

Matter of Garcia v Port Auth. of N.Y. & N.J.
2007 NY Slip Op 32585(U)
August 14, 2007
Supreme Court, New York County
Docket Number: 0105382/2007
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT:

PART 10

Index Number : 105382/2007

GARCIA, GABRIEL

vs

PORT AUTHORITY OF NEW YORK &

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

AUG 21 2007

COUNTY CLERK'S OFFICE
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

Dated: AUG 14 2007

HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

separate motion to dismiss. CPLR §§ 404, 3211 (7). Respondent contends that its decision to disqualify petitioner as a candidate for the police officer position - but not other positions - is rationally based upon the data before it at the time of its determination.

This is a timely petition seeking review of a final determination by the respondent. It will, therefore, be decided on the merits. Since an Article 78 proceeding is a special proceeding, the court will decide the issues raised on the papers and grant judgment for the prevailing party, unless there is a issue of fact requiring a trial. CPLR § 7804 (h); York v. McGuire 1984, 99 A.D.2d 1023 *aff'd* 63 N.Y.2d 760 1984.

The claims asserted in the petition

Virtually all the facts asserted by petitioner are not in dispute. In any event, since respondent has moved to dismiss, the facts as alleged by the petitioner are accepted as true to discern whether they support the claims alleged in the petition. Rovello v. Orofino Realty Co., 40 NY2d 633, 634 (1976)

Petitioner applied for a position as a police officer with respondent's force. As part of the application process he was required to submit to psychological testing. This consisted of written psychological tests (including the MMPI-2, Cornell Index, Draw-a-Person and LEADR tests) and a clinical interview by a psychologist. Petitioner admits that his interview did not go smoothly and in a letter he attributes this in part to his defensiveness about an incident involving the police, and in part the psychologist not being "honest" in her assessment of him.

Because the first psychologist did not find petitioner fit for the police officer job,

he was re-interviewed by another psychologist, in accordance with the Port Authority's internal procedures.

Following this process, respondents notified petitioner on December 21, 2006 that while he was not a qualified candidate. He wrote back to the respondents twice, asking for more information, and for it to reconsider its decision. The respondents responded to each letter with additional information and qualified its original decision to state that petitioner could still compete for other jobs with the Port Authority. In its January 29, 2007 letter, respondents stated that petitioner had been found "not qualified" for the "unique stressors and demands of a Port Authority police officer."

Petitioner has now hired his own psychologist, Robert Daley, PhD to privately administer the MMPI-2 exam on him, and provide his sworn affidavit to the court. Based upon the results, and Dr. Daley's report, petitioner argues that there is no "scientific reason for why [he] would measure as psychologically unsuitable for law enforcement with one administration [of the MMPI-2], and unsuitable with another." Petitioner argues that because he has tested as "qualified" with a private psychologist but "unqualified" with the test the respondent administered, the respondent's decision to disqualify him as a candidate for the police officer job is suspect, and therefore arbitrary, capricious, and without a rational basis. He argues that he should be allowed to see the respondent's test results, and that he should have been given a chance to challenge the decision.

In opposition and in support of its motion to dismiss, respondent provides the sworn affidavit of one of the psychologists who interviewed petitioner (Dr. Francis) and

the sworn affidavit of its Manager of the Human Resources division (Ms. Davidson).

Ms. Davidson describes the respondent's application process for the police force job which consists of psychological (written) testing, medical testing and a psychological interview. Dr. Francis states she interviewed petitioner and because she found him unsuitable for the police officer job, he was automatically interviewed by a second psychologist a few weeks later (Dr. Terranova) who also found him not qualified.

Respondent also provides legal authority to support its legal argument that its' screening process has been uniformly upheld by courts in this and other departments, and that petitions challenging the disqualification of police officer candidates at an early stage in the application process are regularly dismissed.

Respondent argues further that its decision is rationally based upon the written tests and clinical interviews, and the "independent" testing by petitioner hired psychologist is self-serving.

Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision being challenged has a rational basis. CPLR 7803 (3). Thus, where it is alleged the decision was arbitrary and capricious, or without a rational basis, the petitioner would have to set forth facts that establish it is "without sound basis in reason." Matter of Pell, Jr. v. Board of Educ. of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County, 34 NY2d 222 at 231 (1974); Matter of Colton, Jr. v. Berman, 21 NY2d 322 (1967).

Petitioner has failed to set forth facts that support his claim that respondent's

decision was without any rational basis or that there are any factual disputes that have to be decided at trial in order for the court to apply the law. Therefore, this petition can be decided on papers, and for the reasons that follow, it is hereby dismissed.

An appointing authority has wide discretion in determining the fitness of candidates and this discretion is particularly broad in the hiring of law enforcement officers, to whom high standards may be applied. Thomas v. Straub, 29 A.D.3d 595, 596 (2nd Dept 2006). So long as the administrative determination is not irrational or arbitrary, this Court will not interfere with it. Matter of Verme v. Suffolk County Dept. of Civ. Serv., 5 A.D.3d 498, 498-499 (2nd Dept 2004).

The court rejects any suggestion by petitioner that the respondent's MMPI-2 test should be provided to him so that he can compare the results of the respondent's testing to his own testing. An agency has the right to conduct its own testing; it is not bound by the applicant's submissions. Thomas v. Straub, supra. Thus, it is of no consequence that the psychologist petitioner hired obtained a different test result, or has a different opinion about petitioner's fitness to be an officer. Discovery will only be ordered in a special proceeding under limited circumstances, not present here.

Even assuming the two test results on the two MMPI-2 tests are wholly inconsistent, this is not a factual dispute that has to be decided to resolve the petition at bar. It is the Port Authority that decides between diverse opinions, not the court. McCabe v. Hoberman, 33 AD2d 547, 548 (1st Dept 1969). It conducted its own testing, as it has the right to do, and does not have to consider any independent testing proffered by the petitioner.

Respondent has not only administered written tests, it also conducted personal interviews of the petitioner. The value of such personal interactions with the applicant cannot be trivialized. In fact, it is so critical to the process that when one psychologist finds the applicant cannot meet the rigors of the job of police officer, a second psychologist interviews the candidate to confirm those findings.

Petitioner has failed to forth any facts or points of law that support this petition for a judicial review of the respondent's decision to not offer him a job with the Port Authority as a police officer. The decision is rationally based and respondent followed its own procedures. This court cannot and will not substitute its own judgment for the respondent, therefore its decision, that petitioner is not qualified for employment as a police officer with its force remains undisturbed.

Accordingly, respondent's motion is granted, and this petition is hereby dismissed.

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Conclusion

It is hereby

ORDERED that the Clerk shall enter judgment in favor of Respondent, The Port Authority of New York and New Jersey, against petitioner Gabriel Garcia, dismissing the petition in its entirety.

ORDERED that this constitutes the decision, order and judgment of the court.

Dated: New York, New York
August 14, 2007

So Ordered:

Hon. Judith J. Gische, J.S.C.