

Matter of Katz v New York City Civil Serv. Commn.
2012 NY Slip Op 31026(U)
April 17, 2012
Supreme Court, New York County
Docket Number: 114005/11
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 114005/2011
KATZ, ANDREW
VS.
NYC CIVIL SERVICE COMMISSION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, It is ordered that this motion is

is ~~decided~~ decided in accordance with the annexed decision.

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).

RECORDED

APR 18 2012

CLERK OF THE COURT
NEW YORK COUNTY

Dated: 4/17/12

CJK, 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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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

ANDREW KATZ,

Petitioner,

Index No. 114005/11

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

DECISION/ORDER

-against-

NEW YORK CITY CIVIL SERVICE COMMISSION

Respondent.
-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Andrew Katz brought this petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to reverse and annul a determination made by respondent the New York City Civil Service Commission ("CSC"), dated November 17, 2011. In its Determination, the CSC affirmed the determination of the New York City Police Department ("NYPD") finding petitioner unqualified for the position of police officer. Respondent now cross-moves to dismiss the petition on the ground that it fails to state a cause of action. For the reasons set forth below, respondent's cross-motion is granted and the petition is hereby dismissed.

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The relevant facts are as follows. In or around November 2009, petitioner applied for the position of police officer with the NYPD, Exam No. 8303. On November 18, 2009, the NYPD informed petitioner via letter that he did not meet the requirements for the position of police officer and was disqualified. According to the letter, petitioner's disqualification was "based on the evaluation of [his] psychological tests and interview which found personality characteristics incompatible with the unique demands and stresses of Police Officer." Specifically, the NYPD found that petitioner suffered from adult Attention Deficit Hyperactivity Disorder ("ADHD").

Petitioner then appealed his disqualification to the CSC, which conducted a hearing on September 14, 2011. At the hearing, the NYPD presented the testimony of George Kingsley, Ph.D, of the NYPD Psychological Services Unit who recommended that the CSC sustain the disqualification. Petitioner presented the testimony of Robert Daley, Ph.D, his own psychologist who advised that petitioner was psychologically fit for the job as police officer and petitioner also testified on his own behalf.

On November 17, 2011, the CSC affirmed the determination of the NYPD, writing "[t]he Commission has carefully reviewed the entire record and considered the arguments and the testimony presented by both parties. Based on our review, the Commission concludes that the record at this time supports Appellant's disqualification." On or about December 13, 2011, petitioner commenced this Article 78 proceeding challenging the CSC's Determination.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a

* 4]

rational basis.” *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “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.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that the CSC’s affirmation of the determination of the NYPD that petitioner was unqualified for the position of police officer under Exam No. 8303 was made on a rational basis. In reaching its Determination, the CSC relied on the recommendation of Mr. Kingsley, Ph.D of the NYPD Psychological Services Unit, which found petitioner to be psychologically unfit for the police officer position. Petitioner’s only evidence to the contrary is a letter from his own psychologist, Mr. Daley, Ph.D, who found that, based on his examination of petitioner, petitioner was “fully mentally competent and a suitable candidate for employment as a police officer.” However, the fact that petitioner’s private psychologist’s opinion is contrary to that of the NYPD’s Psychologist is immaterial. “It is not for the courts to choose between diverse professional opinions. That is the function of the proper department heads and as long as they act reasonably and responsibly, the courts will not interfere.” *Palozzolo v. Nadel*, 83 A.D.2d 539 (1st Dept 1981), citing *McCabe v. Hoberman*, 33 A.D.2d 547, 548 (1st Dept 1969). Moreover, the First Department has held that “in determining whether a candidate is medically qualified to serve as a police officer, the appointing authority is entitled to rely upon the findings of its own medical

personnel, even if those findings are contrary to those of professionals retained by the candidate.”

Matter of City of New York v. New York City Civ. Serv. Comm'n., 61 A.D.3d 584 (1st Dept 2009).

Also immaterial is the additional evidence offered by petitioner, including petitioner's record of service with the U.S. Navy and the letter from The Summit School which he attended as a youth. Neither piece of evidence is probative of petitioner's psychological suitability to be a police officer as “[a]n appointing authority has wide discretion in determining the fitness of candidates...particularly...in the hiring of law enforcement officers, to whom high standards may be applied.” *Matter of City of New York*, 61 A.D.3d at 584. In *Matter of City of New York v. NYC Civ. Serv. Comm'n.*, 19 Misc.3d 1123(A) (Sup. Ct. N.Y. Cty. 2008), it was held that although the petitioner provided evidence of his “honorable discharge from the Marines and his B average with 100 credits from Mercy College...neither of which are insignificant achievements”, neither piece of evidence was found to be “particularly informative.” Here, although petitioner has offered evidence that he was honorably discharged from the U.S. Navy and that he was a good student and held down various jobs, that evidence is not probative of petitioner's psychological fitness to be a police officer. It was therefore not arbitrary and capricious for the NYPD to conclude, and for the CSC to confirm, that petitioner is unqualified for the position of police officer.

Because the record clearly supports the CSC's decision, the court finds that there is a rational basis for its determination. It is therefore

ADJUDGED that respondent's cross-motion to dismiss the petition is granted and the petition is hereby dismissed in its entirety.

Dated: 4/17/12

Enter: CK

J.S.C.

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