

**Matter of Matyas v Board of Educ. of the City Sch.  
Dist. of the City of N.Y.**

2023 NY Slip Op 32327(U)

July 11, 2023

Supreme Court, New York County

Docket Number: Index No. 156203/2022

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. JOHN J. KELLEY **PART** **56M**

*Justice*

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In the Matter of

ANNABELLE MATYAS,

Petitioner,

- v -

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK, COMMUNITY  
SCHOOL DISTRICT 25 OF BOARD OF EDUCATION OF  
THE CITY OF NEW YORK, and THE UNITED  
FEDERATION OF TEACHERS,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 64, 66

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

In this proceeding pursuant to CPLR article 78, the petitioner seeks judicial review of a March 28, 2022 determination of the City of New York Reasonable Accommodation Appeals Panel (the Panel). That determination affirmed an October 5, 2021 arbitration award in favor of the respondent Board of Education of the City School District of the City of New York (DOE) that, in turn, had confirmed an initial September 22, 2021 DOE determination denying the petitioner's request for a reasonable accommodation exempting her, on religious grounds, from the City's mandatory COVID-19 employee vaccination requirement. The DOE and the respondent Community School District 25 of the Board of Education of the City of New York (together the DOE respondents) answered the petition and submitted the administrative record. The petition is denied, and the proceeding is dismissed.

In the first instance, the court notes that, in a proceeding pursuant to CPLR article 78, the governmental agency that rendered a final determination in connection with a dispute, or

that performed the challenged action, must be named as a party (see *Matter of A&F Scaccia Realty Corp. v New York City Dept. of Env'tl. Protection*, 200 AD3d 875, 877 [1st Dept 2021]; *Matter of Centeno v City of New York*, 115 AD3d 537, 537 [1st Dept 2014]; *Matter of Solid Waste Servs., Inc. v New York City Dept. of Env'tl. Protection*, 29 AD3d 318, 319 [1st Dept 2006]; *Matter of Emmett v Town of Edmeston*, 3 AD3d 816, 818 [3d Dept 2004], *affd* 2 NY3d 817 [2004]). The petitioner did not name the Panel as a party respondent, even though it was the agency that made the final, reviewable determination here. For reasons that the court cannot fathom, the New York City Corporation Counsel did not defend this proceeding on the ground that the Panel was a necessary party that was neither named nor joined. Nonetheless, “[a] court's power to dismiss a complaint, sua sponte, is to be used sparingly and only when extraordinary circumstances exist to warrant dismissal” (*Onewest Bank, FSB v Fernandez*, 112 AD3d 681, 682 [2d Dept 2013]; see *Deutsche Bank Natl. Trust Co. v Winslow*, 180 AD3d 1000, 1001 [2d Dept 2020]; see generally *Transportation Ins. Co. v Simplicity, Inc.*, 61 AD3d 963, 963-964 [2d Dept 2009] [Supreme Court improperly dismissed complaint sua sponte for failure to join necessary party]).

The court further notes that the defense of failure to join a necessary party may be raised by motion “at any time” (see CPLR 3211[e]; *GMAC Mortgage, LLC v Coombs*, 191 AD3d 37, 43-44 [2d Dept 2020]). Consequently, “a court may, at any stage of a case and on its own motion, determine whether there has been a failure to join necessary parties” (*Matter of A&F Scaccia Realty Corp. v New York City Dept. of Env'tl. Protection*, 200 AD3d at 877; see *Matter of Lezette v Board of Educ., Hudson City School Dist.*, 35 NY2d 272, 282 [1974]). By virtue of that authority, the court may sua sponte direct a party's joinder or intervention (see *Country Wide Home Loans, Inc. v Harris*, 136 AD3d 570, 571 [1st Dept 2016]). In light of the Corporation Counsel's tactical determination to defend this proceeding on the merits, however, the court declines to direct the joinder or intervention of the Panel (see CPLR 1001[b][1], [2]), and will address the parties' substantive contentions.

