

Pierre v Fire Dept. of the City of N.Y.

2023 NY Slip Op 30894(U)

March 24, 2023

Supreme Court, New York County

Docket Number: Index No. 158856/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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JUDE PIERRE,

Petitioner,

- v -

FIRE DEPARTMENT OF THE CITY OF NEW YORK, CITY
OF NEW YORK

Respondent.

-----X

INDEX NO. 158856/2022

MOTION DATE 01/26/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, Petitioner Jude Pierre (“Pierre”) moves by Notice of Petition for a determination declaring that the decision by Respondents Fire Department of the City of New York (“FDNY”) and City of New York (collectively “Respondents”) to deny Petitioner’s request for a religious accommodation from the COVID-19 vaccine requirement, put him on forced leave without pay, and terminate his employment was arbitrary, capricious, and an error in law and voiding the decision; and for an order granting the petition and awarding Petitioner back pay, lost wages, and other benefits lost as a result of the denial of his request for a religious accommodation. Petitioner further seeks a declaration that Respondents violated Petitioner’s rights under the New York City Human Rights Law, New York Administrative Code § 8-101 *et. seq.* (“NYCHRL”), specifically § 8-107, as well as an award of attorney’s fees, costs, and expenses. Respondents oppose the motion.

A New York City vaccine mandate was issued on October 20, 2021 requiring that all employees of the City of New York verify vaccination against COVID-19 by October 29, 2021

(NYSCEF Doc. 4). Petitioner, a New York City Firefighter, filed a Form EEO-7 “REQUEST FOR A REASONABLE ACCOMODATION FOR RELIGIOUS OBSERVANCES, PRACTICES OR BELIEFS” on November 21, 2021 (NYSCEF Doc. 5, “Accommodation Request”). Under the section “Identify Religion/creed” he specified Catholic. The form further asks the applicant to “Describe the religious practice(s) in conflict with the work rule(s) or requirement(s).” He stated:

I am not comfortable using a vaccine that has used stem cells from fetuses in it’s [sic] development. I am also cautious in the fact that manufacturers, government, and department are not liable for any adverse long-term side effects. Why shall I take the risk of taking an expedited treatment if something were to happen and I’m will [sic] solely to be responsible with dealing with any unforeseen consequences?

(*id.*).

On December 21, 2021, FDNY denied Petitioner’s request via email. The denial stated: “The request for an exemption from the vaccine mandate is denied. The asserted basis for the accommodation is insufficient to grant the requested accommodations, particularly in light of the potential undue hardship to the Department” (NYSCEF Doc. 6). Petitioner appealed and learned that his appeal was denied by the City of New York Reasonable Accommodation Appeals Panel (“Appeals Panel”) in an email dated August 22, 2022 (*id.*). This email indicated that “The decision classification for [Petitioner’s] appeal is as follows: Does Not Meet Criteria” (*id.*). On January 7, 2022, Respondent FDNY sent an additional email with supplemental information on the denial, stating “Your request for a religious exemption from the vaccine mandate was denied because the asserted religious basis seeking the exemption was insufficient in light of the potential undue hardship to the Department” (NYSCEF Doc. 14, Ex. C). Petitioner was terminated from his job on September 7, 2022 (NYSCEF Doc. 1, Petition).

Petitioner argues that his sincerely held religious beliefs as a Catholic require him to refuse a COVID-19 vaccine. He points to the sentence in his request relating to fetuses and asserts that the denial of the religious accommodation constitutes a “form denial that lacks meaningful justification and cannot be considered rational.” To support this claim, he cites various New York Supreme Court decisions (*id.*). He further contends that Respondents violated the NYCHRL because he qualifies for a religious exemption, that an accommodation existed that would allow him to perform his job, and FDNY could accommodate. He contends that “by using a discriminatory practice to coerce, intimidate, threaten, or interfere with, or attempt to coerce, intimidate, threaten, or interfere with Firefighter Pierre in his exercise or enjoyment of his closely held religious beliefs,” Respondents violated New York Administrative Code § 8-107(19) (Petition ¶ 6).

Respondents assert that the administrative decision to reject Petitioner’s religious exemption request was not the product of an error of law, was supported by a rational basis, and was neither arbitrary nor capricious. They argue the standards applied by the Appeals Panel used to evaluate religious exemption requests were consistent with the Americans with Disabilities Act, Title VII of the Civil Rights Act, the New York State Human Rights Law, and the New York City Human Rights Law.

According to Respondents, Petitioner’s request was denied because it was “motivated by personal, non-religious preference based on concerns about the safety of the vaccine” (NYSCEF Doc. No. 15, Mendez *aff* ¶ 26). They maintain that this finding was in accordance with EEOC guidelines that state that personal preferences or nonreligious concerns, including those about possible effects of the vaccine, do not qualify as a religious belief that could support an exemption request (*id.* ¶ 28, citing U.S. Equal Employment Opportunity Commission, *What You*

Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, available at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L> [last accessed March 23, 2023]).

Respondents further argue that Petitioner’s accommodation request was properly denied because it presented an undue hardship to Respondent FDNY. They state that the Appeals Panel was correct in upholding this finding after considering the cumulative effect that similar requests from hundreds of other employees would have on FDNY and the need to have personnel available to provide first responder services (Mendez aff ¶ 30).


Article 78 proceedings provide for judicial review of administrative actions where a determination made was “arbitrary and capricious or an abuse of discretion” (CPLR § 7803[3]). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]). The Court must review the entire record and “determine whether there exists a rational basis to support the findings upon which the agency’s determination is predicated” (*Purdy v Kreisberg*, 47 NY2d 354, 358 [1979]).

Here, the Court finds that Respondents’ decision was not arbitrary and capricious and that there was a rational basis to support its determination. Although Petitioner points to other decisions regarding the use of “form” denials of religious accommodation requests by the FDNY, in this instance, Petitioner’s application does not set forth a request for accommodation based on his religious beliefs but rather states his personal preferences regarding the vaccine (*see, e.g., Waltzer v Triumph Apparel Corp.*, 2010 U.S. Dist. LEXIS 14170, at * 15 [SD NY 2010] [“Title VII . . . does not require an employer ‘to accommodate what amounts to a purely personal preference’”], quoting *E.E.O.C. v Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico*, 279 F3d 49, 56 [1st Cir. 2002]).

Petitioner fails to demonstrate how his religious beliefs conflict with Respondents’ vaccine requirement notwithstanding that he designates his religion as Catholic on the religious exemption request form. His assertion that he is “not comfortable using a vaccine that has used stem cells from fetuses” is presented without any connection to a sincerely held religious belief and does not set forth an actual religious request for accommodation. Similarly, the language in the remainder of this section of the Accommodation Request – that he is concerned about the “manufacturers, government and department” not being held liable for adverse long-term side effects, sees no reason to take the risk of “taking an expedited treatment,” and that he will be solely responsible for dealing with “unforeseen consequences” – indicate that Petitioner’s request was based on his personal preferences. For the same reasons, the remainder of Petitioner’s motion seeking declaratory judgment under the NYCHRL is denied.

Accordingly, it is hereby,

ADJUDGED that the application is denied and the petition is dismissed.

<u>3/24/2023</u> DATE		 LORI S. SATTLER, 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
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE