

Matter of Walton v New York City Police Dept.
2019 NY Slip Op 32845(U)
September 25, 2019
Supreme Court, New York County
Docket Number: 154848/19
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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In the Matter of the Application of

KEITH WALTON,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Index No.: 154848/19
DECISION/ORDER

-against-

NEW YORK CITY POLICE DEPARTMENT and
JAMES P. O'NEILL as Commissioner of the New York
City Police Department,

Respondents.
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HON. CAROL R. EDMEAD, JSC:

In this Article 78 proceeding, petitioner Keith Walton (Walton) seeks a judgment to overturn an order of the respondent New York City Police Department (NYPD), and the NYPD cross-moves to dismiss the petition pursuant to CPLR 3211 (a) (7) (together, motion sequence number 001). For the following reasons, the petition is denied, the cross motion is granted and this proceeding is dismissed.

FACTS

Walton was employed by the NYPD between 1993 and 2018, when he retired with the rank of Deputy Inspector on May 24, 2018. *See* verified petition, ¶¶ 7, 17, 26. On November 10, 2016, while he was still employed, the NYPD's Internal Affairs Bureau (IAB) informed Walton that he was to report for questioning on November 14. *Id.*, ¶ 9. Walton appeared, and was first told that his questioning would be rescheduled, but later told that the Bronx County District Attorney wanted him to turn himself in for arrest on criminal sexual harassment charges which

another NYPD officer had filed against him (and which were the subject matter of the IAB's inquiry). *Id.*, ¶ 10-11. The NYPD placed Walton on modified duty on November 15, 2016 and he turned himself in for arrest on November 18, 2016. *Id.*, ¶ 12. IAB formally filed departmental charges against Walton on November 23, 2016. *Id.*, ¶ 13. On April 24, 2018, while both sets of charges were still pending against him, Walton served the NYPD with 30 days notice of his intent to retire. *Id.*, ¶ 17. On April 30, 2018, Walton appeared before the IAB for a hearing on the departmental charges, accompanied by a union representative and a union attorney, and declined to answer any questions. *Id.*, ¶¶ 21-22. On May 2, 2018, IAB filed new departmental charges against Walton alleging that he failed to follow orders from superiors directing him to answer IAB's questions. *Id.*, ¶ 25. Walton's retirement became effective on May 24, 2018. *Id.*, ¶ 26. Walton's criminal trial ended on October 22, 2018 with a verdict of not guilty on all charges. *Id.*, ¶ 27. On November 29, 2018, Walton wrote to the NYPD Commissioner to request that he be reinstated. *Id.*, ¶ 28; exhibit C. The NYPD Commissioner denied Walton's request in a letter dated January 14, 2019. *Id.*, ¶ 29; exhibit D. On May 7, 2019 Walton's attorney sent the NYPD Commissioner a request to reconsider the denial of Walton's reinstatement request, but received no response. *Id.*, ¶ 30; exhibit E. As a result, Walton commenced this Article 78 proceeding on May 13, 2019. *See* verified petition. Rather than answer, on July 19, 2019, respondents filed a cross motion to dismiss Walton's petition. *See* notice of cross motion. Both applications are now before the court.

DISCUSSION

Walton's Article 78 petition alleges that "respondents' denial of [his] reinstatement [request] is arbitrary and capricious, without rational basis, and done in bad faith." *See* verified

petition, ¶ 41. It is true that the standard of review that governs Article 78 proceedings requires a court to analyze whether, upon the facts before the administrative agency, the agency's determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). However, the Appellate Division, First Department, has squarely held that an NYPD officer's decision to resign in the face of departmental charges "show[s] a rational basis for the determination not to reinstate" the officer at a later time. *See Salas v New York City Police Dept.*, 63 AD3d 468, 468 (1st Dept 2009). Here, Walton does not contest that he submitted his resignation to the NYPD on April 24, 2018 "due to the pending but uncertain nature of the criminal charges and the possible effect on his pension." *See* verified petition, ¶ 17. Neither does Walton deny that the criminal charges and the departmental charges against him were both drawn from the same subject matter. Indeed, he admits that the criminal "allegations of alleged sexual assault on a fellow officer" were the same as the departmental charges against him, since "those [departmental] charges described the incident that formed the basis for the arrest." *Id.*, ¶¶ 12-13. Walton opted to resign rather than face the departmental charges. The fact that the criminal charges against him were eventually not proven is irrelevant. "A resignation constitutes a complete break in the service, and the absolute termination of relations . . . Reentry into the service can be accomplished only by the voluntary act of the person who has power of appointment." *Matter of Spurling v Police Dept. of City of N.Y.*, 49 AD2d 823, 823 (1st Dept 1975), quoting *Matter of Doering v Hinrichs*, 289 NY 29, 33 (1942); *see also Matter of Hayes v Nigro*, 165 AD3d 1134 (2d Dept 2018). Walton cites no

regulation that required the NYPD Commissioner to grant him a hearing on his reinstatement application, or to consider the merits of the fact that the criminal charges against him were not sustained. Indeed, the law specifically does *not* require the NYPD Commissioner to state a reason for denying a reinstatement request. *Matter of Spurling v Police Dept. of City of N.Y.*, 49 AD2d at 823. The court concludes that, because Walton's strategic retirement decision provided respondents with a legally recognized and rational basis for their decision not to reinstate him, Walton's Article 78 petition is without merit and must be denied. As a result, respondents' cross motion to deny the petition is granted, and this proceeding is dismissed.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Keith Walton (motion sequence number 001) is denied and the petition is dismissed; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211 (a) (7), of the respondents New York City Police Department and James P. O'Neill as Commissioner of the New York City Police Department (motion sequence number 001) is granted, the petition is dismissed in its

entirety, and the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Respondent.

Dated: New York, New York
September 25, 2019

ENTER:



Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.