

Bracey v City of New York

2021 NY Slip Op 31265(U)

April 16, 2021

Supreme Court, New York County

Docket Number: 153801/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

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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AMANDA BRACEY,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES/HUMAN RESOURCES ADMINISTRATION, DEPARTMENT OF HOMELESS SERVICES

Defendant.

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INDEX NO. 153801/2020

MOTION DATE 06/15/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 9, 35 were read on this motion to/for JUDGMENT - MONEY.

Upon the foregoing documents, it is

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

ORDERED that counsel for respondent New York City Department of Social Services/Human Resources Administration 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 Amanda Bracey (Bracey) seeks a judgment to overturn an order by the respondent New York City Department of Social Services/Human Resources Administration (DSS/HRA) that terminated her employment with the co-respondent Department of Homeless Services (DHS; motion sequence number 001). For the following reasons, the petition is denied and this proceeding is dismissed.

FACTS

Bracey was initially hired by DHS in 2016 as a “Community Coordinator,” and was later appointed to a provisional position as an “Assistant Superintendent of Welfare Shelters” (ASW) at the Bedford Atlantic Avenue Shelter in April 2018. *See* verified petition, ¶ 5. Bracey asserts that “[t]hroughout her employment in DHS, [she] performed all of her . . . duties in a highly competent and professional manner.” *Id.*, ¶ 7. DHS disagrees, and asserts that Bracey: 1) reported late for work without excuse on 34 occasions, for which she received a total of five warning letters; 2) was deemed absent without excuse on several occasions for failing to fill out a time and leave calendar prior to departing work; 3) also failed to fill out the time and leave calendars of her subordinate employees, and refused to do so when directed to by her supervisors; 4) was called in for several disciplinary conferences with the Deputy Director of the Bedford Atlantic Avenue Shelter because of the foregoing behavior, which resulted in two formal conference memoranda being placed in her employment file; and 5) was referred to DHS’s Office of Disciplinary Affairs in December 2019 on charges of “unexcused lateness, excessive absences, poor work performance and insubordination,” which nevertheless resulted in her being issued a performance evaluation that rated her as a “good” ASW. *See* verified answer, ¶¶ 18-44; exhibits 3-15. Bracey focuses on the fact that she “received at least one favorable

periodic performance evaluation and was never the subject of any prior discharge or suspension.”

See verified petition, ¶ 7.

On February 6, 2020, Bracey was involved in a physical altercation with one of the residents of the Bedford Atlantic Avenue Shelter. *See* verified petition, ¶ 8. Bracey averred that the resident attacked her, and submitted an incident report to that effect. *Id.*; verified answer, exhibit 17. However, DHS asserts that its Director and Deputy Director of the Bedford Atlantic Avenue Shelter reviewed the security video footage of the altercation which showed that Bracey was the aggressor, and that she began punching and kicking the resident in response to a verbal confrontation. *See* verified answer, ¶¶ 45-48; exhibits 16-20. As a result, on the same day (i.e., February 6, 2020), the Director submitted a revised incident report along with the video footage and police paperwork to DHS’s Program Administrator. *Id.*, ¶ 49; exhibit 21. Thereafter, on March 5, 2020, DHS sent Bracey a letter terminating her employment (the termination letter), which stated that:

“This is to advise you that in accordance with the DSS/HRA, Department of 929 221 6667 Homeless Services, your employment as a Provisional Assistant Superintendent of Welfare Shelters, is being discontinued effective immediately.”
Id., ¶ 50; exhibit 22. DHS notes that, at the time of her termination, Bracey had served for less than two years in her position as a provisional ASW. *Id.*, ¶ 51.

Aggrieved, Bracey thereafter commenced this Article 78 proceeding on August 27, 2020. *See* verified petition. DHS served an answer on October 15, 2020. *See* verified answer. This matter is now fully submitted (motion sequence number 001).

DISCUSSION

The court’s role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether a challenged 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. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). An agency's determination will only be deemed arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts." *See 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 the record discloses 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, Bracey argues that DHS's decision to terminate her employment was arbitrary and capricious solely because her "actions in the February 6, 2020 incident in which she was attacked by a resident of the Bedford Atlantic Shelter were purely defensive and reasonable to the situation created solely by the resident." *See* verified petition, ¶ 11. She repeats this factual allegation in her reply papers, wherein she also asserts for the first time that the Director of the Bedford Atlantic Avenue Shelter was a "bully" who treated her in a "derogatory" fashion and created a "hostile work environment" there for herself and her fellow employees. *See* Bracey reply aff, ¶¶ 1-12. DHS does not engage in factual disputes, but rather raises several arguments that its decision to terminate Bracey's employment satisfies the applicable standard of review.

First, DHS argues that, as a provisional employee subject to Civil Service Law § 65, Bracey could be terminated at any time, without a hearing, for very limited reasons, or for no reason at all. *See* respondent's mem of law at 10-12. DHS is correct. *See e.g., Mahinda v Board of Collective Bargaining*, 91 AD3d 564 (1st Dept 2012); *Matter of Lee v Albany-Schoharie-Schenectady-Saratoga Bd. of Coop. Educ. Servs.*, 69 AD3d 1289 (3d Dept 2010). DHS also

asserts that Bracey's documented history of tardiness and failure to abide by time and leave procedures has been found to be a sufficient ground to terminate probationary or provisional employees. *See* respondent's mem of law at 10-12. Again, DHS is correct. *See e.g., Matter of Halpin v Klein*, 62 AD3d 403 (1st Dept 2009); *Pagan v Board of Educ. of City School Dist. of City of N.Y.*, 56 AD3d 330 (1st Dept 2008); *Matter of Santiago v Horn*, 37 AD3d 307 (1st Dept 2007); *Matter of Butler v Abate*, 204 AD2d 171 (1st Dept 1994). Bracey did not address these points of law in either her petition or her reply papers. However, the caselaw plainly holds that Civil Service Law § 65 did not entitle Bracey to any special procedural protections. Therefore, the court finds that DHS's pro forma March 5, 2020 decision to terminate her provisional employment was proper.

Next, DHS argues that Bracey's "termination was rationally based on [her] assault on a DHS client." *See* respondent's mem of law at 12-13. DHS notes that the incident report that Bracey prepared was contradicted by the video footage of the February 6, 2020 incident, which the Bedford Atlantic Avenue Shelter Director reviewed and forwarded to DHS's Program Administrator. *Id.* Bracey's self-serving statement does not explain this contradiction. DHS also correctly notes that First Department caselaw has upheld the termination of probationary employees who commit unnecessary acts of physical abuse during the course of their employment. *See e.g., Matter of Castro v Schriro*, 140 AD3d 644 (1st Dept 2016); *Matter of Green v New York City Hous. Auth.*, 25 AD3d 352 (1st Dept 2006). Here, the video evidence that DHS reviewed unquestionably provides a rational basis for its termination decision, and Bracey has failed to present a challenge to that evidence. Therefore, the court concludes that the administrative record supports DHS's decision to terminate her employment.

Finally, DHS argues that “there is no evidence of bad faith regarding petitioner’s provisional termination.” *See* respondent’s mem of law at 13-14. As was previously mentioned, Bracey’s only evidence of DHS’s alleged bad faith are her self-serving statements that the Director of the Bedford Atlantic Avenue Shelter was a “bully” who treated her in a “derogatory” fashion and created a “hostile work environment” there. *See* Bracey reply aff, ¶¶ 1-12. However, Bracey’s statements are conclusory at best, since she does not identify or document any incidents of this alleged behavior. The First Department holds that “[t]he burden [of proof] falls on the petitioner to demonstrate by competent proof that a substantial issue of bad faith exists, or that the termination was for an improper or impermissible reason.” *Wilson v City of New York*, 100 AD3d 453, 453 (1st Dept 2012), citing *Matter of Che Lin Tsao v Kelly*, 28 AD3d 320, 321 (1st Dept. 2006). The First Department also holds that unsupported, conclusory allegations are insufficient to carry a petitioner’s burden of proof. *See e.g., Matter of Leka v New York City Law Dept.*, 160 AD3d 497, 497 (1st Dept 2018), citing *Matter of Che Lin Tsao v Kelly*, 28 AD3d at 320. Here, Bracey has presented no more than unsupported, conclusory allegations. Therefore, the court concludes that she has failed to meet her burden of proof on the issue of DHS’s purported “bad faith,” and consequently agrees that Bracey is not entitled to a hearing to challenge her termination on that ground.

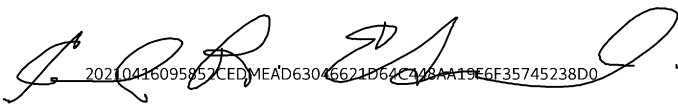
Accordingly, having found that DHS has demonstrated that there were several rational bases for its decision to terminate Bracey’s employment, the court concludes that Bracey’s Article 78 petition should be denied as meritless, and that this proceeding should be dismissed.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

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

ORDERED that counsel for respondent New York City Department of Social Services/Human Resources Administration shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.



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4/16/2021
DATE

CAROL R. EDMED, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
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