

Vanterpool v City of New York

2023 NY Slip Op 31789(U)

May 25, 2023

Supreme Court, New York County

Docket Number: Index No. 160843/2022

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY PART 16TR

Justice

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JOEL VANTERPOOL,

Petitioners,

- v -

CITY OF NEW YORK and
NEW YORK CITY DEPARTMENT OF CORRECTIONS,

Respondents.

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INDEX NO. 160843/2022

MOTION DATE 02/10/2023

MOTION SEQ. NO. 001

DECISION + ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 7, 8, 9, 10, 11

were read on this motion to/for VACATE – DECISION/ORDER/JUDGMENT

In this Article 78 proceeding, petitioner seeks an order annulling the administrative determination made by respondents that led to the termination of petitioner’s employment with the New York City Department of Corrections (“DOC”) and reinstating his employment with backpay, interest, and benefits. Respondent opposes, arguing that petitioner has not shown grounds for injunctive relief and seeking transfer of this action to the Appellate Division or dismissal of the petition in its entirety. On the parties’ consent, petitioner filed reply and the motion was submitted without oral argument. Upon the foregoing cited papers, the Court’s decision is as follows:

Background

Petitioner was a Correction Officer employed by the City of New York. In April 2022, petitioner was subjected to a disciplinary hearing before the New York City Office of Administrative Trials and Hearings (“OATH”) on six Memoranda of Complaint (“MOCs”).

After a trial before an OATH Administrative Law Judge (“ALJ”), which took place over four days and involved video, documentary evidence, and the testimony of live witnesses, petitioner was found guilty of misconduct on five MOCs (petitioner’s ex 3). As a result of the OATH determination, petitioner’s employment was terminated on or about October 20, 2022 (petitioner’s ex 1). Petitioner subsequently commenced the instant action to challenge the OATH determination, arguing that the determination was based on an interpretation of the relevant legal principles that was unreasonable, arbitrary, and capricious and that the evidence presented was not sufficient to support the findings.

In opposition, respondents contend first, that petitioner’s papers do not establish a basis for injunctive relief; second, that petitioner set forth the incorrect standard for review of the OATH determination and that the determination should instead be transferred to the Appellate Division pursuant to CPLR § 7804(g) for review of whether the determination was supported by substantial evidence; and third, that even if evaluated under the arbitrary and capricious standard, petitioner would be unable to meet his burden for the relief requested.

Discussion

As a threshold matter, CPLR § 7804(g) provides, in relevant part, that where an Article 78 petition raises a substantial evidence issue, “the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced.”

Judicial review of an administrative determination made after a hearing at which evidence is taken as directed by law is generally limited to whether such determination was “supported by substantial evidence” (CPLR § 7803[4]; *Wilson v City of White Plains*, 95 NY2d 783 [2000])[“In CPLR article 78 proceedings to review determinations of administrative tribunals, the standard of review is whether there was substantial evidence to support the Hearing Officer’s decision”). However, petition challenges the respondent’s application of a rule to undisputed facts, no substantial evidence question arises, transfer to the Appellate Division is not required, and this Court may decide the question of whether such application was arbitrary and capricious (*Rosenkrantz v McMickens*, 131 AD2d 389 [1st Dept 1987]). A court may determine that a challenge raises a question of substantial evidence notwithstanding the parties’ characterization of the issues (*see Matter of Robinson v Finkel*, 194 Misc 2d 55 [Sup Ct, New York County 2002], *aff’d* 308 AD2d 355 [1st Dept 2003]).

Here, petitioner has framed the inquiry as whether the underlying administrative determination was based upon incorrect standards for “use of excessive force” and “making of false statements,” which should trigger review under the “arbitrary and capricious” standard set forth in CPLR § 7803(c). Notwithstanding the petition’s framing, however, the allegations in the petition ultimately amount to a contention that the evidence before the ALJ was insufficient to support the ALJ’s findings. The Court therefore agrees with respondent that substantial evidence review is the applicable standard in this proceeding, as the agency determination being challenged was the result of a hearing at which evidence was taken pursuant to direction by law (*see* CPLR § 7803[4]; *Wilson v City of White Plains*, 95 NY2d 783 [2000]). The Court additionally notes that in his reply, petitioner does not object to or otherwise address

respondent’s position that this action should be transferred and acknowledges that the petition raises disputes on issues of fact.

Based on the foregoing, and as there is no objection before this Court that could terminate this proceeding, this Court is mandated by CPLR § 7804(g) to transfer this petition to the Appellate Division, First Department. Accordingly, it is hereby:

ORDERED that this petition is respectfully transferred to the Appellate Division, First Department pursuant to CPLR § 7804(g); and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon the Clerk of the Court, who is respectfully directed to transfer the file the Appellate Division, First Department; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the temporary restraint previously imposed by this Court upon respondent’s ability to declare petitioner’s termination to prospective employers is continued until final disposition of this action or other court order; and it is further

ORDERED that any other requested relief is denied.

This constitutes the decision and order of the Court.

5/25/2023
DATE


SHAHA BUDDEEN ABID ALLY, A.J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE