

Matter of Amaker v Adams

2023 NY Slip Op 32774(U)

August 2, 2023

Supreme Court, New York County

Docket Number: Index No. 100291/2023

Judge: Sabrina B. Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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INDEX NO. 100291/2023

In the Matter of the Application of

MOTION DATE 7/10/2023

Anthony Amaker,

MOTION SEQ. NO. 001

Petitioner,

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

- v -

**DECISION + ORDER ON
MOTION**

ERIC ADAMS, in his official Capacity as Mayor of the City of
New York, Ashwin Vasan, MD, PhD, in his official Capacity as
The Commissioner of the New York City Dept. of Health and
Mental Hygiene, The New York City Housing Authority, CEO
Lisa Bova-Hiatt, and The City of New York,

Respondents.

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BACKGROUND

Petitioner commenced this Article 78 proceeding alleging that Respondents' denial of his religious exemption from the City's COVID-19 vaccine mandate was arbitrary and capricious because it lacked rationale and was a violation of his State and Federal Equal Protection rights as the City was treating similarly situated individuals differently.

On July 10, 2023, the papers were submitted and the Court reserved decision.

For the reasons stated below, Petitioner's application is denied, and this proceeding is dismissed.

FACTS UNDRELYING THE PROCEEDING

On October 20, 2021, the Commissioner of the New York City Department of Health

and Mental Hygiene (“DOHMH”) issued an order requiring all New York City employees to submit proof, by October 29, 2021, that they (i) had been fully vaccinated against COVID-19; (ii) had received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or (iii) had received the first dose of a two-dose COVID-19 vaccine (hereinafter, “DOHMH Order”).

The DOHMH Order further stated any New York City employee who had not provided the required proof of vaccination must be excluded from their work location beginning on November 1, 2021. On the same day, October 20, 2021, consistent with the DOHMH Order, NYCHA informed its employees they would be required to submit proof they had received at least one dose of a COVID-19 vaccine by November 1, 2021. Employees who did not comply with the vaccine requirement would be placed on Leave Without Pay (“LWOP”) effective November 1, 2021.

The notification also advised employees they could request a reasonable accommodation exempting them from the COVID-19 vaccine requirement for medical or religious reasons. On October 21, 2021, the New York City Department of Citywide Administrative Services (“DCAS”) issued guidance regarding, among other things, the process and deadlines for requesting medical or religious exemptions from the COVID-19 vaccine mandate.

Consistent with DCAS guidance, NYCHA informed its employees that to remain in compliance with the COVID-19 vaccine mandate they must: (1) submit their religious or medical exemption requests by October 27, 2021 to avoid being placed on LWOP on November 1, 2021; and (2) submit a negative polymerase chain reaction (“PCR”) test result within every seven-day period until their exemption request is decided, including any appeals. Pursuant to DCAS guidelines, employees whose exemption requests were denied by their agency could appeal to the centralized City Appeal Panel. The City Appeal Panel was created to, among other

things, ensure that appeals of reasonable accommodation requests concerning the COVID-19 vaccine mandate were heard consistent with the standards established by applicable laws, and processed in a uniform manner throughout the New York City's workforce. The City Appeal Panel consisted of representatives from the New York City Law Department, DOHMH, DCAS, and New York City Commission on Human Rights ("CCHR"). Employees were required to submit their appeals to the City Appeal Panel within three business days of their agency's decision. If the employee's appeal was denied, the employee was required to submit proof of their first dose of the COVID-19 vaccine within three business days, and if applicable, proof of a second dose within 45 days thereafter. Employees who refused to be vaccinated within this timeframe were placed on LWOP for one week and then terminated.

Petitioner began his employment with NYCHA on February 11, 2021, as a temporary Maintenance Worker. On October 3, 2022, Petitioner obtained Civil Service status in his Maintenance Worker title, subject to a one-year probation. Petitioner's probationary period began on October 3, 2022 and would have ended on or around October 3, 2023.

On October 23, 2021, and again on October 27, 2021, Petitioner submitted a religious exemption request to NYCHA's Human Resources Department. NYCHA acknowledged receipt of Petitioner's requests and advised Petitioner he must continue to provide weekly PCR tests until a final determination was made on his request. In his religious exemption request, Petitioner stated he was a Muslim and a member of the Nation of Islam, and his religion is "steadfast against vaccination." In support of his request, Petitioner attached (1) a letter from the Student Minister stating the Nation of Islam believes "bodies are sacred" and one should be "mindful of the harmful effects of inoculations. . . that may pose severe, long-term and life-threatening risks"; and (2) a notarized affidavit from himself declaring he was exempt from immunization because "[a]ll vaccines are harmful and do not protect anyone from disease."

Upon receipt of Petitioner's request, NYCHA requested a statement from Petitioner explaining how, outside the context of the COVID-19 vaccination, Petitioner has applied the religious principles that, according to him, preclude him from being vaccinated. NYCHA also asked Petitioner to elaborate on his taking of medications and other vaccines. In response to NYCHA's request, Petitioner provided the following statement:

No one under the provision take vaccine and medication are only good reason, however there is dietary law which ptevent [sic] illness. We do not take other vaccine and I should have called on this or asked to come to HR.

Because Petitioner's statement did not address NYCHA's inquiry, NYCHA followed up with Petitioner on January 24, 2022, and again on February 8, 2022. Petitioner did not respond to NYCHA's follow-ups.

On February 18, 2022, NYCHA denied Petitioner's religious exemption request because it found he failed to cite a sincerely held religious belief that prevents him from obtaining the COVID-19 vaccination. As NYCHA explained in its decision, Petitioner's opinion that the vaccine is harmful and does not protect people from disease are based on his personal beliefs and preferences, not religious ones, and in any event, conflict with scientific evidence. NYCHA also noted despite its attempts to request additional information from Petitioner, Petitioner declined to clarify how, outside the context of the COVID-19 vaccine, his religious beliefs had impacted his taking of other vaccinations and medications.

NYCHA informed Petitioner he had three business days to submit his appeal to the City Appeal Panel, and if he timely filed his appeal, he could continue to work until a final determination was made on his appeal, provided he continue to provide weekly negative PCR tests.

On February 25, 2022, Petitioner uploaded his appeal to the City Appeal Panel's online portal. On December 29, 2022, the City Appeal Panel denied Petitioner's appeal and sent the

notification of its decision to NYCHA. On the same day, NYCHA forwarded the City Appeal Panel's decision to Petitioner and advised him he must upload proof of vaccination within three business days and would be placed on LWOP if he failed to do so.

On January 6, 2023, after Petitioner had not uploaded proof of vaccination, NYCHA notified Petitioner that he would be placed on LWOP by the end of the day and would be terminated on January 13, 2023, if he did not provide proof of vaccination. On the same day, January 6, 2023, NYCHA's Human Resources Department informed Petitioner's supervisors about Petitioner's non-compliance with the COVID-19 vaccine mandate and advised them Petitioner was no longer permitted to work. On January 18, 2023, after Petitioner still had not uploaded proof of vaccination, NYCHA extended Petitioner's time to come into compliance with the vaccine mandate until January 23, 2023 and advised that if he did not provide proof of vaccination by January 23, 2023, he would be terminated. By letter dated January 26, 2023, NYCHA advised Petitioner he was terminated effective that day due to his noncompliance with the COVID-19 vaccine mandate.

On February 6, 2023, with over 96% of New York City employees fully vaccinated against COVID-19, Mayor Eric Adams announced the City's decision to rescind the COVID-19 vaccine mandate. On February 9, 2023, the Board of Health ratified the amendment. As of February 10, 2023, the COVID-19 vaccine was optional for current and prospective New York City employees.

On February 17, 2023, Petitioner contacted NYCHA to "reapply" for his prior position. Because NYCHA was awaiting further guidance from DCAS, it acknowledged Petitioner's email and advised him it would provide an update regarding next steps. On or around March 10, 2023, DCAS issued guidelines regarding reinstatement and rehires of New

York City employees who were terminated for noncompliance with the COVID-19 vaccine mandate.

Pursuant to DCAS guidelines, probationary employees are not eligible for reinstatement rights. Instead, they are eligible for rehire and may ask DCAS to restore their names to the Civil Service list. If the employee is then rehired by the same agency (with the same title), the previously served probationary term would count towards the completion of the probationary period.

On March 13, 2023, NYCHA informed Petitioner he was not eligible for reinstatement because he had not completed one year of probation as a Maintenance Worker at the time of his termination. However, Petitioner was eligible for rehire. NYCHA requested that Petitioner contact DCAS to be restored to the Civil Service list for Maintenance Workers and provided Petitioner a link to an online form that needed to be completed by Petitioner and submitted to DCAS. Petitioner did not submit the request to DCAS.

In June 2023, Petitioner contacted NYCHA seeking clarification about his probationary period. NYCHA explained to Petitioner that, even though he began working on February 11, 2021, he was not permanently appointed to the Civil Service title until October 3, 2022 and had only completed three months out of his twelve-month probation at the time of his termination in January 2023.

DISCUSSION

The Determinations Denying Petitioner's Application & Appeal Were Not Arbitrary or Capricious

A court's role in reviewing a determination of an administrative agency is a limited one. The proper standard for judicial review of an administrative determination is whether it was arbitrary or capricious or without a rational basis in the administrative record. *Greystone Mgt.*

Corp. v. Conciliation and Appeals Bd., 94 A.D.2d 614 (1st Dept. 1983), *aff'd*, 62 N.Y.2d 763 (1984). A court may not disturb an administrative decision unless the agency's action was arbitrary and capricious, in violation of lawful procedures, or made in excess of its jurisdiction. *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222 (1974); *Ansonia Residents Assoc., v. N.Y.S. Div of Hous. & Comm. Renewal.*, 75 N.Y.2d 206 (1989).

Moreover, the reviewing Court may not substitute its judgment for that of the administrative agency own [*P'ship 92 LP v. State Div. of Hous. & Cmty. Renewal*, 46 A.D.3d 425, 427 (2007) *aff'd*, 11 N.Y.3d 859 (2008)].

Petitioner's arguments must be rejected because Respondent has established that its decision was rational, based on the evidence in the record and pursuant to a procedure that afforded Petitioner due process.

As detailed in Eric Eichenholtz's Affirmation, the Citywide Panel conducted a thorough review of Petitioner's appeal, which incorporated: 1) Petitioner's RA application and all supporting documentation; 2) relevant correspondences between Petitioner and NYCHA; and 3) NYCHA's review and determination of Petitioner's RA Request.

Once its review was completed only then did the Citywide Panel affirm NYCHA's determination that: 1) Petitioner's beliefs regarding the vaccine's harmful effects are personal and not religious in nature or supported by scientific evidence, and 2) Petitioner failed to clarify how, outside the context of the COVID-19 vaccination, his beliefs conflicted with other vaccinations and medications.

Further, the Equal Employment Opportunity Commission's ("EEOC") guidance regarding RA request states that an "employer [is] justified in making a limited factual inquiry and... [a]n employee who fails to cooperate with an employer's reasonable requests...risks losing any subsequent claim that the employer improperly denied an accommodation."

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>.

Here, NYCHA asked Petitioner three times to clarify how, outside the context of the COVID-19 vaccination, Petitioner's religious beliefs have impacted his taking of other vaccinations and medications. However, Petitioner did not provide any additional information.

Finally, Petitioner fails to adequately plead or present any evidence regarding how Respondents' have treated similarly situated individuals differently. Nor is Petitioner's argument persuasive that private employees were treated differently than public employees considering the City employees interactions with the public.

Petitioner's argument that the denial of the appeal should have specified that it was for the reasons stated by the agency below is valid, but Respondent has overcome that argument by the submission of the affirmation of Eric Eichenholtz, which detailed the appellate process and the reasons for the denial. *See eg Matter of Marsteller v City of New York* 217 AD3d 543 (2023); *Ventresca-Cohen v DiFiore* 77 Misc.3d 652 (2022).

Based on the foregoing, the petition is denied and the proceeding is dismissed.

WHEREFORE it is hereby:

ADJUDGED that the petition for relief pursuant to Article 78 is denied and the proceeding is dismissed; and it is further

ORDERED that this constitutes the decision and order of this court; and it is further

ORDERED that, within 20 days from entry of this order, Respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

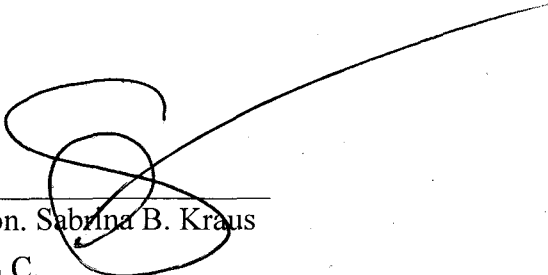
ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*

(accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

Dated: New York, New York
August 2, 2023



Hon. Sabrina B. Kraus
J.S.C.

HON. SABRINA B. KRAUS
J.S.C.