On September 10, 2021, an arbitrator acting under the auspices of Scheinman Arbitration & Mediation Services rendered an award in a dispute under a collective bargaining agreement between the petitioner's union and the DOE. As relevant here, the arbitrator directed that

“[a]s an alternative to any statutory reasonable accommodation process, the City, the Board of Education of the City School District for the City of New York (the ‘DOE’), and the United Federation of Teachers, Local 2, AFT, AFL-CIO (the ‘UFT’), (collectively the ‘Parties’) shall be subject to the following Expedited Review Process to be implemented immediately for full-time staff, H Bank and non-pedagogical employees who work a regular schedule of twenty (20) hours per week or more inclusive of lunch, including but not limited to Occupational Therapists and Physical Therapists, and Adult Education teachers who work a regular schedule of twenty (20) or more hours per week. This process shall only apply to (a) religious and medical exemption requests to the mandatory vaccination policy, and (b) medical accommodation requests where an employee is unable to mount an immune response to COVID-19 due to preexisting immune conditions and the requested accommodation is that the employee not appear at school. This process shall be in place for the 2021-2022 school year and shall only be extended by mutual agreement of the Parties.

“Any requests to be considered as part of this process must be submitted via the SOLAS system no later than Monday, September 20, 2021, by 5:00 p.m.”

The arbitrator further ruled that

“[r]eligious exemptions for an employee to not adhere to the mandatory vaccination policy must be documented in writing by a religious official (e.g., clergy). Requests shall be denied where the leader of the religious organization has spoken publicly in favor of the vaccine, where the documentation is readily available (e.g., from an online source), or where the objection is personal, political, or philosophical in nature. Exemption requests shall be considered for recognized and established religious organizations (e.g., Christian Scientists).”

The DOE and the teachers' union created a process whereby the DOE would make the initial determination to grant or deny an application for a religious exemption from the COVID vaccine mandate, which could then be appealed to a neutral arbitrator.

On October 20, 2021, the Commissioner of the New York City Department of Health and Mental Hygiene (NYC DOHMH) issued an order requiring City employees, including DOE employees, to receive vaccinations protecting them from the COVID-19 virus on or before October 29, 2021. That administrative order further provided that “[a]ny City employee who has

not provided . . . proof [of vaccination] must be excluded from the premises at which they work beginning on November 1, 2021.” The order also permitted employees to apply for a reasonable accommodation from the vaccine mandate. By administrative order dated August 24, 2021, as supplemented December 13, 2021, the NYC DOHMH Commissioner required City agencies to exclude from employment staff members who were not vaccinated against the COVID-19 virus, but provided the opportunity for City employees to apply for a reasonable accommodation exemption from the requirement, based, among other things, on religious grounds.

On November 19, 2021, after the City established the Panel, DOE employees were provided with the additional right to appeal an adverse arbitration award to the Panel.

On March 24, 2022, New York City Mayor Eric Adams issued Emergency Executive Order No. 62, referable to the ongoing COVID-19 pandemic. In that executive order, the Mayor incorporated the provisions of the December 13, 2021 order, and directed that “covered entities,” including the DOE,

“shall continue to require that a covered worker provide proof of vaccination, unless such worker has received a reasonable accommodation. Covered entities shall continue to keep a written record of their protocol for checking covered workers' proof of vaccination and to maintain records of such workers' proof of vaccination.”

The executive order defined “covered workers” to include DOE employees and officers.

The petitioner was a schoolteacher for the DOE. On September 19, 2021, the petitioner submitted, to the DOE, a request for a reasonable accommodation exempting her from the COVID-19 vaccination requirement on the ground that her childhood Roman Catholic faith, and what appears to have been her recent conversion to an unspecified sect of Evangelical Protestant Christianity, made it impossible for her to take any type of vaccination. She cited several passages from both the Old and New Testaments of the Bible including Jeremiah 30:17, Psalms 62:8, Deuteronomy 4:29, Matthew 6:33, Proverbs 3:5-6, Psalms 18:2, Matthew 6:33-34, and Luke 13:1-5, and numerous others, most which discuss one’s faith and trust in the almighty,

and the last of which proscribes the mixing of human blood with the mixing of the blood of sacrificed animals. As the petitioner phrased it, although she teaches biology,

“[t]here is only one GOD. To trust that a vaccine will protect us more than God would, is to have a false idol. I cannot betray my faith and GOD and my conscious. I will not follow any false idols in search of salvation I know that my salvation is secure in my faith in GOD.”

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“I understand that vaccines have been designed to protect us from becoming ill with a variety of viruses. However, for me as person of faith I know that GOD provides and shelters all those who believe and follow his tenet.”

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“[t]he Bible teaches that GOD hates arrogance, and the scientific community is overflowing with arrogance in believing that they know more than GOD does. How can I possibly think that introducing foreign organisms and fluids into myself is not defiling myself? This is an issue of great distress for me as I honestly feel that I would betray my faith in by allowing myself to be vaccinated. Yet, I could lose my one source of income if I don't. Regardless, GOD has given us the gift of life we must pay homage to him and follow his teachings, or our lives will go awry.”

The petitioner averred that certain vaccines are manufactured using a mixture of human and animal blood products. She did not state whether her parents had her vaccinated with numerous childhood vaccines, and that she only began seriously having apprehensions about vaccines while she was a teacher, when a 9th-grade biology student asked her about how vaccines were manufactured. The petitioner also submitted an acknowledgment from a woman identified as Stella Jack, who asserted that she was

“founder and presiding minister of Stella Jack Ministries International which is located at 493 Clinton Avenue, Rockville Center [sic], NY 11570, I do affirm that the above are Annabelle Matyas' sincerely held religious beliefs according to the Word of God, the Bible. It is in total agreement to the Christian Faith. I ask that you would grant the religious exemption.”

Ms. Jack did not specify which Christian denomination she represented, whether she was ordained as a minister by any particular recognized Christian denomination, or whether the petitioner's “sincerely held beliefs” were required by the tenets of any established faith, rather

than being merely “consistent” with Christian faith and an expression of the petitioner’s personal interpretations of widely disparate Bible passages.

In its September 22, 2021 determination, the DOE wrote that the petitioner “failed to meet the criteria for a religious based accommodation.” In an arbitration award dated October 5, 2021, an arbitrator acting under the auspices of Scheinman Arbitration & Mediation Services confirmed the initial determination and denied the petitioner’s application for a religious exemption. In a letter dated December 3, 2021, the petitioner appealed to the Panel, again asserting that she held strong religious beliefs that vaccines of any sort somehow violated the tenets of her religion, and that compelling her to receive a vaccination was improper. She also raised, for the first time, the issue that certain vaccines, including the COVID-19 vaccine, were manufactured using fetal stem cells, and that this also was contrary to her religious beliefs, as was her opposition to abortion. In a January 14, 2022 response to the Panel’s request for further information as to whether she had previously had vaccinations for other viruses or bacteria, the petitioner stated:

“[a]s an adult, I have not consented to or taken any vaccinations since before 1994. As a child, I was only given vaccines where titers were not available and only as a requirement for school attendance under the authority of my parents, not my own. In my own authority I would not consent to such a treatment.”

In connection with the Panel’s request for further explication of her religious objections and her objection to the use of a vaccine developed, in part, through the use of fetal stem cells, the petitioner simply referred the Panel to her prior submissions. The DOE submitted a “position statement” concerning its understaffing and the hardship allegedly created by so many employees refusing to come to work in person, as well as the public health rationale for requiring its employees to be vaccinated. It noted that 3,300 DOE employees had applied for a religious exemption from the vaccine mandate.

