

**Matter of City of New York v New York City Civ.  
Serv. Commn.**

2007 NY Slip Op 30021(U)

March 5, 2007

Supreme Court, New York County

Docket Number: 0401706

Judge: Joan A. Madden

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SCANNED ON 3/9/2007  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hov Joev A. m. ddu.  
Justice

PART 11

Index Number : 401706/2006  
CITY OF NEW YORK  
vs  
CIVIL SERVICE COMMISSION  
Sequence Number : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE 12/21/06  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion procedury is decided  
in accordance with the attached memorandum, Decision  
order + Judgment.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice 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  
141B).

Dated: March 5, 2007

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

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

-----X  
In The Matter of the Application of

THE CITY OF NEW YORK and MARTHA K.  
HIRST, as Commissioner of the New York City  
Department of Citywide Administrative Services  
And RAYMOND KELLY, as Commissioner of the  
New York City Police Department,

Index No.  
401706/06

Petitioners,

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

-against-

THE NEW YORK CITY CIVIL SERVICE  
COMMISSION and HOPE MAHONEY,

Respondents.

-----X  
MADDEN, J.:

In this Article 78 proceeding, petitioners the City of New York, Martha K. Hirst, as the Commissioner of the New York City Department of Citywide Administrative Services (“DCAS”), and Raymond Kelly, as Commissioner of the New York City Police Department by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, (collectively “the petitioners”), seek to vacate a determination by respondent, the New York City Civil Service Commission (“CSC”), which reversed petitioners’ determination disqualifying respondent Hope Mahoney (“Mahoney”), for the position of police officer with the New York Police Department (“NYPD”). Respondents oppose the petition, which is denied for the reasons below.

## Background

Mahoney applied for a position as a police officer with the NYPD in 2003, and has since taken and passed the written portion of the exam required for that position. As part of the NYPD's application process Mahoney was also required to submit to a psychological examination in order to determine her fitness for duty as a police officer. The psychological evaluation was conducted by Sheng Chiu-Palmer ("Chiu-Palmer"), who is a staff psychologist employed by the NYPD's Psychological Services Section ("PSS"). At the time, Chiu-Palmer was a graduate student and possessed a Masters Degree in clinical psychology, and had conducted roughly six thousand psychological evaluations in her capacity as staff psychologist for the NYPD. (Tr. at 7).

Chiu-Palmer first conducted a psychological evaluation of Mahoney on June 16, 2003. During the June 16<sup>th</sup> evaluation Chiu-Palmer described Mahoney's responses to questions during the interview as "vague," and demonstrating a "histrionic response style." (Palmer Report at 1). As a result of the responses that Mahoney gave to the questions in the first evaluation, Palmer decided to conduct a second evaluation.

Chiu-Palmer conducted a second psychological evaluation of Mahoney on August 5, 2003. During the second evaluation Chiu-Palmer characterized Mahoney as "attempt[ing] to minimize or even deny some of the information provided in the first interview, information which cd [Mahoney] deemed may have negative consequences for her getting this job." (Palmer Report at 1). Chiu-Palmer noted in her report that Mahoney had "difficulty managing daily stresses." (Palmer Report at 1). In support of this assertion Chiu-Palmer pointed to Mahoney's two recent job terminations, three motor vehicle accidents, a suspension of her driver's license by the Department of Motor

Vehicles (“DMV”), and taking a year off from college. The court notes, however, that Mahoney eventually returned to college and earned her degree. (Tr. at 40-41).

Chiu-Palmer opined that witnessing the death of a close friend in 2000, and the responsibility of caring for her mother, who became seriously ill in 1999, may have contributed to her current psychological state. (Palmer Report at 2). With respect to her job terminations Mahoney explained that one stemmed from a misunderstanding about who was scheduled to open the store where she was employed, and the other came about as the result of her co-workers wrongfully taking her commissions. As a result of the two evaluations Chiu-Palmer concluded in her report that Mahoney was “psychologically unsuited for police work.” (Palmer Report at 2).

After Chiu-Palmer issued her report, PSS staff psychologist Christina Duplak, Ph.D (“Dr. Duplak”), conducted a “rejection review,” in which she examined the PSS psychological records of Mahoney. Following this review, Dr. Duplak issued a recommendation to the NYPD Director of Psychological Services, Eloise M. Archibald, Ph.D. (“Dr. Archibald”), that Chiu-Palmer’s determination that Mahoney was psychologically unsuited for work as a police officer be upheld.

