

<b>DiMaggio-Campos v Brann</b>
2021 NY Slip Op 31868(U)
June 2, 2021
Supreme Court, New York County
Docket Number: 155012/2020
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM**

*Justice*

-----X  
JENNIFER DIMAGGIO-CAMPOS,  
Petitioner,

INDEX NO. 155012/2020  
MOTION DATE 07/06/2020  
MOTION SEQ. NO. 001

- v -

CYNTHIA BRANN, THE NEW YORK CITY DEPARTMENT  
OF CORRECTION, THE CITY OF NEW YORK  
Respondent.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, the instant CPLR Article 78 petition by Jennifer DiMaggio-Campos against respondents, Cynthia Brann, Correction Commissioner of the New York City Department of Correction; The New York City Department of Correction; and the City of New York, is denied.

Background

On January 8, 2018, respondent The New York City Department of Correction (“DOC”) hired petitioner, Jennifer DiMaggio-Campos, as a Probationary Correction Officer, with a two-year probationary period. Petitioner asserts that during her time working for DOC, she never received Command Discipline(s), was never late, and was absent from work only three times. (NYSCEF Doc. 1.)

Petitioner asserts the following. On December 3, 2018, while petitioner was working at the Otis Bantum Correctional Center (“OBCC”), an inmate named Ali Stanback assaulted petitioner. Petitioner’s supervisor, Captain Titjen, ordered petitioner to leave the inmate and sent petitioner to receive medical attention. Petitioner never again saw the subject inmate. (NYSCEF Doc. 1.)

Petitioner “served [the inmate] for an infraction.” Subsequently, the inmate asserted that petitioner sexually harassed him. Petitioner asserts that she never knew of that sexual harassment allegation and, therefore, did not have an opportunity to refute it. Additionally, petitioner claims that DOC’s ensuing investigation “was severely lacking.” (NYSCEF Doc. 1.)

On December 16, 2019, DOC terminated petitioner (NYSCEF Doc. 12). Petitioner asserts that said termination was arbitrary and irrational (NYSCEF Doc. 1).

### The Instant Special Proceeding

On July 6, 2020, petitioner commenced the instant CPLR Article 78 special proceeding, seeking a judgment (1) annulling petitioner's December 16, 2019 termination from DOC; and (2) ordering DOC to reinstate petitioner with back pay and benefits (NYSCEF Doc. 4).

In opposition, respondents, DOC; Cynthia Brann, DOC Correction Commissioner; and the City of New York ("NYC"), jointly assert, inter alia, the following: (1) DOC found that petitioner had not sexually assaulted the subject inmate; and (2) petitioner worked as a probationary employee, and, thus, DOC could discontinue her at any time prior to the end of her probationary period without a hearing and/or a statement of reasons. Further, though case law establishes that DOC is not required to submit reasons for its termination of a probationary employee such as petitioner, respondents assert that DOC terminated petitioner pursuant to DOC Rules and Regulations 3.05.120, 3.20.030, and 4.30.020. (NYSCEF Documents 8-9.)

DOC Rule and Regulation 3.05.120 states the following: "Members of the Department are responsible for the efficient performance of their duties and for the proper supervision of any inmates under their direction."

DOC Rule and Regulation 3.20.030 states the following:

Members of the Department found guilty of any of the following offenses may be dismissed from the Department, or suffer such other punishment as the Commissioner may direct:

- a. Violation of the rules and regulations,
- b. Failure to abide by the provisions of any order,
- c. Disobedience of orders,
- d. Conduct unbecoming an officer or employee,
- e. Making a false official statement, or
- f. Conviction in a court of criminal jurisdiction.

DOC Rule and Regulation 4.30.020 states the following: "Members of the Department shall not make any false entries or notations or render any false reports concerning the business of the Department. The failure to submit a report when one is required, or the suppression of any evidence regarding an alleged violation, shall be cause for disciplinary action."

(NYSCEF Documents 8-9.)

