

Singh v City of N.Y. Off. of Admin. Trials & Hearings
2019 NY Slip Op 31847(U)
June 26, 2019
Supreme Court, New York County
Docket Number: 151332/2019
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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INDEX NO. 151332/2019

HARPREET SINGH,

MOTION DATE 06/30/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK OFFICE OF ADMINISTRATIVE
TRIALS AND HEARINGS, FIDEL DEL VALLE

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents and oral argument, the court grants the petition, vacates the determination of the respondents, and remands for an in-person hearing with the ability to cross-examine witnesses, as discussed below.¹

Background

Petitioner was registered to appear as a non-attorney representative before the Hearings Division at the Office of Administrative Trials and Hearings (“OATH”). OATH is a tribunal authorized by the New York City Charter and the New York City Administrative Code, and the New York City agency rules and regulations, enabled to conduct hearings for violations issued by New York City agencies.

It was found that Petitioner committed misconduct when on July 7, 2016, and on August 2, 2016, by submitting two motions to vacate default decisions on behalf of two OATH respondents. Both respondents claimed to have missed their hearing due to car troubles and both made use of identical towing receipts, despite being submitted by different respondents.

¹ The Court would like to thank Daniel Rabbani for his assistance in this matter.

The Department of Investigations (“DOI”) concluded that the receipts were fraudulently submitted to Respondent. Afterward, Respondent conducted its own investigation and brought forth charges against Petitioner for violating the rules of their practice, under Rules of the City of New York (“RCNY”) §5-16 (Prohibited Conduct), and §§ 6-23 and 6-24, alleging that Petitioner knew, or should have known that the towing receipt submitted to Respondent on the previous mentioned dates were fraudulent.

A permanent bar was placed on Petitioner from appearing as a non-attorney representative before OATH by the Commissioner on October 15, 2018. The evidence used to support this bar was that the identical towing receipts used in two separate motions to vacate default decisions had the identical Invoice Number (56309), could be traced back to the same company (Singh Towing) and were copies of the original. On one of the receipts the invoice number was whited-out.

Violations of OATH Rules

A representative shall not “[s]ubmit a document, present testimony or other evidence to the Tribunal which he or she knows, or reasonably should have known, to be false, fraudulent or misleading.” 48 RCNY §6-25(a)(9). Moreover, a representative must “[e]xercise due diligence in learning and observing Tribunal rules and preparing paperwork.” 48 RCNY §6-23(e).

“The Chief Administrative Law Judge [has the ability with good cause to] suspend or bar from appearing before the Tribunal an attorney or representative who fails to abide by these rules.” 48 RCNY §6-25. “The Chief Administrative or his or her designee may not act until after the attorney or representative is given notice and a reasonable opportunity to appear before the Chief Administrative Law Judge or his or her designee to rebut the claims against him or her. The Chief Administrative Law Judge or his or her designee, depending upon the nature of the conduct, will determine whether said appearance will be in person or by remote method.” *Id.*

Appearances are allowed by remote means. 48 RCNY §6-10. “When the opportunity to do so is offered by the Tribunal, a Respondent may contest a violation by mail, online, by telephone or by other remote methods.” 48 RCNY §6-10(a) &(b). “The written submission must

contain any denials, admissions, and explanations related to the individual violations charged, and documents, exhibits or witness statements, if any, to be considered as evidence in support of Respondent’s defense.” *Id.*

Due Process

Article 78 review is permitted, where a determination was made that “was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed....” NY CPLR §7803(3).

“Arbitrary” for the purpose of the statute is interpreted as “when it is without sound basis in reason and is taken without regard to the facts.” *Pell v. Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 N.Y.2d 222, 231 (1974). “Where the finding of guilt is confirmed and punishment has been imposed, the test is whether such punishment is so disproportionate to the offense as to be shocking to one’s sense of fairness.” *Id.* at 233.

The court may determine a shock to one’s sense of fairness if “the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals. *Id.* at 234. “Additional factors would be the prospect of deterrence of the individual or of others in like situations, and therefore a reasonable prospect of recurrence of derelictions by the individual or persons similarly employed.” *Id.* The Court of Appeals has viewed the enactment of CPLR 7803, as a way to protect against harsh punishments by administrative agencies. *Id.* at 235.

Discussion

Here, the Petitioner was registered as a representative for only 45 days and was 25 years old at the time of the alleged fraud. The evidence against Petitioner for the alleged fraud was from a single unchallenged observation of an OATH staff member, who claimed that the

Petitioner and a woman were applying white-out to papers. No in person hearing was conducted, and the Petitioner was not able to cross examine the witness who testified against the Petitioner.


Moreover, there is no method for the Petitioner to apply to be reinstated after a certain time following this banishment. Finally, as pointed out by the Petitioner's counsel at oral argument, this will remain a matter of public record throughout the Petitioner's life. The Court notes the irony that had this been a criminal case, the Petitioner would have had the opportunity to apply to have the matter against him sealed after ten years, pursuant to Criminal Procedure Law §160.59.

Where the punishment is so extreme that it carries a lifetime ban from being a registered representative for OATH and a permanent stain on Petitioner's record, the Petitioner should have the opportunity to have an in-person hearing with the right to cross-examine witnesses. Based on the foregoing, the court in evaluating the circumstances finds that the punishment imposed shocks one's sense of fairness viewed in the light where no in person hearing was conducted.

It is therefore

ORDERED, that the determination by the Office of Administrative Trials and Hearings in this matter is vacated, and the matter is remanded to such agency for an evidentiary hearing consistent with this decision.

6/26/2019
DATE


LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE