

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

2007 NY Slip Op 31502(U)

May 30, 2007

Supreme Court, New York County

Docket Number: 0110946/2006

Judge: Eileen Bransten

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

PRESENT: Eileen Bransten  
Justice

PART 6

Index Number : 110946/2006  
CARRINGTON, CHARLES  
vs  
CIVIL SERVICE COMMISSION  
Sequence Number : 001  
ARTICLE 78

INDEX NO. 110946/06  
MOTION DATE 3/27/07  
MOTION SEQ. NO. 01  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 5 is motion to/for vacate determination

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

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

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

PAPERS NUMBERED	
<u>1</u>	and cross- motion to dismiss
<u>2</u>	
<u>3, 4, 5</u>	

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and no entry should be placed hereon. To file a copy of this judgment, the representative must bring the original to the County Clerk's Desk (Room 1210) in person.

**MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: 5-30-07

Eileen Bransten  
J.S.C.

**HON. EILEEN BRANSTEN**

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: PART SIX

-----X  
In the Matter of the Application of  
CHARLES CARRINGTON,

Petitioner,  
  
-against-

Index No.110946/06  
Motion Date: 03/27/07  
Motion Seq. No: 01

NEW YORK CITY CIVIL SERVICE COMMISSION,  
RUDY WASHINGTON, COMMISSIONER, Acting Chairman,  
CHAIRMAN, STANLEY K. SCHLEIN, COMMISSIONER,  
CHAIRMAN AND NICHOLAS A. LaPORTE, COMMISSIONER,

Respondents.

-----X  
PRESENT: EILEEN BRANSTEN, J.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
appear in person at the Judgment Clerk's Desk (Room  
11B).

In this proceeding, purportedly brought pursuant to Article 78 of the CPLR, *see*,  
Verified Petition ("Petition"), at 9, petitioner Charles Carrington ("Officer Carrington"),  
formerly a correction officer, seeks a judgment vacating and annulling the determination of  
respondent New York City Civil Service Commission ("Commission"), which upheld the  
decision and penalty imposed on him by the New York City Department of Correction.  
Respondents--New York City Civil Service Commission, Rudy Washington, Commissioner,  
Acting Chairman, Stanley K. Schlein, Commissioner, Chairman and Nicholas A. LaPorte,  
Commissioner (collectively, "Respondents")--cross-move to dismiss the petition for failure  
to state a cause of action.

### Background

On August 11, 2005, Administrative Law Judge Kara J. Miller ("ALJ")--in a thorough, 19-page Report and Recommendation--examined charges leveled against two correction officers: Officer Carrington and Officer Melissa Hall.

### Officer Carrington

Charges against Officer Carrington stemmed from two incidents.

#### The First Incident--December 7, 2002

The first incident took place on December 7, 2002. Among Officer Carrington's responsibilities on that date was to open and close breaker gates, corridor doors and cell doors in the housing area at the George Motchan Detention Center ("GMDC"). Petition, Ex. C., at 3. While Officer Carrington was on duty, two inmates got into a fight. One of the inmates, who was "dazed and bloodied," approached Officer Carrington asked that he open his cell so that the inmate could use the bathroom. *Id.* Officer Carrington "permitted [the inmate] to return to his cell, where he became woozy and fell." *Id.* The inmate hit his head on the sink and was further injured. Another inmate notified Officer Carrington of the situation. Officer Carrington investigated. He "found [the inmate] lying on the floor of his cell, bleeding heavily from his nose and face." Petition, Ex. C, at 3. The inmate reported that he was injured because he fell. Officer Carrington was directed to take the inmate to the

clinic. The inmate's injuries were life threatening and he was transferred to Elmhurst Hospital where he was placed on a respirator.

