

**Matter of Amoros v New York City Health and  
Hospitals Corporation**

2003 NY Slip Op 30143(U)

September 3, 2003

Supreme Court, New York County

Docket Number:

Judge: Eileen Bransten

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

**EILEEN BRANSTEN**

J.S.C.

0102758/2003

PART 6

AMOROS, ALBERT

VS

N.Y.C.HEALTH & HOSPITALS CORP.

INDEX NO.

102758/03

MOTION DATE

7-22-03

MOTION SEQ. NO.

01

MOTION CAL. NO.

SEQ 1

ARTICLE 78

The following papers, numbered 1 to 2 were read on this <sup>proceeding</sup> motion to/for reverse determination

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1

Answering Affidavits — Exhibits

2

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

Dated:

9-3-03

*Eileen Bransten*

**EILEEN BRANSTEN** J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART SIX

-----X

In the Matter of the Application of  
ALBERTO AMOROS and LARRY NEGRON,

Petitioners,

Index No. 102758/03  
Motion Date: 7/22/03  
Motion Seq. No.: 001

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

-against-

NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION and THE CITY OF NEW YORK,

Respondents.

..... X

PRESENT: EILEEN BRANSTEN, J.

In this CPLR Article 78 proceeding, which seeks to annul determinations by respondent New York City Health and Hospitals Corporation (“NYCHHC”) terminating the employment of Alberto Amoros (“Amoros”) and Larry Negron (“Negron”) (collectively “Petitioners”), the parties are in agreement that the Appellate Division, First Department must decide substantial evidence questions and that a transfer of the petition for those purposes is warranted assuming that there is no “other objection” that would serve as the basis for disposing of the proceeding without reaching the merits. See, CPLR 7803(4) and 7804(g); *see also*, Siegel, *NY Prac* § 568, at 939 (3d ed). Because this Court holds that a determination was made in violation of lawful procedure, however, it grants the petition and remits the matter to respondent NYCHHC.

### Background

Petitioners, who worked at Woodhull Medical and Mental Health Center (“Woodhull”) as Hospital Police Officers, were charged with various acts of misconduct relating to visits to the Hospital Police Administrative Offices outside business hours on May 29, 2001 and June 2, 2001. An extensive hearing was conducted, after which the Administrative Law Judge (“ALJ”) determined that Petitioners were guilty of the bulk of the charges and recommended that they be dismissed.

In a decision dated November 6, 2002, the ALJ concluded that:

“[Petitioners] have been found to have engaged in conduct that is so inimical to their duties as police officers as to leave no room for mitigation.

\* \* \*

“The hospital needs to be able to rely upon its police officers to safeguard offices, not to enter them and search them surreptitiously; it needs to be able to rely on its police officers to be at their posts, not to sneak away from their assigned duties; it needs to be able to rely on its police officers to respond to emergencies when they arise, not ignore them and pretend to have responded after the fact; and it needs to be able to trust that its police officers’ written reports and memo book entries reflect reality. With respect to \* \* \* Amoros and Negron, the Hospital has no basis for reposing such trust in either employee any longer. Not only were the two officers shown to have neglected their duties and responsibilities as police officers on May 29, 2001 and on June 2, 2001, and to have attempted to cover-up their misconduct, but even after they were caught, they continued to adhere to a story that is simply untenable and to have elicited supporting testimony from a fellow officer. [Amoros and Negron’s] integrity has been compromised beyond repair, and is exacerbated by their poor judgment.” Verified Petition, Ex. G, at 31.

By letter dated November 6, 2002, addressed to Lynda Curtis--Senior Vice President of Woodhull--and copied to Ellen Grossman, Esq., who represented NYCHHC, and Barry Peek, who was counsel for Petitioners, the ALJ stated:

“A disciplinary proceeding was held before me in the above-captioned matter. The record of the proceeding and my report and recommendation are enclosed for your review and decision.

“By copy of this letter, I am instructing [Petitioners’] counsel, should he wish to comment on my report prior to your final determination, to contact your office immediately in order to ascertain when you will require comments to be submitted.”

*Id.*, **Ex. H.**

On November 7, 2002, Petitioners’ attorney received the letter.

The very next day--November 8, 2002--an attorney representing Petitioners called Ellen B. Grossman, NYCHHC’s attorney throughout the disciplinary proceeding, to find out when comments were due for review. Ms. Grossman’s voicemail indicated that she was on vacation through November 11, 2002 and that Vicki Kahaner should be contacted for further information. *Id.*, at ¶ 36.

That day, Petitioners’ attorney contacted Ms. Kahaner. Ms. Kahaner informed her that NYCHHC had already terminated Petitioners’ employment effective November 8, 2002. *Id.*, at ¶ 39; see *also*, Verified Answer, at ¶ 39. Indeed, in a letter dated November 8, 2002, an Associate Director of Labor Relations at Woodhull sent Amoros and Negron letters advising

them that they were “separated from service, effective 1330 hours on November 8, 2002.”

Verified Petition, Ex. J.

Still on that same day, November 8, 2002, Petitioners’ attorney wrote to Ms. Curtis (the Senior Vice President at Woodhull), complaining that they had not been provided with a reasonable opportunity to respond to the ALJ’s findings and recommendation. Verified Petition, Ex. K. The letter was sent to Ms. Curtis by facsimile and first-class mail.

Because November 8, 2002 was the Friday before a holiday weekend, Petitioners’ “letter was not entered into the hospital’s mail system until approximately 7:55 a.m. on Tuesday, November 12, 2002.” Verified Answer, at ¶ 41. On November 18, 2002, Ms. Curtis responded that given “the fact that this office did not receive immediate notice [of an intention to submit comments], we believe we were within our rights to adopt and implement the recommended penalty following a review of the record and the Report and Recommendation.” Verified Petition, Ex. L.

#### Analysis

The sole issue presented in this proceeding is whether Petitioners’ were afforded a “reasonable opportunity” to respond to the ALJ’s findings and recommendations. Respondents urge that Petitioners were told to contact Ms. Curtis immediately to find out when comments could be submitted, They assert that Petitioners’ failure to act immediately

warrants rejection of their argument that they were denied a reasonable opportunity to be heard. This Court disagrees.

In *Fogel v. Board of Educ.*, 48 A.D.2d 925 (2d Dep't 1975), the Appellate Division held that a determination that the petitioner was guilty of misconduct and should be dismissed, which was made after a hearing, required annulment. The Court concluded that petitioner and her attorney "should have been given the opportunity to controvert the findings which [were] the subject of review." *Id.*; contrast, *Casey v. New York City Hous. Auth.*, 249 A.D.2d 230 (1st Dep't 1998) (explaining that petitioner had been afforded a "full opportunity to controvert the findings and recommendations of the hearing officer") (emphasis added).

Here, Petitioners' counsel did not receive the ALJ's decision, which had been made the day before, until November 7, 2002. It is not even clear whether NYCHHC waited a full day from Petitioners' receipt of the decision before dismissing them. Although in a comprehensive decision made after days of hearings Petitioners were found by the ALJ to have engaged in serious misconduct, our constitutions and laws afford them with at least a "reasonable opportunity" to respond to the findings. NYCHHC's haste was unfair to Petitioners, who did not have a "reasonable opportunity" to respond. That Petitioners only one day after receiving the ALJ's decision and accompanying letter may have contacted the wrong individual to ascertain their time frame for submitting comments-- counsel contacted NYCHHC's attorney in the proceeding instead of Lynda Curtis who also worked for

NYCHHC--this mistake should not be deemed fatal. It was made “immediately”--a maximum of one day after receiving the decision and long before a “reasonable opportunity” to respond expired. Moreover, by the time Petitioners’ counsel was able to make contact with a representative of NYCHHC’s legal department, which again was a maximum of one day after receiving the decision and at most two days after the decision was actually rendered, she was informed that NYCHHC had already made its determination and that Petitioners had been terminated. Significantly, by that time, there is no evidence to suggest that NYCHHC had reason to believe that Petitioners had even actually received and considered the letter, much less to suggest that a “reasonable time” to respond to it or to the ALJ’s Report and Recommendation had lapsed.

Lawful procedure must be followed. Assuming it had been followed, this Court would without reservation transfer this case to the Appellate Division, First Department for substantial-evidence review. However, on this record the Court cannot conclude that Petitioners had a fair, “reasonable opportunity” to submit comments on the ALJ’s recommendation and report. The Court will not approve of respondents’ attempt to cut corners with regard to Petitioners’ procedural rights, which are designed to safeguard the integrity of administrative proceedings. Thus, as was the case in *Fogel*, this matter will be remitted for further proceedings--a result that should have been avoided by NYCHHC. It is truly a shame that after the ALJ prepared such a thorough report, NYCHHC rushed matters

and did not afford Petitioners a “reasonable” opportunity to refute its contents. In the end, the only way to assure justice, however, is to allow Petitioners to respond to the ALJ’s Report and Recommendation.

Accordingly, it is ORDERED AND ADJUDGED that the petition is granted and that the determination is annulled and the matter is remitted to respondent NYCHHC with a direction to afford petitioners and their attorney a reasonable opportunity to respond to the Report and Recommendation made by the Administrative Law Judge on November 6, 2002.

This constitutes the decision and judgment of the Court.

Dated: New York, New York  
September 3, 2003

ENTER

A handwritten signature in black ink, appearing to read "Eileen Bransten", written over a horizontal line.

Hon. Eileen Bransten