Court, New York County

Docket Number: 114005/11

Judge: Cynthia S. Kern

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: \_\_\_\_\_  
Justice

PART \_\_\_\_\_

Index Number : 114005/2011  
KATZ, ANDREW  
VS.  
NYC CIVIL SERVICE COMMISSION  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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~~ decided in accordance with the annexed decision.*

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

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

RECEIVED  
APR 18 2012

Dated: 4/17/12

CRK, 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

ANDREW KATZ,

Petitioner,

Index No. 114005/11

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

**DECISION/ORDER**

-against-

NEW YORK CITY CIVIL SERVICE COMMISSION

Respondent.

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

-----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
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Andrew Katz brought this petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to reverse and annul a determination made by respondent the New York City Civil Service Commission ("CSC"), dated November 17, 2011. In its Determination, the CSC affirmed the determination of the New York City Police Department ("NYPD") finding petitioner unqualified for the position of police officer. Respondent now cross-moves to dismiss the petition on the ground that it fails to state a cause of action. For the reasons set forth below, respondent's cross-motion is granted and the petition is hereby dismissed.

The relevant facts are as follows. In or around November 2009, petitioner applied for the position of police officer with the NYPD, Exam No. 8303. On November 18, 2009, the NYPD informed petitioner via letter that he did not meet the requirements for the position of police officer and was disqualified. According to the letter, petitioner's disqualification was "based on the evaluation of [his] psychological tests and interview which found personality characteristics incompatible with the unique demands and stresses of Police Officer." Specifically, the NYPD found that petitioner suffered from adult Attention Deficit Hyperactivity Disorder ("ADHD").

Petitioner then appealed his disqualification to the CSC, which conducted a hearing on September 14, 2011. At the hearing, the NYPD presented the testimony of George Kingsley, Ph.D, of the NYPD Psychological Services Unit who recommended that the CSC sustain the disqualification. Petitioner presented the testimony of Robert Daley, Ph.D, his own psychologist who advised that petitioner was psychologically fit for the job as police officer and petitioner also testified on his own behalf.

On November 17, 2011, the CSC affirmed the determination of the NYPD, writing "[t]he Commission has carefully reviewed the entire record and considered the arguments and the testimony presented by both parties. Based on our review, the Commission concludes that the record at this time supports Appellant's disqualification." On or about December 13, 2011, petitioner commenced this Article 78 proceeding challenging the CSC's Determination.

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

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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).

In the instant action, the court finds that the CSC’s affirmation of the determination of the NYPD that petitioner was unqualified for the position of police officer under Exam No. 8303 was made on a rational basis. In reaching its Determination, the CSC relied on the recommendation of Mr. Kingsley, Ph.D of the NYPD Psychological Services Unit, which found petitioner to be psychologically unfit for the police officer position. Petitioner’s only evidence to the contrary is a letter from his own psychologist, Mr. Daley, Ph.D, who found that, based on his examination of petitioner, petitioner was “fully mentally competent and a suitable candidate for employment as a police officer.” However, the fact that petitioner’s private psychologist’s opinion is contrary to that of the NYPD’s Psychologist is immaterial. “It is not for the courts to choose between diverse professional opinions. That is the function of the proper department heads and as long as they act reasonably and responsibly, the courts will not interfere.” *Palozzolo v. Nadel*, 83 A.D.2d 539 (1<sup>st</sup> Dept 1981), citing *McCabe v. Hoberman*, 33 A.D.2d 547, 548 (1<sup>st</sup> Dept 1969). Moreover, the First Department has held that “in determining whether a candidate is medically qualified to serve as a police officer, the appointing authority is entitled to rely upon the findings of its own medical

