

<p>Czernisz v New York City Civil Serv. Commn. NYCCSC</p>
<p>2015 NY Slip Op 32037(U)</p>
<p>September 9, 2015</p>
<p>Supreme Court, New York County</p>
<p>Docket Number: 100465/2015</p>
<p>Judge: Joan B. Lobis</p>
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<p>This opinion is uncorrected and not selected for official publication.</p>

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

EF
9/16/15
E
Index Number : 100465/2015

CZERNISZ, TOMASZ

vs

NYC CIVIL SERVICE COMMISSION

Sequence Number : 001

ARTICLE 78

PART 6

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). 1

Answering Affidavits — Exhibits _____ | No(s). 2, 3

Replying Affidavits _____ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is

FILED

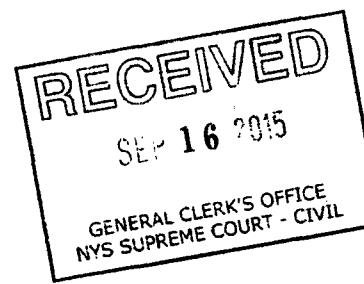
OCT 5 2015

COUNTY CLERKS OFFICE
NEW YORK

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION
and the clerk of court shall ORDER
enter an order and judgment
of dismissal.

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

Dated: 9/9/15




JOAN B. LOBIS, J.S.C., 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

[* 2]

ПОДГОТОВКА ИСПОЛНИТЕЛЕЙ КОМПОЗИЦИИ
СОВРЕМЕННОГО САКРАМЕНТАЛЬНОГО МИССА

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X

Tomasz Czernisz,

Petitioner,

-against-

Index No. 100465/2015

**Decision, Order, and
Judgment**

New York City Civil Service Commission NYCCSC, Nancy Chavetz, Commissioner NYCCSC in her official capacity, Department of Correction DOC, Joseph Ponte Commissioner DOC in his official capacity, Lewis Schlosser PhD Director of Psychological Services DOC in his official capacity, David Safran PhD Director AIU DOC in his official capacity, Alan Vengersky Deputy Commissioner DOC in his official capacity, Albert Ceva Attorney DOC Legal Bureau in his official capacity, Tammy Wyche DOC Investigator in her official capacity, Edna Wells Handy Commissioner DCAS in her official capacity,

Respondents.

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JOAN B. LOBIS, J.S.C.:

FILED
OCT -5 2015
COUNTY CLERK'S OFFICE
NEW YORK

In this Article 78 proceeding, petitioner challenges the determination of respondents that he was disqualified for the position of correction officer. Respondents cross-move to dismiss the petition. As respondents point out, the petition is lengthy and contains information not relevant to this proceeding. Although the Court does not dismiss the petition on this basis as respondents request, it limits its discussion to the pertinent facts.

Petitioner took the civil service exam for the position of correction officer in 2010. His high score gave him a high ranking and he was otherwise qualified for consideration. Although there was some confusion as to petitioner's continued interest in the job in January 2013, ultimately

the matter was cleared up and on January 18, 2013, petitioner attended an orientation session, at which petitioner continued with the application process. Among other things, he filled out a form in which he disclosed that in April 2000 he saw a mental health professional in connection with his discharge from military duty. By way of explanation, he submitted a five-page information form which stated that he had joined the Navy in order to be stationed in Japan near a woman with whom he was in a serious relationship. He alleges that recruiters informed he likely would get the desired assignment and be eligible for an officer training program. Subsequently, he learned that he would not be stationed in Japan and he was not eligible for the officer training program. Accordingly, and because as a seaman rather than an officer he would endure financial hardship, he did not wish to remain in the military. He states that because he wanted a “failsafe reason for discharge,” he behaved as if he were psychologically unbalanced – in particular, by making small cuts on his wrist. As a result, he was sent to the Navy psychologist, who “accused me of making threats” and “diagnosed me with ‘antisocial personality disorder.’” He said the diagnosis was based on one interview with the doctor and acknowledged that his own actions were “immature” and wrong. He added, “I feel if I was not misled to begin with and if my loan situation and circumstances were considered, I would not have resorted to such actions. Actually, I would not have signed up.”

