

**Hunold v City of New York**

2023 NY Slip Op 33508(U)

October 10, 2023

Supreme Court, New York County

Docket Number: Index No. 158531/2022

Judge: Judy H. Kim

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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. JUDY H. KIM **PART** **05RCP**

*Justice*

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JEFFREY HUNOLD,

Petitioner,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE  
DEPARTMENT, POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC., ERIC ADAMS, ASHWIN  
VASAN,

Respondents.

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**INDEX NO.** 158531/2022

**MOTION DATE** 01/24/2023

**MOTION SEQ. NO.** 001

**DECISION, ORDER &  
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32

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

Petitioner brings this Article 78 proceeding against respondents the City of New York, The New York City Police Department, New York City Mayor Eric Adams, and Ashwin Vasan<sup>1</sup>, Commissioner of the New York City Department of Health and Mental Hygiene, to annul respondents' final determination of June 30, 2022, denying petitioner's request for a COVID-19 vaccine exemption. For the reasons set forth below, the petition is denied.

The Petition alleges as follows:

Petitioner began his employment with the New York City Police Department approximately eighteen years ago. On October 20, 2021, in response to the COVID-19 pandemic, the Commissioner of the New York City Department of Health and Mental Hygiene issued an order requiring all New York City employees to submit proof of vaccination against COVID-19

<sup>1</sup> Petitioner discontinued this special proceeding as against respondent the Police Benevolent Association of the City of New York by stipulation dated November 15, 2022 (NYSCEF Doc. No. 23).

no later than November 1, 2021. On October 27, 2021, the petitioner submitted a request for a religious exemption to the vaccine mandate in the form of a six-page letter setting forth the role his Christian faith has played in his life and his objection to receiving the COVID-19 vaccine. On February 15, 2022, petitioner received an email from the NYPD denying his request, citing “insufficient or missing religious documentation” and “no demonstrated history of vaccine/medicine refusal (See NYSECF Doc. No 9). Petitioner timely appealed this denial, attaching additional material documenting his receipt of Christian sacraments and his refusal, in 2022, of vaccinations for his newborn daughter (NYSCEF Doc. No. 10). On or about June 17, 2022, the City of New York’s Reasonable Accommodation Appeals Panel (the “Panel”) denied petitioner’s appeal and affirmed the NYPD’s initial denial of his request for an exemption (See NYSCEF Doc. No. 11). Petitioner was informed that, as a result of this final denial, if he continued to refuse to be vaccinated he would be placed on leave without pay on June 24, 2022 and his employment would be terminated on June 27, 2022. In response, petitioner applied for vested retirement on June 17, 2022, which became effective on or about July 28, 2022.

Petitioner commenced this proceeding on October 5, 2022, arguing that respondents’ determination was arbitrary and capricious under CPLR §7803(3), because the initial denial of his application amounted did not reference petitioner’s application or the specific documents upon which the decision was based and failed to articulate the criteria used to make the decision or the policy which was applied. Petitioner further argues that the City’s procedure for religious accommodation requests to the COVID-19 vaccination violated Administrative Code §§8-107(3) and (28).

Respondents' Answer asserts that the denial was neither arbitrary nor capricious. Respondents submit the affirmation of Eric J. Eichenholtz, Chief Assistant Corporation Counsel for Employment Policy and Litigation in the New York City Office of the Corporation Counsel, who avers that:

The Panel voted to affirm the denial of the reasonable accommodation for many of the same reasons as indicated in the NYPD's February 15, 2022 letter. In particular, Petitioner's objections appeared to be based personal in nature, as opposed to religious, his letter contained stock language, and Petitioner had received prior vaccinations that were mandated.

For example, while petitioner did provide documents that demonstrates petitioner was raised, baptized and confirmed as a Catholic, the documents did not establish a religious basis for refusing vaccination. Petitioner did submit a letter regarding his religious beliefs, but the personal religious practices described by petitioner did not demonstrate that he personally refuses vaccines for religious reasons. Rather, petitioner's contentions regarding vaccination appeared to be largely stock language derived from publicly available resources such as <https://ca.childrenshealthdefense.org/wp-content/uploads/Drafting-a-Religious-ExemptionLtr-webfinal.pdf>.

Additionally, petitioner failed to provide any other occasion in which his [...] religious beliefs impacted his receipt of other vaccinations and other medications outside the context of COVID-19. The EEOC's guidance that "personal preferences, or any other nonreligious concerns (including about the possible effects of the vaccine), do not qualify as religious beliefs . . ." and that to qualify as a religious belief, the cited belief should be "part of a comprehensive religious belief system and is not simply an isolated teaching." <https://www.eeoc.gov/wysk/whatyou-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>. When viewed in its totality, the record here suggested that petitioner did not possess a sincerely held, personal religious belief that precluded vaccination but instead appeared to either be acting on personal beliefs or selectively applying general religious principles on this one occasion.

Thus, on June 17, 2022, the Citywide Panel denied Petitioner's appeal and affirmed the NYPD's denial of Petitioner's reasonable accommodation request because the Petitioner's appeal "Does Not Meet Criteria." This categorization is used by the Panel on occasions when the Panel affirms the agency's determination that the employee failed to establish entitlement to a reasonable accommodation under the applicable legal standards.

(NYSCEF Doc. No. 25 [Eichenholtz Affirm. at ¶¶27-31]).

## DISCUSSION

“It is well settled that judicial review of an administrative determination pursuant to CPLR Article 78 is limited to whether the determination was arbitrary and capricious or rationally based on the record” and “[d]isposition of the proceeding is limited to “the facts and record adduced before the agency when the administrative determination was rendered” (Marsteller v The City of New York [Sup Ct, NY County 2023] [internal citations and quotations omitted], affd sub nom. Marsteller v City of New York, 2023 NY Slip Op 03308 [1st Dept 2023]). Applying this standard, the Court concludes that respondents did not act arbitrarily or capriciously in denying petitioner’s application for a vaccination exemption. Melocowsky’s affidavit “identifies the sound reasons for the denial of such application, including the clear philosophical nature of the petitioner’s objections, the petitioner’s failure to provide a cogent explanation why his religion or religious beliefs conflict with vaccination, and the petitioner’s failure to demonstrate any history of refusing vaccines or other medicine for religious reasons” and is therefore “sufficient to meet the threshold for this court’s deference as a matter of law” (Id.).

Petitioner cites to a number of other decisions of the trial courts of this State which have concluded that denials of NYPD’s employees’ applications for religious exemption using a form checklist like the one at issue here provided insufficient detail for the basis of the NYPD’s decision and were therefore arbitrary and capricious. However, these trial court decisions have no weight as they were issued before the Appellate Division, First Department issued Marsteller v City of New York, \_\_\_ AD3d \_\_\_, 2023 NY Slip Op 03308 (1st Dept 2023) which, as the Hon. John J. Kelley recently noted, “unambiguously held that the checklist format utilized by the NYPD [is] sufficient to apprise an applicant for exemption of the basis for the initial determination” (Matyas

v Bd. of Educ. of the City School Dist. of the City of New York, 2023 NY Slip Op 32327[U], 10-12 [Sup Ct, NY County 2023]).

Petitioner’s reliance on Matter of Police Benevolent Assn. of City of N.Y., Inc. v City of New York, 2022 NY Slip Op 33185(U), is also unavailing, as the Appellate Division, First Department reversed the trial court’s decision—which concluded that the COVID-19 vaccination mandate was invalid insofar as it imposed a new condition of employment on current members of petitioner Police Benevolent Association of the City of New York, Inc.—and dismissed that proceeding as barred, as a matter of res judicata, by a “prior article 78 proceeding in Richmond County, in which the court issued a valid final judgment on the merits, denying the petition and dismissing the proceeding” (Matter of Police Benevolent Assn. of City of N.Y., Inc. v City of New York, 215 AD3d 463 [1st Dept 2023]).

Finally, petitioner’s assertion that the City’s process for resolving requests for accommodations to the vaccine mandate violated the New York City Human Rights Law has also been rejected by the First Department<sup>2</sup> (Marsteller v City of New York, 217 AD3d 543, 545 [1st Dept 2023]).

In light of the foregoing, it is

**ORDERED** and **ADJUDGED** that the Petition is denied and this proceeding dismissed.

**ORDERED** that counsel for the City of New York shall, within ten days from the date of this decision, order, and judgment, serve a copy of this decision, order, and judgment, with notice of entry, on petitioner, as well as on the Clerk of the Court (60 Centre St., Room 141B) and the

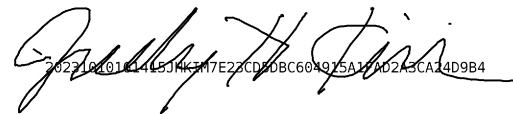
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<sup>2</sup> On July 3, 2023, plaintiff e-filed a letter to this Court requesting permission for supplemental briefing to address the applicability of a recent decision of the United States Supreme Court, Groff v DeJoy, 600 US 447 (2023). The Court declines to grant this request. Groff clarifies an employer’s burden in establishing that an accommodation of an employee’s religious practice would impose an “undue hardship on the conduct of the employer’s business” under Title VII of the Civil Rights Act of 1964 and has no bearing on the issues in dispute in this proceeding.

Clerk of the General Clerk’s Office (60 Centre St., Room 119), who are directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efiling” page on this court’s website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)).

This constitutes the decision, order, and judgment of the Court.



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10/10/2023  
DATE

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HON. JUDY H. KIM, 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