

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

2014 NY Slip Op 30365(U)

February 6, 2014

Supreme Court, New York County

Docket Number: 400357/2013

Judge: Michael D. Stallman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN  
*Justice*

PART 21

Index Number : 400357/2013  
CITY OF NEW YORK  
NYC CIVIL SERVICE COMMISSION  
SEQUENCE NUMBER : 001  
ARTICLE 78

Plaintiffs

INDEX NO. 400357/13

MOTION DATE 11/19/13

MOTION SEQ. NO. 001

Respondents

The following papers, numbered 1 to 3 were read on this Article 78 petition:

Notice of Motion: Amended Notice of Petition (Exhibits 1-20)

[No(s)] 1-2

Verbal Answer

[No(s)] 3

Upon the foregoing papers, this motion is decided in accordance with the annexed memorandum decision, order and judgment.

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and a copy 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 2000)

HON. MICHAEL D. STALLMAN

Dated: 11/19/13  
New York, New York



J.S.C.

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

- 1. Check off:
- 2. Check if appropriate:..... PETITION IS:
- 3. Check if appropriate:.....

- X CASE DISPOSED  NON-FINAL DISPOSITION
- GRANTED  DENIED  GRANTED IN PART  OTHER
- SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 21**

-----X  
THE CITY OF NEW YORK, EDNA WELLS  
HANDY, as Commissioner of the New York City  
Department of Citywide Administrative Services, and  
RAYMOND W. KELLY, as Commissioner of the  
New York City Police Department

Index No. 400357/2013

Petitioners,

**Decision, Order and  
Judgment**

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

- against -

THE NEW YORK CITY CIVIL SERVICE  
COMMISSION and SEAPON PATTERSON,

Respondents.  
-----X

**HON. MICHAEL D. STALLMAN, J.:**

Petitioners bring this Article 78 proceeding to challenge a determination of respondent New York City Civil Service Commission (CSC), in which the CSC reversed the decision of the New York City Police Department (NYPD) to disqualify respondent Seapon Patterson from consideration for appointment as a School Safety Agent with the NYPD, based on Patterson's psychological tests and interview. Petitioners seek an order setting aside, reversing, vacating, or

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[F 3]

modifying the CSC's determination, arguing that the determination was arbitrary and capricious, affected by an error of law, and constituted an abuse of discretion. Respondents argue that the petition should be dismissed.

### **BACKGROUND**

On December 20, 2008, respondent Seanon Patterson took Civil Service Examination Number 8121 for the position of New York City School Safety Agent with the NYPD (Exam No. 8121). In the Notice of Examination for Exam No. 8121, under the subheading "Medical and Psychological Assessment," it stated, "medical and psychological guidelines have been established for the position of School Safety Agent," and each applicant will "be examined to determine whether [he or she] can perform the essential functions of the position." (Petition Ex. 2.)

In April 2009, a staff psychologist for the NYPD, Michael R. White (NYPD Psychologist White), administered a battery of tests to Patterson as part of the pre-employment background investigation to determine Patterson's suitability for employment as a School Safety Agent. (Petition Ex. 3.) On April 15, 2009, NYPD Psychologist White concluded that Patterson "is not psychologically suitable for this position" because he "lack[ed] adequate stress tolerance and experiences disruptions in attention and concentration due to excessive anxiety." (Petition Ex. 4.) On June 18, 2009, an NYPD supervising psychologist, Dr.

Edward Fitzsimmons reviewed Patterson's entire psychological services record for the position of School Safety Agent under Exam No. 8121 and sustained NYPD Psychologist White's decision to reject Patterson as psychologically unsuited for the position. (Petition Ex. 5.)

By letter dated September 21, 2009, Patterson was notified that he did not meet the requirements for the NYPD School Safety Agent position. (Petition Ex.