On December 31, 2003, Mahoney was issued a letter of determination by the PSS stating that she was found to be psychologically unsuited for police work. The letter also informed Mahoney of her right to appeal the PSS decision to the CSC.

On January 27, 2004, Mahoney filed an appeal of the PSS decision to the CSC. In conjunction with her appeal Mahoney retained the services of Dr. Richard E. Ovens (“Dr. Ovens”) who conducted his own psychological evaluation of Mahoney. Dr. Ovens holds a doctorate in clinical psychology, is a retired member of the NYPD with thirty

years of experience, and his practice involves treatment of traumatized police officers. (Tr. 45); (Ovens Report). Dr. Ovens' evaluation described Mahoney as "possess[ing] the requisite intellectual abilities, emotional resources and coping skills to meet the demands and stresses associated with the unique duties of a . . . police officer." (Ovens' Report at 11). The Ovens' report was forwarded to Dr. Archibald on April 16, 2004.

On June 29, 2004, the PSS retained an outside consulting psychologist, Robert Arko, Ph. D. ("Dr. Arko"). Dr. Arko reviewed Mahoney's PSS record as well Dr. Ovens' evaluation and concluded that Mahoney should be denied admittance to the position of police officer based on "poor judgment and impulse control" as evidenced by her two job terminations, and her driving record. (Arko Report). Dr. Arko's report was forwarded to the CSC by the NYPD.

After Dr. Arko concluded his review, Dr. Edward Fitzsimmons ("Dr. Fitzsimmons"), on behalf of the NYPD Psychological Services Section, conducted another review of Mahoney's, entire PSS record, all her test results, and the evaluation of Dr. Ovens. Dr. Fitzsimmons concluded that Dr. Arko's evaluation of Mahoney was accurate, that Mahoney was unsuited for police work, and that Mahoney's candidacy for a position with the NYPD should be denied for psychological reasons.

After reviewing all the records, the CSC determined that a hearing was appropriate in order to resolve the factual issues regarding Mahoney's disqualification. The CSC hearing took place on March 9, 2005. At the hearing, both Chiu-Palmer and Dr. Ovens testified with respect to their evaluations of Mahoney. Dr. Ovens offered testimony that "[t]here is nothing in the testing that would indicate any kind of substantial . . . stress," (Tr. at 48), and further that, "there isn't anything in there [the

record] that indicates a lack of her ability to perform as a police officer.” (Tr. At 55). In contrast to these statements, Chiu-Palmer offered testimony in support of the DCAS and the NYPD that “[t]his [stress Mahoney was experiencing from her mother’s hospitalization] manifested itself in terms of affecting different areas, if not all areas of her functioning.” (Tr. at 13).

By decision dated January 4, 2006, the CSC issued a decision reversing the NYPD’s disqualification of Mahoney, and writing that “[h]aving reviewed the entire record and considering the arguments and testimony presented at the hearing, we conclude as follows. . . Having heard from both experts, we find that Dr. Ovens [sic] evaluation and assessment of the appellant was accurate and therefore more credible.” (CSC decision at 3).

Petitioners now challenge the decision of the CSC in this Article 78 proceeding, arguing that the CSC’s determination was irrational in crediting the testimony of Dr. Ovens over the testimony of Chiu-Palmer, and the other doctors employed by the petitioners.

Respondents counter that Dr. Ovens conducted a more comprehensive evaluation of Mahoney than Chiu-Palmer, and that CSC rationally credited Dr. Ovens’ testimony over that of Chiu Palmer based on his stronger educational background in psychology and his thirty years experience as a police officer.

In reply, petitioners contend that although Dr. Ovens conducted a different series of psychological tests than the petitioners, “Dr. Ovens never testified that the range of tests he administered w[ere] more comprehensive than the tests administered by the NYPD, nor did he testify that his method of testing was in any way superior or that the

NYPD's psychological testing was somehow improper or faulty." (Reply in Support of Pet ¶ 10).

Further, the petitioners contend that the CSC's decision is irrational as it fails to address the discrepancies in Mahoney's testimony. As an example, the petitioners point out that although Mahoney claimed that the reason she took a one year leave from college was because of the stress she was experiencing after witnessing the death of a close friend, the record indicates that Mahoney began her leave from college in 2000, but the accident involving the death of her friend did not occur until January, 2001. Petitioners also argue that Dr. Ovens' testimony failed to adequately address the psychological relevance of Mahoney's job terminations and the motor vehicle accidents.

### Discussion

The CSC is empowered by Section 813 (d) of the New York City Charter<sup>1</sup> to hear and decide appeals of petitioners' determinations as to employment eligibility. CSC's determinations of such appeals are subject to judicial review under Article 78.