In connection with the incident, Officer Carrington was charged with failing to efficiently perform his duties because "he stated that he was unaware that a physical altercation occurred between two inmates in the area of his assigned post \* \* \* that resulted in serious injuries to one of the inmates" and "he opened a cell door for an inmate at a time other than during the 'option' in direct violation of the Department's rules, regulations and procedures." He was also charged with giving "false and/or misleading information regarding the events leading up to [the] physical altercation between two inmates \* \* \* and his failure to observe and/or witness the altercation even though the altercation occurred near and/or at his post." Affirmation in Further Support of Cross-Motion to Dismiss the Petition, Ex. 1 at ¶ 5.

The ALJ concluded:

"I find Officer Carrington's explanation for not noticing the fight to be incredible.

\* \* \*

\* \* \* "It is implausible that Officer Carrington did not notice the fight since it took place \* \* \* less than three to five feet from his post."

Petition, Ex. C, at 4-5.

With respect to the first charge, the ALJ summarized:

“Whether Officer Carrington for some inexplicable reason failed to observe the fight or he actually witnessed it and chose not to report it, the finding is the same \* \* \* . Officer Carrington failed to provide proper care, custody and control of two inmates involved in a physical altercation on December 7, 2002.”

*Id.*, at 6.

As to the second charge, the ALJ found:

“It is troubling that Officer Carrington admitted that he not only opened the cell outside an option period, but maintained that he did so without actually looking at [the inmate]. He testified that he did not need to look at [the inmate] because he recognized his voice and shape. Even if I were to credit that Officer Carrington can distinguish one inmate from another without looking at them, certainly this would not be true under these circumstances. [The inmate] just sustained three to four heavy blows to his nose and face, causing him to be disoriented and bleed profusely. It is implausible that he sounded normal or recognizable. At the very least, his tone or manner should have been affected, which should have caused Officer Carrington to take more notice, not less. \* \* \*

\* \* \*

“In finding that Officer Carrington observed the fight, I also conclude that he had actually looked at [the inmate] and noticed his injuries before permitting him access to his cell. Officer Carrington denied looking at [the inmate], otherwise he would have had to explain his failure to notice and report the inmate’s injuries. If officer Carrington acknowledged the injuries, it would have led to an inquiry about him observing the fight and not reporting it. With [a Captain] present in the housing area, Officer Carrington probably thought it best to overlook the fight, which was in all likelihood of short duration, and to allow [the inmate] to go back to his cell to clean himself up. With any luck, [the Captain] would not have detected that anything was amiss.”

Petition, Ex. C, at 7.

The ALJ also concluded that Officer Carrington “provided false and/or misleading information about the events of December 7, 2002” during his Mayoral Executive Order Interview. *Id.*

The Second Incident--May 30, 2003

The second incident that the ALJ addressed took place on May 30, 2003, when Officer Carrington’s duties were identical to those he had at the time of the first incident. Petition, Ex. C, at 7. To facilitate “the processing of the inmates, Officer Carrington left the main breaker gate between [the area to which he was assigned] and the central GMDC corridor open.” *Id.* A five-foot-one-inch tall inmate, on a quest to buy drugs from a friend, mixed in with other inmates who were returning from religious services and entered the housing area through the two open gates. *Id.*, at 8.

While in the housing area, the drug-seeking inmate started a shoving match with another inmate. When it looked like he was losing the fight, “his friend handed him a shank made out of plastic, which he used to stab [the other inmate], fatally wounding him.” Petition, Ex. C, at 8.

As the fight was ending, Officer Hall entered through the open main gate to report for meal relief. Petition, Ex. C, at 8. As she went to sign the log book, she noticed that it had not been updated and volunteered to help Officer Carrington by filling in information for him. *Id.* She also asked Officer Carrington whom she would be relieving. Officer

Carrington contacted the other officer on duty to discuss the matter. As the other officer approached, the stabbed inmate staggered toward the area. He was bleeding heavily and asked Officer Hall to let him out. Officer Hall panicked and started yelling at Officer Carrington to open the door closest to the injured inmate to let him out. *Id.*

Officer Carrington simultaneously unlocked both area doors to enable the other officer on duty and the injured inmate to exit on their respective sides. Officer Carrington then entered the fight area and saw the aggressor inmate with blood on him. The inmate told Officer Carrington that he was trying to help an inmate who had fallen on him. "At this point, Officer Carrington noticed [the stabbed inmate] collapse to the floor and while his attention was diverted, [the fight-starting inmate] ran out of the housing area through the open main breaker gate." Petition, Ex. C., at 9.

