

Hollinshead v New York City Health & Hosps. Corps.

2023 NY Slip Op 34596(U)

April 10, 2023

Supreme Court, Kings County

Docket Number: Index No. 509120/22

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

not have any effect on an evaluation of an extension of her reasonable accommodation request upon its expiration. Hollinshead did not get vaccinated for COVID-19 and did not voluntarily resign from her employment by the October 29, 2021 deadline. By letter dated November 29, 2021, HHC notified Hollinshead that she was terminated, effective as of that date, due to her non-compliance with the COVID-19 vaccination requirement.

On March 28, 2022, Hollinshead commenced the instant CPLR article 78 proceeding challenging HHC's determination denying her an extension of her reasonable accommodation and religious exemption, arguing, among other things, that the decision was arbitrary and capricious and lacked a rational basis. Instead of filing an answer, HHC and DOHMH cross-moved to dismiss the petition on the grounds that (1) the proceeding is barred by the applicable statute of limitations, (2) DOHMH is an improper party, and (3) the petition fails to state a cause of action.

Initially, the court finds that the instant petition is not barred by the statute of limitations. "A proceeding pursuant to CPLR article 78 must be commenced within four months after the determination to be reviewed becomes final and binding on the petitioner" (*Zherka v Ramos*, 173 AD3d 746, 747 [2d Dept 2019]). "A determination generally becomes binding when the aggrieved party is notified" (*Matter of Village of Westbury v. Department of Transp. of State of N.Y.*, 75 NY2d 62, 72 [1989] [internal quotation marks and citations omitted]). Here, the four-month statute of limitations began to run upon Hollinshead's receipt of HHC's final and binding termination notice dated November 29, 2021. Therefore, the petition, filed on March 28, 2022, was timely.

"On a motion to dismiss a pleading pursuant to CPLR 3211(a)(7)..., only the petition is considered, all of its allegations are deemed true, and petitioner is afforded the benefit of every [favorable] inference" (*Levy v SUNY Stony Brook*, 185 AD3d 689, 690 [2d Dept 2020]). "In determining such a motion, the sole criterion is whether the petition sets forth allegations sufficient to make out a claim that the determination sought to be reviewed was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion (*Kunik v New York City Dept. of Educ.*, 142 AD3d 616 617 [2d Dept 2016]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043 [2013] [internal quotations and citation omitted]).

Applying this standard, the petition sets forth allegations sufficient to make out a claim that HHC's determination denying Hollinshead an extension of her reasonable accommodation and religious exemption from the mandatory COVID-19 vaccination, and ultimately terminating her employment, was arbitrary and capricious (*see generally Oddone v Suffolk County Police Dept.*, 96 AD3d 758 [2d Dept 2012]). As discussed earlier, HHC originally granted Hollinshead's request for a religious exemption from the

mandated COVID-19 vaccination. She was provided a reasonable accommodation of job protected leave without pay for 60 days. HHC then denied Hollinshead an extension of her reasonable accommodation without providing any reason or explanation for the denial. Instead, HHC merely notified Hollinshead that she was terminated for remaining non-compliant with the COVID-19 vaccination requirement.

Given that HHC provided no rational whatsoever for denying Hollinshead an extension of her reasonable accommodation (*see Matter of Deletto v Adams*, 2022 WL 4298736 [Sup Ct, N.Y. County 2022]), Hollinshead properly states a cause of action for relief pursuant to CPLR article 78 to review HHC's determination. As such, dismissal pursuant to CPLR 3211(a)(7) is not warranted.

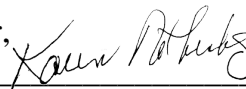
However, only the portion of the cross-motion seeking to dismiss the proceeding as against DOHMH, an improper party, is granted, and the cross-motion is denied in other respects.

As CPLR §7804(f) expressly provides that, where a motion to dismiss is denied, "the court shall permit the respondent to answer, upon such terms as may be just." Therefore, respondent is directed to file and serve an answer to the petition within thirty (30) days after this order is uploaded to NYSCEF.

This constitutes the decision/order of the Court

Dated: April 10, 2023

Enter,



Karen B. Rothenberg, J.S.C