

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

2009 NY Slip Op 30800(U)

April 1, 2009

Supreme Court, New York County

Docket Number: 402466/2008

Judge: Shirley Werner Kornreich

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: **JUSTICE SHIRLEY WERNER KORNREICH** PART 54
Index Number : 402466/2008

CITY OF NEW YORK

vs
NYC CIVIL SERVICE COMMISSION

Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 1/15/09
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this ^{petition} motion to/for _____

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

PAPERS NUMBERED
<u>1-2</u>
<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ^{petition} _____

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

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).

Dated: April 1, 2009

JUSTICE SHIRLEY WERNER KORNREICH
J.S.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 YORK
COUNTY OF NEW YORK

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

Index No.: 402466/2008

THE CITY OF NEW YORK, MARTHA K. HIRST,
as Commissioner of the New York City Department
of Citywide Administrative Services, and
RAYMOND W. KELLY, as Commissioner of the
New York City Police Department,

**DECISION, ORDER &
JUDGMENT**

Petitioners,

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

-against-

NEW YORK CITY CIVIL SERVICE COMMISSION
and LISAMARIE YOUNGBLOOD,

Respondents.

-----X
KORNREICH, SHIRLEY WERNER, J.

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).

In this Article 78 proceeding, petitioners, the Commissioner of the New York City Department of Citywide Administrative Services (DCAS) and the Commissioner of the New York City Police Department (NYPD), challenge a determination of the New York City Civil Service Commission (CSC), dated June 5, 2008 (Determination). The Determination reversed a decision of the NYPD, dated December 5, 2007 (NYPD Decision), which determined that Youngblood was unqualified for the position of police officer due to the "omission of pertinent facts" in her responses to questions concerning her background.

The petition challenges the Determination on three theories:

- 1. the CCSC exceeded its jurisdiction by conducting a *de novo* hearing (1st cause of action);

2. the CCSC applied the wrong standard of review, which should have been the arbitrary and capricious standard applicable in Article 78 proceedings (1st cause of action); and
3. the Determination by the CCSC was arbitrary and capricious (2nd cause of action).

Respondents oppose the petition and also assert that it is moot because it was filed after the eligible list from which Youngblood was appointed expired.

Background

Youngblood took examination 3007 for the position of police officer and placed number 7037 on the eligible list (List). She submitted an application, dated October 31, 2006 (Application), to the NYPD. The first page of the Application form stated that “[a]pplicants are cautioned to answer every question, truthfully, completely and without evasion” and warned that failure to do so would result in penalties, including revocation of appointment. Question 16(a) of the Application asked if Youngblood had ever been arrested. She checked the box for no.

Question 16(b) was:

List ALL ARRESTS, INCLUDING any resulting in YOUTHFUL OFFENDER TREATMENT, arrests which were DISMISSED, SEALED, OTHERWISE DISPOSED OF, and CASES STILL PENDING. If you have never been arrested, enter NONE.

Youngblood entered “NONE.” Question 19a asked:

Were you ever the subject/witness or have you ever been questioned during a police investigation in which you were not charged with a crime?

Youngblood checked the box for no.

On December 13, 2006, Youngblood was appointed to the position of probationary police officer and she signed the appointment form, which was entitled “Appointment Subject to

Investigation" (Appointment Form). The Appointment Form stated that Youngblood was "strongly advised" that if the post-appointment investigation revealed a "material false statement or omission of fact," it would be probable cause for disqualification and she would be "summarily dismissed."

The subsequent NYPD investigation revealed that Youngblood had been arrested on October 14 2004, when she was 20 years old, on a weapons possession charge for possession of a razor blade. Youngblood had been a passenger in a car that was stopped by the police on suspicion that it was a stolen vehicle. In Youngblood's pocket, the police found the razor blade, also described in the record as a box cutter, which Youngblood used to open cartons at her job at Starbucks and routinely took home. During the arrest, the police handcuffed Youngblood, placed her in a cell, fingerprinted her, photographed her and moved her to a second cell, before permitting her to leave. The vehicle was found not to be stolen and Youngblood was not charged with a crime. In addition, NYPD discovered that Youngblood had been involved in ten other criminal incidents between May 1999 and February 2005, as a victim, a reporter and, in one case, a perpetrator, which included criminal harassment, criminal mischief, assault and lost property.

After the investigation revealed the omissions on the Application, the NYPD gave Youngblood an opportunity to explain her omissions in writing, and Youngblood signed several written statements responding to written questions in January of 2007. At first she wrote that she was detained, but not arrested in 2004, without mentioning the razor blade. After being confronted with her arrest record, Youngblood signed a statement, in which she first wrote that she had a razor in her possession when the incident took place. When asked to write the reason that she answered no to question 19(a) in the Application, which required her to disclose police

investigations in which she was questioned although not charged, she wrote that when she had applied for a job with the Department of Correction, she was told that in order to be considered an arrest, one would have to be brought before a judge or serve time.

On June 20, 2007, the NYPD informed Youngblood that she would be disqualified for the position of police officer if she did not respond, on the ground that she “failed to disclosed [sic] her police investigation.” She responded by letter, dated June 26, 2007, in which she repeated her prior explanations. On December 5, 2007, the NYPD’s Chief of Personnel issued a decision (NYPD Decision) finding Youngblood unqualified due to the “omission of pertinent facts.” Youngblood then appealed to the CCSC.

The CCSC held a hearing on April 29, 2008 and issued the Determination, reversing the NYPD Decision. At the hearing, Youngblood was the sole witness. The NYPD introduced a report dated March 28, 2008, which annexed the administrative record that resulted in the NYPD Decision. The NYPD report objected to *de novo* review by the CCSC. The CCSC overruled the objection. In addition, the NYPD argued that the omissions on Youngblood’s Application and her subsequent written statements showed that she lacked the requisite character, judgment and integrity to be a police officer. Further, the NYPD urged that Youngblood failed to explain her omission of incidents other than the arrest when she was given an opportunity to explain her deficient Application.

The CCSC Determination gave three reasons for reversal: 1) Youngblood’s interpretation of the word “arrest” was reasonable; 2) Youngblood’s failure to disclose the arrest was not willful; and 3) the arrest would not have been a reason to disqualify her since there was no resulting conviction.

Discussion

DCAS is the agency responsible for personnel matters in New York City and has the power and duty to administer the Civil Service Law (CSL). CSL §2(4) defines a "municipal service commission" or "municipal commission" as a civil service commission of a city. CSL §15(4), provides that in a city with more than one county, such as the New York City, the CSL shall be administered "under the form of administration prescribed in the charter of such city."

Section 811 of the New York City Charter (Charter) provides that the Commissioner of DCAS is responsible for citywide personnel matters and has all of the powers and duties of a municipal civil service commission under the CSL. The DCAS Commissioner has the power and duty to investigate applicants for civil service positions, to review their qualifications and to revoke appointments under the CSL, the rules promulgated by the DCAS Commissioner, or any other law. 55 R.C.N.Y., Appendix A, Rule IV, §III, subsection 4.3.1. In this case, pursuant to Charter §814(b)(6), DCAS delegated its authority to carry out personnel functions of the NYPD to the head of that agency.

CSL §50(4)(a) provides that a municipal commission may refuse to certify an applicant or eligible who lacks any of the established requirements for appointment to the position for which he applies. A municipal commission has wide discretion in determining the fitness of candidates, which is to be sustained unless clearly abused. *Smith v. City of New York*, 228 A.D.2d 381, 382 (1st Dep't 1996); *Metzger v. Nassau County Civil Service Com.*, 54 A.D.2d 565, 566 (2d Dep't 1976). CSL §50(f) and (g) provide that a municipal commission may disqualify an eligible or applicant who has intentionally made a false statement of any material fact in his application or who has practiced, or attempted to practice, any deception or fraud in his

application, in his examination, or in securing his eligibility or appointment. With respect to police officers, CSL §58(1)(d) provides that one of the basic requirements is that the individual appointed must be of "good moral character."

The Commissioner of DCAS has rule-making authority relating to personnel policies of the New York City. Charter §814(c). The rules promulgated by the Commissioner pursuant to §814, 55 R.C.N.Y., Appendix A (Rules), provide that he shall furnish application forms for competitive class applicants, upon which applicants must provide information as to their merit and fitness for public service, and which must be subscribed by applicants under penalty of perjury. *Id.*, Rule IV, §II, subsection, 4.2.1(b). The rules place the burden of proving fitness for the position upon the applicant. *Id.* at §III, subsection 4.3.3. Satisfactory character and reputation is "part of the established minimum requirements" under the rules. *Id.* at 4.3.2(a).

A. De Novo Review

NYPD argues that the Determination must be reversed because the CCSC exceeded its jurisdiction by conducting a *de novo* review, citing precedent holding that an objection to new evidence presented to the CCSC must be preserved in order to raise it in an Article 78 proceeding. *Garayua v. New York City Police Dep't*, 68 N.Y.2d 970, 972 (1986)(new witnesses by both sides); *Matter of City of New York v. New York City Civ. Serv. Commn.*, 30 A.D.3d 227, 229 (1st Dep't 2006)(reference letters from former employers); *Matter of City of New York v. New York City Civ. Serv. Commn.*, 40 A.D.3d 325 (1st Dep't 2007)(testimony of psychologist). NYPD further argues that it preserved the issue in this proceeding, unlike in *Garayua* and its progeny.

While the court agrees that DCAS preserved the issue, the court does not agree that the

CCSC conducted an unauthorized *de novo* review. The only evidence it considered was Youngblood's testimony and the NYPD report. Section 2-02 of the rules of the CCSC expressly provide that in determining appeals it "may hear oral argument to afford appellant an opportunity to submit facts in opposition to the action or determination...." 60 R.C.N.Y. §2-02. Hence, the CCSC's consideration of Youngblood's testimony and written statement was authorized by the rules of the CCSC and was not an impermissible *de novo* review based upon new evidence.

B. CCSC's Standard of Review and Reasonableness of its Determination

NYPD, however, is correct that the standard of review should have been the judicial standard applicable in Article 78 proceedings and the CCSC's consideration should have been limited to whether there was a rational basis to support the NYPD Decision. *City of New York v. N.Y. City Civ. Serv. Comm'n*, 20 A.D.3d 347, 348 (1st Dep't 2005), *aff'd. on other grounds*, 6 N.Y.3d 855 (2006), *rearg. den.*, 7 N.Y.3d 784 (2006). In an Article 78 proceeding, a reviewing court cannot substitute its judgment for that of the administrative agency and must affirm if there is any rational basis for the determination. *Pell v. Board of Education*, 34 NY2d 222, 231 (1974); *ISTA Mgmt. v. DHCR*, 161 AD2d 424 (1st Dept 1990).

In this case, the Determination must be vacated because CCSC applied the wrong standard of review, substituted its judgment for that of the NYPD, and was unreasonable because it violated CSL §50. The Determination that Youngblood's interpretation of the word "arrest" was reasonable reversed the applicable standard of review, which should have been whether the NYPD Decision lacked a rational basis. The Determination that Youngblood's failure to disclose the arrest was not wilful, improperly substituted CCSC's judgment for that of the NYPD. The Determination that an arrest not resulting in conviction was not a reason to disqualify

Youngblood violated CSL §50(f) and (g), which allows disqualification for any intentional false statement of any material fact in an application or a deception or attempted deception.

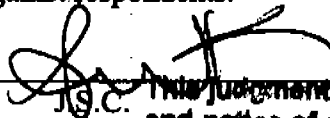
The NYPD Decision was reasonable and should have been upheld by the CCSC. The Application and the form entitled "Appointment Subject to Investigation," both signed by Youngblood, warned that a failure to make a complete disclosure could result in the revocation of her appointment. The Application expressly required her to disclose arrests, whether or not they resulted in conviction, as well as an criminal investigations in which she had been involved as a witness. As it is undisputed that Youngblood did not make a full disclosure, it was reasonable for the NYPD to revoke her appointment for failure to disclose pertinent facts. CSL §50 authorized the NYPD to revoke an appointment for intentional failure to disclose material facts. In deciding that the failure to disclose was not willful, the CCSC impermissibly substituted its judgment for that of the NYPD. An intentional failure to disclose facts is material to the qualifications of a police officer because it bears on character and integrity.

B. Mootness

It is unnecessary to address the mootness argument in light of the decision to annul the Determination reversing Youngblood's disqualification. Accordingly, it is

ORDERED, ADJUDGED and DECREED that the petition is granted in favor of petitioners, the determination of the New York City Civil Service Commission, dated June 5, 2008, reversing the disqualification of Lisamarie Youngblood for the position of probationary police officer, is hereby vacated and annulled, and the Clerk is directed to enter judgment accordingly in favor of petitioners and against respondents.

Dated: April 1, 2009


 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).