Another component of the application process was an interview with psychologist Joseph E. Stack, Ph.D., on February 11, 2013. The doctor’s report indicated that petitioner’s background, marital history and relationship with his children all appeared to be healthy. As for his military record, however, Dr. Stack noted that at his psychological exam during his Navy service, petitioner threatened to cut himself “until command ‘kicks him out.’” Dr. Stack noted that

petitioner attempted to use the military to get back to Japan, and that he felt manipulated when he did not get the desired assignment, suggesting that petitioner still justified his conduct on this basis. He found that petitioner had “an inconsistent work record,” focusing on the limited time petitioner had worked at his current job and the fact that he was unemployed for two years. He concluded that petitioner “demonstrated inconsistent functioning in the vocational and interpersonal domains.” In particular, the doctor found petitioner’s conduct in 2000 troubling. Whether, as petitioner contended, he feigned suicidal impulses in order to obtain a military discharge, or whether he in fact had antisocial personality disorder and had been suicidal in 2000, his behavior demonstrated that he was not trustworthy. As “trustworthiness is of the utmost importance” for the position of correctional officer, Dr. Stack concluded that petitioner was not qualified. Petitioner claims that Dr. Stack appeared to be unfocused and in poor health during the interview and notes that he apparently died a few weeks later.

A letter informing petitioner that he was disqualified (“the disqualification letter”) is dated February 14, 2013. Meanwhile, petitioner continued to take qualification tests and allegedly he performed well on them. Petitioner received the disqualification letter on March 13, 2013. Following his receipt of the letter, petitioner filed a complaint with the New York State Division of Human Rights (“DHR”) in which he alleged discrimination based on age, disability, military status, national origin, race, color, and sex. His disability, he argued, was his record of psychological disability in his military record. Respondents opposed the complaint, stating there was no evidence of discrimination. Ultimately, DHR found no merit to petitioner’s claim. A subsequent decision of DHR, with a different case number, reached the same conclusion.

In addition, on March 19, 2013, petitioner appealed respondents' determination.¹ Among other things, he submitted the July 25, 2014, report of Marina Bontkowski, LMHC-LP, and Alexander Sasha Bardey, M.D., who is board certified in psychiatry and neurology. This expert report opines that petitioner is "psychiatrically clear to work as a Corrections Officer" The report disagrees that petitioner's feigned suicidal behavior thirteen years earlier rendered him disqualified when considered against his more recent behavior. The report further asserts that petitioner's long-term friendships and work history contradict Dr. Stack's conclusion that petitioner functioned inconsistently in interpersonal and vocational arenas. Petitioner also submitted an evaluation from the Department of Homeless Services, where petitioner currently works as a peace officer, indicating that he is an exceptional employee, and letters of recommendation from several of his colleagues at the shelter. On November 19, 2014, respondents denied petitioner's appeal, stating "the record at this time supports [petitioner's] disqualification."

Subsequently, petitioner commenced this proceeding. He alleges it was irrational to rely on Dr. Stack's report, and submits the July 25, 2014, report of his expert, which he suggests should be dispositive. He states that Dr. Stack omitted some of their discussion from his report and stresses the doctor was tired, droopy, and ailing during the interview. He argues that the history of his discrimination claim highlights "the contradictions and false statements regarding petitioner's alleged psychological disqualification." He alleges that respondents are guilty of misleading him as to the status of his application and that they conspired against him by their delay in informing

¹ The Court notes that petitioner filed a third complaint with DHR, and the third decision denied petitioner's claims without consideration because of the pending appeal of his discharge.

him of their decision. He generally challenges the conclusion in the disqualification letter and the affirmation of disqualification.

