

**Matter of Webster v Police Dept. of the City of N.Y.**

2007 NY Slip Op 34502(U)

September 10, 2007

Supreme Court, New York County

Docket Number: 107302/06

Judge: Alice Schlesinger

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This opinion is uncorrected and not selected for official publication.

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

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In the Matter of the Petition of

MICHAEL BROOKE WEBSTER,

Petitioner,

-against-

Index No. 107302/06  
Motion Seq. 001

POLICE DEPARTMENT OF THE CITY OF NEW YORK and THE CITY OF NEW YORK,

Respondents.

-----X  
SCHLESINGER, J.:

**FILED**  
SEP 19 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Pursuant to this Court's interim decision of December 6, 2006, a one-day hearing was held on June 1, 2007 pursuant to CPLR §7804(h). The subject of the hearing was the discharge of the petitioner, Michael Brooke Webster, by the New York City Police Department's Auxiliary Service. After 23 years as a volunteer with the Auxiliary Service, Webster was told on December 23, 2004 to turn in his shield and official identification. This decision determines the petition after the hearing based on the evidence adduced and the arguments made in the parties' post-hearing memoranda.

Background

The Article 78 petition, which was served on respondent on May 25, 2006 and filed with the Court on May 30, 2006, seeks reinstatement of Webster to his former position of Auxiliary Sergeant with the Department or alternatively, an order directing respondent to conduct a hearing pursuant to provisions set out in the Police Department's Auxiliary Police

**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).

Guide.<sup>1</sup> The Police Department responded to the petition by cross-moving to dismiss, arguing that the petition was barred by the four-month statute of limitations found in CPLR 217. Respondent urged that the commencement of the proceeding in May 2006, more than 18 months after Webster's termination on December 23, 2004, was clearly untimely.

The parties' respective factual positions, which the Court relied upon in directing a hearing on the cross-motion, were as follows. Webster asserted that he had never been given any notification of the facts and circumstances surrounding the order to turn in his shield and identification. Further, he stated that over the succeeding 8 months, he regularly requested an explanation but that none was forthcoming. Finally, on August 17, 2005 he wrote a letter to Commissioner Raymond Kelly (see Exhibit B to the petition). Webster sent this letter by certified mail to prove receipt of same because, as stated in the letter, it was a follow-up of an earlier letter sent to the Commissioner by Webster a couple of months earlier. In the August 17, 2005 letter, Webster asked the Commissioner to provide him with a full explanation of the Department's actions in ordering him on December 23, 2004 to forthwith return his shield and I.D. There he said, in part: "I promptly turned them into the Auxiliary Police Section, for which I was issued a receipt but no further explanation other than that the decision 'came from the top'."

Webster received no response to this letter. He then retained counsel to pursue the matter. Counsel then contacted Deputy Inspector Angelo Maroulis, Commanding Officer of the Auxiliary Police Section, who told counsel he would look into it. That was some time

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<sup>1</sup>Actually, Procedure No. 8-5 of the Guide, included in petitioner's papers, speaks about a member's right to an Administrative Interview, not a hearing, when confronted with charges.

in December, 2005. After receiving no response, counsel wrote C.O. Maroulis a letter dated January 19, 2006, alluding to their prior contacts (Exhibit C to the petition). In response, counsel received a letter dated January 30, 2006 from Thomas P. Doepfner, Assistant Deputy Commissioner of the Department (Exhibit D to the petition). The letter stated the following:

Mr. Webster was properly dismissed from service with the Auxiliary Police Program for serious violations of the Auxiliary Police General Regulations. As a volunteer auxiliary police officer, Mr. Webster was not constitutionally or statutorily entitled to a hearing before dismissal - a conclusion uniformly upheld by case law. Therefore, there is no legal basis to support your request, nor are there any "outstanding" issues to be resolved or reconsidered.

Counsel for Webster then brought this Article 78 petition within four months of the Deputy Commissioner's letter.

It is respondent's position that the four-month period for the statute of limitations ran from December 23, 2004, the date when Webster was clearly aggrieved by the order to turn in his shield and identification, rather than from the January 30, 2006 letter. In other words, respondent asserts that Webster's time ran out on April 23, 2005 and that the August 17, 2005 letter to the Commissioner did not extend the statute of limitations.

The parameters of the hearing were outlined on page 9 of my December 6, 2006 decision wherein I stated:

I am going to direct that a hearing be held and the hearing will concern the questions of what efforts in the first instance Mr. Webster made in order to ascertain his status, ascertain whether he was being terminated, and if so, for what reasons, and on the other side, what in fact the Auxiliary Police did to so inform Mr. Webster of these things.

## The Hearing

Three witnesses testified at the hearing, Deputy Inspector Angelo Maroulis, Commanding Officer of the Auxiliary Police Section (who was taken out of turn and testified first), Mr. Webster, and Michael Kushner, a Sergeant with the Patrol Sections Bureau of the Auxiliary Section assigned to the Auxiliary Headquarters in Queens. Sgt. Kushner was the person who had received the shield and identification card from Webster on December 24, 2004. The thrust of his testimony, after explaining some of the forms used, was as follows, and it was the only thing about which he had a distinct recollection: "Mr. Webster turned and looked at me and he says, is this how it all ends. I thanked Mr. Webster for his time" (TR 113).<sup>2</sup>

Respondent also introduced into evidence as Exhibit C a copy of the receipt which Sgt. Kushner completed when Webster turned in his shield and identification on December 14, 2004. The receipt indicates the reason for the return of the items as "Currently Dismissed." While Sgt. Kushner acknowledged that he had no specific recollection of having given Webster the receipt, he testified that it was his custom and practice to do so (TR 111). Webster denied having received the receipt (TR 104).

C.O. Maroulis testified that while it was fair to say that no charges had been served upon Webster, it was his understanding that an investigation by Internal Affairs had been conducted with Webster's knowledge and participation involving some charitable groups he was involved with. As to the relevant events here, C.O. Maroulis specifically testified that either on December 22 or 23, 2004, he received a fax concerning an internal investigation regarding Webster (TR 12). In response to this fax (Exhibit A in evidence),

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<sup>2</sup>"TR" refers to the page of the hearing transcript.

C.O. Maroulis told Sgt. Kushner that Webster was to be terminated from the program and that the Sergeant should call Highway One (Webster's assigned site) and have them notify Webster that he was being terminated and to return his shield and ID card (TR 16).

Significantly, C.O. Maroulis testified, he then received a phone call from the petitioner who identified himself as such (TR 20). According to Maroulis' recollection, the conversation proceeded as follows:

He told me that he was, you know, surprised that this was coming to this. That it came to this level. That he thought it [the internal investigation] was still ongoing and he didn't believe that he would be terminated. I explained to him that yes, you're being terminated. He then said to me, like what did I do? What can I do about it? I said, I don't think you can do anything about it, because this is it. The buck basically stops here. ... I said, it was a result of the higher up internal investigation from the Police Department and that it came from the Commissioner... I told him he was involved in an association with an internet search. I mentioned the idea, the fact that he was involved with a telemarketing company and that there was some issues there that the department said [were] not, you know, not within the guidelines. He was being terminated by the Police Commissioner (TR 21-23).

C.O. Maroulis further testified that Webster had then asked him if he could change the status to one of resignation, and Maroulis had responded that he could not do that (TR 23). It was a brief conversation.

When Webster testified, he confirmed that this conversation with C.O. Maroulis had occurred, and he also acknowledged that he knew of the ongoing investigation (TR 77). He added that he had been called down to be interviewed by Internal Affairs as part of this investigation. In fact, while this investigation had been proceeding, he had been taken off of patrol for the period both before and after his interview (TR 78-79).

With regard to the precise details of [redacted] phone call, Webster was vague. He testified that he had asked Maroulis why he was being instructed to turn in his shield and ID, but what the response was, was hard to elicit from him. In response to questions from his counsel and the Court, Webster testified: "It was very difficult to get information. Basically all he kept reiterating was I expect you to turn in your shield and ID...." (TR 77-78). However, Webster was certain that he had not been advised that he was being terminated. He kept insisting in his testimony how unusual the procedure had been, and that it was not the way he understood these things were normally handled. "I assumed I would get further information at some point," he said (TR 80).

Webster also testified that a couple of months later he had called C.O. Maroulis in a futile attempt to get more information and that in the ensuing months he had made multiple informal inquiries with people on the force to find out what had happened. He did personally call up Internal Affairs and speak to a Detective Mount who was the person who had interviewed him.

### Conclusion

From all of the above, I find that the credible evidence supports the respondent's position. In light of the internal investigation which Webster knew about and his inactive status during that investigation, culminating with the order to turn in his shield and ID, confirmed by the Commander, any reasonable person in Webster's position had to have known that he was being terminated from the Auxiliary Program. Webster may not have known precisely the reasons for that termination, but he certainly had to know that they involved the subject matter of the investigation. While it is true, as counsel for the petitioner argues in his letter brief, that the Department could have done things differently in a number of ways, as far as providing explicit notice to Webster, the fact remains that

Webster had to have known the bottom line which was that he was no longer on the force. And he had to have known that on or about December 23, 2004. Therefore, since petitioner Webster, acting as a reasonable person and knowing that he had been terminated from the Police Department's Auxiliary Service on December 23, 2004, was aggrieved at that time, he had four months from then to seek relief. Since he did not do that, but waited until May of 2006 to commence this proceeding, I find his petition is untimely as barred by the four-month statute of limitations.

Accordingly, it is hereby

ORDERED that respondent's cross-motion to dismiss is granted; and it is further ADJUDGED that the petition is denied and this proceeding is dismissed.

This decision constitutes the order and judgment of this Court.

Dated: September 10, 2007  
SEP 10 2007

*Alice Schlesinger*  
ALICE SCHLESINGER

~~FILED  
SEP 19 2007  
NEW YORK  
COUNTY CLERK'S OFFICE~~

*Norman Cedeno*  
clerk

FILED  
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NEW YORK  
COUNTY CLERK'S OFFICE

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