

Matter of New York City Civilian Complaint Review Bd. v Office of the Comptroller of the City of N.Y.

2015 NY Slip Op 32537(U)

October 22, 2015

Supreme Court, New York County

Docket Number: 452358/2015

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ Justice

PART 13

In the Matter of the Application of THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD, Petitioner,

INDEX NO. 452358/15 MOTION DATE 10-07-2015 MOTION SEQ. NO. 001 MOTION CAL. NO.

-against-

THE OFFICE OF THE COMPTROLLER OF THE CITY OF NEW YORK, Respondent.

The following papers, numbered 1 to 11 were read on this petition to/for Art. 78 and Declaratory Relief:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Answering Affidavits — Exhibits cross motion Replying Affidavits

PAPERS NUMBERED

1 - 4

5 - 8

9 - 11

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is Ordered, Adjudged and Declared that the Article 78 petition seeking to have this Court find and pursuant to CPLR §3001, declare that THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD, is not required to obtain a court order or release from a claimant or his or her counsel pursuant to General Municipal Law §50-h[3], to obtain a transcript of any 50-h hearing, in response to a subpoena issued; and to use or disclose a 50-h hearing transcript as part of any findings and recommendations issued pursuant to N.Y.C. Charter §440 and any subsequent disciplinary proceedings pursuant to Civil Service Law §75, 1940 N.Y. Laws Ch. 834 and/or N.Y.C. Admin. Code §14-115, is denied.

The New York City Civilian Complaint Review Board ("CCRB") brought this Article 78 proceeding seeking a declaration that the Office of the Comptroller of the City of New York produce transcripts of testimony at 50-h hearings pursuant to non-judicial subpoenas issued by the CCRB while investigating claims. Petitioner also seeks a declaration permitting the use or disclosure of 50-h hearing transcripts as part of any findings and recommendations issued. Petitioner argues that it should be granted the relief sought, (1) because this Court is authorized to grant the relief, (2) CCRB is an independent investigative and prosecutorial City agency with an express grant of subpoena power, (3) the Respondent is required to cooperate with CCRB investigations by law, (4) the Respondent's assertions are belied by a plain reading of the law, and (5) in the interests of justice.

Petitioner claims that the Respondent will not comply with any non-judicial subpoena issued by CCRB, seeking copies of any transcripts of 50-h hearings, without a Court Order, or a release executed by the claimant or his counsel. It is Petitioner's contention that it has capacity and standing to bring this declaratory judgment action because the N.Y.C. Charter § 440 (c)(3) and 38 R.C.N.Y. §15-04 (b), provide an express grant of subpoena power and the clear capacity to obtain information by the Courts. Petitioner also contends that N.Y.C. Charter §1120 grants power necessary for CCRB to carry out its duties, including the ability to defend access to information.

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

The capacity to sue is the litigant's ability to appear and bring its grievance to the Court. An agency can have capacity to sue inferred from its responsibility and powers, as long as there is no "clear legislative intent" preventing review (*Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y. 2d 148, 639 N.E. 2d 1, 615 N.Y.S. 2d 644 [1994] citing to *Matter of City of New York v. City Civ. Ser. Commn.*, 60 N.Y. 2d 436, 458 N.E. 2d 354, 470 N.Y.S. 2d 113 [1983]). Standing requires that the party seeking relief sufficiently establish a recognizable stake in the proceedings and their outcome so that the dispute is capable of judicial resolution (*Community Bd. 7 of Borough of Manhattan v. Schaffer*, 84 N.Y. 2d 148, *supra*).

The Respondent has not established that there is "clear legislative intent" preventing review. Respondent's contention that the power to enforce a subpoena does not include the power to bring a declaratory judgment action, is not persuasive. Petitioner has the capacity to bring this proceeding and seek declaratory relief.

Petitioner contends that it is a sister agency of the Comptroller of the City of New York, not part of the public at large, and is entitled to unfettered access to the Comptroller's 50-h transcripts for investigative purposes.

General Municipal Law 50-h(3), states in relevant part,

"The transcript of the record of an examination shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his attorney upon request. "

There is no mention in the statute of an exchange of the transcript between agencies. Respondent has interpreted this provision as extending confidentiality to other City agencies, requiring either the claimant's consent or a court order issued upon good cause shown.

CCRB pursuant to the N.Y.C. Charter, Title 38-A, §1-02 (a), has,

"...the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language including but not limited to, slurs relating to race, ethnicity, gender, sexual orientation and disability." (Abbreviation and emphasis added)

N.Y.C. Charter, §440 (c)(3), states that the CCRB, "...may compel attendance of witnesses," and require production of records and other materials necessary for investigation of complaints. There is no specific language for the issuance of a subpoena or reference to other agencies.

