

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

2007 NY Slip Op 30443(U)

March 16, 2007

Supreme Court, New York County

Docket Number: 0403004

Judge: William A. Wetzel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

x

In the Matter of the Application of
THE CITY OF NEW YORK, 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,

DECISION AND ORDER

Index No. 403004/06

Petitioner,

-against-

THE NEW YORK CITY CIVIL SERVICE
COMMISSION and JOSHUA AGRELO,

Respondents.

x

WILLIAM A. WETZEL, J.:

Petitioners bring this proceeding pursuant to Article 78 of the CPLR seeking a judgment vacating the March 30, 2006 decision of the New York City Civil Service Commission.

Respondent Joshua Agrelo applied for a position as a New York City Police Officer. The Commissioner of the New York City Department of Citywide Administrative Services, acting in her capacity as a municipal civil service commissioner rejected his application because the applicant had an arrest record which demonstrated poor judgment and blatant disregard for the law and therefore lacks the moral character required to be a police officer.

The Police Department based its determination on Civil Service Law §50(4)(a) which empowered them to disqualify a person when he was “found to lack . . . the established requirements . . . for appointment to the position for which he applies.” It is asserted that good moral character is a basic requirement for the position of police officer and this cannot be disputed.

At the hearing, the applicant's arrest record was undisputed. On April 8, 2000, he was arrested and charged with Patronizing a Prostitute, who was, in fact, an undercover police officer. He pled guilty to a lesser charge of Disorderly Conduct. On May 31, 2000, he was arrested and charged with Robbery in the Second Degree, a felony, and Assault in the Second Degree, a felony, but ultimately pled guilty to Harassment, a violation. On July 15, 2000, the applicant was arrested for Sexual Abuse in the Third Degree and ultimately pled guilty to Disorderly Conduct, a violation.

At the hearing, the applicant provided a rationale or explanation for each of the offenses. He stated that he always wanted to become a police officer. The respondent noted that it had reviewed the record, and considered the arguments of both parties, and found that appellant was a credible and honest witness. It acknowledged he had pled guilty to three violations but no misdemeanor or felony convictions. The Commission concluded that the appellant possessed the requisite character to be a New York City police officer.

The petitioner does not challenge the authority of the respondent Commission to review its decision with respect to the eligibility of candidates. They assert, however, that the Commission may only set aside its determination if they conclude that the decision of the Commissioner was not rationally based.

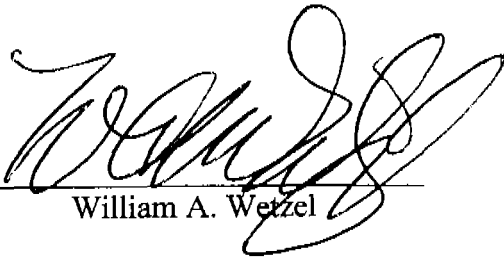
The relevant standard for this court in reviewing the determination of the Commission is whether or not it was rational. See City of New York v. New York City Civil Serv. Comm'n., 6 NY3d 855 (2006). In this case, the respondent takes no issue and indeed confirms the applicant's arrest and conviction record. While it gratuitously finds him to be credible, it fails to provide any explanation for the seemingly obvious fact that this arrest record, conceding the rationale provided by applicant, does not demonstrate the requisite character to be a police

officer. Credibility was not the issue. The issue was whether the undisputed facts i.e. his actual arrests and pleas are disqualifying. An issue not addressed by the respondent.

This court therefore reverses and sets aside the determination of the respondent that, in effect, held the applicant to have the required character to be a police officer.

This constitutes the Decision and Judgment of this court.

Dated: March 16, 2007
New York, NY



William A. Wetzel

WON. WILLIAM A. WETZEL