In an Article 78 proceeding, review by the court is limited to the question of whether the decision of the administrative agency was arbitrary or capricious or irrational. Matter of City of New York v. O'Connor, 9 AD3d 328, 329 (1<sup>st</sup> Dept), ly denied, 3 NY3d 611 (2004); Matter of City of New York v. City Civ. Serv. Com'n., 141 Misc2d 276, 281 (Sup. Ct., NY Co. 1988). "In fact, a court *must affirm* the agency's

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<sup>1</sup> NY City Charter § 813 [d] provides that: "[t]he civil service commission shall have the power to hear and determine appeals by any person aggrieved by any action or determination of the commissioner . . . and may affirm, modify or reverse such action or determination."

decision when there exists a rational basis in the record to support the decision.” Id. (emphasis added). See also Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mameroneck, 34 NY2d 222, 232 (1974) (“[i]t is well settled that a court may not substitute its judgment for that of the board or body it reviews”).

Furthermore it has been held that “[w]ide discretion is afforded to civil service commissions in determining fitness of candidates. The exercise of that discretion is to be sustained unless it has been clearly abused.” Smith v. City of New York, 228 AD2d 381, 383 (1<sup>st</sup> Dept 1996), lv denied, 89 NY2d 806 (1997), quoting Metzger v. Nassau County Civ. Serv. Commn., 54 AD2d 565, 566 (2<sup>nd</sup> Dept 1976).

Under this standard, there is no basis for overturning the CSC determination that Mahoney is qualified to be a police officer. Specifically, it cannot be said that the CSC’s decision to credit the opinion of Dr. Ovens over that of Chiu-Palmer was irrational in light of Ovens’ substantial qualifications, including his doctorate in clinical psychology, his thirty years of experience as a police officer, and his practice which involves the treatment of traumatized police officers. See City of New York v. New York City Civil Services Com’n, 12 AD3d 172 (1<sup>st</sup> Dept 2004) (based on credible evidence presented, respondent commission rationally concluded that respondent was qualified to be a firefighter despite a previous injury); City of New York v. O’Connor, 9 AD3d 328 (1<sup>st</sup> Dept 2004) (upholding as reasonable CSC determination reversing NYPD’s determination that respondent was psychologically unfit to be a police officer because of failure to disclose prior hospitalization).

Moreover, contrary to petitioners’ argument, there is no requirement that Dr. Ovens base his opinion on the same tests performed by the petitioners’ psychologists, or

that the CSC provide a detailed analysis of its decision to credit Dr. Ovens' testimony over that of the petitioners' expert. In addition, while petitioners' psychologists agreed with Chiu-Palmer's assessment of Mahoney, they did not personally examine her. Next, although there were apparent discrepancies in Mahoney's version of events it cannot be said that such discrepancies were sufficient to render the CSC's decision irrational. Similarly, the factual disputes surrounding Mahoney's job terminations and motor vehicle accidents do not provide a basis for annulling the CSC's determination.

Furthermore, contrary to petitioners' argument, City of New York v Ciacciullo, 6 NY2d 855 (2006) does not support their position. In Ciacciullo, the CSC reversed the police department's determination that a former police officer was not qualified for reinstatement for psychological reasons. The Appellate Division, First Department annulled this determination and the Court of Appeals affirmed, explaining that:

While the Commission [the CSC] had evidence that petitioner [the police officer] . . . was no longer psychologically disabled, there was no evidence given his background and lack of any employment for a decade (or more) he was fit for the stresses of police work. The Department of Citywide Administrative Services adduced medical evidence of his future unfitness while petitioner offered no medical evidence to rebut that proof and support his future fitness.

6 NY3d 855 at 856 (emphasis added).

Notably, however, in contrast to situation in Ciacciullo, in this case, the CSC's determination is supported by medical evidence in the form of Dr. Ovens' testimony.

Accordingly, it cannot be said that the determination of the CSC was arbitrary, capricious, or without rational basis. In reaching conclusion, the court notes that

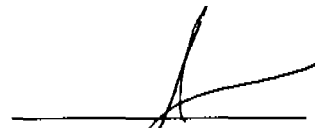
its role in this proceeding is not to second guess the determination of the CSC, but only to ensure that the agency's determination is rational. Pell, 34 NY2d 222, 238; see also City of New York v. O'Connor, 9 AD3d at 330.

Conclusion

In view of the above, it is

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

DATED: ~~February~~ <sup>March 5, 2007</sup> 2007

  
\_\_\_\_\_  
J.S.C.