

Lovell v City of New York
2022 NY Slip Op 32043(U)
June 30, 2022
Supreme Court, New York County
Docket Number: Index No. 154952/2021
Judge: Lisa S. Headley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LISA HEADLEY PART 28M

Justice

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BARBARA LOVELL,

Petitioner,

- v -

CITY OF NEW YORK, NEW YORK CITY OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS, AND NEW
YORK CITY DEPARTMENT OF SOCIAL
SERVICES/HUMAN RESOURCES ADMINISTRATION

Respondents.

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INDEX NO. 154952/2021

MOTION DATE 02/03/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 31, 34, 35

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Before the court is a motion filed by petitioner (“Barbara Lovell”), pursuant to Article 78 of the CPLR, seeking an Order to vacate the report of the Office of Administrative Trials and Hearings (“OATH”) Administrative Law Judge (“ALJ”) Jocelyn McGeachy-Kuls, who recommended petitioner be discharged from her employment as a Case Worker in the New York Department of Social Services/Human Resources Administration. Petitioner argues the ALJ’s report was arbitrary and capricious, as petitioner was denied a reasonable adjournment, and could not adequately represent herself without counsel. Respondents filed a Cross-Motion in opposition, pursuant to Rule 3211 (a)(7) of the CPLR, dismissing the Petition on the ground that petitioner failed to state a cause of action. Petitioner filed opposition. Respondents filed a reply.

Petitioner was served with disciplinary charges by the Human Resources Administration (“HRA”) on October 17, 2019, in response to petitioner’s altercation with visitors to the family court, improper use of the Welfare Management System, and various violations of the HRA Code of Conduct. After an informal conference held on May 6, 2019, petitioner was found guilty of the charges, and termination of her employment was recommended. Petitioner declined to accept the finding of guilt, and a hearing was scheduled before the New York City OATH. A hearing before ALJ McGeachy-Kuls was scheduled for December 14, 2020, and a pre-hearing conference was scheduled for December 9, 2020. Petitioner’s counsel sent an email message to OATH on December 8, 2020, requesting an adjournment in good faith, due to counsel’s inability to prepare for trial due to his severe medical condition and upcoming surgery. Petitioner’s counsel also stressed that due to COVID-19 limitations, and only having three other attorneys at the firm, it was not feasible to transfer the case to another attorney. Additionally, Petitioner’s counsel explained that petitioner did not want anyone else representing her on this matter. OATH and the ALJ denied the adjournment request, and proceeded with the hearing without petitioner or petitioner’s counsel on December 14, 2020, in which a Report and Recommendation were

made for petitioner's discharge of employment on February 8, 2021. A portion of ALJ McGeachy-Kuls' decision along with her Report and Recommendation states, "Mr. Maitland's adjournment request was denied based on the number of prior adjournments and the length of the requested adjournment. Respondent was advised, through her counsel and via e-mail, that this matter remained on the calendar for trial as scheduled. This evidence established the jurisdictional prerequisite for finding Respondent in default and the matter proceeded in her absence. During trial, Petitioner presented the testimony of five witnesses: Inv. Hernandez, Ms. Watson, Christina H., Shanisa T., and Capt. Moreno, and presented documentary evidence in support of the charges against Respondent. I find that Petitioner established the charges and recommend that Respondent's employment from HRA be terminated."

Petitioner argues that HRA consented to the adjournment request, and agreed that it would not be prejudiced by the delay as petitioner was working from home and would not accrue a back-pay claim. Petitioner argues that she was denied the opportunity to appear with counsel, and fully participate in a hearing that determined whether she would lose her career and livelihood. Petitioner contends that the OATH ALJ's report was arbitrary and capricious and asks this Court to vacate the report of respondents, and remand the disciplinary charges against petitioner to OATH for a new hearing before a different ALJ in which she may be represented by counsel. Lastly, Petitioner requests this Court to allow that the HRA be enjoined from adopting the Report of the OATH ALJ pending a new hearing before OATH.

Respondents argue that petitioner had requested four adjournments, which were all granted, and the ALJ's denial of the fifth adjournment was neither arbitrary, nor capricious. Respondents state ALJ McGeachy-Kuls had good cause to deny petitioner's most recent request for adjournment, as it was only made six calendar days prior to the hearing, and petitioner's counsel was offered a brief adjournment to arrange for other counsel in his firm to represent petitioner, but petitioner declined to take advantage of this opportunity. Additionally, respondents argue that petitioner's counsel had knowledge of his upcoming surgeries when the hearing date, December 14, 2020, was set. Additionally, Respondents state that petitioner had proper notice and still refused to appear, thus petitioner was held in default, and she did not follow The Rules of the City of New York ("RCNY") in challenging a default judgment. Lastly, respondents contend that all claims against HRA should be dismissed, as HRA was not accused of any violation of law or injury to petitioner. Respondents request that this Court grant their Cross-Motion to Dismiss the Verified Petition.