According to respondents, DOC found that petitioner provided false statement(s) in her subject infraction against the subject inmate and during DOC's aforementioned investigation into the subject inmate's sexual harassment allegations against petitioner. Specifically, respondents

assert that video footage of the subject alleged December 3, 2018 assault demonstrates that the subject inmate did not strike petitioner in the “facial area,” which petitioner alleged in her subject Incident Report Form (December 3, 2018), Report and Notice of Infraction (December 3, 2018), and Intradepartmental Memorandum (December 27, 2018) (NYSCEF Doc. 10). (NYSCEF Documents 8-9.)

On December 3, 2020, petitioner requested an adjournment to review the video that respondent(s) had sent (NYSCEF Doc. 14).

In reply, petitioner asserts, inter alia, the following: (1) petitioner was truthful in executing the subject report and the instant petition; (2) the inmate hit petitioner’s hand and arm; and (3) petitioner could not act as though she was injured in real time, as she had to “keep calm in order to control the situation.” Additionally, petitioner requests, in the alternative, a CPLR 7804(h) hearing to resolve issues of fact in the instant matter. (NYSCEF Doc. 16.)

### Discussion

It is well-settled that in a CPLR Article 78 special proceeding the scope of judicial review is limited to the issue of whether the administrative action is rational. Pell v Board of Educ., 34 NY2d 222, 230-231 (1974). This Court may not disturb respondents’ determination unless there is no rational basis for the exercise of discretion or it was arbitrary and capricious. Id., at 231. “The arbitrary or capricious test chiefly relates to ... whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.” Id. This Court may not simply second-guess respondents.

[A probationary employee] “may be dismissed for almost any reason, or for no reason at all.” Venes v Community School Board, 43 NY2d 520, 525 (1978). Additionally, “a probationary employee may be terminated without a hearing and without a statement of reasons in the absence of a demonstration that the termination was in bad faith, for a constitutionally impermissible or an illegal purpose, or in violation or statutory of decisional law.” Matter of Lane v City of New York, 92 AD3d 786, 786 (2d Dep’t 2012).

This Court finds that DOC’s December 16, 2019 termination of petitioner from her position as a Probationary Correction Officer was neither arbitrary nor capricious. Respondents have demonstrated a rational basis for terminating petitioner by submitting, inter alia, the December 3, 2019 Personnel Determination Review that Sarena Townsend Esq., Deputy Commissioner, Investigation and Trials Division, sent to Nadene Pinnock, Deputy Commissioner, Human Resources, which states, in pertinent part, as follows: “... A review of Genetec [apparently the subject video footage] revealed that at no time was [petitioner] assaulted by Inmate Stanback on December 3, 2018 as she had informed ID PREA and the facility” (NYSCEF Doc. 11). Pursuant to DOC’s comparison of petitioner’s allegations and the subject surveillance video footage, DOC concluded that petitioner violated DOC Rule and Regulation 3.05.120, 3.20.030, and 4.30.020.

Petitioner has failed to submit evidentiary proof that respondents acted in bad faith in terminating her. Witherspoon v Horn, 19 AD3d 250, 251 (1<sup>st</sup> Dep’t 2005) (“The mere assertion of ‘bad faith’ without representation of evidence demonstrating it does not satisfy the employee’s burden” [to demonstrate said “bad faith.”]). Further, in the reply papers that petitioner submitted,



presumably after viewing respondents' subject surveillance video footage, petitioner does not claim that the subject inmate struck her face; instead, petitioner asserts that the subject inmate struck her hand and arm (NYSCEF Doc. 16).

Additionally, New York City Charter Section 396 states that "all actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of [NYC] and not in that of any agency, except where otherwise provided by law." Therefore, this Court notes that DOC, an NYC agency, is not a proper party to the instant case (although respondents do not argue this).

This Court has considered petitioner's other arguments and finds them to be unavailing and/or non-dispositive.

Therefore, this Court will deny the instant CPLR Article 78 petition.

Conclusion

Thus, for the reasons stated hereinabove, the instant CPLR Article 78 petition by Jennifer DiMaggio-Campos against respondents, Cynthia Brann, Correction Commissioner of the New York City Department of Correction; The New York City Department of Correction; and the City of New York, is hereby denied. Accordingly, the Clerk is hereby directed to enter judgment denying and dismissing the instant petition and awarding costs and disbursements to respondents.

6/2/2021  
DATE

  
ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE