

Weeks v Carrion

2015 NY Slip Op 32019(U)

March 10, 2015

Supreme Court, New York County

Docket Number: 100750/2015

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

EA
3/11/15
E

HON. MARGARET A. CHAN

Index Number : 100750/2014

WEEKS, JAMES

PART 52

vs

CARRION, GLADYS

INDEX NO. _____

Sequence Number : 001

MOTION DATE _____

ARTICLE 78

MOTION SEQ. NO. _____

The following papers, numbered 1 to 4, were read on this motion to/for Article 78

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 2, 3

Replying Affidavits _____ No(s). 4

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

**MOTION DETERMINED PURSUANT TO
ANNEXED DECISION AND ORDER**

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

FILED

MAR 12 2015

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: 3-10-15


_____, J.S.C.
HON. MARGARET A. CHAN

- 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
NEW YORK COUNTY: PART 52**

INDEX 100750/2015

DECISION and ORDER

JAMES WEEKS,

Petitioner,

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

- v -

**GLADYS CARRION, Commissioner of NYC Administration
of Children’s Services, CLAUDETTE R. WYNTER,
Assistant Commissioner Of Office Personnel Services
NYC Administration Of Children’s Services and, the NYC
Administration of Children’s Services,**

Respondent.

FILED
MAR 12 2015
NEW YORK
COUNTY CLERKS OFFICE

Margaret A. Chan, J.:

Petitioner, a former probationary juvenile counselor at the Crossroads Detention Center, moved for an order pursuant to CPLR Article 78 reinstating him as a juvenile counselor with the Administration of Children’s Services (“ACS”) after respondents terminated his employment due to a violation of ACS policy. Respondents filed a cross-motion to dismiss the petition pursuant to CPLR 3211(a)(7) for failure to state a cause of action. Petitioner filed opposition to which the respondents replied.

Petitioner, a probationary counselor since February 3, 2013, admitted in an ACS incident report that he permitted residents of the detention center to use his cellular phone (Resp Aff, Exh B). This conduct violated ACS rule M.1.2 which states “No employee shall bring any article or item of contraband onto the premises or facilities of this Agency...” (*id.*, Exh C). Cellular phones are contraband and petitioner’s conduct resulted in a security breach since detention center residents were able to use petitioner’s phone to access the social media site Facebook (*id.*, Exh C). Respondents subsequently terminated petitioner’s employment due to this violation on March 24, 2014.

Petitioner claimed that respondents’ termination of his employment was made in bad faith since it was predetermined by bias, prejudice, and vindictive supervisors (Pet Opposition, pg 2). Respondents argued that petitioner was a probationary employee whose employment could be terminated at any time and that he failed to demonstrate that respondents acted in bad faith (Resp Reply Memo, p 2).

In the First Department, “[i]t is well settled that a probationary employee may be discharged without a hearing or statement of reasons, for any reason or no reason at all, in the absence of a showing that his or her dismissal was in bad faith...” (*Witherspoon v Horn*, 19 AD3d 250 [1st Dept 2005]; see *DeVito v Department of Educ. Of City of New York*, 112 AD3d 421 [1st Dept 2013]). Petitioner bears the burden of proving bad faith, and mere conclusory allegations of bad faith based upon speculation are insufficient to meet that burden (see *Files v Department of Educ. of City of New York*, 118 AD3d 624 [1st Dept 2014]; *Matter of Thomas v Abate*, 213 AD 2d 251 [1st Dept 1995]).

Petitioner was not terminated in bad faith since he was a probationary employee and violated ACS regulation that concerned security at a secure facility. Petitioner disregards his misconduct and instead focuses on his allegations of harassment and disparate treatment by his supervisors at ACS to support his argument that his termination was in bad faith. However, petitioner submitted no evidence to support his allegation that he was terminated in bad faith.

Accordingly, the Article 78 petition is denied and respondents’ cross-motion to dismiss is granted.

This constitutes the decision and order of the court.

Dated: March 10, 2015



Margaret A. Chan, J.S.C.

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NEW YORK
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FILED

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COMMUNICATIONS SECTION