While Officer Carrington, the other officer on duty and Officer Hall dealt with the situation in the housing area, the killer inmate attempted to return to his own housing area. Petition, Ex. C, at 9. Because he had a bloodied lip, the officer assigned to that area was suspicious and locked the inmate between the main gate and the housing area doors until he was identified as the inmate who fatally wounded another. *Id.*

Officer Carrington was first charged with allowing an inmate that was not assigned to the housing area to enter without ascertaining any information about him. "The proper procedure for allowing inmates into a housing area is to ask the inmate for identification and

[a] pass, check that the identification belongs to that inmate , ensure that the inmate belongs in that particular housing area, and finally search the inmate for contraband.” Petition, Ex. C, at 10. Officer Carrington maintained that he “sight-checked all the inmates” who were returning from services and never saw the aggressor inmate. He guessed that the inmate snuck in with other inmates who were returning from the health clinic. *Id.* “Officer Carrington acknowledged having trouble keeping pace with the number of inmates being processed in and out of the housing area and even admitted to leaving the main breaker gate open to help with the flow.” *Id.*

The ALJ concluded:

Although Officer Carrington “did not intentionally allow [the inmate to enter], he was nonetheless careless and lax in processing inmates returning to the housing area. [Officer Carrington’s] decision to leave the main gate open was a security breach that permitted [the inmate] free access [to the area]. Similarly, Officer Carrington’s decision to leave the [door closest to the area where the fight took place] open allowed [the inmate] access to his intended victim. In order for [the inmate] to sneak into the housing area, Officer Carrington could not have been following the proper procedure of checking identification, passes and conducting searches. Officer Carrington’s negligence enabled a dangerous inmate to enter a housing area in which he did not belong, where he ultimately stabbed and killed another inmate. Accordingly, I find Officer Carrington guilty of permitting an inmate who was not assigned [to the area] to enter \* \* \*without ascertaining information about him.”

Petition, Ex. C., at 11.

Officer Carrington was also charged with failing to notice the physical altercation. The ALJ found that based on his assignment at the time, he “had a critical role in the care, custody and control of the inmates [in the housing area]. \* \* \* Officer Carrington \* \* \* was the only officer at the time to be in a position that would have allowed him to view the fight. Petition, Ex. C., at 12. The ALJ concluded that though Officer Carrington was preoccupied with writing passes, he was obligated “to maintain vigilance over the inmates.” *Id.* The ALJ explained that Officer Carrington was “responsible for continued observation of the housing area. He should have been periodically checking the cell corridors to ensure that everything was copasetic.” *Id.*

In response to the charge of “failing to notice that an inmate was bleeding and take appropriate action,” the ALJ found Officer Carrington not guilty of any misconduct because, under the circumstances, he did in fact take appropriate action. Petition, Ex. C., at 12.

With respect to the charge related to “failing to properly secure the two gates leading to the housing area,” the ALJ found Officer Carrington guilty of misconduct because he “admitted leaving the main gate open to ease the processing of inmates and readily acknowledged that he should not have done so.” Petition, Ex. C., at 13.

The ALJ found that Officer Carrington was not guilty of any misconduct with respect to allowing the stabber to leave the area unimpeded since he was understandably focused on the “inmate lying on the floor and bleeding profusely.” Petition, Ex. C., at 14. Additionally,

the ALJ determined that Officer Carrington did not submit a false report related to this incident.

### Recommendation

The Department of Correction requested termination of Officer Carrington. Because of the seriousness of the charges, the ALJ obtained his personnel abstract.

The ALJ noted Officer Carrington's 15-year tenure and that he had been disciplined twice before (in 1995 for sleeping or leaving his post, and in 1997 for a sick leave violation).

The ALJ stated:

"Officer Carrington has been found guilty of failing to observe an inmate fight on two occasions, permitting an inmate to enter his cell at an unauthorized time, making misleading or false statements during a MEO 16 [Mayoral Executive Order] interview, permitting an unauthorized inmate to enter his housing area, and leaving the main gate of the housing area open. The misconduct established by [the Department of Correction] demonstrates a pattern of inattentiveness and neglect, the consequences of which resulted in one inmate being severely beaten on December 7, 2002, and another inmate being killed on May 30, 2003.

"[Officer Carrington] works for a para-military organization whose primary mission is the care, custody and control of inmates. In order to effectuate this mission, it is incumbent upon its employees to follow established rules and procedures. Officer Carrington has demonstrated a lax attitude with respect to enforcing the Department's rules. Moreover, he admitted having trouble performing the many tasks required of him when posted [in the position he occupied during the incidents at issue] in a housing area. He attributed his failure to observe each of the fights to the chaos and noise in the housing area, as well as being engrossed in other tasks such as, reviewing the log book with a Captain or issuing clinic passes to inmates. While it may be true that in the past two officers had been assigned \* \* \* that is not the current state of affairs.

As such, it is incumbent upon the [officer assigned to the post that Officer Carrington manned] to rise to the task and not shirk his responsibilities by blaming his failures on reduced staffing due to budget cuts.

“The Department requested that Officer Carrington be terminated. Although [it] did not establish all of the charges against Officer Carrington, the ones [it] did prove were significant. I agree with the Department that Officer Carrington has demonstrated an inability to comply with Department rules and meet the pressing demands of being a correction officer. Unfortunately, his misconduct has had fatal consequences. Despite his relatively good record, long tenure with the Department and his remorsefulness, the only appropriate penalty under the circumstances is termination.”

Petition, Ex. C, at 18 (emphasis added).

### Officer Hall

The charges against Officer Hall stemmed solely from the May 30, 2003 incident.

Like Officer Carrington, the ALJ found that Officer Hall , “adequately responded” once becoming aware of the stabbed inmate’s injuries. Petition, Ex. C, at 13. The ALJ further found, despite her insistence to the contrary, that Officer Hall bore responsibility for “failing to properly secure the two gates leading to the housing area,” since “the gate was open when she arrived and regardless of whether or not she had assumed the post, as a correction officer, she was responsible for ensuring that the area was secure in order to maintain proper custody of the inmates. At a minimum, Officer Hall should have inquired why the gate was open.” *Id.*

Like Officer Carrington, Officer Hall was also charged with failing to notice the physical altercation. As to her, the ALJ concluded, that in contrast with Officer Carrington,

“Officer Hall \* \* \* had only just arrived at the scene when the fight was over. She credibly testified that she had just entered \* \* \* and was getting situated when [the stabbed inmate] approached her, asking for help. Moreover Officer Hall’s testimony was corroborated by both Officers Carrington [and the other officer on duty in the housing area]. Accordingly, I find Officer Carrington negligently failed to notice the physical altercation between the two inmates, while Officer Hall was not yet on duty, when the fight occurred.”

Petition, Ex. C, at 12 (emphasis added). The ALJ also found that Officer Hall “submitted a false or misleading report” about the incident because she did not reveal in her report that the main gate had been open in an attempt to shield herself from liability. *Id.*, at 15. The ALJ concluded that Officer Hall did not intentionally enter any false information into the log book.

#### Recommendation

The Department of Correction also sought termination of Officer Hall based on the May 30, 2003 incident. This time, however, the ALJ disagreed with the proposed disposition. The ALJ noted that Officer Hall had been disciplined once before for excessive lateness. The ALJ set forth that Officer Hall was found guilty of leaving the main gate open and submitting a false or misleading report. She noted that the in the past these types of infractions were dealt with by issuance of suspensions, except that an officer with a prior 30-

day suspension had been terminated for leaving security gates unlocked. Petition, Ex. C., at 18.

