

Matter of Peters v Horn
2010 NY Slip Op 30392(U)
March 1, 2010
Supreme Court, New York County
Docket Number: 114110/07
Judge: Alice Schlesinger
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
Justice

~~PA~~ PART 16

Peters, Valerie

INDEX NO. 114110/2007

- v -

Horn, Martin

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ Article 78 proceeding and cross-motion are settled and discontinued pursuant to the March 1, 2010 stipulation of Discontinuance and Dismissal between counsel and this Court's June 18, 2008 Order.

FILED

MAR 02 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: MAR 01 2010

Alice Schlesinger
ALICE SCHLESINGER J.S.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

In the Matter of the Application of

VALERIE PETERS,

Petitioner,

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

**STIPULATION OF
DISCONTINUANCE
AND DISMISSAL**

Index No. 114110/07
I.A.S. Part 16
(Schlesinger, J.)

-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,

Respondents.

----- X

WHEREAS, on June 21, 2007, petitioner Valerie Peters, was terminated from employment by the City of New York ("City") in the title of Correction Officer in the City's Department of Correction ("DOC") during a probationary period; and

WHEREAS, petitioner commenced the above-captioned Article 78 proceeding on or about October 19, 2007, seeking annulment of petitioner's termination and reinstatement to the title of Correction Officer in DOC; and

WHEREAS, respondents deny the truth of petitioner's allegations and any and all liability arising out of the petition or petitioner's allegations; and

WHEREAS, petitioner seeks to retire from the DOC and respondents make no representations whatsoever concerning any pension or retirement allowance or effect on any pension or retirement allowance or concerning any tax matters; and

WHEREAS, no party is an infant or incompetent for which a committee has been appointed; and

WHEREAS, there is no person nor a party who has any interest in the subject matter of this proceeding; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, the New York City Employee Retirement System ("NYCERS"), which is not a party to this litigation, has informed the parties that under the terms of this Stipulation of Settlement and Discontinuance ("Stipulation"), petitioner is eligible to file an application for disability retirement no later than twelve ("12") months from the last day paid; and

WHEREAS, petitioner's last day paid was July 10, 2009.

NOW, THEREFORE,

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as represented below, as follows:

1. The above-referenced proceeding is hereby withdrawn, discontinued, and dismissed, with prejudice, and without costs, disbursements, expenses, or fees.
2. The City and DOC agree to rescind petitioner's June 21, 2007, termination and reinstate petitioner to the title of Correction Officer in DOC, on leave without pay from the date of petitioner's termination, June 21, 2007, until July 9, 2009, and such reinstatement shall not be deemed implied or construed to be used to complete a one-year probationary period. The parties understand that any time spent on leave of absence without pay does not have the effect of reducing the probationary period or counting toward the completion of a probationary period. Effective July 10, 2009, petitioner shall be placed on leave without pay for medical reasons and

subject to a probationary period, continuing from July 10, 2009, to the date petitioner resigns from City service, as described in paragraph "3," below, and in no event later than June 30, 2010.

3. The undersigned attorney for respondents shall provide written notification to petitioner's attorney of the effective date of the change to petitioner's DOC employment status described in paragraph "2," above. Within two (2) weeks of such written notification, petitioner shall take all steps and actions necessary or desirable to accomplish and effect her retirement from City service. It is understood by the parties that petitioner intends to request disability retirement and none of the parties make any representations concerning pension or retirement or tax matters. Respondents do not take any position on plaintiff's retirement applications, or any of them, by entering into this Stipulation and this Stipulation shall not be construed, implied, or deemed to be a promise of any particular pension, retirement or retirement allowance whatsoever. Petitioner further agrees that: (1) petitioner shall provide a complete copy of any retirement application or applications she files with NYCERS, bearing a date stamp indicating receipt by NYCERS and (2) petitioner shall resign from City service within two (2) weeks of the date of NYCERS rendering any determination on petitioner's disability retirement application or applications, regardless of whether petitioner's retirement application or applications is or are approved or denied. In no event shall petitioner continue in City service after June 30, 2010, and in no event shall petitioner receive any amount of back pay or benefits.

