Matter of Greenwood v New York City Dept. of Parks & Recreation
2009 NY Slip Op 32158(U)
September 17, 2009
Supreme Court, New York County
Docket Number: 107751/09
Judge: Joan B. Lobis
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SCANNED ON 9/23/2009

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

PRESENT: Joan B. Lobis, Justice PART 6

Index Number : 107751/2009
GREENWOOD, DOREEN
vs.
NYC DEPT OF PARKS & RECREATION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. ____
MOTION DATE 8/18/09
MOTION SEQ. NO. ____
MOTION CAL. NO. ____

this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Petition	1-7
Answering Affidavits — Exhibits XMOTION	8
Replying Affidavits	9-10

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED
SEP 23 2009
COUNTY CLERK'S OFFICE
NEW YORK

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/17/09 ____ J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6
---X
In the Matter of the Application of

DOREEN GREENWOOD,

Petitioner,

Index No. 107751/09

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

Decision, Order and Judgment

-against-

NEW YORK CITY DEPARTMENT OF
PARKS AND RECREATION and ADRIAN
BENEPE, as Commissioner of the New York City
Department of Parks and Recreation,

Respondents.
---X
JOAN B. LOBIS, J.S.C.:

Petitioner Doreen Greenwood brings this Article 78 proceeding to challenge her dismissal from employment by the New York City Department of Parks and Recreation (the "Department") as an Associate Urban Park Ranger ("AUPR"). Petitioner asserts that the Department's refusal to reinstate her was arbitrary and capricious and violated her rights under Civil Service Law § 75 to service of charges and a hearing before being removed from employment. She seeks permanent reinstatement to the position of AUPR; backpay; and, all other benefits, retroactive to the Department's refusal to reinstate her. The Department cross-moves, pursuant to C.P.L.R. Rules 3211(a)(5) and (a)(7) and § 7804(f), to dismiss the petition as barred by the applicable statute of limitations and for failure to state a cause of action.

On or about June 28, 2000, Ms. Greenwood was appointed to the position of Ranger; this was a provisional appointment. After petitioner passed the Civil Service examination for the

title, she was appointed to the permanent position of Urban Park Ranger, effective July 18, 2001. Her appointment letter sets forth that her permanent status begins on July 18, 2001, and the probationary period ends October 17, 2001. Petitioner was promoted to the position of AUPR, effective May 9, 2005, from the Civil Service promotional examination list for this position. She was advised that she would serve a one-year probationary period. Petitioner satisfactorily completed her probationary period.

Although not mentioned at all in the petition, respondents' papers set forth that petitioner was arrested on April 8, 2008, for violating Penal Law §§ 170.10(1), Forgery in the Second Degree (a class D felony); Penal Law § 155.25, Petit Larceny (a class A misdemeanor); and, Penal Law § 175.35, Offering a False Instrument for Filing in the First Degree (a class E felony). Apparently, petitioner, who resides in a New York City Housing Authority ("NYCHA") apartment, submitted a letter to the NYCHA, dated August 2, 2007, setting forth that her annual income was $34,935. The letter was purportedly signed by Barbara Smith, a Verification Specialist with the Department. In fact, petitioner's annual income at that time was $46,717. As a result of her falsely setting forth a lower income than she actually earned, petitioner paid $150 less in rent ($25 less per month for six months) than she would have been required to pay under the NYCHA rent guidelines if she had set forth her actual income. Ms. Smith advised the Department of Investigation that she did not sign the letter, nor did she give petitioner permission to sign Ms. Smith's name to the letter. Petitioner allegedly admitted to the Special Investigator with the New York City Department of Investigation that she forged the letter. Petitioner pled guilty to a charge of violating Penal Law § 240.20, Disorderly Conduct (a violation). She was fined $100, given ten days of community service, and received a one-year conditional discharge.

[* 4]

The petition acknowledges that on April 21, 2008, the New York City Police Department ("NYPD") suspended petitioner's Special Patrolman's license. According to respondent, the NYPD can suspend or revoke a Special Patrolman's license if the license holder is arrested or convicted of a crime. See Title 38, Rules of the City of New York, Section 13-02.[1] Since a minimum and continuing eligibility requirement of serving as an AURP is maintaining a Special Patrolman's license, petitioner became disqualified from serving as an AURP, after her license was suspended. The Department terminated petitioner's employment on April 24, 2008, and her termination was effective the following day, April 25, 2008.

Petitioner requested an administrative hearing concerning the suspension of her Special Patrolman's license. According to the reply papers, she could not ask for this hearing immediately because the NYPD will not afford a hearing concerning the suspension of a Special Patrolman's license until after the resolution of any criminal proceedings.[2] Petitioner sets forth that the criminal proceedings were resolved on January 29, 2009, and she then requested a hearing. The NYPD held a hearing on April 23, 2009. The Hearing Officer recommended that petitioner's status as a Special Patrolman be continued "if she continued to be employed by the [Department].

