

**Matter of Jones v New York City Hous. Auth.**

2013 NY Slip Op 32363(U)

September 27, 2013

Supreme Court, New York County

Docket Number: 402452/12

Judge: Joan B. Lobis

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOAN B. LOBIS  
*Justice*

PART 6

Frederick Jones  
  
Plaintiff(s),  
  
- v -  
  
NYC Housing Authority  
  
Defendant(s).

INDEX NO. 402452/2012  
MOTION DATE 3/27/13  
MOTION SEQ. NO. 001  
MOTION CAL. NO.

The following papers, numbered 1 to 42, were read on this motion to/for Article 78 Ptition

	<u>PAPERS NUMBERED</u>
Notice of Motion / Order to Show Cause – Affidavits – Exhibits _____	<u>1-20</u>
Answering Affidavits – Exhibits _____	<u>43</u>
Replying Affidavits _____	

**THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION**  
*Order & Judgment*

**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).

Dated: 9/27/13

*JBL*  
**JOAN B. LOBIS, 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  
NEW YORK COUNTY: IAS PART 6**

-----X  
IN THE MATTER OF THE APPLICATION OF  
FREDERICK JONES,

Petitioner,

Index No. 402452/12

-against-

**Decision, Order, and Judgment**

NEW YORK CITY HOUSING AUTHORITY,  
NEW YORK CITY DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES, NEW YORK CITY  
EMPLOYEES RETIREMENT SYSTEM,

Respondents.

-----X  
**JOAN B. LOBIS, J.S.C.:**

Frederick Jones petitions this Court pro se under Article 78 of the Civil Practice Law and Rules for an order compelling the Respondents to restore certain employment benefits that were allegedly adversely affected by his involuntary medical leaves of absence. This Court granted Respondent New York City Housing Authority's motion to dismiss, but denied the motion to dismiss of Respondent New York City Department of Citywide Administrative Services (DCAS).<sup>1</sup> Respondents DCAS and NYCERS now answer the petition. For the following reasons, the petition is granted.

The facts in this action were set forth in this Court's May 13, 2013, decision. Briefly, Petitioner Frederick Jones, an honorably discharged, disabled veteran began working for NYCHA in 1985. In the course of his employment he was receiving treatment through the Veteran's

---

<sup>1</sup>This Court in its May 13, 2013, disposition on those motions noted that the New York City Employees Retirement System (NYCERS) had not moved to dismiss. Respondents DCAS and NYCERS acknowledge this procedural posture in their Memorandum of Law accompanying their Answer at page 2.

Administration for mental health issues. At various times during his employment he was placed on medical leaves of absence. In 1995 and again in 1996 Petitioner sought reinstatement to his duties. He sued DCAS, then known as the Department of Personnel, in consecutive actions in federal district court, which actions were consolidated for trial. In the original federal action Mr. Jones alleged that the denial of his 1995 application for reinstatement was discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA). In the subsequent action Mr. Jones claimed that the second denial of his application for reinstatement in 1996 was retaliation for his having sued for discrimination in the 1995 action. While these cases were pending, Mr. Jones was reinstated on October 27, 1997.

In 1998, the jury rejected Mr. Jones' claim of ADA discrimination, but found that DCAS had retaliated against him for filing the 1995 action. The jury awarded him \$36,000. The Second Circuit affirmed that verdict, which the court of appeals found included back pay for the ten-month period between the unlawful retaliation and Jones's ultimate rehiring. Jones v. Dep't of Citywide Admin. Servs., 182 F.3d 900, 900 (2d Cir. 1999).

Following that award, in August 2002, Mr. Jones brought an Article 78 proceeding against the New York City Housing Authority (NYCHA) seeking relief for the imposition of the involuntary medical leave and sought restoration of benefits for the times that he was on leave from 1993 to 1997, including back pay with interest, restoration of leave credits and seniority (the 2002 action). On December 23, 2002, that petition was dismissed as time-barred since it was not brought within the applicable four-month statute of limitations period.

In 2012 Petitioner brought this Article 78 proceeding against Respondents NYCHA, DCAS, and NYCERS seeking to compel the Respondents to restore his employment benefits. Since the filing of the petition, NYCERS notified Petitioner that his disability retirement application had been granted, effective October 7, 2012. This Court granted NYCHA's cross-motion to dismiss the petition against that agency based on the 2002 action. The Court found, however, that the action could proceed against the remaining Respondent agencies, DCAS and NYCERS based on the showing that Mr. Jones had prevailed against DCAS in his federal action claiming that he was denied reinstatement in 1996 in retaliation for filing a discrimination claim under the ADA.

In answering the petition, Respondents DCAS<sup>2</sup> and NYCERS now claim that any restoration of employment benefits lost during the ten-month unlawful retaliation period is time-barred because Mr. Jones "is guilty of laches." The equitable doctrine of laches permits this Court, in appropriate cases, to deny relief that would otherwise be available where a claimant has unreasonably delayed or been negligent in asserting a claim, and that delay or negligence has prejudiced the party against whom relief is sought. Black's Law Dictionary 878 (7th ed. 1999). In this case, Petitioner Jones is proceeding pro se. He suffers from service-related disabilities, has received mental health and alcohol-related treatment, and is currently retired based on disability. His seeking any lost benefits while processing his application for disability retirement does not appear to this Court to represent unreasonable delay or negligence. Regardless, even if to the trained eye, the delay were excessive, the Respondents, in raising this affirmative defense, have failed to show any prejudice. Accordingly, this Court finds that the doctrine of laches does not apply in the

---

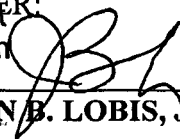
<sup>2</sup>This Court notes that DCAS failed to verify the Answer.

circumstances of this case.

This Court next considers the Respondents' contention that the petition fails to state a cause of action. Respondent DCAS is precluded from raising this claim based on its earlier motion. To the extent that Respondent NYCERS has asserted this claim in its Answer, for the same reasons the argument was rejected in this Court's May 13, 2013, decision, it fails again. As the Second Circuit's affirmance showed, the federal district court instructed the jurors that if they found DCAS liable for retaliation, Jones was entitled, minus a duty to mitigate, to "the amount of salary and benefits lost from the date of the adverse action." 182 F.3d at 900. Agencies' action that is required to restore any benefits lost during the established ten-month unlawful retaliation period flows ineluctably from that federal jury's determination. Upon remand, the Respondents must provide Petitioner Jones with the opportunity to pursue steps required to implement that restoration.<sup>3</sup> Accordingly, it is

ADJUDGED that the petition is granted, and the matter is remanded to the Respondent agencies to determine what benefits remain to be restored from the ten-month unlawful retaliation period and to provide Petitioner Jones with the opportunity to pursue steps required to implement restoration should he so choose.

Dated: September 27, 2013

**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).  
**ENTER:**  
  
**JOAN B. LOBIS, J.S.C.**

<sup>3</sup>Respondents address at some length what those steps might be but those actions are not before this Court.