Prior to July 25, 2001, the CCRB was required to substantiate a case and transfer it to either the Department Advocates Office (DAO) or the Office of the Special Prosecutor (SPO), for administrative prosecution of police officers within the police department's disciplinary system. The DAO prosecuted the majority of the disciplinary cases, and SPO handled more serious allegations of misconduct. In 2001, a Memorandum of Understanding (MOU) was entered into between the CCRB and the Police Department, wherein the Commissioner delegated to the CCRB, administrative prosecutions on substantiated complaints, which was found to be a valid exercise of discretion by the Appellate Division, First Department (*Lynch v. Giuliani*, 301 A.D. 2d 351, 755 N.Y.S. 2d 6 [1st Dept., 2003]). On April 2, 2012, the CCRB and the Police Department entered into another MOU, permitting the CCRB to conduct administrative prosecutions on substantiated complaints, which was incorporated into the Rules of the

City of New York, and includes a reference subchapter A (38 R.C.N.Y. §15-15). 38 R.C.N.Y. §15-04 (b), is part of Subchapter A, it permits the Attorneys for the parties, "the right to subpoena witnesses," it is silent as to transcripts.

An administrative decision will withstand judicial scrutiny if it is supported by substantial evidence, has a rational basis and is not arbitrary and capricious (Matter of Pell v. Board of Education, 34 N.Y. 2d 222, 313 N.E. 2d321 [1974]). "Administrative agencies, as creatures of the Legislature within the executive branch, can act only to implement their charter as it is written and given to them." An agency cannot empower itself to rewrite or add to its administrative charter. Deference to an agency charged with responsibility for administration of a statute applies where the application is not, "irrational or unreasonable" (Matter of New York State Superfund Coalition, Inc. v. New York State Dept. Of Env'tl. Conservation, 18 N.Y. 3d 289, 961 N.E. 2d 657, 938 N.Y.S. 2d 266 [2011]).

Petitioner has not established that it is entitled to unfettered access to the Comptroller's 50-h transcripts for investigative purposes, or that Respondents refusal to provide them is arbitrary and capricious. The statutory provisions relied upon by Petitioner permit the use of subpoenas and obtaining records as part of the CCRB's investigation of complaints about police officers, but do not specifically identify records from other agencies or departments related to the complainant. Confidentiality and privacy concerns related to the complainant, are part of the legislative policy behind 50-h hearings, and would potentially be violated by disclosure of the transcripts as part of the CCRB's findings and recommendations. Petitioner although an agency, consists of members of the public. The relevant provisions of the N.Y.C. Charter and Rules of the City of New York allow petitioner to obtain records from the Police Department as part of its investigation and prosecution. Petitioner fails to establish a compelling reason for the use of unlimited access to the 50-h hearings, given that there are alternative means of obtaining the transcripts, including the complainants' release, or Court Order permitting the subpoena. Petitioner has not established a basis for the relief sought in this Article 78 proceeding, or for the declaratory relief.

Accordingly, it is ORDERED, ADJUDGED and DECLARED, that the Article 78 petition seeking to have this Court find and pursuant to CPLR §3001, declare that THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD, is not required to obtain a court order or release from a claimant or his or her counsel pursuant to General Municipal Law §50-h[3], to obtain a transcript of any 50-h hearing, in response to a subpoena issued pursuant to General Municipal Law §20(21) and New York City Charter §440 (c)(3) or 38 N.Y. C. R.R. §15-04(b); and to use or disclose a 50-h hearing transcript as part of any findings and recommendations issued pursuant to N.Y.C. Charter §440 and any subsequent disciplinary proceedings pursuant to Civil Service Law §75, 1940 N.Y. Laws Ch. 834 and/or N.Y.C. Admin. Code §14-115, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ,
J.S.C.

Dated: October 22, 2015

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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COUNTY CLERK'S OFFICE
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Index No. 452358/15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK CIVIL BRANCH: PART 13

In the Matter of the Application of

THE NEW YORK CITY CIVILIAN COMPLAINT
REVIEW BOARD

Petitioner

-against-

THE OFFICE OF THE COMPTROLLER OF THE CITY
OF NEW YORK

Respondent

THIS IS AN E-FILED CASE
ALL DOCUMENTS MUST
BE FILED ELECTRONICALLY.

JUDGMENT

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Matter No.: 2015-034900

Due and timely service is hereby admitted.

New York, N.Y.2015

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Attorney for.....

FILED
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AT 12:49 PM
N.Y., CO. CLK'S OFFICE