

<b>Paul v Brann</b>
2021 NY Slip Op 30184(U)
January 21, 2021
Supreme Court, New York County
Docket Number: 161310/2019
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

CHANTAL PAUL,

Plaintiff,

- v -

CYNTHIA BRANN, CORRECTION COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF CORRECTION, THE NEW YORK CITY DEPARTMENT OF CORRECTION, THE CITY OF NEW YORK

Defendant.

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INDEX NO. 161310/2019
MOTION DATE 11/20/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, it is

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

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents Cynthia Brann, as Correction Commissioner of the New York City Department of Correction, the New York City Department Of Correction; and the City of New York (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order along with Notice of Entry on all parties within twenty (20) days.

In this Article 78 proceeding, petitioner Chantal Paul (Paul) seeks a judgment to overturn the order of the respondent New York City Department of Correction (DOC) that terminated her probationary employment, while the DOC cross-moves to dismiss her petition (together, motion sequence number 001). For the following reasons, the petition is denied, the cross motion is granted and this proceeding is dismissed.

#### FACTS

Paul was employed as a correction officer by DOC from July 23, 2018 until her termination on July 24, 2019, during which time she was assigned to the Brooklyn Detention Complex on Rikers Island. *See* verified petition, ¶¶ 1, 4-5. Paul admits that she was terminated within the two-year probationary period that applied to her job title. *Id.*, ¶¶ 1, 4. However, she asserts that the DOC terminated her employment in bad faith. *Id.*, ¶¶ 38-54.

Paul commenced this Article 78 proceeding on November 20, 2019. *See* verified petition. Rather than file an answer, the DOC submitted a cross motion to dismiss Paul's petition on February 28, 2020. *See* notice of cross motion. Shortly thereafter, the Covid-19 national pandemic obliged the court to indefinitely suspend most of its operations. The parties nevertheless executed stipulations to extend their respective times to reply, and this matter is now fully submitted (motion sequence number 001).

#### DISCUSSION

Normally, the court's role in an Article 78 proceeding is to determine, upon the facts before an administrative agency, whether a challenged agency 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 (1<sup>st</sup> Dept 1996). An agency's determination will only be found arbitrary and capricious where it is "without sound basis in reason, and in disregard of the facts." *Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. Conversely, if there is a rational basis in the administrative record that supports the agency's determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. However, this Article 78 proceeding does not require the court to employ the normal arbitrary and capricious analysis.

In the context of corrections officers similarly situated to Paul, the Appellate Division, First Department, has long and consistently held that:

"A probationary employee may be dismissed for almost any reason, or for no reason at all, and the employee has no right to challenge the termination in a hearing or otherwise, absent a showing that he or she was dismissed in bad faith or for an improper or impermissible reason. The burden falls on the petitioner to demonstrate by competent proof that bad faith exists, or that the termination was for an improper or impermissible reason." *Matter of Castro v Schriro*, 140 AD3d 644, 647 (1<sup>st</sup> Dept 2016), citing *Matter of Swinton v Safir*, 93 NY2d 758, 762-763 (1999), *Matter of Che Lin Tsao v Kelly*, 28 AD3d 320, 321 (1<sup>st</sup> Dept 2006); see also *Wilson v City of New York*, 100 AD3d 453 (1<sup>st</sup> Dept 2012); *Matter of Turner v Horn*, 69 AD3d 522 (1<sup>st</sup> Dept 2010). Here, Paul's termination by the DOC was presumptively justified because she admits that it occurred during the two-year probationary period that followed her hiring on July 23, 2018. See verified petition, ¶¶ 1, 4.

Paul nevertheless argues that the DOC terminated her employment in bad faith. See verified petition, ¶¶ 38-54. As just observed, Paul bears the burden of proof to demonstrate that the DOC acted in bad faith. *Matter of Castro v Schriro*, 140 AD3d at 647. The DOC argues that

she failed to meet that burden of proof. *See* respondent's mem of law at 4-13. After carefully considering the evidence, the court agrees with the DOC.

Paul asserts that the incident that led to her termination occurred on May 28, 2019, and involved an altercation between two inmates at the Brooklyn Detention Complex. *See* verified petition, ¶¶ 5-22. Paul recounts two operative facts about her involvement in stopping that altercation: 1) that she waited for the appropriate amount of time to deploy her "OC spray" (oleoresin capsicum, a/k/a pepper spray) after several of the other correction officers present had deployed theirs in order not to oversaturate the area; and 2) that she obeyed another correction officer's request to lead a group of the non-involved inmates present upstairs so that they would not be affected by the OC spray. *See* verified petition, ¶¶ 10-20. Paul avers that these actions conformed with the DOC's "use of force" guidelines pertaining to OC spray. *Id.*, ¶ 10. Paul next states that she and the other correction officers involved subsequently filed use of force reports about the altercation which the Brooklyn Detention Complex's Warden, Melissa Matthews (Warden Matthews) later called her to discuss. *Id.*, ¶¶ 23-28. Paul asserts that Warden Matthews had reviewed the video record of the altercation from one security camera and improperly concluded that she had improperly failed to deploy her OC spray in a timely manner, and then improperly left her post. *Id.*, ¶¶ 29-32. She avers that she requested Warden Matthews to also review the video footage of the altercation that was taken from different angles by other security cameras in the area. *Id.*, ¶¶ 32-34. Paul states that that, after they had reviewed that footage, Warden Matthews acknowledged that she had in fact deployed her OC spray and that she had not in fact left her post for no reason, and concluded that she had handled the altercation properly. *Id.* Paul asserts, however, that Warden Matthews had already prepared a "personnel determination review" request (PDR) that was based on incorrect allegations about the video

footage, and that she did so in a bad faith attempt to generate a recommendation to terminate Paul's employment. *Id.*, ¶ 29. Paul further asserts that Warden Matthews declined to submit that PDR request after they had reviewed the secondary video footage of the incident, and that she retired shortly thereafter, but left the PDR request on file for her successor as Warden to submit. *Id.*, ¶¶ 32-37. Paul concludes that the DOC acted in bad faith to terminate her employment based on the inaccurate content of the PDR request, since the actual facts demonstrate that she adhered to the DOC's use of force guidelines concerning OC spray during the altercation. *Id.*, ¶¶ 38-54.

The DOC first responds that Paul's assertion of bad faith by Warden Matthews fails as a matter of law because she bases it solely on unsupported allegations, which are insufficient to carry her burden of proof on the issue. *See* respondent's mem of law at 4-6. This statement correctly summarizes the rule which prevails in the Appellate Divisions. *See e.g., Matter of Francois v Walcott*, 136 AD3d 434 (1<sup>st</sup> Dept 2016); *Matter of Muller v New York City Dept. of Educ.*, 142 AD3d 618 (2d Dept 2016); *Matter of Shabazz v New York State Dept. of Correctional Servs.*, 63 AD3d 1253 (3d Dept 2009); *Matter of Witherspoon v Horn*, 19 AD3d 250 (1<sup>st</sup> Dept 2005). Here, Paul's petition actually states that she made her allegation about Warden Matthews' purported bad faith "upon information and belief," without any specific factual allegations. *See* verified petition, ¶ 29. Therefore, the court deems that the DOC is correct to characterize Paul's claim that Warden Matthews acted in bad faith as "speculation."

The DOC also argues that it had a separate basis to terminate Paul's employment, regardless of her claim that she complied with its use of force guideline for OC spray. *See* respondent's mem of law at 6-13. The DOC specifically notes that Warden Matthews' PDR request did not merely inquire into whether Paul's conduct comported with that use of force guideline (Directive 5006R-D UOF 11.[1]), but also whether her conduct violated the DOC's

general regulations that concern a correction officer's obligation to maintain security, efficiently perform his/her duty, and avoid lapses of discipline (Rules & Regulations §§ 4.35.080, 3.05.120 and 3.20.300). *Id.*; notice of cross motion, exhibit 1. The DOC concludes that Paul's act of leaving her post at the request of another correction officer to lead inmates to another location violated those regulations because: 1) since the requesting correction officer was not Paul's supervisor, he had no authority to make that request and she had no obligation to follow it; and 2) neither she nor the other officer mentioned the alleged request in their respective use of force reports, so Paul's account is uncorroborated and/or false. *Id.* Paul's reply papers do not address the DOC's argument that she left her post in violation of regulations, but instead merely repeat her assertion that she complied with the use of force guideline regarding OC spray. *See* Paul reply aff, ¶ 1-14. Therefore, the court concludes that Paul has failed to rebut the DOC's assertion that she violated regulations by leaving her post. Instead, she countered that assertion with a speculative allegation of bad faith, which is insufficient to carry her burden of proof. *See e.g., Matter of Turner v Horn*, 69 AD3d 522, 523 (1<sup>st</sup> Dept 2010), citing *Matter of Medina v Sielaff*, 182 AD2d 424 (1<sup>st</sup> Dept 1992). As a result, the court rejects Paul's "bad faith" argument as unsupported, and finds that her Article 78 petition lacks merit.

The court notes in passing that Paul cited the First Department's holding in *Matter of Castro v Schriro* (140 AD3d 644, *supra*) for the proposition that this matter should be remanded to the DOC for a hearing on her allegation of bad faith. *See* verified petition, ¶¶ 46-47. However, the court finds that Paul's reliance on *Castro* is misplaced. In that case, the DOC failed to provide *any* explanation to counter the petitioner's credible allegations of bad faith. Here, by contrast, Paul's allegation of bad faith is speculative rather than credible, and the DOC has demonstrated that her conduct violated other regulations than those that pertain to OC spray.

As a result, the court finds that this case is subject to the general rule expressed in *Schriro* that a probationary DOC officer may be dismissed for any reason at all, rather than the exception that applies where the officer makes credible and unchallenged allegations of bad faith.

The DOC's cross motion asks the court to dismiss Paul's petition for failure to state a cause of action, pursuant to CPLR 3211 (a) (7). See respondent's mem of law at 9-14. Since the court has found that Paul's petition fails as a matter of law, the court also finds that the DOC's cross motion should be granted, and that this Article 78 proceeding should be dismissed.

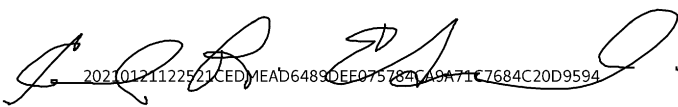
CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

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

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents Cynthia Brann, as Correction Commissioner of the New York City Department of Correction, the New York City Department Of Correction; and the City of New York (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

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<u>1/21/2021</u>				<u>CAROL R. EDMOAD, J.S.C.</u>	
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