4. It is expressly understood that respondents do not make any representations concerning petitioner's pension or retirement or retirement allowance of any kind whatsoever. Furthermore, nothing in this Stipulation shall be construed, implied or deemed to require or imply that petitioner shall ever be returned to active payroll status or to active duty or

service with the City or DOC. It is expressly understood that NYCERS has informed the parties that the rescinding of petitioner's termination and her placement on a leave without pay status for medical reasons as of July 10, 2009, through and including the date of plaintiff's separation from service as set forth in this Stipulation, will make her eligible to file an application for a disability retirement with NYCERS. The parties acknowledge that they have no power to bind NYCERS, a non-party to this proceeding.

5. In consideration for the foregoing, petitioner agrees to dismissal of all claims against respondents and to waive, release, and discharge respondents, any past or present officials, employees, representatives, or agents of the City, or DOC, and the City, and DOC, and their successors or assigns ("Released Parties") from any and all liability, claims, or rights of action, of any kind whatsoever, of every kind and nature, at law or in equity, whether known or unknown, whether joint or severable, and whether or not discoverable, from the beginning of the world to the date of this Stipulation, including, but not limited to, claims for costs, expenses and attorney fees. Petitioner's waiver, release, and discharge of future claims specifically includes, but is not limited to, claims arising under federal, state, or local laws prohibiting employment discrimination of any kind, including, without limitation, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., as well as any claims growing out of any legal restrictions on the termination of petitioner, including local, state, and federal laws prohibiting employment discrimination on any prohibited basis, or claims under the common law for breach of express or implied contract, defamation, intentional or negligent infliction of emotional distress, or prima facie tort.

6. Petitioner shall execute and deliver to respondents' attorney all documents necessary to effect this Stipulation, including, but not limited to, a waiver and general release based on the terms of paragraphs "2," "3," "4," and "5," above, in the form annexed hereto.

7. Nothing contained herein shall be deemed to be an admission by respondents, Martin F. Horn, the DOC, or the City of liability or of the truth of any of the allegations set forth in the Verified Petition filed in the above-captioned proceeding, or an admission by the respondents that they have in any manner or way violated petitioner's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, the DOC or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York, or the DOC. This Stipulation shall not be admissible in, nor is it related to, any other litigation arbitration or settlement negotiations, except that it shall be admissible in a proceeding to enforce the terms of this Stipulation.

8. Nothing contained herein shall be deemed to constitute a policy or practice of the DOC or the City of New York.

9. Petitioner acknowledges that in accordance with the Older Workers Benefit Protection Act (i) she enters into this Stipulation of Discontinuance and Dismissal voluntarily and with full understanding and knowledge of its consequences; (ii) she has been advised by respondents to consult with her attorney before executing this Stipulation; (iii) she has been provided with at least a twenty-one (21) day period to review and consider whether to sign this Stipulation; and (iv) she has been advised that she has seven (7) days following execution to revoke it (the "Revocation Period"). This Stipulation will not be effective and enforceable until the Revocation Period has expired. Such revocation shall only be effective if

an originally executed written notice of revocation is delivered to respondents' counsel on or before 5:00 p.m. on the seventh day after petitioner's execution of this Stipulation. If so revoked, this Stipulation shall be deemed to be void ab initio and have no force or effect.

10. Petitioner acknowledges that at all times during the pendency of the above-captioned proceeding she has been represented by counsel, and agrees that she has consulted with her counsel prior to entering this agreement and that she has entered into this agreement freely, knowingly and openly without coercion, duress, or undue influence with full understanding and knowledge of its consequences.

