

Matter of Vaughan v Bloomberg

2007 NY Slip Op 33705(U)

November 7, 2007

Supreme Court, New York County

Docket Number: 0102384/2007

Judge: Marcy S. Friedman

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

PRESENT: Hon. Marcy S. Friedman
Justice

PART 57

Kenny Vaughan

INDEX NO. 102384/07

Michael Bloomberg

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

Petition
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Cross-Motion
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion petition and cross-motion are granted as per accompanying decision/order dated 11-7-07.

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

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 11B)

Dated: 11-7-07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Hon. Marcy S. Friedman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

_____ x

In the Matter of the Application of
KENNY VAUGHAN, LYNNE SCHNELLE,
DONALD CATANZARO and DAVID CALLA,

Index No.: 102384/07

DECISION/ORDER

Petitioners,

- against -

MICHAEL BLOOMBERG, as Mayor of the City of
New York, RAYMOND KELLY, as Commissioner
of the Police Department of the City of New York,
and THE CITY OF NEW YORK,

Respondents.

_____ x

In this Article 78 proceeding, petitioners seek a determination directing respondents to designate petitioners as detectives as of 18 months after the date they were assigned investigative functions. Respondents cross-move to dismiss the petition, on the ground that it is barred by the doctrines of res judicata and collateral estoppel, and by the statute of limitations.

Petitioners' claims arise under Administrative Code of the City of New York §14-103(b)(2), which provides in pertinent part: "Any person who has received permanent appointment as a police officer and is temporarily assigned to perform the duties of a detective shall, whenever such assignment exceeds eighteen months in duration, be appointed as a detective and receive the compensation ordinarily paid to a detective performing such duties."

The petition alleges that petitioners were assigned to the Intelligence Division on March

3]

5, 1997, began performing investigative duties as of that date, and should have been designated as detectives as of August 2, 1998. In response to respondents' cross-motion to dismiss, petitioners acknowledge that their claims from 1997 to 2002 are barred by res judicata or collateral estoppel, pursuant to the determination of the Appellate Division in Scotto v Giuliani (280 AD2d 315 [1st Dept 2001].)

Petitioners argue, in the alternative, that they were assigned to the Research and Analysis Squad ("RAS") on May 21, 2002 and are entitled to designation as detectives as of October 21, 2003, 18 months after they began performing investigative functions at RAS. Respondents argue that this alternative claim is time-barred. It is undisputed that in August 2004, respondents notified petitioners that they were put in a detective track position retroactive to February 2004. (Petition, ¶¶ 15, 16.) They were not designated as detectives until August 2005.


An Article 78 proceeding must be brought within four months "after the determination to be reviewed becomes final and binding upon the petitioner." (CPLR 217[1].) "A determination generally becomes binding when the aggrieved party is 'notified.'" (Matter of Village of Westbury v. Department of Transp., 75 NY2d 62, 72 [1989].) Here, petitioners did not bring this proceeding until nearly 2 3/4 years after they were notified that respondents would not give them retroactive credit beyond February 2004 – that is, would not acknowledge their performance of investigative functions prior to that date. Contrary to petitioner's contention, their August 1, 2006 request to Commissioner Kelly (Ex. A to Petition) was a request for reconsideration of that determination, and therefore could not serve to extend the statute of limitations. (See Matter of DeMilio v Borghard, 55 NY2d 216 [1982].) The court accordingly holds that the proceeding is untimely.

[* 4]
The court has considered petitioners' remaining contentions and finds them to be without merit.

It is accordingly hereby ORDERED that respondent's cross-motion is granted, and the petition is dismissed.

This constitutes the decision and judgment of the court.

Dated: New York, New York
November 7, 2007



MARCY FRIEDMAN, J.S.C.

UNFILED JUDGMENT

his 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 11B)