The ALJ recommended the imposition of a 45-day suspension on Officer Hall, reasoning that “her nonchalant attitude and the challenging manner in which she stated that she did not open the gate, therefore she was not responsible for closing it, is troubling.” Petition, Ex. C., at 19.

#### Termination of Officer Carrington

On September 22, 2005, Commissioner Martin Horn of the Department of Correction informed Officer Carrington that after “a complete review of the record and the report and recommendation” of the ALJ, he was being found guilty and the sanction imposed was “dismissal from the Department of Correction effective forthwith.” Petition, Ex. B.

Commissioner Horn’s letter informed Officer Carrington that:

“Under the provision of Section 76 of the Civil Service Law, you are entitled to appeal from this determination by application to either the Civil Service Commission or to a court in accordance with the provisions of Article 78 of the Civil Practice and Rules. If you elect to appeal to the Commission such appeal must be filed in writing within twenty (20) days of receipt of this determination. A decision of the Commission is final and conclusive.”

Petition, Ex. B (emphasis added).

Appeal to the Commission

Significantly, Officer Carrington elected to appeal the decision to the Commission. In a determination dated April 4, 2006, after “a careful review of the testimony adduced at the departmental hearing \* \* \* and based on the record,” the Commission affirmed the Department of Correction’s decision to terminate Officer Carrington. Petition, Ex. D.

This Proceeding

Officer Carrington commenced this proceeding challenging Respondents’ actions. He argues, among other things, that “the administrative action lacks substantial evidence and/or is without foundation” because the ALJ discounted Officer Carrington’s testimony, which had been corroborated by a Captain at the scene of the first incident. Petition, at ¶ 12. In addition, he contends that after the first incident a Captain conducted a corrective interview with him and he was led to believe that no other disciplinary action would be taken in connection with the events of December 7, 2002. *Id.*, at ¶ 5.

With respect to the May 30, 2003 incident, Officer Carrington faults the ALJ for not adequately weighing his years of loyal and dedicated service. Petition, at ¶ 23. Officer Carrington maintains that his termination was thus “arbitrary and capricious.” *Id.*, at ¶ 25. He further sets forth that Officer Hall should have been found guilty of some of the charges that had been excused. *Id.*, at ¶¶ 21, 23.

Officer Carrington asserts that the “determination, that [Correction Officer Carrington], despite inconsistencies and unsubstantiated assumptions in the record and his 15 years of satisfactory or better service, be improperly terminated on a number of charges is arbitrary and capricious while Melissa Hall, a 7 year employee, who unlike [Correction Officer Carrington] committed two serious intentional acts of misconduct by failing to close the gate after she passed through it and submitting a false and misleading report retained her position [and was] only penalized with 45 days suspension.” Petition, at 9-10.

In the petition, which refers to relief pursuant to Article 78 of the CPLR, there is absolutely no mention of any constitutional violations.

Respondents cross-move to dismiss the petition, arguing that in appealing the Department of Correction’s determination to the Commission, Officer Carrington waived any right to CPLR Article 78 relief. Affirmation of Assistant Corporation Counsel (“Cross”), at ¶ 3. Respondents set forth that the only way for Officer Carrington to prevail is upon establishing that Respondents acted illegally, unconstitutionally or in excess of jurisdiction. Cross, at ¶ 4. They further point out that there are no such allegations in the Petition, warranting its dismissal. *Id.*, at 5.

In opposition to the cross-motion (and tacitly acknowledging that Respondents were right on the mark), Officer Carrington entirely changes course. He now recasts his petition and states that pursuant to Civil Service Law § 76 the Commission’s determination should

be overturned based on a violation of equal protection and illegal discrimination because “female Correction Officer Melissa Hall received a suspension of 45 days, while the male Petitioner, who was similarly situated, was unjustly terminated.” Affirmation in Opposition to Cross-Motion to Dismiss (“Opp. Cross”), at ¶ 5. Officer Carrington’s newly-asserted equal protection and discrimination claims have absolutely no foundation and are entirely without merit. Thus, the petition is denied and the proceeding is dismissed.