11. This Stipulation of Discontinuance and Dismissal contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Discontinuance and Dismissal shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

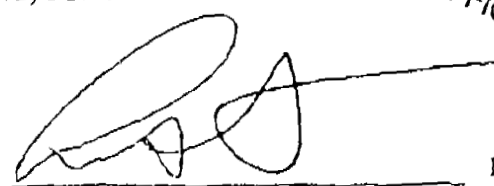
Dated: New York, New York
March 1, 2010

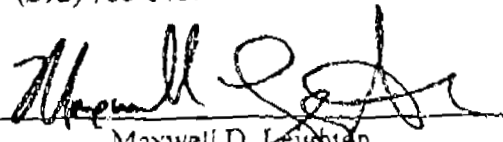
FILED

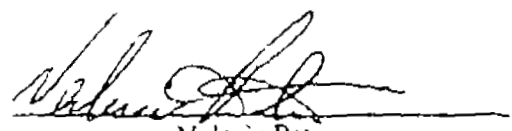
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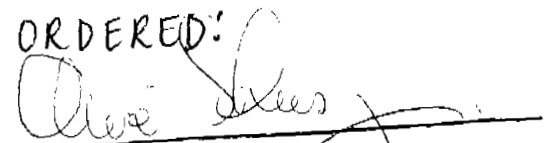
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(212) 788-0407

By: 
Louis I. Albert

By: 
Maxwell D. Leighton
Assistant Corporation Counsel


Valerie Peters
Petitioner

SO ORDERED:

ALICE SCHLESINGER

3/1/10 -6-
MAR 01 2010

WAIVER AND GENERAL RELEASE

KNOW THAT I, VALERIE PETERS, the petitioner in the proceeding entitled Valerie Peters v. Martin F. Horn, et al., Index No. 114110/07, filed in the Supreme Court of the State of New York, County of New York, in consideration for the entry into the accompanying Stipulation do hereby waive, release and discharge respondents Martin F. Horn, the Department of Correction of the City of New York, and the City of New York (the "Released Parties"), and all their respective successors, or assigns, and any and all past or present officials, employees, representatives and agents of the Released Parties, and all their respective successors, or assigns, from any and all liability, claims or rights of action from any and all liability, claims, demands, causes of action, obligations, damages, grievances and liabilities whatsoever of every kind and nature, at law or in equity, whether joint or several, whether known or unknown, and whether or not discoverable, which petitioner may have resulting from anything which has happened from the beginning of the world up to and including the date of the execution of this release, including, but not limited to, any and all liability, claims or rights of action which were or could have been alleged in this proceeding, including all claims for costs, expenses and attorneys' fees.

THIS GENERAL WAIVER AND RELEASE MAY NOT BE CHANGED ORALLY.

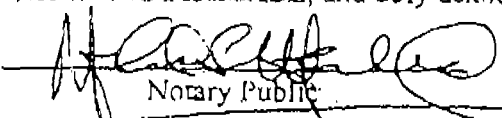
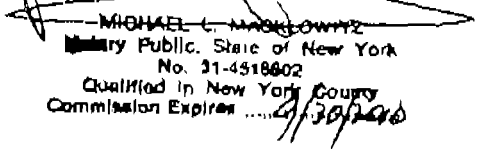
THE UNDERSIGNED HAS READ THE FOREGOING GENERAL WAIVER AND RELEASE AND FULLY UNDERSTANDS IT.

IN WITNESS WHEREOF, I have executed this General Waiver and Release this 1st day of March, 2010.


VALERIE PETERS

State of New York, County of New York, ss:

On the 1st day of March, 2010, VALERIE PETERS to me known, and known to me to be the individual described in, and who executed the foregoing WAIVER AND GENERAL RELEASE, and duly acknowledged to me that she executed the same.


Notary Public

MICHAEL C. MOSKOWITZ
Notary Public, State of New York
No. 31-4518602
Qualified in New York County
Commission Expires 9/30/2010

Index No. 114110/07

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STIPULATION OF
DISCONTINUANCE AND DISMISSAL

MICHAEL A. CARDOZO,
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Attorney for Respondents
100 Church Street Rm. 2-169
New York, N.Y. 10007-2601

Of Counsel: Maxwell D. Leighton
Tel: (212) 788-0407

Our No. 2007-032005

Due and timely service is hereby admitted

New York, N.Y., 200

Attorney for