

Caramante v New York City Hous. Auth.

2023 NY Slip Op 34499(U)

December 21, 2023

Supreme Court, New York County

Docket Number: Index No. 157059/2023

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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RALPH CARAMANTE

Petitioner,

- v -

THE NEW YORK CITY HOUSING AUTHORITY,

Respondent.

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INDEX NO. 157059/2023

MOTION DATE 12/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for ARTICLE 78.

The petition to reverse a determination by respondent that denied petitioner's request for reinstatement is denied.

Background

Petitioner worked as a plumber's helper for respondent. In September 2020, he was appointed to a probationary position as a plumber after passing a promotional exam for that role. He claims that about 11 months after starting his employment as a plumber, he was suspended for 30 days due to a disagreement with his supervisor. As part of his suspension, he was demoted back to the position of plumber's helper.

In December 2021, petitioner started to take time off to help care for his ailing father (who is in his 90s). On December 23, 2021, disciplinary charges were brought against him arising out of the aforementioned incident with his supervisor. He claims he asked to speak with NYCHA human resources about his options and was presented with resignation paperwork. Petitioner claims he had no intention of resigning to avoid the disciplinary charges and thought

he would be reappointed when he asked to be reinstated. He insists he sent an email in February 2023 asking to be reinstated and respondent denied that request.

Respondent observes that petitioner's papers do not provide much detail about the incident that led to his suspension and the disciplinary charges. It observes that when petitioner's supervisor confronted him about not being at a worksite on July 28, 2021, petitioner threatened the supervisor with violence and began cursing out the supervisor. Respondent also points out that a counseling memorandum was prepared for petitioner which detailed numerous incidents where he swiped in and out of developments to which he was not assigned. It theorizes that respondent was swiping in and out at a development in Staten Island (where petitioner lives) in order to get compensation for the time spent commuting to and from work. Disciplinary charges were issued and a trial on those charges was subsequently scheduled.

Respondent argues that petitioner signed the resignation form with the advice of his own counsel. It claims that petitioner then executed the resignation form. Respondent argues that this form memorializes that a civil service employee has surrendered any interest in their civil service title and terminates his or her relationship with NYCHA.

It maintains that its decision to deny petitioner's request for reinstatement was rational and that all three members of the Personnel Board for respondent agreed with this decision. Respondent claims this decision was based on the fact that petitioner resigned more than a year earlier with disciplinary charges pending and that he received a suspension for violent acts in the workplace. Respondent asserts it was not required to accept petitioner's withdrawal of his resignation.

Discussion

In an Article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*Matter of Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013]).

As an initial matter, to the extent that petitioner’s request for reinstatement is really a request to withdraw his February 2022 resignation, that request is time barred as it was made well more than four-months after his resignation (*see Matter of Reo v Vil. of Lawrence*, 105 AD3d 855, 856, 962 NYS2d 689 [2d Dept 2013]).

On the merits, the determination to deny his reinstatement was rational. Decisions about such requests are in the discretion of the agency (*Hodge v New York City Tr. Auth.*, 180 AD3d 490, 491, 120 NYS3d 6 [1st Dept 2020]). Here, there is no dispute that when petitioner resigned, he faced serious disciplinary charges for violent conduct towards his supervisor and for misrepresenting the amount of time he worked. The trial on those charges was pending when he resigned.

To be sure, the resignation form certainly mentions that he wanted to care for a family member (NYSCEF Doc. No. 24). But that assertion, which was contained in a portion of the form filled out by petitioner, does not foreclose respondent’s ability to deny his request for reinstatement. The form itself is entitled a *resignation form*; it is not a form to go on leave to care for a family member. It contains a date for his last day of work and includes a box checked by petitioner that states that “I am resigning from the title in which I am currently serving and, if applicable, any permanent civil service title for which I am currently on leave” (*id.*).

Moreover, the portion at the bottom, which was filled out by respondent, contains an unsatisfactory rating for petitioner and a notation that he not be recommend for reemployment. The Court finds that by resigning, petitioner relinquished his property interest in this employment (*see Matter of Smith v Kunkel*, 152 AD2d 893, 895, 152 AD2d 893 [3d Dept 1989]). There is no basis to find that this resignation should be invalidated because petitioner now asserts he did not mean to resign.


Summary

The Court recognizes that petitioner thought he was resigning to take care of his ailing father and that he claims he had no intention of permanently resigning. But, unfortunately, that is exactly what he did by signing the resignation form. Nothing in that form provides that petitioner would automatically be entitled to get his job back upon a request for reinstatement. And respondent was under no obligation to give him his job back. The record shows that respondent considered his request to be reinstated and rejected it given his disciplinary history.

That petitioner claims he is now willing to face the charges against him is of no moment. Once he resigned, the trial on those charges were cancelled (NYSCEF Doc. No. 25). And the Court sees no way to construe an unambiguous resignation to require respondent to hold a trial on disciplinary charges that arose out events that occurred years ago.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

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|---------------------------|--|----------------------------|-------------------------------------|-----------------------|
| <u>12/21/2023</u> DATE |  ARLENE P. BLUTH, 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 |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | SUBMIT ORDER |
| | | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> | OTHER |
| | | | <input type="checkbox"/> | REFERENCE |