

Matter of Black v Horn
2008 NY Slip Op 30047(U)
January 7, 2008
Supreme Court, New York County
Docket Number: 0109437/2007
Judge: Lottie E. Wilkins
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: LOTTIE E. WILKINS
Lottie E. Wilkins Justice

PART 18

THOMAS BLACK,
Petitioner,
- v -
MARTIN HORN,
Respondent.

INDEX NO. 109437/2007
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for article 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	_____
Answering Affidavits – Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

UNFILED JUDGMENT

Upon the foregoing papers, it is ordered that ~~this motion~~
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).

Petition pursuant to CPLR article 78 is granted in accordance with attached decision and judgment.

Dated: January 7, 2008
JAN 07 2008

Lottie E. Wilkins
Lottie E. Wilkins, J.C.

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 18

-----X
In the Matter of the Application of

Index No. 109437/07

THOMAS BLACK,

Petitioner,
For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules

DECISION and JUDGMENT

- against -

MARTIN F. HORN, Correction Commissioner of the
New York City Department of Correction; THE NEW
YORK CITY DEPARTMENT OF CORRECTION; and
THE CITY OF NEW YORK,

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).**

-----X
Lottie E. Wilkins, J.:

In this proceeding pursuant to CPLR article 78 petitioner, a former corrections officer seeks an order in the nature of mandamus to compel respondents to reinstate him to his position with the New York City Department of Correction in accordance with a determination of the New York City Civil Service Commission an appeal from a prior disciplinary proceeding. The municipal respondents oppose the petition and have also commenced a separate article 78 proceeding, under Index No. 405375/07, to annul the determination of the Civil Service Commission which reduced the penalty of termination imposed by the Commissioner of the Department of Correction and, in its place, imposed a penalty of temporary suspension.

There is no question here that under applicable provisions of the New York City Charter and the Civil Service Law, Thomas Black had the option of appealing the respondent Commissioner's decision to terminate his employment, which itself was made on the recommendation of Administrative Law Judge, either to the courts via a CPLR article 78 proceeding or to the New York City Civil Service Commission (see, Civil Service Law § 76[1]). Petitioner opted for the latter avenue of review. That being the case, the provisions of Civil Service Law § 76 governed the standards applicable to the Civil Service Commission on its review of the case and the subsequent availability (or lack thereof) of judicial review.

Notwithstanding the fact that Civil Service Law § 76(3) states that there shall be no judicial review of an appeal determination from a Civil Service Commission, the Court of Appeals has held that judicial review is available under certain limited circumstances (see, Matter of New York City Dept. of Environmental Protection v New York City Civil Service Commission, 78 NY2d 318 [1991]). Specifically, in order for the statute to be valid, there must be an avenue of judicial review for claims that the Commission has acted illegally, unconstitutionally, or in excess of its jurisdiction (Id. at 323-24). The Court stressed, however, that this standard of review is "exceedingly limited" and of an entirely different kind and degree than the more familiar "arbitrary and capricious" standard applied to most other agency determinations (Id.).

Given this Court's determination in the related article 78 proceeding that the New York City Civil Service Commission did not act illegally, unconstitutionally, or in excess of its jurisdiction under these circumstances, there is no valid basis for annulling that agency's determination. Therefore the instant petition to compel respondent to reinstate petitioner to his former employment should be granted.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted and respondent is ordered to reinstate petitioner to his employment with the New York City Department of Corrections under the terms specified in the March 13, 2007 determination of the New York City Civil Service Commission.

This constitutes the decision and judgment of the Court.

Dated: *JANUARY 07, 2008*

JAN 07 2008



Lottie E. Wilkins, J.S.C.

Lottie E. Wilkins

UNFILED JUDGMENT

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