

**Matter of Manneh v Staten Is. Dev. Disabilities
Serv. Off.**

2007 NY Slip Op 32459(U)

August 6, 2007

Supreme Court, New York County

Docket Number: 0106369/2007

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 5

In the Matter of the Application of
LAFAYETTE MANNEN

INDEX NO. 106369107

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

Staten Island

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2, 3

Cross-Motion: Yes No


Upon the foregoing papers, It is ordered that this motion

FILED
AUG 09 2007
NEW YORK
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 8/6/07


EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the application of LAFAYETTE
MANNEH,

FILED
AUG 09 2007
NEW YORK
COUNTY CLERK'S OFFICE

Index No.
400476/07

- against -

Decision
and Order

STATEN ISLAND DEVELOPMENTAL DISABILITIES
SERVICE OFFICE, THOMAS MAUL, as Commissioner
of the NYS OFFICE OF MENTAL RETARDATION &
DEVELOPMENT DISABILITIES; DAVID BOOTH, PhD as
Director of STATEN ISLAND DEVELOPMENTAL DISABILITIES
SERVICE OFFICE; MARGARET GREEN as Director of HUMAN
RESOURCES PERSONNEL at STATEN ISLAND DEVELOPMENTAL
DISABILITIES SERVICE OFFICE; SHERYL MINTER-BROOKS as Director of
RESIDENTIAL SERVICES; and MARIE GILLEN as OMRDD AGENCY
LABOR RELATIONS REPRESENTATIVE assigned to STATEN
ISLAND DEVELOPMENTAL DISABILITIES SERVICE OFFICE,
Respondents.

-----X
HON. EILEEN A. RAKOWER

Lafayette Manneh was employed as a Developmental Aide at the Staten Island Developmental Disabilities Service Office ("SIDDSO") by State of New York Office of Mental Retardation and Developmental Disabilities ("OMRDD"), effective January 5, 2006, and was to be a probationary employee. Petitioner was terminated on January 10, 2007. Respondents claim that petitioner's probationary status was extended by a letter dated December 29, 2006, and that its decision to terminate Mr. Manneh was proper. Petitioner brings this Article 78 seeking review of the decision to terminate Mr. Manneh without a hearing or stated reasons for such termination. Respondents oppose.

Petitioner asserts that he was a permanent employee at the time of his termination, and was entitled to a Notice of Discipline and a due process hearing

regarding his dismissal. While respondents insist that a letter extending petitioner's probationary status was prepared dated December 29, 2006, Mr. Manneh states he never received such a letter, and certain of those parties who were to have received copies of the letter, according to Union CSEA President Jay Armstrong's investigation, never received it either.

Respondents set forth details of an incident investigation which resulted in petitioner, among others, being placed on administrative leave on August 11, 2006. Pursuant to the investigation, Mr. Manneh was interviewed on August 14, 2006 and August 23, 2006. The investigation concluded that Mr. Manneh, among others, falsified documentation and did not complete an inspection form. It recommended that Mr. Manneh receive training. A further interview with Mr. Manneh on September 7, 2006 led to a final conclusion that staff, including Mr. Manneh, were negligent, and a final recommendation included administrative action. Ultimately, despite an apparently positive overall evaluation dated, November 14, 2006, Mr. Manneh received a less than favorable rating due to the incident noted above.

Consistent with the investigation and conclusions above, respondent asserts that it sent to Petitioner at his assigned work place, DAT, Bldg. 47 A/B, a memo extending his traineeship program, also known as his probationary period. This memo was stamped received by the Personnel Office January 4, 2007. Finally, despite a positive fourth quarter evaluation, which concedes "[t]here are no problems with Mr. Manneh's work performance he is very helpful and efficient in his assigned house of 47 A/B . . . Manneh is a pleasure to work with," it was recommended that Mr. Manneh be terminated. Notice of such termination, dated January 3, 2007, was hand delivered to Mr. Manneh, and stated that termination would be effective January 10, 2007.

Respondents note that its letter extending employment to petitioner stated "[t]he appointment will be permanent pending Civil Service approval and you will serve a traineeship the length of which is usually one year." Respondents argue that petitioner signed a document entitled "Memorandum of Understanding," which set forth when the traineeship period would conclude. It included, in relevant part, the following:

Twelve months (for trainees who complete all traineeship requirements with satisfactory training and job performance); or Fifteen months

[* 4]
(primarily for trainees who require additional time to master the more academic components of the traineeship.

Respondents assert that there was no contractual length of the probationary period, and that it was entitled, especially in light of the investigation into the August 2006 incident, to extend that period to fifteen months.

The judicial review of an administrative determination is limited to the grounds invoked by the agency. (*Lindemann v. American Horse Shows Assn.*, 222 A.D.2d 248, 250 [1st Dept. 1995]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis, based on the record as a whole. (*Purdy v. Kreisberg*, 47 NY2d 354, (1979); *Matter of Clancy - Cullen Storage Co. V. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. V. Glasser*, 30 N.Y. 2d 269 [1972]).

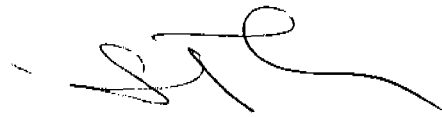
Accordingly, there was a reasonable basis for SIDDSO's determination to terminate petitioner and it cannot be said that such decision was arbitrary, capricious, an abuse of discretion or founded on an error of law and Petition is denied. Wherefore, it is hereby

ORDERED that the petition is denied.

All other relief requested is denied.

This constitutes the decision and order of the Court

Dated: August 6, 2007



Eileen A. Rakower, J.S.C.

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