

Martell v New York City Health & Hosps.

2023 NY Slip Op 32545(U)

July 25, 2023

Supreme Court, New York County

Docket Number: Index No. 151660/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

CHRISTINA MARTELL

Petitioner,

- v -

NEW YORK CITY HEALTH & HOSPITALS,

Respondent.

-----X

INDEX NO. 151660/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for ARTICLE 78.

The petition for an order setting aside respondent’s decision to demote petitioner is denied.

Background

Petitioner works for respondent as a hospital care investigator. She began working for respondent in 2003 and, in April 2022, was promoted to the position of Senior Health Care Investigator and assigned to work at Bellevue Hospital. Petitioner acknowledges that her new position was subject to a one-year probationary period.

She insists that from her first day working in her new position, she was treated in a “disparaging manner” and faced significant obstacles. Petitioner claims that she was never provided with a lock for her belongings so she had to carry them around with her all day and that the employees she was assigned to supervise were located a great distance from her desk, which

made it challenging to perform her supervisory functions. She insists she complained about the location of her desk, but her complaints were ignored.

Petitioner argues that she was bullied by her supervisors and insists that certain ratings she received on her performance reviews were “completely unfair.” She maintains that her performance reviews were unnecessarily critical of her work. Petitioner claims that in December 2022, she was told that she had failed to successfully complete her probationary period and was returned to the position of Hospital Care Investigator. She argues that this decision was arbitrary and capricious.

In opposition, respondent argues that because petitioner was on a one-year probationary term, it was permitted to return her to her previous title for any reason as long as this decision was not made in bad faith. It insists that it had many valid reasons for demoting petitioner and points to her poor performance ratings. Respondent argues that it has no record of any response by petitioner to her performance evaluations or her performance improvement plans and any attempt by her to respond in this proceeding is without merit.

In reply, petitioner claims that respondent had no legitimate business reason to justify her demotion and that respondent took steps to bully and berate her. She blames respondent for disregarding some of her basic requests—like a secure place to store her belongings. Petitioner acknowledges that she received two performance improvement plans as well as performance evaluations. She disagrees with the conclusions contained in these documents.

Discussion

“[A] probationary employee may be demoted without a hearing for any reason or no reason at all, as long as the demotion was not unlawful or in bad faith. Evidence supporting the

conclusion that petitioner's performance was unsatisfactory establishes that the demotion was not made in bad faith” (*Banton v Brann*, 180 AD3d 489, 489 [1st Dept 2020] [citations omitted]).

The Court denies the petition. The record before this Court is replete with instances in which petitioner’s supervisors found that she was underperforming in her new role. The competency validation (NYSCEF Doc. No. 3) contains a number of unsatisfactory ratings. Her evaluation (NYSCEF Doc. No. 4) details many ways in which petitioner was directed to improve her performance. She was “instructed to seek guidance and direction from her immediate supervisor and not to rely on her peers for help” and that petitioner “struggles with some routine senior responsibilities that present[] a challenge with the orientation, training, and skills development of new staff (*id.*). Another observation noted that petitioner “has a laissez faire [approach] to handling case assignments and the workflow of the Emergency Department unit. Cases are not distributed timely and efficiently” (*id.*). Petitioner also received three performance improvement plans (NYSCEF Doc. Nos. 5-7) that detailed areas in which she needed to improve.


In other words, respondent provided significant and substantial reasons for why it demoted petitioner. There is no basis to find that this demotion was done in bad faith; the record shows numerous deficiencies in petitioner’s work performance. Under these circumstances, respondent was entitled to return petitioner to her previous position prior to the end of her one-year probationary period.

The Court recognizes that petitioner strenuously disagrees with her evaluations and makes many assertions about the conduct of her supervisors. She clearly disliked her work environment. But the Court’s role in the instant proceeding is not to make credibility assessments of petitioner or other workers at the hospital. Rather, the Court must evaluate

whether respondent properly demoted petitioner. Because petitioner was a probationary employee, respondent was entitled to demote petitioner for “almost any reason, or for no reason at all, as long as it is not in bad faith or for an improper or impermissible reason” (*Finkelstein v Bd. of Educ. of City School Dist. of City of New York*, 150 AD3d 464, 465, 56 NYS3d 8 [1st Dept 2017] [internal quotations and citations omitted]). And it was petitioner’s burden to demonstrate that there was bad faith. Unfortunately, she failed to do so and respondent cited many good faith reasons for why it demoted petitioner.

Accordingly, it is hereby

ADJUDGED that the application is denied and the petition is dismissed, without costs and disbursements to respondent.

<u>7/25/2023</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE