

**Matter of City of New York v New York City Civ.  
Serv. Commn.**

2008 NY Slip Op 32509(U)

September 8, 2008

Supreme Court, New York County

Docket Number: 0400925/2008

Judge: Lewis Bart Stone

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

PRESENT: Hon Lewis Bart Stone  
Justice

PART 505

Index Number : 400925/2008  
CITY OF NEW YORK  
VS.  
NYC CIVIL SERVICE COMMISSION  
SEQUENCE NUMBER : # 001  
ARTICLE 78

INDEX NO. 400925-08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. #001  
MOTION CAL. NO. \_\_\_\_\_

were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is denied in accordance with the Annexed Decision and Order*

**FILED**

SEP 16 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8 Sept '08

Lewis Bart Stone  
Hon Lewis Bart Stone, J.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):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50S

----- X  
In the Matter of the Application of :  
THE CITY OF NEW YORK and MARTHA K. HIRST, : DECISION AND  
As Commissioner of the New York City Department : ORDER  
of Citywide Administrative Services, :

Petitioner,

For a Judgment Pursuant to Article 78 of the : INDEX NUMBER  
Civil Practice Law and Rules, : 400495/08

-against-

THE NEW YORK CITY CIVIL SERVICE  
COMMISSION and NATALYA LEVINA,

Respondents.

**FILED**  
SEP 16 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

----- X  
Hon. Lewis Bart Stone:

This proceeding was commenced by petitioners, The City of New York (the "City") and Martha K. Hirst as Commissioner of the New York City Department of Citywide Administrative Services ("Hirst") by Notice of Petition, dated April 24, 2008, against Respondents, The New York City Civil Service Commission ("CSC") and Natalya Levina ("Levina"), pursuant to Civil Practice Law and Rules ("CPLR") Article 78, to review a decision of CSC, dated December 24, 2007 (the "Decision") which had reversed Hirst's determination that Levina was unqualified for the position of Assistant Engineer to which she had sought appointment. Both CSC and Levina

oppose the petition.

Levina was educated in Minsk, Belarus (the Belarussian SSR of the Soviet Union at the time of her education). She attended the Belarussky Ordena Trudovogo Kraskogo Znaneni Politenicheskij Institut, a post secondary school whose name may be loosely translated as Belarus Polytechnic Institute, (“BPI”) where she completed a combined undergraduate curriculum for the degree of Specialist in Civil Engineering with a specialization in Water Supply and Sewage Systems in 1974.

In 2005, Levina applied for the civil service position of Assistant Environmental Engineer. Her application was denied by Hirst on the grounds that she was not qualified for the position because she did not have (as set forth in the Notice for Examination for the position):

1. A baccalaureate degree in environmental, chemical, mechanical, petroleum, aeronautical, or materials engineering from an accredited college, and either one year of full-time satisfactory experience in environmental engineering work or a master’s degree in environmental engineering from an accredited college; or
2. A baccalaureate degree in environmental, chemical, mechanical, petroleum, aeronautical, or materials engineering technology from an accredited college, and a master’s degree in environmental engineering from an accredited college and one year of full-time satisfactory experience in environmental engineering work.

Levina made a timely appeal to CSC of Hirst's determination on the grounds that her educational experience at BPI was the equivalent of such requirement. Although Hirst opposed her appeal on the grounds that Hirst's denial was lawful and rational, CSC set Levina's appeal for an evidentiary hearing which was eventually held on September 11, 2007. Representatives of Hirst and Levina participated at such hearing, and evidence was presented and the parties were heard on the record at that time. Levina submitted curricula from the State University of York at Buffalo for a bachelors degree in Environmental Engineering and Manhattan College's curricula for a Masters degree in Environmental Engineering as well as translations of her course descriptions from BPI.

The decision, which was unanimously rendered by the four members of CSC who heard her appeal, stated:

We find that the course work completed by Appellant is equivalent to the curriculum outlined for a baccalaureate degree in Environmental Engineering at the State University of New York at Buffalo and the curriculum outlined by Manhattan College for a Master's Degree in Environmental Engineering.

This Commission finds that Appellant satisfied the requirement of a baccalaureate degree and a Master's degree in Environmental Engineering as described in the NOE.

Accordingly, we find Appellant met the minimum educational requirement for the position of Assistant Environmental Engineer, Exam No 4052, and, therefore, reverse the determination of DCAS.”

As this proceeding was commenced under CPLR Art. 78, the scope of review by this Court is limited by CPLR §7803. The City and Hirst accept this limitation by alleging that CBC acted arbitrarily and capriciously and abused its discretion, all assertions that may be properly addressed in an Article 78 proceeding.

CSC’s Decision was within its authorized jurisdiction to “hear and determine appeals...and may affirm, modify or reverse such action or determination.” NY City Charter §813(d).

In the appeal, CSC considered Hirst’s decision that Levina’s education did not meet the basic requirements for the position. The hearing record shows that Hirst relied on a consultant’s evaluation of Levina’s educational transcript to find a lack of equivalency, and that CSC made its own factual evaluation of equivalency based on her BPI transcript in light of curricula in New York colleges. The problem of equivalency, CSC noted, is that engineering disciplines overlap.

This Court also notes that the concept of generic environmental concerns, which have led to the designation of college “majors” in Environmental Engineering and the field itself is of recent vintage. This Court, as a graduate of New York’s

premier engineering university, can take judicial notice that there was no major in Environmental Engineering at such school only a few years before Levina entered BPI, and that at the time Levina attended BPI in the Soviet Union, it was a country where environmental concerns as such were barely recognized. Similarly, the concept of the “environment” as a separate discipline, was only beginning to be recognized in this country at the time Levina received her education. For example, the National Environmental Protection Act of 1969 (42 USCA §4321 et. seq.) was adopted the same year Levina commenced her studies at BPI. The New York State Department of Environmental Conservation, which was established to oversee all environmental issues which has been scattered among a number of Departments, was only established a year later by L.1970 c. 140. and the New York State Environmental Quality Review Act itself was adopted by Laws 1975. C.612, a year after Levina completed her studies at BPI.

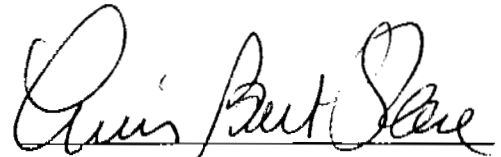
Accordingly, inquiry into the meaning of Levina’s educational courses and relating their equivalency to modern environmental curricula is hardly arbitrary, capricious or an abuse of discretion in this context. Although the failure to do so might have been arbitrary and capricious in their context, such issue is not before the Court and is not being decided.

Whether this Court would have made the same decision on the facts as CSC did is not relevant. What is relevant is that CSC made an inquiry and reviewed the material submitted to it and made its Decision on the facts of equivalency, a determination that is neither arbitrary, capricious or an abuse of discretion.

The petition is dismissed.

This is the Decision and Order of the Court.

DATED: SEPTEMBER 8, 2008  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
SEP 16 2008  
COUNTY CLERK'S OFFICE  
NEW YORK