6.) The letter stated in part,

"I hereby inform you that you have not met the requirements for the position of School Safety Agent, [NYPD] and are hereby disqualified. This determination was based on the evaluation of your psychological tests and interview which found personality characteristics incompatible with the unique demands and stress of employment as a New York City School Safety Agent. It is important to note that the evaluation of your psychological suitability is limited to the demands and stresses of School Safety Agent, [NYPD]. This evaluation does not reflect on your suitability for other employment."

(Petition Ex. 6.)

On October 8, 2009, Patterson appealed the NYPD's disqualification to the CSC. (Petition Ex. 7.) On June 10, 2010, in connection with his appeal, Dr. Christopher Fabian, one of Patterson's designated mental health professionals, evaluated Patterson. (Petition Ex. 10.) In his report, Dr. Fabian concluded that, "[b]ased on a review of the available records and on . . . [my] evaluation and mental status examination of Mr. Patterson, there is no indication [of] a

psychiatric, psychological, or substance use disorder that would render him incapable of performing as a New York City School Safety Officer Candidate.”

*(Id.)*

On June 24, 2010, in connection with his appeal, psychotherapist and employee assistance professional Sal Conti, another of Patterson’s designated mental health professionals, evaluated Patterson. (Petition Ex. 11.) In his report, Conti concluded that, “[b]ased on tests, interviews, and psychiatric evaluation; Mr. Patterson does not demonstrate any emotional disorder. There is no indication of any affective, cognitive, or personality disorder. His medical history is unremarkable. The reason for his disqualification under medical standard is unclear at this time.” *(Id.)*

In February 2011, Dr. Robert Arko, an independent appeal review consultant retained by the NYPD, reviewed Patterson’s original disqualification, including Patterson’s entire NYPD psychological services record for Exam No. 8121, as well as the reports from Patterson’s designated mental health professionals. In a memorandum dated February 18, 2011, Dr. Arko notified Dr. Eloise M. Archibald, the NYPD Director of Psychological Services of his recommendation that Patterson’s appeal be denied. (Petition Ex. 12.) On February 22, 2011, Dr. Archibald sustained the original disqualification of

[\* 6]  
Patterson and marked Patterson as “not qualified.” (Petition Ex. 13.)

On March 7, 2012 the CSC held oral argument in connection with Patterson’s appeal. (Petition Ex. 14.) On July 2, 2012, the CSC reversed the decision of the NYPD to disqualify Patterson from consideration for appointment as a School Safety Agent with the NYPD. (Petition Ex. 16.) On October 14, 2012 and October 26, 2012, the CSC issued “corrected” notices amending its written decision with respect to Patterson’s appeal, but still upheld its determination to reverse Patterson’s original disqualification. (Petition Ex. 17, Ex. 1.)

Thereafter, on February 22, 2013, petitioners commenced this Article 78 proceeding. Petitioners apparently served an amended notice of petition and amended verified petition in September 2013.

### **DISCUSSION**

Respondents argue that the petition should be dismissed because (1) petitioners’ challenge is moot as the eligible list for School Safety Agent with the NYPD announced under Exam No. 8121 expired on August 19, 2013 and Patterson cannot be restored to the expired list; (2) the CSC has the authority to undertake a de novo review of the NYPD’s decision to disqualify Patterson; and (3) the CSC’s determination was supported by a rational basis.

“An appeal will be considered moot unless the rights of the parties will be

directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment.” (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980].) Courts have held that where an agency appeal seeks reversal of the CSC’s determination with regard to a candidate, the expiration of the civil service list under which the candidate was disqualified renders the appeal moot. (*See Matter of Carchietta v Dept. of Personnel of City of N.Y.*, 172 AD2d 304 [1st Dept 1991]; *Matter of City of New York v New York City Civil Service Commn.*, 2011 WL 6933817, 2011 NY Misc LEXIS 6233, \*3-4 [Sup Ct, NY County 2011].) Because Patterson cannot be reinstated to the eligible list for Exam No. 8121<sup>1</sup>, irrespective of what this Court finds, the proceeding must be dismissed as moot.

