

Handle v City of New York

2023 NY Slip Op 32392(U)

July 1, 2023

Supreme Court, Kings County

Docket Number: Index No. 526212/2022

Judge: Patria Frias-Colón

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 20
HON. PATRIA FRIAS-COLÓN, J.S.C.

-----X
BRITTANY HANDLE,

Index # 526212/2022
Cal. # 33 Mot. Seq. # 2

Petitioner,

-against-

DECISION AND ORDER

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

Respondents.

-----X

Recitation, as required by CPLR §§ 2219 and/or 3212 of Papers consider on Review of Motion:

Papers	NYSCEF Doc. #s:
Motion Sequence 2 (Art. 78 Petition):	
Petitioner’s Art. 78 Petition and supporting documents	1-8, 22, 33-34, 39
Defendants’ Opposition and supporting documents	23-30, 35-38, 41-42

Upon the foregoing cited documents and oral argument on March 29, 2023, pursuant to CPLR §§ 3211, 7803, and 7806, as well as the New York State Human Rights Law, Executive Law § 296 and the New York City Human Rights Law § 8-107(28)(a) the Decision and Order on Petitioner Handle’s CPLR Article 78 petition against the City of New York (“City”) and the New York City Police Department (“NYPD”) is outlined below.

Petitioner Handle’s Article 78 Petition is DENIED against Respondents City and the NYPD. Petitioner commenced this Article 78 special proceeding seeking an appeal from the City’s denial of petitioner’s religious accommodation request to be excluded from the requirement that all city employees get the COVID-19 vaccination. Petitioner alleges this determination was arbitrary and capricious. The Court finds that Petitioner’s appeal is moot because, as of February 9, 2023, Respondent City amended its vaccine mandate and no longer requires City employees to show proof of vaccination to enter workplaces. As such, the Verified Petition is moot since the requirement is repealed and Petitioner was never placed on Leave Without Pay, nor terminated from her position. However, in the event that Petitioner’s Verified Petition is found not to be moot on appeal, this Court would find that Respondent City’s August 31, 2022 decision denying Petitioner’s appeal of NYPD’s denial of her request for a reasonable accommodation and exemption from the Covid-19 vaccination requirement was arbitrary and capricious.

BACKGROUND

Petitioner is an unvaccinated NYPD Police Officer who brought this proceeding against Respondents City and NYPD after refusing to comply with the City's Covid-19 vaccination requirement. Petitioner avers doing so would violate her religious beliefs. Petitioner confirms she has complied with the weekly testing requirement and has worn a mask during her duties.

On October 20, 2021, the Commissioner of the New York City Department of Health and Mental Hygiene ordered that all City employees were required to show proof of at least one dose of vaccination by end of business day on October 29, 2021. If they did not do so, then they would be excluded from their respective city employment premises beginning November 1, 2021. City employees had the option to apply for a reasonable accommodation for exemption from the vaccination requirement by October 27, 2021, or they would be placed on leave without pay status effective November 1, 2021. The city still required the employee to submit weekly negative PCR Covid-19 test results to continue working.

On October 25, 2021, Petitioner filed a reasonable accommodation request for an exemption from showing proof of vaccination given her sincere and genuine religious beliefs. Petitioner asserts she is a devout Roman Catholic and believes abortion is the killing of an innocent life. She further stated that she could not receive the Covid-19 vaccination because the Covid-19 vaccines were "developed or tested using aborted fetal cells" and to do so would be "a violation of God's Commandments."

On February 8, 2022, NYPD denied Petitioner's request and checked four boxes indicating: (1) Petitioner had insufficient or missing religious documentation; (2) Petitioner's written statement did not appear to be written by her; (3) Petitioner's written statement did not set forth how her religious tenets conflicts with the vaccine requirement; and (4) Petitioner had not demonstrated a history of vaccination refusal.¹ Petitioner then filed an appeal with the City of New York Reasonable Accommodation Appeals Panel ("Appeals Panel").² In her appeal letter, she explained why she disagreed with Respondents' decision and reiterated her sincerely held religious beliefs.

On May 19, 2022, Respondent City paused its Covid-19 vaccine mandate for NYPD employees and Petitioner was not placed on leave without pay or terminated. On August 31, 2022, the NYC Employee Vaccine Appeals ("Appeals Panel") notified the Petitioner via email that her appeal was denied. The denial indicated that the decision classification "Does Not Meet Criteria." The denial indicated that the determination was made after the Appeals Panel carefully reviewed the agency's determination, all the documentation submitted to the agency, and the information Petitioner submitted with the appeal. It further advised Petitioner that the determination was the final decision in her reasonable accommodation request and that she had seven calendar days to submit proof of vaccination, otherwise she would be placed on Leave Without Pay.

On September 9, 2022, Petitioner filed an Order to Show Cause asking the Court to grant a temporary restraining order to enjoin Respondents from terminating Petitioner's employment

¹ NYSCEF Doc. # 26

² NYSCEF Doc. # 27

with the NYPD. On September 28, 2022, this Court granted the Petitioner's request for a temporary restraining order enjoining Respondents from terminating Petitioner's employment.³

Petitioner's Verified Petition challenges the denial of her appeal on various grounds:

- 1) Respondents' denial of Petitioner's request for a reasonable accommodation exempting her from the Covid-19 vaccination requirement is arbitrary, capricious, an error of law and an abuse of discretion;
- 2) Decision denying Petitioner's request for a religious exemption be annulled, voided, and vacated;
- 3) Enjoining Respondents from enforcing the vaccine mandate as an abuse of discretion;
- 4) Enjoining Respondents from violating Petitioner's New York State Constitution Free Exercise Rights, all with temporary restraining order, preliminary and permanent injunction;
- 5) Declaring that Respondents violated Petitioner's Constitutional Rights and its rights under the New York City Human Rights Law ("NYCHRL") and New York City Administrative Code ("NYAC") § 8-107;
- 6) Granting a Temporary Restraining Order enjoining Respondents from permanently terminating Petitioner on September 12, 2022;
- 7) Awarding Petitioner her reasonable attorneys' fees, costs and expenses; and
- 8) Granting such further relief to which Petitioner may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

On February 9, 2023, Respondent City amended its vaccine mandate and no longer required City employees to show proof of vaccination to enter workplaces. As such, Respondents argue that the Petition is moot since Petitioner was never placed on Leave Without Pay, nor terminated from her position. Petitioner argues that the Petition is not moot and that the Court should decide the matter.

The scope of judicial review in an Article 78 proceeding is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law.⁴ In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious.⁵ Where the agency's determination is based on detailed methods derived from legislation, is within an area of the agency's expertise and is amply supported by the record, judicial deference and substantial weight must be accorded to the determination.⁶ The Court may not substitute its judgment for that of the decision-making agency, as it must only ascertain whether the agency's determination was rationally based. *Flacke* at 363; *Halloran*, 172 A.D.3d at 717.

³ NYSCEF Doc. # 31.

⁴ See CPLR § 7803(3); *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 230 (1974); *Scherbyn v. BOCES*, 77 N.Y.2d 753, 757-758 (1991).

⁵ *Matter of Murphy v. New York State Div. of Hous. And Community Renewal*, 21 N.Y.3d 649 (2013); *McCollum v. City of New York*, 184 A.D.3d 838 (2d Dept. 2020).

⁶ *Flacke v. Onondaga Landfill Sys., Inc.*, 69 N.Y.2d 355 (1987); *Halloran v. NYC Employees' Ret. Sys.*, 172 A.D.3d 715 (2d Dept. 2019).

Additionally, an agency is to be afforded wide deference in the interpretation of its regulation and, to a lesser extent, in its construction of governing statutory law. *Vink v. New York State Div. of Hous. and Community Renewal*, 285 A.D.2d 203, 210 (1st Dept. 2001). However, an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation. *Id.* at 210; *Matter of Schenkman v. Dole*, 148 A.D.2d 116 (1st Dept. 1989).

Pursuant to both the New York State Human Rights Law, Executive Law § 296 (“NYSHRL”), and the New York City Human Rights Law, Administrative Code of the NYCHRL § 8-107(28)(a), the first step in providing a reasonable accommodation is to engage in good faith interactive process or cooperative dialogue that assesses the needs of the employee and the reasonableness of the accommodation requested. If possible, the interactive process continues until an accommodation reasonable to the employee and employer is reached. *Hosking v. Mem’l Sloan-Kettering Cancer Ctr.*, 186 A.D.3d 58, 63 (1st Dept. 2020).

The Court has authority to enter judgment granting Petitioner the relief for which she is entitled and since Petitioner seeks review of an agency’s determination, such judgment may annul or confirm the determination in whole or in part or modify it; the Court may direct or prohibit specified action by the Respondents. *See* CPLR § 7806. The Court also has the discretion to order restitution or damages.

DISCUSSION

As an initial matter, the Court determines that the Verified Petition is moot. “The power of the court to declare the law arises only out of, and is limited to, determining rights of persons which are actually controverted in a particular case pending before the tribunal.” *Hearst Corp. v. Clyne*, 50 N.Y.2d 707 (1980). Generally, courts are prohibited from issuing advisory opinions or ruling on hypothetical questions, unless an adjudication will result in immediate consequences to the parties. *Coleman v. Daines*, 19 N.Y.3d 1087 (2012). Furthermore, courts are precluded from considering questions that have become academic by the passage of time or a change in circumstances. *Hearst Corp.*, 50 N.Y.2d at 714; *In re Melinda D.*, 31 A.D.3d 24 (2d Dept. 2006).

Here, the Court agrees with Respondents that the Verified Petition is now moot as the reasonable accommodation request was seeking an exemption for a requirement that no longer exists due to the repealing of the requirement that City employees be excluded from the workplace for failure to provide proof of vaccination against Covid-19.⁷ Furthermore, the Petitioner was never terminated nor placed on leave without pay, meaning she has no right or interest that has been or would be affected by the Court ruling on her Verified Petition. *See Hearst Corp.*, 50 N.Y.2d at 714. While the Petitioner contends that she may again be subjected to the vaccine mandate and denial of the reasonable accommodation, the Court finds these arguments speculative and unavailing.

⁷ *See Marciano v. Adams et al.*, No. 22-570-cv (2d Cir. 2023); *Cano v. City of N.Y.*, Index No. 156355/2022 (Sup. Ct., N.Y. County 2023); *Roberts v. N.Y.C. Police Dept.*, Index No. 157372/2022 (Sup. Ct., N.Y. County 2023); and *Vignali v. N.Y.C. Police Dept.*, Index No. 151552/2023 (Sup. Ct., N.Y. County 2023) (where courts have found the issue herein moot).

However, if this decision is appealed and Petitioner's Verified Petition is found *not* to be moot by the Appellate Division, Second Department, this Court would find that Respondent City's August 31, 2022 decision denying Petitioner's appeal of NYPD's denial of her request for a reasonable accommodation and exemption from the Covid-19 vaccination requirement was arbitrary and capricious and without a rational basis. But for its determination that the instant matter is moot, this Court would otherwise hold that the City's determination was without sound basis in reason and without regard for the facts included in Petitioner's papers, namely that taking the vaccine would violate her Catholic religious belief that the vaccines were developed or tested using cells from fetuses. The City's purported reason for denying Petitioner is simply a checked-box labeled "Does Not Meet Criteria", without identifying the criteria Petitioner had failed to meet, or to provide any details or support for its determination. The denial does not specify whether the unsatisfied criteria was based on the initial denial of Petitioner's request, as there is no mention of the initial denial. The Court is unable to assess whether the Appeals Panel incorporated the reasons checked off in the initial denial form, which included "insufficient or missing religious documentation," "written statement does not set forth how religious tenets conflicts with vaccine requirement," and "no demonstrated history of vaccination/medicine refusal."

Even if the Appeals Panel based its decision on the reasons set forth in the underlying checked box denial form, Respondent City still failed to provide any basis for the Court to evaluate whether the denial had a rational basis. The reasons in the checked box denial form are too general and conclusory for the Court to analyze how those checked boxes relate to Petitioner's application. The Respondents failed to include any evidentiary basis to support how and why the Petitioner (1) had insufficient or missing religious documentation, (2) did not draft the written statement herself, (3) did not set forth how their religious beliefs conflicted with the vaccine, and (4) did not demonstrate a history of vaccination or medicine refusal.⁸

While Respondents or the Court can impose opinions about whether we agree with Petitioner's alleged religious beliefs or her understanding of the scientific and medical reasons as to why the vaccine violated her religious beliefs, the City's decision denying her appeal provided no evidentiary basis or reasons for challenging whether Petitioner's alleged religious beliefs were sincerely held or whether the vaccine conflicted with those beliefs.⁹

Therefore, based on the details and support included in Petitioner's submission, the Court would find, if Petitioner's Verified Petition was found not moot on appeal, that the Appeals Panel decision that Petitioner "Did Not Meet Criteria," without more, fails to provide a sufficient basis for the denial of Petitioner's appeal and it was not rationally based and was arbitrary and

⁸ See *Agugliaro v. Adams*, 2023 NYLJ LEXIS 421 (Sup. Ct., N.Y. County 2023); *Grullon v. City of N.Y.*, 2023 NY Slip Op 30376(U) (Sup. Ct., N.Y. County 2023); *Cepeda v. City of N.Y.*, 2023 NY Slip Op 30360(U) (Sup. Ct., N.Y. County 2023); *Duarte v. Adams*, 2023 NY Slip Op30957(U) (Sup. Ct., N.Y. County 2023); *Anderson v. Adams*, 2022 NY Slip Op 33614(U) (Sup. Ct., N.Y. County 2022); *Brosseau v. N.Y.C. Police Dept.*, 2022 NY Slip Op 33734(U) (Sup. Ct., N.Y. County 2022); *Sutliff v. Adams*, 2022 NY Slip Op 33644(U) (Sup. Ct., N.Y. County 2022); *Deletto v. Adams*, 2022 NYLJ LEXIS 1306 (Sup. Ct., N.Y. County 2022); and *Stewart v. N.Y. City Police Dept.*, 2022 NY Slip op 33822(U) (Sup. Ct., N.Y. County 2022).

⁹ *Id.*

capricious.¹⁰ The Respondents failed to engage in a cooperative dialogue with Petitioner and failed to explain how granting the requested accommodation would unduly burden Respondents.¹¹

Accordingly, it is hereby ADJUDGED that the petition for relief pursuant to Article 78 is denied as moot, the cross-motion is granted, and the proceeding is dismissed.

It is further ORDERED that the Clerk of the Court shall enter judgment accordingly.

This constitutes the decision and order of the court.

Date: July 1, 2023
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.

¹⁰ *Id.*

¹¹ *See Cepeda*, 2023 NY Slip Op 30360(U) at 9.