#### Analysis

Civil Service Law § 76 precludes almost any judicial review of the Commission’s determination. *Matter of New York City Dept. of Envtl. Protection v. New York City Civ. Serv. Commn.*, 78 N.Y.2d 318, 321-22 (1991) (the statutory language “is clear and unambiguous in its intent to preclude judicial review”); *Matter of Griffin v. New York City Dept. of Correction*, 179 A.D.2d 585 (1st Dept. 1992). The statute provides that any employee dismissed from service may appeal by application *either* to the state or municipal commission having jurisdiction *or* to the courts pursuant to CPLR Article 78. Civil Service Law § 76(1) (emphasis added). Section 76(3) makes clear, moreover, that “the decision of such civil service commission shall be final and conclusive, and not subject to further review in any court.” Civil Service Law § 76(3).

Nonetheless, courts are empowered to ensure that administrative officials do not act unconstitutionally, illegally, or in excess of their jurisdiction in reaching determinations. *Matter of New York City Dept. of Env'tl. Protection v. New York City Civ. Serv. Commn.*, 78 N.Y.2d, at 323; *Matter of Guardian Life Ins. Co. of Am. v. Bohlinger*, 308 N.Y. 174, 183 (1954), *rearg. denied*, 308 N.Y. 810 (1955); *Matter of Griffin v. New York City Dept. of Correction*, 179 A.D.2d, at 585.

Because Officer Carrington, who was made fully aware of his options, charted his own course and elected to appeal to the Commission (and not to the courts pursuant to CPLR Article 78), this court has "exceedingly limited" power to review the challenged determination. "Once courts have determined that an agency has not acted in excess of its authority or in violation of the Constitution or of the laws of this State, judicial review is completed." *Matter of New York City Dept. of Env'tl. Protection v. New York City Civ. Serv. Commn.*, 78 N.Y.2d, at 323-324. Thus, the question here is not whether Respondents acted arbitrarily or capriciously in terminating Officer Carrington, it is only whether they improperly discharged him in violation of his constitutional or statutory rights.

To succeed on an equal protection claim, Officer Carrington must demonstrate that the law in question was applied unequally to others similarly situated and that the differential treatment was deliberately based on an impermissible standard such as race, religion or some other arbitrary classification. *Matter of 303 West 42nd St. Corp. v. Klein*, 46 N.Y.2d 686,

693 (1979); *Matter of Szipeck v. Safir*, 291 A.D.2d 269 (1st Dept. 2002). “The burden of proving a claim of discriminatory enforcement is a weighty one.” *Matter of 303 West 42nd St. Corp. v. Klein*, 46 N.Y.2d, at 694.

Officer Carrington has not established any equal protection violation.

It is beyond cavil that Officer Carrington and Officer Hall were not remotely similarly situated. Officer Carrington, unlike Officer Hall, was not only disciplined for the events of May 30, 2003, he was also disciplined for his conduct on December 7, 2002. Officer Carrington has failed to establish that it was illegal for the ALJ to address the 2002 incident or that it was improper for her to consider what took place that day in imposing his penalty. In addition, Officer Carrington’s misconduct with respect to May 30, 2003 differed from Officer Hall’s. Specifically, Officer Carrington was found guilty of improperly allowing an inmate to enter the housing area and failing to notice an altercation. Officer Hall was not found guilty of either of those charges. In the end, there is not a shred of evidence of any improper discrimination. The ALJ’s report is thorough and fully accounted for the difference in the penalties imposed.

In the end, there is no basis whatsoever for annulling the determination here.

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and Respondents’ cross-motion to dismiss the proceeding is GRANTED.

*Carrington v. New York City Civ. Serv. Commn.*

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This constitutes the Decision and Judgment of the Court.

Dated: New York, New York  
May 30, 2007

ENTER:



Hon. Eileen Bransten

**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).