Petitioner's counsel clarifies in the opposition to respondents' Cross-Motion that he actually had shoulder surgery on November 12, 2020, but due to unforeseen discoveries during pre-surgical testing, his injuries were far more severe and extensive. Petitioner's counsel was hopeful that he could appear for trial, since it was on zoom, but on December 8, 2020, he realized that was impossible. Counsel could not hold a pen, write, and was obliged to take pain-killers; thus, he knew he could not zealously advocate for his client, and that is when he requested an adjournment. Petitioner's counsel also clarifies that the firm is comprised of four attorneys, and none were available to step in due to previously scheduled engagements and/or confidential conflicts and ethical considerations. Petitioner's counsel also argues that any application to OATH to vacate the inquest results would have been futile. Lastly, petitioner argues that HRA is a proper party, as HRA has strongly advocated for petitioner's discharge, and petitioner's decision not to appear was not a default, but was a protest, a boycott, an act of respectful civil disobedience.

Respondents' allege in their reply that petitioner still did not adequately respond to

respondents' assertions that HRA should be dismissed because the Petition presents no claims against that agency, and that petitioner failed to exhaust her administrative remedies before seeking relief in this Court. Therefore, Respondents argue that the Article 78 Petition should be dismissed.

In an Article 78 proceeding, the Court must decide whether an administrative agency's decision was rational, or whether it was arbitrary and capricious (*Matter of Gilman v. New York State Div. of Housing & Community Renewal*, 99 N.Y. 2d 144, 149 [2002]). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y. 2d 222, 230 [1974]). Courts must give deference to an administrative agency's rational determinations in its area of expertise (*Matter of Peckham v Calogero*, 12 N.Y. 3d 424, 431 [2009]). "When the interpretation of a statute involves specialized knowledge and understanding of underlying operational practices . . . the courts should defer to the administrative agency's interpretation" (*Matter of Leggio v Devine*, 34 N.Y. 3d 448, 460 [2020]). Lastly, the *CPLR* provides that an Article 78 proceeding must not be used to challenge an administrative determination that is not final. N.Y. CPLR §7801(1).

As an initial matter, petitioner's claim that the ALJ's Report and Recommendation of petitioner's employment termination is arbitrary and capricious is erroneous. Petitioner has had four adjournment requests granted prior, and the ALJ had good cause to deny petitioner's most recent adjournment request as it was made only six days prior to the hearing and petitioner's counsel had ample time and notice to transfer the case to another attorney. The parties had been aware of the trial date in October, so, petitioner and counsel could have made efforts to find another attorney to take the case or counsel could have communicated the issue to the ALJ much earlier. The ALJ gave petitioner's counsel the option for a brief adjournment to transition the case to another counsel within his firm, but counsel refused. The ALJ recommended petitioner be terminated because petitioner, "by engaging in inappropriate and unprofessional conduct, has indicated her lack of regard for the physical safety of the clients as well as the security of their confidential information." The ALJ did not make her ruling without reason or regard to the facts, the ruling was made in response to the evidence that petitioner was engaging in inappropriate behavior with clients and used the agency's database for an improper purpose. This case was resolved on the merits by the ALJ, but was decided without petitioner or petitioner's counsel there to present their side. While this is unfortunate, petitioner and counsel voluntarily decided not to attend the hearing, and this amounts to default. The ALJ had authority to deny the fifth adjournment request as petitioner's counsel knew the dates of his upcoming surgeries, there were four adjournments prior and counsel should have communicated any limitations or issues to the ALJ much earlier. The ALJ's recommendation was in no way arbitrary nor capricious, because the determination was not solely based on the petitioner's default, but based, according to ALJ McGeachy-Kuls, on extensive evidence that showed that petitioner was engaging in unprofessional and inappropriate conduct in the workplace. Additionally, petitioner did not follow procedure according to The Rules of the city of New York for challenging a default judgment. Therefore, petitioner did not exhaust all administrative remedies before bringing this issue to the Court. This Court must give deference to the Office of Administrative Trials and Hearings Report and Recommendation for petitioner's employment discharge, as the decision was neither arbitrary nor capricious, but was rooted in reason.

Accordingly, it is

ORDERED that the Article 78 petition is DENIED on the basis that this Court finds that the Office of Administrative Trials and Hearings Report and Recommendation of petitioner’s employment termination was neither arbitrary nor capricious; and it is further

ORDERED that petitioner’s request to enjoin and restrain HRA from adopting the Report and Recommendation is denied; and it is further

ORDERED that respondents cross-motion to dismiss the petition as against HRA for petitioner’s failure to state a cause of action is granted; and it is further

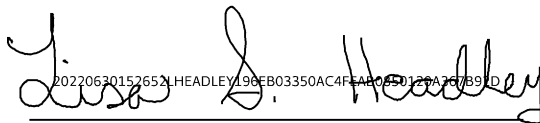
ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered and is denied; and it is further

ORDERED that within 30 days of entry, petitioner shall serve a copy of this decision/order upon the respondents with notice of entry.

This constitutes the Decision/Order of the Court.

6/30/2022

DATE



LISA HEADLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: