| **Rumley v New York City Dept. of Educ.** |
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| 2021 NY Slip Op 30192(U) |
| January 19, 2021 |
| Supreme Court, New York County |
| Docket Number: 451684/2020 |
| 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*

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YAKIK RUMLEY,

Plaintiff,

- v -

THE NEW YORK CITY DEPARTMENT OF EDUCATION, CHANCELLOR RICHARD A. CARRANZA

Defendant.

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**INDEX NO.** 451684/2020

**MOTION DATE** 08/21/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

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 Yakik Rumley (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents New York City Department of Education and Chancellor Richard A. Carranza (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

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

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner Yakik Rumley (Rumley) seeks a judgment to overturn a decision by the respondent New York City Department of Education (DOE), and the DOE cross-moves to dismiss Rumley's petition (together, motion sequence number 001). For the following reasons, the petition is denied and the cross motion is granted.

FACTS

Rumley is currently a part-time physical education instructor. *See* verified petition, ¶¶ 3-4, 12-25. He was previously employed by DOE as a probationary phys-ed teacher during the 2007-2008 school year. *Id*., exhibit A (DOE decision). However, the DOE terminated his probationary employment, along with his teaching licenses and certificates, after its Office of Special Investigations (OSI) concluded an inquiry into an incident in which Rumley assaulted a student. *Id*. Rumley was also arrested and made the subject of a two-year order of protection as a result of that incident. *Id*. Rumley's subsequent criminal history will be discussed later.

Most recently, Rumley was employed during the 2018-2019 school year at the DOE's Public School 234 (PS 234) in New York County as a "phys-ed teacher/sports specialist" for kindergarten through 5th grade students. *See* verified petition, ¶¶ 17-18. Rumley's employer, non-party Kids in the Game, LLC (Kids in the Game), was contracted by the DOE to provide structured play/learning activities for PS 234 students during schoolyard and gymnasium periods and summer camp programs. *Id*., ¶ 18. At the end of the 2018-2019 school year, Kids in the Game offered Rumley a full-time position as an "activities specialist," which necessitated that Rumley apply to the DOE for security clearance. *Id*. Rumley consequently submitted an application in late 2019, which the DOE's Office of Personnel Investigation (OPI) denied in a

decision dated February 25, 2020 (the OPI decision). *Id.*, ¶ 23; exhibit A. The relevant portions of the OPI decision stated as follows:

> "The initial reason for the denial of your application is based on the information we received from the Division of Criminal Justice Services. Specifically, on 8/17/2015, you plead guilty to two counts of PL 155.30 Grand Larceny 4th Degree (Felony), thirty-one counts of PL 165.45 Criminal Possession of Stolen Property 4th Degree (Felony), and two counts of PL 155.25 Petit Larceny (Misdemeanor). You also previously plead guilty to PL 215.5 Criminal Contempt 2nd Degree (Misdemeanor) on 12/16/2010 and to PL 145.00 Criminal Mischief 4th Degree (Misdemeanor) and two counts of PL 140.15 Criminal Trespass 2nd Degree (Misdemeanor) on 12/1/2010.
>
> "Pursuant to Corrections Law §750 et seq., we have considered the duties of the position you applied for, the relationship of the prior offense(s) to your ability to perform your duties, the date of the prior offense(s) and your age at the time of occurrence, the seriousness of the offense(s) and all information you offered on your own behalf. Additionally, we have taken into consideration the legitimate interest of the Department in protecting its property, and the safety and welfare of individuals and the general public. The Chief Human Capital Officer is mindful of the fact that no application for security clearance shall be denied due to prior conviction except where there is a direct relationship between the employment sought and the prior conviction, or where granting clearance would pose an unreasonable risk to property or to the safety and welfare of specific individuals or the general public. Furthermore, we have taken into consideration the public policy of New York State, which is to encourage the employment of persons who have been convicted of a crime.
>
> "We are providing you with the reasons that your conviction contributed to your denial, in accordance with Corrections Law §754, as follows: the nature and the severity of your recent felony and misdemeanor convictions, which you acknowledged were a result of the discovery of a large number of confidential personal items found in your home, including identification cards and credit cards of various individuals. Your participation in this criminal activity, especially at your mature age at the time, raises grave concern when considering your exposure to the student population and to DOE property.
>
> "A second reason that your application is being denied is based on your prior adverse service history with the DOE, where you were employed as a Teacher from 8/30/2007 until 9/10/2008, when you were discontinued from your probationary position. During your employment, you were the subject of a substantiated report completed by the [OSI]. OSI Case #08-1136 substantiated that you engaged in a verbal and physical altercation with a DOE student when you yelled angrily directly into a student's face, grabbed him by the collar and, in a scuffle, you both fell to the floor. According to the report, you were angry with a student after he reported to the principal that you had not been showing up to the gym to teach your Physical Education class. As a result of this incident, you were arrested, and a two-year Order of Protection was issued against you. In addition, based on the nature of the allegations, you were removed from the classroom pending the disposition of the case and the determination of personnel action. At the end of the 2007-2008 school year, your teaching licenses/certificates were terminated.

* * *

"The nature of your employee misconduct, coupled with the severity of your 2015 convictions, is of grave concern when considering your application for security clearance. First, your aggressive action towards a student, which resulted in your discontinuance, raises concern regarding your professionalism and impulse control. In addition, your criminal history is indicative of extremely poor judgement, an attribute unbecoming of an employee of a DOE vendor employee. Per Chancellor's Regulation C-105, the DOE is particularly concerned with acts which have a direct relationship to the particular position sought, or which involve an unreasonable risk to property or to the safety or welfare of students or other employees. As an employee of a DOE vendor, you will not only be working with the vulnerable population, but you will also have access to confidential information, including that of your employer and/or the student population you will be serving. Due to the nature of your convictions and the overwhelming amount of 2015 felony charges, your potential exposure to this confidential information poses a substantial risk to your employer and DOE interests. Furthermore, your inability to accept any responsibility for your actions and/or for the repercussions of your actions further exacerbates the concerns raised. As such, granting you security clearance would pose an unreasonable risk to the welfare of our vulnerable populations, as well as the interests of the DOE, its constituents, and to taxpayer's interests.

"We have reviewed your entire file, and pursuant to Correction Law §753(2), we have taken into consideration the Certificate of Relief from Disabilities issued to you on January 31, 2017, in making this decision. Correction Law §753 (2) establishes that with respect to a public agency such as the NYC Department of Education, a Certificate of Relief from Disabilities creates a presumption of rehabilitation in regard to the offense specified therein. However, it does not prohibit us from using our discretionary power to deny an individual security clearance when there is a direct nexus between the criminal offense and the employment being sought. Based upon the information brought forth, the Department, through its decree, has established a direct relationship between your prior criminality and the position which you are seeking. In full consideration of the best interests of the school community and the DOE, we have determined that you should not be granted clearance."

*Id*., Exhibit A.

Aggrieved, Rumley commenced this Article 78 proceeding on August 21, 2020. *See* verified petition. Rather than file an answer, the DOE submitted a cross-motion to dismiss the petition on October 28, 2020. *See* notice of cross motion. The parties have filed reply papers, and this matter is now fully submitted (together, motion sequence number 001).

## DISCUSSION

A reviewing court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the 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, 230-231 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of the . . . facts . . .." *See 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. However, if there is a rational basis for the administrative 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.

Here, Rumley's petition argues that "it was arbitrary and capricious for the [DOE]to deny [his] license application based upon his criminal history." *See* petitioner's mem of law at 6-18. This argument refers to the two statutes that the DOE considered in the OPI decision; i.e, Correction Law §§ 752 and 753. *See* verified petition, exhibit A. Correction Law § 752 ("Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited") provides as follows:

> "No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, . . . when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:
>
> "(1) *there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual*; or
>
> "(2) *the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public*."

Correction Law § 752 (emphasis added). Correction Law § 753 ("Factors to be considered concerning a previous criminal conviction; presumption") sets forth the following list of factors:

> "1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:
>
> (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
>
> (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
>
> (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
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> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
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> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
>
> (f) The seriousness of the offense or offenses.
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> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
>
> (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
>
> 2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein."

Correction Law § 753. The Court of Appeals consistently holds that "'[a] failure to take into consideration each of these factors results in a failure to comply with the Correction Law's mandatory directive.'" *Matter of Dempsey v New York City Dept. of Educ.*, 25 NY3d 291, 299 (2015), quoting *Matter of Acosta v New York City Dept. of Educ.*, 16 NY3d 309, 316 (2011).

Rumley argues that the OPI decision was an arbitrary and capricious ruling in four ways. First, Rumley argues that "[t]he DOE failed to show a direct nexus between the job of 'activities specialist' and [his] past convictions." *See* petitioner's mem of law at 8-12. He specifically asserts that "[i]t is arbitrary and capricious for the DOE to deny a security clearance on the basis of a direct relationship without articulating the actual connection" between his past criminal convictions and the responsibilities of an elementary school activities specialist. *Id.* at 8-9. The DOE responds that the OPI decision *did* articulate such a connection in accordance with

Correction Law § 752, and that it also properly evaluated all of the factors set forth in in Correction Law § 753. *See* respondents' mem of law at 12-19. Rumley's reply papers merely repeat his original argument. *See* petitioner's reply mem at 5-9. However, the court finds that that argument is unpersuasive because it is belied by the evidence.

The OPI decision made the following observation about the job responsibilities of a Kids in the Game activities specialist: "[a]s an employee of a DOE vendor, you will not only be working with the vulnerable population, but you will also have access to confidential information, including that of your employer and/or the student population you will be serving." *See* respondents' mem of law at 12; verified petition, exhibit A. The OPI decision then made two findings with respect to a connection between those job responsibilities and Rumley's past criminal convictions. First, that the 2007-2008 incident, in which Rumley was arrested for assaulting a student, had his teaching licenses and certificates revoked, and was made the subject of an order of protection, indicates "an unreasonable risk to the welfare of students," who are a "vulnerable population . . . [that] you will be serving." Second, that Rumley's 2015 convictions, for one count of "grand larceny 4th Degree," 31 counts of "criminal possession of stolen property 4th degree," two counts of "petit larceny," one count each of "criminal contempt 2nd degree" and "criminal mischief 4th degree," and two counts of "criminal trespass 2nd degree," all incurred as a result of his running a brothel out of his apartment at which the "johns" reported the theft of their personal property, "raise[] grave concern when considering [his] exposure to . . . DOE property" that Rumley would have access to as a Kids in the Game activities specialist. *Id.* at 12-15; verified petition, exhibit A. The former finding satisfied the inquiry specified by Correction Law § 752 (1), while the latter finding satisfied the inquiry specified by Correction Law § 752 (2). Rumley's assertion that the OPI decision "failed to show a direct nexus" between

his proposed job responsibilities and his past criminal convictions is simply false, since it ignores the two foregoing findings in the OPI decision's plain text. Therefore, the court rejects it.

The court notes that Rumley made a second assertion which did not deny that the OPI decision contained the analyses mandated by Correction Law § 752, but rather argued that the connections which the DOE did draw were "misguided" or "unfounded." *See* petitioner's mem of law at 10-11. In effect, this assertion contends that the two aforementioned findings were not "rationally based." However, the court finds that they were. The administrative record before the OPI included Rumley's complete criminal history as well as documents that described the job duties of a full-time Kids in the Game activities specialist. The connections that the OPI drew in the decision were based on a plain reading of both sets of documents. It is irrelevant that Rumley does not believe that it was reasonable to draw those connections, and would have preferred the OPI to have drawn different ones. The Court of Appeals recognizes that the DOE may accord "'greater weight to ... the fact and circumstances of [a] [petitioner's] conviction[s] than to ... his subsequent accomplishments,' and [that] in these circumstances the DOE's determination cannot be overturned without 'engaging in essentially a re-weighing of the factors, which is beyond the power of judicial review.'" *Matter of Dempsey v New York City Dept. of Educ.*, 25 NY3d at 300, quoting *Matter of Arrocha v Board of Educ. of City of N.Y.*, 93 NY2d 361, 366–367 (1999). Here, the OPI plainly acted within its discretion. Therefore, the court discounts Rumley's assertion as a matter of law, and rejects his first argument, in toto, as unfounded.

Next, Rumley argues that the OPI decision "failed to consider the eight factors required by the Correction Law." *See* petitioner's mem of law at 12-17. This argument is similarly contradicted by the plain text of the OPI decision. The eight factors set forth in Correction Law

§ 753 that the DOE must consider are: 1) the State's public policy that supports employment of former convicts; 2) the applicant's prospective job duties; 3) the nexus between the applicant's former offenses and prospective job duties; 4) the amount of time that has elapsed since the applicant's offenses; 5) the applicant's age at the time of the offenses; 6) the seriousness of the applicant's offenses; 7) information about the applicant's attempts at rehabilitation; and 8) the prospective employer's interest in protecting the property, safety and welfare of its employees and/or the general public. Correction Law § 753 (1) (a)-(h). The statute also imposes a rebuttable presumption that an applicant has been rehabilitated from his/her former offenses where the applicant produces a certificate of relief from disability and/or of good conduct. Correction Law § 753 (2). The OPI decision plainly includes separate considerations of each of these factors. *See* verified petition, exhibit A. Rumley nevertheless insists that the OPI decision "does list all eight factors in its pro forma paragraph, [but] it only discusses three of the factors specifically: 1) [t]he severity of the recent felony convictions; 2) [his] age at the time of the most recent convictions; and 3) the rehabilitative information provided"; and that "[t]he other five factors are barely even mentioned in passing." *See* petitioner's mem of law at 14-17. This statement is demonstrably incorrect. Among other things, the OPI decision plainly includes the reviewer's explanation of how the details of Rumley's criminal activity outweighed his evidence of rehabilitation, and notes that Rumley undercut his own evidence be refusing to accept responsibility for his criminal activity. *See* verified petition, exhibit A. It again appears that Rumley's argument actually objects to the weight that the DOE accorded to the Correction Law § 753 factors, since his assertion that the OPI decision omitted discussion of those factors is unsustainable. As discussed above, this "is beyond the power of judicial review.'" *Matter of Dempsey v New York City Dept. of Educ.*, 25 NY3d at 300. Further, the Appellate Division, First

Department, recently specifically reiterated that "[t]he DOE [is] 'not required' to 'state with specificity its detailed analysis with respect to each of the eight factors in its denial letter' or to 'point to any contemporaneously created record' to show that it considered all eight factors." *Matter of Stewart v New York City Dept. of Educ.*, 182 AD3d 472, 472 (1st Dept 2020), quoting *Matter of Acosta v New York City Dept. of Educ.*, 16 NY3d at 318-319. Thus, Rumley's objection to the sufficiency of the analysis in the OPI decision is irrelevant, since the decision certainly did set forth the required analysis. Therefore, the court rejects Rumley's second argument.

Next, Rumley argues that the OPI decision "failed to consider the presumption of rehabilitation provided by [his] 'certificates of relief from disabilities.'" *See* petitioner's mem of law at 17-18. He specifically asserts that the OPI decision included the certificate of relief from disability that pertained to his 2015 convictions, but objects that the decision took no notice of the two certificates that pertained to his 2010 convictions. *Id*. The DOE counters that this argument is a "red herring," since the OPI decision did not state that it based the denial of Rumley's application on his 2010 convictions for criminal contempt 2nd degree, criminal mischief 4th degree and/or criminal trespass 2nd degree, but rather on his 2008 conviction for assaulting a student, and his 2015 convictions for theft of property in connection with running a brothel. *See* respondent's mem of law at 17-18; respondent's reply mem at 5-6. Rumley did not present a certificate of relief from disability in connection with the 2008 matter. He did present such a certificate in connection with the 2015 convictions, and the OPI decision plainly took that certificate into consideration. Therefore, the court concludes that Rumley's third argument is indeed a "red herring," and rejects it.

Finally, Rumley contends that his "prior adverse service history is not independently rational nor distinguishable from the [DOE's] denial based on [his] criminal record." *See* petitioner's mem of law at 18-19. This argument specifically asserts that the OPI decision improperly relied on his 2008 conviction to find a nexus between his past criminal activity and his proposed job responsibilities, and also improperly minimized his efforts at rehabilitation. *Id.* The DOE responds that it was neither improper for the OPI to consider the importance of Rumley's 2008 assault on a student, or to find that the seriousness of that offense outweighed the fact that ten years had passed by the time he submitted the instant security clearance application. *See* respondents' mem of law at 18-19. The court agrees. The OPI's decision as to what weight to accord to the factors set forth in Correction Law § 753 "'is beyond the power of judicial review.'" *Matter of Dempsey v New York City Dept. of Educ.*, 25 NY3d at 300 (citation omitted). Therefore, the court rejects Rumley's final argument. Accordingly, the court concludes that Rumley's Article 78 petition lacks merit, since he has failed to establish that the OPI decision was an arbitrary and capricious ruling.

The DOE's cross motion seeks to dismiss Rumley's petition pursuant to CPLR 3211 (a) (7) for "failure to state a cause of action." *See* respondents' mem of law at 9, 19; respondents' reply mem at 4. As discussed above, Rumley has failed to establish that the OPI decision was arbitrary and capricious, which is the only ground upon which the court may grant relief pursuant to CPLR Article 78. *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. Accordingly, the court finds that Rumley's Article 78 petition should be denied as meritless, and that the DOE's cross motion to dismiss it should be granted.

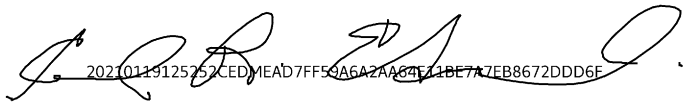
CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

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

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents New York City Department of Education and Chancellor Richard A. Carranza (motion sequence number 001) is granted, and this proceeding is dismissed; and it is further

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




1/19/2021
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CAROL R. EDMEAD, J.S.C.

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