

**Matter of Bonanno v Nassau County Civ. Serv.
Commn.**

2008 NY Slip Op 30754(U)

March 5, 2008

Supreme Court, Nassau County

Docket Number: 2549-07/

Judge: Kenneth A. Davis

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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. KENNETH A. DAVIS,

Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

In the Matter of

DOROTHY H. BONANNO,

Petitioner,

SUBMISSION DATE: 2/20/08

INDEX No.: 22549/07

-against-

NASSAU COUNTY CIVIL SERVICE COMMISSION,

MOTION SEQUENCE # 1

Respondents

For a Judgment pursuant to Article 78
of the CPLR.

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause..... X
- Answering Papers..... X
- Reply.....
- Briefs: Plaintiff's/Petitioner's..... X
- Defendant's/Respondent's.....

Motion by the attorneys for the petitioner for an order pursuant to Article 78 of the Civil Practice Law and Rules directing the respondent Nassau County Civil Service Commission to reinstate petitioner Dorothy H. Bonanno as a Personnel Specialist I with the Nassau County Civil Service Commission including obtaining all back pay and accumulative fringe benefits is denied.

In 2006 petitioner took and passed a civil service examination for the competitive title of Personnel Specialist I. On May 11, 2007 petitioner began employment with the Nassau County Civil

Service Commission (CSC) as a Personnel Specialist I at an annual salary of \$31,350. She was placed on probation for a period of a minimum of eight weeks and a maximum of 26 weeks (November 8, 2007). Pursuant to Section 20(1) of the New York Civil Service Law, CSC is required to "prescribe, amend and enforce suitable rules for carrying into effect the provisions of [the New York Civil Service Law] and of section six of article five of the constitution of the state of New York" Paragraph 6 of Rule XIX adopted by the CSC provides that:

6. Report on Probationer's Service

The probationer's supervisor shall carefully observe his conduct and performance and, from time to time during the probationary term may advise the probationer of his progress. The appointing authority at least two weeks prior to the end of the probationary term shall advise the Civil Service Commission, on forms provided by the Commission, whether the probationer's conduct, capacity and fitness are satisfactory and that he will be retained as a permanent employee, or whether his conduct, capacity and fitness are unsatisfactory and that he is to be discharged. A probationer whose services are to be terminated for unsatisfactory service

shall receive written notice at least one week prior to such termination, and a copy of this notice shall be sent to the Civil Service Commission.

Petitioner's job responsibilities in the Examination Unit were to administer various examinations for clerk/typist positions. The CSC has a rule that prohibits an applicant for a clerk/typist position from taking the examination more than once for the same competitive test. At the end of June 2007, petitioner discovered that an applicant had taken the typing examination twice for the same list. Petitioner upon discovering this violation of the CSC rule against an applicant taking a second exam, brought this fact to the attention of her supervisor, Gregory Stoeber. Two weeks later, on July 13, 2007, Stoeber hand-delivered to petitioner a letter advising her that her employment was terminated effective July 19, 2007. Petitioner alleges she met with Stoeber later in the day on July 13, 2007 and inquired of him as to the reason for her termination since she had not been advised by Stoeber or anyone else at CSC during her prior two months of employment that her work product was not satisfactory. She also met with Karl Kampe, the executive director. In "terminating" the petitioner on July 15, 2007, effective July 19, 2007, the CSC did not comply with its own rules in that the petitioner's supervisors did not prepare a probation report two weeks prior to the termination date as

required and the "termination" letter was delivered to petitioner only six days before the putative effective termination date. On July 19, 2007 Kampe reinstated petitioner and transferred petitioner to the Recruitment Unit where she spent the next three and a half months.

Petitioner claims that at no time during the ensuing three and one-half months was she ever advised, orally or in writing, that her work was unsatisfactory. She alleges being told on a number of occasions that her work was excellent. On November 1, 2007 petitioner received a letter of termination from Mr. Silvestri, which stated that her employment was being terminated effective November 8, 2007, the final day of Dorothy's probation period. This time CSC complied with its Rule XIX(6) in that petitioner was given one week notice of her termination. CSC prepared a timely mandatory probationary report as required by Rule XIX(6). The October 24, 2007 probationary report was signed by Karl Kampe, the Executive Director of the Civil Service Commission, and not by Frank Monteleone who petitioner alleges for the last three and one-half months of the petitioner's employment with CSC, was her supervisor. CSC Rule XIX(6) states, in pertinent part, "the probationer's supervisor shall carefully observe his conduct and performance and, from time to time during the probationary term may advise the probationer of his progress." The gravamen of petitioner's claim is that Kampe, the individual who signed the probationary report stating that petitioner's conduct, capacity and

[* 5]

fitness were unsatisfactory, was unqualified to make that decision as he had not observed her work performance. In short she asserts that since the probationary report was not prepared and signed by the petitioner's supervisor, then the probationary report is a nullity.

In opposition to the motion, the respondent contends that the decision to terminate petitioner's employment was rationally based on her failure to satisfactorily perform her job.

Respondent submitted an affidavit sworn to February 5, 2008 by Stoeber stating the petitioner's "overall performance while she was under my supervision was unsatisfactory. Some of the issues with her performance included an inability to remember procedures, significant typing errors resulting in incorrect addresses [the Commission communicates with applicants almost exclusively through US Mail and an applicant's failure to receive and act on letters from the Commission can result in a candidate's disqualification], mismatched days and dates on scheduling letters and confusing incorrect information given to candidates." Stoeber recommended that petitioner's employment be terminated. Respondent also submitted an affidavit sworn to February 5, 2008 by Michael Figliolia, a Personnel Specialist III and supervisor of the Recruitment Unit of the CSC. He opines that taken as a whole the petitioner's performance while she was under his supervision was unsatisfactory. He states that "many of the issues with her performance mirrored the problems articulated by her prior

supervisor, Greg Stoeber: she was unable to retain information concerning the work done by the different departments in the Commission, she had trouble working on the computer, she was unable to retain information concerning policies and procedures. Again, her performance had incidents of competency but overall her performance was inadequate."

The termination of employment of a probationary employee without a statement or a hearing must be upheld unless there is a demonstration that the dismissal was violative of the Constitution, illegal or made in bad faith. *Engoren v County of Nassau*, 163 AD2d 520. The basis for petitioner's claim is that the probationary report should have been signed by her immediate supervisor. The Probation Report was executed by the Executive Director based on the information provided by petitioner's direct supervisors. Kampe, the Executive Director of CSC stated that based "upon unsatisfactory reports from two different supervisors over the course of her probationary period," he determined that petitioner's employment be terminated. In *Abbondandolo v Edwards*, 174 AD2d 737, the Court held that the fact that "the City of Glen Cove Police Department, in making its determination, relied on the reports and opinions of those who actually supervised the petitioner, is not evidence of bad faith or that the determination was arbitrary and capricious." See also *McCabe v County of Dutchess*, 143 AD2d 670. The respondent's determination to discharge the petitioner was not arbitrary and capricious, but rather, made on a rational basis, to


wit: petitioner's unsatisfactory performance rating. *Green v Board of Education*, 262 AD2d 411; *Iannuzzi v Town of Brookhaven*, 258 AD2d 651; *Matter of Wilson v New York City Tr. Auth.*, 254 AD2d 426; *Matter of Sessoms v Date*, 223 AD2d 387.

The petition is dismissed.

This order is the decision of the Court.

This decision constitutes the order of the court.

Dated: MAR 05 2008



KENNETH A. DAVIS J.S.C.

ENTERED

MAR 07 2008
NASSAU COUNTY
COUNTY CLERKS OFFICE