In a March 28, 2022 appellate determination, the Panel adopted the reasons identified in the DOE’s decision, and denied the petitioner’s administrative appeal. In an April 7, 2022 letter,

the DOE informed the petitioner that it was terminating her employment. This proceeding ensued.

In her petition, the petitioner asserted that the DOE's determination to reject her request for a reasonable accommodation was arbitrary and capricious and affected by errors of law, in that it violated both the Free Exercise clause of the First Amendment to the United States Constitution and the New York City Human Rights Law (Admin. Code of City of N.Y. §§ 8-101, *et seq.*) by discriminating against her on the basis of her religion. In support of their answer, the DOE respondents submitted, among other things, an affirmation of Eric J. Eichenholtz, an attorney for the City, who explained the City's and the DOE's procedures for the submission and determination of requests for reasonable accommodations. Eichenholtz described the composition of the Panel, and how its members reviewed each application for a religious accommodation. As he explained it,

“[t]he City Commission on Human Rights guidance . . . like[ ] [that of the United States Equal Employment Opportunity Commission] allows for denial on undue burden grounds in these circumstances, stating ‘With respect to religion, the NYC H[uman] R[ights] L[aw] defines an undue hardship as “an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system).” In this regard, the NYCHRL itself notes that ‘The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice’ is a key factor.”

Eichenholtz further explained that, when an applicant for a religious accommodation professes that it would violate his or her religious beliefs to be vaccinated with a product that contained or was developed with cells of aborted fetuses or fetal cells, the Panel would undertake a review as to whether there was a factual basis for that claim, such as prior refusals to accept other vaccines or medications developed or tested with fetal cells, or prior refusals to accept any vaccination or medication whatsoever. The respondents also referred to the United States Equal Employment Opportunity Commission's (EEOC's) guidance explaining that to require an employer to bear more than a de minimis cost to accommodate an employee's religious belief constituted an undue hardship to the employer.

Where, as here, an administrative determination is made, and there is no statutory requirement of a trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (see CPLR 7803[3]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ.*, 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth.*, 232 AD2d 421, 421 [2d Dept 1996]). Inasmuch as the petitioner made no allegations that the Panel's determination was made in violation of lawful procedure, the Panel's determination to deny the petitioner's administrative appeal must be confirmed unless it was arbitrary and capricious or affected by an error of law.

A determination is arbitrary and capricious where it is not rationally based, or has no support in the record (see *Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (see *Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). Consequently, an agency determination is arbitrary and capricious where the agency provides only a "perfunctory recitation" of relevant statutory factors or other required considerations as a basis for its conclusions (*Matter of BarFreeBedford v New York State Liq. Auth.*, 130 AD3d 71, 78 [1st Dept 2015]; see *Matter of Wallman v Travis*, 18 AD3d 304, 308 [1st Dept 2005] ["perfunctory discussion"]), provides no reason whatsoever for its determination (see *Matter of Rhino Assets, LLC v New York City Dept. for the Aging, SCRIE Programs*, 31 AD3d 292, 294 [1st Dept 2006]; *Matter of Jones v New York State Dept. of Corrections & Community Supervision*, 2016 NY

Misc LEXIS 15778, \*1-2 [Sup Ct, Erie County, Jul. 28, 2016]), or provides only a post hoc rationalization therefor (*see Matter of New York State Chapter, Inc., Associated Gen. Contrrs. of Am. v New York State Thruway Auth.*, 88 NY2d 56, 756 [1996]; *Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d 127, 135 [1st Dept 2009]).

"Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent"

(*Matter of Figel v Dwyer*, 75 AD3d 802, 804-805 [3d Dept 2010] [internal quotation marks and citations omitted]).

"Courts have rarely singled out error of law by name . . . as a question for consideration in an Article 78 proceeding" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 7803:1). "The question of whether an administrative agency's determination is affected by an error of law is often implicit in the nature of the grievance, and will often turn on the underlying substantive law applicable to the determination" (*Matter of Held v State of New York Workers' Compensation Bd.*, 2008 NY Slip Op 52741[U], \*7, 2008 NY Misc LEXIS 10881, \*20-21 [Sup Ct, Albany County, Jul. 7, 2008]; *see also* 14-7803 Weinstein-Korn-Miller, NY Civ Prac P 7803.01[3]). Hence, an administrative determination is affected by an error of law where the agency incorrectly interprets or improperly applies a statute, regulation, or rule (*see Matter of New York State Pub. Empl. Relations Bd v Board of Educ. of City of Buffalo*, 39 NY2d 86, 92 [1976]; *see generally Matter of CVS Discount Liquor v New York State Liq. Auth.*, 207 AD2d 891, 892 [2d Dept 1994]), or where its determination violates some other statutory or constitutional provision (*see Matter of New York State Pub. Empl. Relations Bd v Board of Educ. of City of Buffalo*, 39 NY2d at 93 [Fuchsberg, J., concurring] ["an order which is specifically and expressly forbidden by . . . statute is an error of law"]).

Initially, only the Panel's administrative determination is subject to review in this proceeding. When an administrative agency renders a determination on an administrative appeal from the decision of another agency, the agency rendering the initial determination generally is not a proper party to any CPLR article 78 challenge to the appellate determination, as the initial determination has been superseded. Rather, only the determination of the administrative appeal is subject to judicial review (see *Matter of Rivera v Blass*, 127 AD3d 759 [2d Dept 2015]; *Matter of Safran v Shah*, 119 AD3d 590, 590-591 [2d Dept 2014]; *Matter of Berman v New York State Dept. of Social Servs.*, 107 AD3d 509 [1st Dept 2013]; *Matter of Baker v Mahon*, 72 AD3d 811, 813 [2d Dept 2010]; see also *Matter of Holland v New York City*, 271 AD2d 609 [2d Dept 2000]; *Jiggetts v Grinker*, 148 AD2d 1, 21 [1st Dept 1989], *rev'd on other grounds* 75 NY2d 411 [1990]; see generally *Matter of Armacida v Reitz*, 141 AD3d 713 [2d Dept 2016]; *Matter of TAC Peek Equities, Ltd. v Town of Putnam Val. Zoning Bd. of Appeals*, 127 AD3d 1216 [2d Dept 2015]; *Matter of Johnson v Scholastic, Inc.*, 52 AD3d 375, 375 [1st Dept 2008]; *Matter of Solid Waste Servs., Inc. v New York City Dept. of Env'tl. Protection*, 29 AD3d 318, 319 [1st Dept 2006]). Where, as here, the joinder of the agency that rendered the initial determination is necessary to give complete relief to the petitioner, that agency may be a proper party for that limited purpose only, and not for the purpose of reviewing its determination.

In a series of previous determinations, this court had concluded that similar initial determinations by the New York City Police Department (NYPD), which had denied its employees' applications for religious exemption from the vaccine mandate, were arbitrary and capricious because they didn't describe in sufficient detail the reasons underlying the denials, which were set forth only on a form-letter checklist. In those decisions, this court also concluded that the Panel's cursory affirmances were insufficiently detailed to provide a basis for judicial review (see *Matter of Daniels v New York City Police Dept.*, 2023 NY Slip Op 31357[U], 2023 NY Misc LEXIS 2011 [Sup Ct, N.Y. County, Apr. 24, 2023] [Kelley, J.]; *Matter of Quagliata v New York City Police Dept.*, 2023 NY Slip Op 30836[U], 2023 NY Misc LEXIS 1190 [Sup Ct,

N.Y. County, Mar. 17, 2023] [Kelley, J.]; *Matter of Moscatelli v New York City Police Dept.*, 2022 NY Slip Op 34393[U], 2022 NY Misc LEXIS 8341 [Sup Ct, N.Y. County, Dec. 22, 2022] [Kelley, J.]). Since the issuance of those decisions, however, the Appellate Division, First Department, has unambiguously held that the checklist format utilized by the NYPD was sufficient to apprise an applicant for exemption of the basis for the initial determination (see *Matter of Marsteller v City of New York*, \_\_\_\_ AD3d \_\_\_\_, 2023 NY Slip Op 03308, \*1 [1st Dept., Jun. 20, 2023]). In that decision, the First Department explained that

“[p]etitioner has failed to demonstrate that respondents' determination was arbitrary and capricious or made in violation of lawful procedure (CPLR 7803[3]). The determination by the City of New York Reasonable Accommodation Appeals Panel (Citywide Panel) was based on the reasoning set forth in the denial letter from respondent New York City Police Department (NYPD), which concluded that petitioner's application contained a ‘generic statement that does not support [his] request’ and that he failed to explain how his religious tenets conflict with the vaccine requirement. NYPD also found that petitioner had no demonstrated history of refusing medications or vaccines. *The decision therefore had a rational basis in the record (see Matter of Galaxy Bar & Grill Corp. v New York State Liq. Auth.*, 154 AD3d 476, 478 [1st Dept 2017], *appeal dismissed* 30 NY3d 1046 [2018]), and we decline to substitute our judgment for that of the NYPD (see *Matter of Roberts v Gavin*, 96 AD3d 669, 671-672 [1st Dept 2012]).”

(emphasis added). Moreover, the First Department also concluded that the format of the Panel's affirmances, although short, was sufficient to survive judicial scrutiny, inasmuch as a court “need not limit [its] review to the language in the Citywide Panel's decision, as the Panel noted that it had ‘carefully reviewed [the NYPD's] determination’ as well as ‘all of the documentation submitted to the agency,’ and that it had based its decision on that review” (*id.*).

In reaching its decision in *Marsteller*, the First Department noted that

“where, as here, there was no administrative hearing, an agency may submit an official's affidavit to explain the information that was before the agency and the rationale for its decision, and this Court may consider such an affidavit even though it was not submitted during the administrative process (*Matter of Robins v New York City Off. of Chief Med. Examiner*, 212 AD3d 541, 542 [1st Dept 2023]). The affirmation of Eric J. Eichenholtz, Chief Assistant Corporation Counsel for Employment Policy and Litigation, who served as a final reviewer for Citywide Panel determinations, further supports the court's conclusion that respondents' determination was not arbitrary and capricious”

(*id.*).

The *Marsteller* decision thus calls into question the continuing validity of this court's conclusions with respect to the facial sufficiency of both the initial determinations rendered by City agencies in religious exemption cases and the appellate determinations rendered by the Panel, which were the sole grounds for this court's prior orders annulling the denials of applications for exemption. Since this court must apply the precedent established by the First Department (*see D'Alessandro v Carro*, 123 AD3d 1, 6 [1st Dept 2014]), and the facts in *Marsteller* are virtually identical to those presented here, the court must conclude that the DOE's determination, as well as the Panel's affirmance, were not arbitrary and capricious.

With respect to the errors of law that the petitioner alleged, namely, the violation of her First Amendment right to the free exercise of religion and discrimination in employment on the basis of religion, the petitioner has not established either that the City's vaccine mandate was premised upon religion, as she has not demonstrated that her conclusions about the alleged proscription of desecrating the human body with vaccinations is an established Catholic or Evangelical doctrine, or shown that they were more than her personal interpretation of her obligations as a practicing Catholic or Evangelical (*see generally F.F. v State of New York*, 65 Misc 3d 616 [Sup Ct, Albany County 2019]). Neither has she made the necessary showing that the respondents violated the New York City Human Rights Law in particular (*see Matter of Marsteller v City of New York*, 2023 NY Slip Op 03308, \*1-2). As the First Department explained,

"The City HRL makes it an 'unlawful discriminatory practice for an employer . . . to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation,' including a religious accommodation (Administrative Code of the City of New York § 8-107[28][a]). Here, the City publicly offered public information on its process for reviewing accommodation requests related to the vaccine mandate, and informed employees about how to apply to their agency's Equal Employment Opportunity office and how to appeal denials. Petitioner availed h[er]self of this process, the [DOE] explained why [her] application did not qualify for an accommodation, and the parties further engaged during the administrative appeals process. Respondents also submitted evidence that they received approximately [3,300] requests for religious accommodations to the vaccine mandate from [DOE] employees alone, which the City had to resolve under a

constrained timeline during an evolving public health emergency. Petitioner has not established that, under these unique circumstances, the City HRL required a more robust or individualized dialogue than the process [s]he received”

(*id.*). Nor has the petitioner demonstrated that she had previously declined to be treated with drugs such as acetaminophen, albuterol, aspirin, ibuprofen, Tylenol, Pepto Bismol, Tums, Lipitor, Senokot, Motrin, Maalox, Ex-Lax, Benadryl, Sudafed, Preparation H, Claritin, Prilosec, and Zoloft, all of which were either developed, improved, or recently tested by their manufacturers for adverse side effects using stem cells from aborted fetuses, and all of which are absorbed into the body.

Hence, neither the DOE respondents’ nor the Panel’s determination was arbitrary and capricious, as there was a rational basis in the administrative record for the DOE respondents and the Panel to conclude that the petitioner did not meet the criteria for a religious exemption and that her refusal to work in person in light of the mandate contributed to the DOE’s hardship in fully staffing all of its schools.

With respect to the causes of action for a declaratory judgment, the court further notes that declaratory relief is not available as a remedy in a CPLR article 78 proceeding (*see Matter of Cuffy v Pesce*, 178 AD3d 695, 695 [2d Dept 2019]; *Matter of Krichevsky v Dear*, 172 AD3d 1370, 1370 [2d Dept 2019]; CPLR 3017). Rather, only a judgment annulling or vacating an administrative determination is available in a CPLR article 78 proceeding where a petitioner establishes an error of law, and the court concludes here that the adverse determinations against the petitioner cannot be annulled or vacated on that ground (*see Matter of Moscatelli v New York City Police Dept.*, 2022 NY Slip Op 34393[U], \*9-10.).

The petitioner also relies, in part, on the decision in the declaratory judgment action entitled *Matter of Police Benevolent Assn. of City of N.Y., Inc. v City of New York* (2022 NY Slip Op 33185[U], 2022 NY Misc LEXIS 5420 [Sup Ct, N.Y. County, Sep. 23, 2022] [Lyle Frank, J.]). The judgment in that action declared that the City’s vaccine mandate was invalid to the extent that it had been employed to impose a “new condition of employment” to “current P[olice]

B[enevolent] A[ssociation] members” that had not been the subject of collective bargaining. That determination, however, was stayed by operation of law when the City appealed it to the Appellate Division (see CPLR 5519[a][1]), and it was recently reversed by that Court (see *Matter of Police Benevolent Assn. of City of N.Y., Inc. v City of New York*, 215 AD3d 463 [1st Dept 2023]). In its decision and order, the Appellate Division dismissed the petition as barred by res judicata, in light of the decision of the Supreme Court, Richmond County, dismissing an identical petition in *Matter of Police Benevolent Assn. of City of N.Y., Inc. v de Blasio* (Index No. 85229/2021 [Sup Ct, Richmond County, Feb. 16, 2022]). In any event, the petitioner’s union and the DOE *did* engage in arbitration pursuant to their collective bargaining agreement, which resulted in an award that incorporated the vaccine mandate and procedures for applying for a religious exemption, of which the petitioner here availed herself.

In light of the foregoing, it is

ORDERED that the petition is denied; and it is

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

7/11/2023

DATE

JOHN J. KELLEY, 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