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[1] Section 13-02 provides that a Special Patrolman and/or his or her employer must notify the License Division of the Police Department, Special Patrolman Section, if ever that employee is arrested; the NYPD shall then notify the Special Patrolman that his or her license is either cancelled, suspended, or revoked.

[2] Title 38, RCNY § 13-03, to which petitioner was alluding, provides that if the suspension of the Special Patrolman's license was the result of an arrest, the request for a hearing cannot be submitted until after the termination of the criminal action, as defined in New York State Criminal Procedure Law § 1.20(16)(c). In such case, the request for a hearing must be made within thirty (30) days thereafter.

[Petitioner] must present proof to the Special Patrolman section that she is currently employed or about to be rehired by [the Department] to perform duties that require Special Patrolman status." This recommendation was approved by the Director of the License Division and became final on April 23, 2009. By letter dated April 28, 2009, the NYPD notified petitioner that as a result of the determination, her Special Patrolman status will be continued, upon receipt of proof that she is employed by or to be rehired by the Department.

Petitioner contends that thereafter, she sought reinstatement with the Department to her position as an AUPR. She does not provide any documentation in support of her claimed request for reinstatement, nor does she set forth how or when it was made. She does not state whether her request was made pursuant to any statute or collective bargaining agreement. According to the petition, on May 27, 2009, petitioner was advised that she would not be reinstated. Again, she does not set forth how she was so advised; if she was advised in writing, she does not include this writing as an exhibit. This proceeding was commenced on June 1, 2009.

This proceeding is dismissed as time-barred. C.P.L.R. § 217(1). The challenged determination became binding on petitioner on April 25, 2008, the date her termination from employment was effective, since this is the date that she became "aggrieved" by it. See, Rocco v. Kelly, 20 A.D.3d 364, 365-66 (1st Dep't 2005). Petitioner provides no information whatsoever as to the manner in which she requested reinstatement. To the extent she made an informal request, such a request does not serve to toll or extend the statute of limitations. In Raykowski v. New York City Dept. of Transp., 259 A.D.2d 367 (1999), eight months after petitioner's employment was

terminated, he sought a meeting to review the decision; the court held that the meeting did not constitute a fresh look at the decision. Similarly, in De Milio v. Borghard, 55 N.Y.2d 216 (1982), petitioner was terminated from employment, and then wrote a letter to the Commissioner requesting reconsideration, after he pursued his administrative remedies. The court held that bringing the Article 78 proceeding four months after the Commissioner's decision rejecting the letter's request for reconsideration was untimely. Since petitioner failed to bring this proceeding within four months of the decision by the Department to terminate her employment, the petition must be dismissed as untimely.

Even assuming, arguendo, that petitioner could still challenge the determination to terminate her employment, her request for reinstatement would still be denied on the merits. In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether that administrative decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact.'" Id. (citation omitted). A determination is considered "arbitrary" when it is made "without sound basis in reason and is generally taken without regard to the facts." Id.

Contrary to petitioner's contention, the fact that petitioner's Special Patrolman license was reinstated does not compel the conclusion that it is arbitrary and capricious to refuse to reinstate her as an AUPR. Petitioner was arrested following her submission of a falsified document, setting forth that she earned a lower annual income than she actually did, in order to pay less rent in a

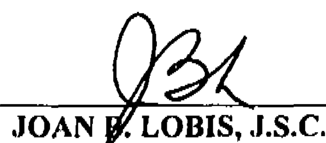
NYCHA apartment. She lost her Special Patrolman license, which was a condition of her continued employment. Finally, as set forth in the transcript of the hearing before the NYPD, petitioner admitted that she fraudulently under-reported her income and forged a signature on a document she submitted in connection with her NYCHA apartment. All of these facts constitute a basis to terminate her employment and deny any request for reinstatement.

To the extent that the petition may be read as a challenge to the NYPD's revocation of her Special Patrolman license, her claim cannot be considered, since the NYPD is not a party to this proceeding. Moreover, any such claim as part of an Article 78 proceeding would similarly be time-barred at this juncture. The court notes that petitioner has commenced an action in the United States District Court for the Southern District of New York against the City of New York, the NYPD, the Department, and others, to challenge her suspension as a Special Patrolman and her discharge from employment by the Department. See Greenwood v. City of New York, et al., 08 Civ. 4474 (S.D.N.Y.).

For all of these reasons, the petition is denied and this proceeding is dismissed. This constitutes the decision, order, and judgment of the court.

Dated: September 17, 2009

JOAN B. LOBIS, J.S.C.



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