

**Matter of City of N.Y. v New York City Civi. Serv.
Commn.**

2011 NY Slip Op 33450(U)

December 20, 2011

Sup Ct, NY County

Docket Number: 401112/11

Judge: Carol E. Huff

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **CAROL E. HUFF**

PART 32

Index Number : 401112/2011

CITY OF NEW YORK

vs

NYC CIVIL SERVICE COMMISSION

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

Answering Affidavits — Exhibits _____

No(s). _____

Replying Affidavits _____

No(s). _____

No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion~~

motion is decided in accordance

with accompanying memorandum decision

FILED

DEC 21 2011

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: DEC 20 2011



CAROL E. HUFF J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X
In the Matter of the Application of : Index No. 401112/11
THE CITY OF NEW YORK, NEW YORK CITY POLICE :
DEPARTMENT, EDNA WELLS HANDY, :
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, :

Petitioners, :

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

- against - :

THE NEW YORK CITY CIVIL SERVICE :
COMMISSION and VICTOR N. LUNA, :

Respondents. :

FILED

DEC 21 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioners move for an order annulling the determination of respondent New York City Civil Service Commission ("CCSC"), dated December 29, 2010, which reversed the determination of petitioner New York City Police Department ("NYPD") that respondent Victor N. Luna was not psychologically fit for the position of Police Officer.

Seeking to become a Police Officer, Luna took Civil Service Examination No. 6010 on October 28, 2006, and placed number 2254 on the eligible list. Subsequently he was required to submit to and pass medical, physical and psychological examinations as well as a background investigation, before being deemed qualified for the position. Luna was interviewed by an NYPD psychologist on April 16, 2008. In her report dated May 16, 2008, the psychologist

[*3]
found Luna psychologically unqualified for police work.

Among the factors the psychologist considered were Luna's six driver's license suspensions, a three-year period of unemployment, termination from two jobs, and early school difficulties relating to cognitive and behavioral issues. Finding him unqualified, she concluded that Luna had "not reached the level of responsible or mature functioning expected for an average 30 year old man" and expressed "concern about [Luna's] ability to tolerate and deal with the elevated level of stress and responsibility that is inherent in police work." Candidate Psychological Disqualification Summary, Adria N. Adams, dated May 16, 2008.

NYPD notified Luna of his disqualification on March 25, 2009, and he filed an appeal to CCSC on April 23, 2009. In connection with that appeal, he retained his own psychologist who reported his opinion that Luna was qualified for police work. NYPD submitted Luna's entire psychological file to an outside consultant, who sustained the disqualification on October 9, 2009.

On August 10, 2010, CCSC conducted a de novo review of the matter, requiring NYPD to present its evidence first, over NYPD's objections that such review was inappropriate and that the burden of proof should have been on Luna. Relying on the evidence adduced at the hearing including the report of its own psychologist, CCSC reversed NYPD's determination of disqualification on December 29, 2010.

Civil Service Examination No. 6010 expired on January 3, 2011, and Luna cannot be restored to the expired list. Respondents contend that this fact renders the matter moot. Petitioners argue that the petition should be decided because Luna has sat for another exam, No. 8132, and is listed as eligible candidate number 5137. However, that exam has not been

established, and there is no indication that Luna's number has been or will be reached.

Petitioners have set forth significant objections to the procedure followed by CCSC, including the propriety of de novo review, the burden of proof at the review, NYPD's entitlement to rely on its own experts, and the deference that should be given NYPD, a quasi-military entity charged with public safety, in determining who is qualified to become a Police Officer.

However, "an appeal will be considered moot unless the rights of the parties will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment." Hearst Corp. v Clyne, 50 NY2d 707, 714 (1980). Since, whatever this Court finds, Luna cannot be reinstated to the eligible list for Examination No. 6010, the proceeding must be dismissed as moot. Petitioners' argument that Luna "may" be called in connection with Exam No. 8132, "when" that list is established, is too tenuous to circumvent the mootness doctrine.

Petitioners contend that the issues raised here should be decided in any event because similar issues recur "frequently" and, due to the short lives of civil service lists, have often been subjected to mootness defenses. An exception to the mootness doctrine allows courts to "review important and recurring issues which, by virtue of their relatively brief existence, would be rendered otherwise nonreviewable." Id. Petitioner has not, however, provided evidence of such other recurring, similar and important issues, sufficient to invoke this exception.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

FILED

DEC 21 2011

Dated: **DEC 20 2011**

NEW YORK
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