Petitioners, relying on *City of New York v New York City Civil Service Commn.* (2009 WL 926942, 2009 NY Misc LEXIS 4702, \*6 [Sup Ct, NY County 2009]) and *O’Sullivan v City of New York*, (38 AD3d 467 [1st Dept 2007]) argue that their challenge is not moot because the CSC’s determination has preclusive

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<sup>1</sup> Patterson has not challenged “the validity of the list itself, as being in violation of the merit and fitness requirements” which, if successful, would extend the “corrected list . . . because the original was never valid.” (*Matter of City of New York v New York State Div. of Human Rights*, 93 NY2d 768, 874 [1999].) Without such a challenge brought before the expiration of the list, Patterson cannot be restored to the list even if this Court reversed the CSC’s determination. (*Id.*)

effect on petitioners and bars them from disqualifying Patterson on future applications for psychological unsuitability for the position of NYPD School Safety Agent. In *City of New York*, the court held that the case was not moot because the candidate took and passed a second exam and was on the eligible list for that second exam, which had not yet expired. Here, there is no indication that Patterson has sat for another exam or will sit for another exam. Neither is there any indication that, if Patterson were to sit for another exam and were listed as an eligible candidate, that his number would even be reached. Thus, petitioners' argument is not sufficient to circumvent the mootness doctrine (*See Matter of City of New York*, 2011 WL 6933817.)

In *O'Sullivan*, the NYPD disqualified a candidate for appointment as an NYPD officer due to a leg prosthesis and hip and back problems, which the NYPD concluded would prevent him from performing the normal duties of a police officer. (*O'Sullivan*, 38 AD3d at 467.) The candidate had been born with a congenital deformity of his lower right leg necessitating surgery and the use of a prosthetic limb his entire life. The CSC affirmed the medical disqualification. (*Id.* at 468.) Thereafter, the candidate took and passed the exam a second time, and the NYPD medically disqualified him again. (*Id.*) The candidate did not appeal the second disqualification to the CSC but instead brought an action alleging unlawful

discrimination in violation of various sections of the New York State Human Rights Law. (*Id.* at 469.) The Appellate Division held that the candidate was collaterally estopped from relitigating the issue of whether he was medically qualified to perform the functions of a police officer because he had a “full and fair opportunity to litigate” this issue before the CSC. (*Id.*)

In the instant proceeding, the NYPD disqualified Patterson for psychological unsuitability, which is not a permanent medical condition. Unlike the candidate in *O’Sullivan*, Patterson could seek ways to improve his ability to manage stress or anxiety so that he might become psychologically suitable for the position. According to the CSC, if Patterson were to apply for the position of School Safety Agent again and was placed on another eligible list, “he would undergo the identical screening process on any other list as he did for exam No. 8121.” (Respondents MOL at 6.) Respondents further contend that “psychologists from the NYPD [] frequently testify before [the CSC] that there is no difference whatsoever in the screening process as between candidates who have never been disqualified, those who have had a disqualification reversed, and those candidates who have previous disqualifications.” (*Id.*) Petitioners have not disputed this contention. The issue determined by the CSC based on the evidence before it is therefore different from the issue that would be considered on a future

application i.e. the psychological suitability of the applicant at the time of the particular application. The instant CSC determination thus would not have collateral estoppel (issue preclusion) effect because the issues are not identical. Accordingly, the controversy before the Court under Exam No. 8121 is moot and the petition must be dismissed.

The Court need not reach respondents' remaining contentions.

**CONCLUSION**

Accordingly, it is hereby, ADJUDGED that the petition is denied and the proceeding is dismissed.

**Dated: February 6, 2014  
New York, New York**

**ENTER:**

  
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**J.S.C.**

**HON. MICHAEL D. STALLMAN**

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