Respondents cross-move to dismiss the proceeding. They claim the decision to rely on Dr. Stack's evaluation was rational and point out that the doctor's decision was based on undisputed facts. They argue they reasonably concluded that the "sham suicide attempt raises serious concerns about [petitioner's] trustworthiness and judgment." They argue that they were entitled to rely on the evaluation of their doctor rather than that of petitioner's doctor. In addition, they argue that the petition does not comply with pleading requirements, that it is too long and hard to follow, and that the petition should be dismissed on this basis. In the alternative, they state, petitioner should be ordered to amend the petition to conform to the rules.

In an Article 78 proceeding, the Court reviews agency decisions to determine whether an action violates lawful procedures, is arbitrary or capricious, or is affected by an error of law. E.g., Pell v. Bd. of Educ., 34 N.Y.2d 222, 231 (1974); Roberts v. Gavin, 96 A.D.3d 669, 671 (1st Dep't 2012). The Court must not substitute its judgment for that of the agency. Roberts, 96 A.D.3d at 671. It is petitioner's burden to show that an agency determination should be overturned. Where a hiring decision is at issue, respondents have the task of setting fair standards for determining whether individuals are qualified for their positions, and courts do not interfere with these standards unless they are completely irrational. See Kulesa v. Office of Court Admin. of the State of New York, 208 A.D.2d 927, 928 (2nd Dep't 1994)(concerning hiring of court officers). In the appointment of correction officers and other law enforcement officers, the Court

accords the appointing authorities particularly wide discretion. Little v. County of Westchester, 36 A.D.3d 616, 616-17 (2nd Dep’t 2007)(concerning hiring of correction officer).

Here, petitioner has not shown that respondents abused their discretion. The psychological evaluation is an integral part of the hiring process for the position of correction officer. See Rigia v. Koehler, 165 A.D.2d 525, 528 (1st Dep’t 1991). Moreover, respondents were “entitled to rely upon the findings of [their] own medical personnel, even if those findings are contrary to those of professionals retained by the candidate, and the judicial function is exhausted once a rational basis for the conclusion is found.” Thomas v. Straub, 29 A.D.3d 595, 596 (2nd Dep’t 2006). It was reasonable of Dr. Stack to consider petitioner’s military medical history in reaching his determination. See id. His notes make it clear that he considered petitioner’s more recent behavior as well, in particular remarking that petitioner continued to assert that, although he had behaved immaturely, his conduct had resulted from the fact that the military had misled him. In addition, he found the fact that petitioner had threatened to cut himself until the military discharged him to be important in assessing his trustworthiness and the diagnosis of antisocial personality disorder.

Petitioner refers to Dr. Stack’s drowsiness and to the fact that he died shortly after the interview with petitioner, and he also mentions that he discussed personal matters with Dr. Stack which were not a part of the doctor’s report but which petitioner believes should have been considered. Neither of these contentions are persuasive, however, as they do not show that Dr. Stack’s recommendation was irrational or that respondents were unreasonable in their decision to rely on it. Petitioner additionally alludes to many instances of alleged misconduct by respondents,

including that they mailed documents to him late, that they told him he was a worthy applicant when he was about to be – or already had been – disqualified, that various members of the institutional respondents were dismissive of his application and his arguments in support of reconsideration, and that they actively misled him and they lied during the appeals process. None of these allegations are supported and the nexus between them and the disqualification decision is unclear based on the papers.

The Court understands the frustration of petitioner, who scored well on his examination and had high hopes for the position, who believes he was unfairly disqualified, and who feels his current work as a peace officer shows he would do well as a corrections officer. None of his beliefs or arguments, however, show that respondents were irrational. Instead, Dr. Stack's report, respondents' conduct and arguments, and the record make it clear there was a rational basis for the determination. Accordingly, it is

ORDERED that the cross-motion is granted and the petition is dismissed.

Dated: *Sept. 9, 2015*

FILED
OCT -5 2015
COUNTY CLERK'S OFFICE
NEW YORK

ENTER:


JOAN B. LOBIS, J.S.C.