

**Jimenez v Sewell**

2022 NY Slip Op 31091(U)

April 5, 2022

Supreme Court, New York County

Docket Number: Index No. 151927/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

JUAN JIMENEZ,

Petitioner,

- v -

KEECHANT SEWELL, POLICE DEPARTMENT CITY OF NEW YORK, THE CITY OF NEW YORK

Respondent.

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INDEX NO. 151927/2022
MOTION DATE 03/24/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for REINSTATE

Petitioner brings the instant petition seeking to annul the determination made by the respondents terminating petitioner's employment as a police officer and reinstate petitioner's employment based on the allegations that respondents acted in an arbitrary and capricious manner. There has been no appearance by the respondent and no opposition is filed as to this petition.

Facts<sup>1</sup>

Petitioner, a former New York City Police Officer, was terminated from his position as an officer on November 12, 2021. Petitioner alleges his termination was in retaliation for disclosing his false arrest and other related misconduct to the general public through the media.

Petitioner was the subject of an Internal Affairs Bureau investigation as well as a criminal investigation resulting from allegations that he engaged in "PROHIBITED CONDUCT N.Y. Penal Law 130.65 SEXUAL ABUSE IN THE FIRST DEGREE N.Y. Penal Law 260.10

<sup>1</sup> All facts in the Court's recitation have been obtained by petitioner's filings, specifically NYSCEF Docs. 1, 6 and 9.

ENDANGERING THE WELFARE OF A CHILD” (specification 1) and “Prohibited Conduct” (specification 2). The criminal charges against petitioner were dismissed on May 26, 2020. On July 6, 2021, and July 8, 2021, petitioner was the subject of a two-day departmental trial, regarding both specifications, before Assistant Deputy Commissioner Nancy R. Ryan. On August 23, 2021, Assistant Commissioner Ryan issued a memorandum wherein it was concluded that petitioner was not guilty as to the first specification and guilty as to the second specification, and it was recommended that petitioner forfeit 10 vacation days. The second specification, alleged that petitioner identified himself as an NYPD detective to obtain information from a BounceU, in relation to his pending criminal investigation, while petitioner was suspended. The memorandum was subsequently forwarded to then Commissioner Dermot Shea, who approved the findings of Assistant Commissioner Ryan but disapproved of the penalty.

Commissioner Shea found that petitioner’s prior disciplinary history, specifically conducting an off-duty investigation<sup>2</sup> in a matter that involved the petitioner’s father, coupled with petitioner’s attempt to obtain information in the matter in which he was involved by identifying himself as a NYPD Detective was conduct that required a more severe penalty. Specifically, Commissioner Shea elected to dismiss the petitioner from the department. There is no indication that Assistant Commissioner Ryan considered the petitioner’s prior history in coming up with this penalty.

#### *Standard of Review*

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....” CPLR §7803(3).

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<sup>2</sup> In that incident petitioner stopped five individuals at gunpoint and was disciplined by forfeiting thirty vacation days and “was placed on dismissal probation”. See NYSCEF Doc. 9.

“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 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” *Id.* If the court reviewing the determination finds that “[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed.” *American Telephone & Telegraph v State Tax Comm’n* 61 NY2d 393, 400 [1984].

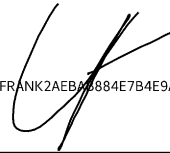
It is well established that the court should not disturb an administrative body’s determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass’n, Inc. v Glasser*, 30 NY2d 269 [1972]; *Presidents’ Council of Trade Waste Assns. v New York*, 159 AD2d 428, 430 [1st Dept 1990].

#### *Discussion*

The Court finds that petitioner has failed to establish its *prima facie* entitlement to the relief sought, based on the record provided by petitioner. Commissioner Shea’s determination that petitioner be dismissed from the department was rational and based on undisputed facts and the petitioner’s prior history. Petitioner has failed to establish that petitioner’s dismissal was arbitrary, capricious, or irrational. Accordingly, it is hereby

ADJUDGED that the petition is denied.

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4/5/2022

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED  DENIED

GRANTED IN PART  OTHER

APPLICATION:  SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE