

<b>Matter of Martin v Schriro</b>
2012 NY Slip Op 30971(U)
April 11, 2012
Supreme Court, New York County
Docket Number: 112251/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of RONALD MARTIN,*

INDEX No: 112251/11

Petitioner,

MOTION DATE \_\_\_\_\_

-against-

MOTION SEQ. No. 001

THE NEW YORK CITY DEPARTMENT OF  
CORRECTIONS; et al.,

Respondents.

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1, 2, 3

Answering Affidavits- Exhibits 4

Replying Affidavits 5

CROSS-MOTION:  YES  NO

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

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION

**FILED**

APR 12 2012

Dated: 4/11/12

*Donna M. Mills*  
NEW YORK  
J.S.C. COUNTY CLERK'S OFFICE

**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

\* 2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 58

-----X  
In the Matter of the Application of  
RONALD MARTIN

Petitioner,

For a Judgment under Article 78  
of the Civil Practice Law and Rules.

-against-

Index No. 112251/11

Dr. Dora Schriro, Correction Commissioner of the  
New York City Department of Correction; THE  
NEW YORK CITY DEPARTMENT OF  
CORRECTION; and THE CITY OF NEW YORK,  
Respondents.

**FILED**

APR 12 2012

NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
**DONNA M. MILLS, J.:**

In this Article 78 proceeding, petitioner Ronald Martin, a correction officer currently employed by the New York City Department of Correction ("DOC"), brings this proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules seeking an order directing the DOC to expunge references to his being psychologically unfit to carry a firearm and compelling DOC to reinstate his firearm privileges. Respondents now cross-move to dismiss the petition on the grounds that the petition is time-barred by the four-month statute of limitations applicable to an Article 78 special proceeding, and in the alternative, that the petitioner has failed to exhaust his administrative remedies.

The events leading up to DOC's decision to label Officer Martin as unfit to carry a firearm have to do with two complaints made by another correction officer. In April of 2010, a fellow Correction Officer assigned to the Fire Safety Unit filed the first complaint with the DOC's Equal Employment Office ("EEO"), alleging that petitioner had made

derogatory, race and gender based comments in and around the workplace. The second complaint is dated April 30, 2010.

EEO spoke to Officer Martin on June 24, 2010 in connection with the complaints. On October 19, 2010, the charges were ultimately determined by EEO to be unsubstantiated. However, it was alleged that during the June 24, 2010, EEO interview, petitioner abruptly refused to answer any further questions and threatened other members of DOC's staff.

As a result of the allegations that Officer Martin threatened DOC staff, he was sent to its Health Management Division ("HMD") on June 30, 2010 to be seen by a psychologist. HMD is a unit within DOC that monitors correction officers on sick leave and is staffed by doctors and nurses.

As a result of the June 30, 2010 appointment with a psychologist at HMD, HMD determined that he was psychologically not qualified to carry a weapon. Consequently, DOC confiscated petitioner's weapon and transferred him to a different command assignment. Subsequently, in an effort to have HMD reconsider its determination, petitioner met with HMD personnel a number of times. During these meetings petitioner submitted two independent psychological evaluations. In response, HMD requested a three-page report from petitioner's personal physician detailing his mental fitness to possess a firearm. Petitioner did not submit the requested report to HMD.

On June 20, 2011, petitioner, through his attorneys, wrote to the Office of the Commissioner of the DOC. In that letter, petitioner disputed HMD's determination that he was psychologically unfit to carry a firearm and objected to HMD's requirement that he submit further medical documentation. On August 5, 2011, DOC replied to petitioner

\* 4] .  
that HMD would not be able to reevaluate petitioner's firearms privileges unless and until he submitted the requested report.

Petitioner filed the instant Article 78 petition on October 27, 2011, challenging DOC's refusal to restore his firearms privilege and reverse its finding that Officer Martin is psychologically unfit to carry a firearm as arbitrary and capricious. Petitioner claims that HMD wholly relied on the account of the EEO investigators, who alleged that petitioner threatened certain DOC personnel, and only superficially investigated the circumstances underlying those events.

Respondents argue that petitioner's Article 78 proceeding in this case is time barred. They contend that when HMD determined that petitioner was psychologically not qualified to carry a weapon on June 30, 2010, he was therefore aggrieved by that determination, and his claim accrued, as of that date. Petitioner did not commence this Article 78 proceeding until October 27, 2011, more than a year from the date of HMD's determination.

An Article 78 proceeding must be commenced "within four months after the determination to be reviewed becomes final and binding on the petitioner" (CPLR 217 1)). An agency determination becomes final and binding when the aggrieved party received actual notice of the determination. (Matter of Metropolitan Museum Historic Dist. Coalition v De Montebello, 20 AD3d 28 [1<sup>st</sup> Dept 2005]).

In an effort to avoid the four-month limitations period applicable to special proceedings, petitioner contends that his cause of action to bring this Article 78 action began to run on August 5, 2011, upon receiving the letter from DOC's Office of Legal Counsel denying his request for restoration of his firearm privileges.

"A challenged determination is final and binding when it 'has its impact' upon the petitioner who is thereby aggrieved" (Matter of Edmead v McGuire, 67 NY2d 714, 716 [1986]), e.g., when a request for reinstatement is unequivocally denied (Matter of Drake v Reuter, 27 AD3d 736 [2006]). A request for reconsideration of an administrative determination will not extend the four-month limitations period (Matter of De Milio v Borghard, 55 NY2d 216, 220 [1982]). Where, however, an agency holds a new hearing at which new testimony is taken, new evidence is proffered and new matters are considered, or reconsideration of the matter appears to be on a fresh look at the merits, the statutory period within which to commence a review proceeding is renewed (Chase v Board of Educ. of Roxbury Cent. School Dist., 188 AD2d 192, 197 [1993]).

Petitioner's claim accrued when he received DOC's letter of June 30, 2010, revoking his firearms status. DOC's subsequent rejection of his request on August 5, 2011 merely referenced the original revocation of his firearm, and there was no new determination to be challenged by way of an Article 78 proceeding, since the August 2011 denial did not "constitute the sort of 'fresh, complete and unlimited examination into the merits' as would suffice to revive the Statute of Limitations" (Raykowski v New York City Department of Trans., 259 AD2d 367 [1<sup>st</sup> Dept 1999]).

An Article 78 proceeding is a special proceeding. It may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (CPLR 409 [b]; 7801, 7804 [h].) Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial. (CPLR 7804 [h]; Matter of York v McGuire, 99 AD2d 1023 [1984], affd 63 NY2d

760 [1984]).

In the instant action, since the DOC did not undergo a fresh, complete and unlimited examination into the merits of the June 30, 2010 decision, the DOC's subsequent letter does not constitute a new and final determination that may be challenged in the instant Article 78 proceeding (see Eldaghar v New York City Hous. Auth., 34 AD3d 326, 327 [1<sup>st</sup> Dept 2006]). Accordingly, the petition should be dismissed as untimely.

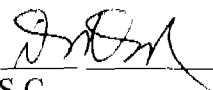
In light of the dismissal on statute of limitations grounds, this Court declines to address the respondent's alternative argument seeking dismissal on failure to exhaust administrative remedies.

Accordingly, it is hereby

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

Dated: 4/11/12

ENTER:

  
\_\_\_\_\_  
J.S.C.

DONNA M. ELLIS, J.S.C.

**FILED**

APR 12 2012

NEW YORK  
COUNTY CLERK'S OFFICE