

Bonacarti v Mayor's Off. of Criminal Justice
2022 NY Slip Op 31883(U)
June 15, 2022
Supreme Court, New York County
Docket Number: Index No. 151420/2022
Judge: Arlene Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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ALEXANDRA BONACARTI,

Petitioner,

- v -

MAYOR'S OFFICE OF CRIMINAL JUSTICE, DEPT OF
CITYWIDE ADMINISTRATIVE SERVICES

Respondents.

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INDEX NO. 151420/2022

MOTION DATE 06/14/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion to/for ARTICLE 78

The petition to annul petitioner's termination and to reinstate petitioner to her former position in the Mayor's Office of Criminal Justice is denied.

Background

Petitioner alleges that she began working for the Mayor's Office of Criminal Justice ("MOCJ") on August 30, 2021 and was hired as Supervisory Attorney, MOCJ, Assigned Counsel Plan. She explains that she was assigned to supervised assigned counsel in Manhattan (otherwise known as 18B attorneys). Petitioner complains that the office was disorganized—it lacked basic supplies and the database used to keep records was antiquated.

She explains how she had issues with a fellow supervisor in MOCJ and she eventually came to believe that this supervisor was trying to get her fired. Petitioner then recounts issues she had with Sheriff Fucito, who purportedly complained about petitioner to petitioner's supervisor. Petitioner contends that on December 10, 2021 she was fired and no reason was given.

Petitioner commenced this proceeding and insists that her termination was arbitrary and capricious. She claims that she did nothing wrong in the two incidents that seem to have led to her firing: the incident with a fellow supervisor concerning an issue with an 18B attorney's client and the incident with Sheriff Fucito.

In opposition, respondents contend that petitioner was a probationary employee and therefore MOCJ was entitled to fire her. They claim that petitioner failed to establish that respondents acted in bad faith when MOCJ fired her and argue that there were legitimate reasons supporting the termination. Respondents point out that a confidential memo was prepared detailing petitioner's purported misconduct. They insist that this memo provides all the good faith justification necessary to defeat the instant petition. Respondents also claim that petitioner failed to state a claim against respondent DCAS and that this respondent had no involvement in her employment.

In reply, petitioner argues that respondents submitted no first-hand accounts that justify her discharge and offers her own view about the memo that allegedly details her poor performance. She insists that respondents have failed to state a good faith basis to justify her termination.

Discussion

"It is well settled that a provisional or probationary employee may be discharged for any or no reason at all in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of law" (*Smith v New York City Dept. of Correction*, 292 AD2d 198, 198-99, 739 NYS2d 666 [1st Dept 2002] [internal quotations and citations omitted]).


Here, there is no question that petitioner's job had a 6-month probationary period (NYSCEF Doc. No. 1, exh 2¹) and that petitioner was fired within that 6-month period. Therefore, MOCJ was entitled to fire her for any reason or no reason at all. And, here, respondents included the affirmation of Michael Aperstein, petitioner's supervisor, who explains that he observed many deficiencies with petitioner's work and that he prepared a memo outlining the deficiencies (NYSCEF Doc. No. 8 at 2). Mr. Aperstein details how petitioner repeatedly left training meetings and inadequately prepared for an introduction she gave for a speaker at a training (*id.*). He also cited an example where petitioner reacted unprofessionally to a request that she cover a telephone for a sick co-worker and "drew her knees to her chest in a fetal position, and threw her cell phone and iPad in her cubicle" (*id.* at 3). According to Mr. Aperstein, petitioner routinely refused to wear a mask while in the office despite receiving instructions to do so and while she was visibly coughing and ill (*id.* at 4).

Simply put, respondents established a good faith basis to fire petitioner. That petitioner attempted in reply to give her version of the facts surrounding her time at MOCJ is besides the point. This Court's role in evaluating the instant petition is not to make findings of fact; rather, this Court is only tasked with considering whether the dismissal was in bad faith. There is nothing to suggest that the firing was in bad faith whatsoever. It does not matter if petitioner did not get along with her co-workers or her supervisors. The fact is that a probationary employee can be fired for virtually any reason and respondents' reason—that petitioner did not meet expectations and was, in respondents' view, a poor employee—compels the Court do deny the petition.

Accordingly, it is hereby

¹ For some reason, petitioner uploaded her petition along with all of her exhibits as a single 107-page document in clear violation of the applicable e-filing rules.

ORDERED that the petition to annul petitioner’s termination and for an order directing that petitioner be reinstated is denied, this proceeding is dismissed, and the Clerk is directed to enter judgment in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

<u>6/15/2022</u> DATE		 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE