

**Matter of Mesidor v New York City Dept. of Corr.**

2024 NY Slip Op 30264(U)

January 22, 2024

Supreme Court, New York County

Docket Number: Index No. 153874/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS**

**PART 10**

*Justice*

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**INDEX NO. 153874/2023**

In the Matter of the Application of

**MOTION DATE 04/28/2023**

SAMANTHA MESIDOR,

**MOTION SEQ. NO. 001**

Petitioner,

- v -

THE NEW YORK CITY DEPARTMENT OF CORRECTION;  
and THE CITY OF NEW YORK,

**DECISION + ORDER ON  
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for ARTICLE 78 and X-MTN TO DISMISS.

Upon the foregoing documents, the court grants in part Petitioner Samantha Mesidor’s (“Petitioner”) Verified Petition to the extent that the court vacates and annuls Respondents The New York City Department of Corrections’ (“DOC”) and The City of New York’s (“City”) (collectively, “Respondents”) determination to terminate Petitioner from her position as probationary correction officer with the DOC and the court remands this matter back to the DOC for reconsideration and further proceedings. The court denies Respondents’ cross-motion to dismiss the Verified Petition.

Petitioner brought this CPLR Article 78 proceeding against Respondents seeking a judgment annulling Respondents’ termination of Petitioner’s employment and ordering that she be reinstated with back pay, plus interest, and benefits. Petitioner was appointed as a Correction Officer with the DOC on June 23, 2022, subject to a two-year probationary period. Petitioner was terminated on January 9, 2023, for unauthorized use of the DOC’s Inmate Look-up System

on November 17, 2022, and for failure to disclose her association with an inmate, who was her ex-boyfriend's brother, once she learned that he was incarcerated at Rikers Island, in violation of DOC's Rule and Regulation 3.25.041.

Petitioner alleges in substance that the DOC's decision to terminate her employment was arbitrary, capricious and done in bad faith. She also alleges that it shocks the conscious as it was disproportionate to the allegations against her. Petitioner has a daughter with her ex-boyfriend, she is a single mother and she alleges that she had no contact with the inmate in years and has no relationship with him.

Petitioner further alleges that the DOC failed to train her on Rule and Regulation 3.25.041 requiring her to disclose the association and that she was taught Rule and Regulation 3.25.050, which only required her to disclose that she had an association with an inmate if that person was a relative, friend, or someone with whom she had a previous relationship, and only if that inmate was housed in the same facility where she was assigned. Petitioner further argues that her young daughter told her that she had heard that her uncle was incarcerated. Petitioner argues that while she and two others were still in the academy, they were being trained at Rikers Island and taught how to use the Inmate Look-up system. The Correction Officer who was training them told them in substance to familiarize themselves with how to use the system. Petitioner further argues that she entered her ex-boyfriend's brother's information into the system and learned that he was incarcerated at Rikers Island. Petitioner argues that she ultimately got assigned to a women's only facility, so knew that he would never be assigned to her facility. She further argues in substance that she did not believe that she had to disclose her association with him because she had no relationship or contact with him and he was not being housed in the same facility where she worked. She further argues in substance that her failure to immediately

notify the DOC of her association with the inmate was not intentional or willful as she was unaware of the rule requiring her to do so.

Additionally, Petitioner argues that she did not intentionally misuse the Inmate Look-up System, since she was directed to get familiar with it as part of her training. Therefore, she believed her use of the system was authorized and she did nothing improper. She also argues in substance that the other trainee who used the system was not terminated since she had previously disclosed her association with two inmates with whom she had a previous relationship on her initial application. Petitioner argues in substance that she was treated unfairly because she was not trained on the rule requiring immediate notification and she could not have disclosed it on her application because she was unaware of the inmate's incarceration. She also argues in substance that her termination shocks the conscious because the punishment is disproportionate to the alleged misconduct.

Respondents oppose Petitioner's Petition and cross-move to dismiss the Petition for failure to state a cause of action, pursuant to CPLR 3211(a)(7), primarily because as a probationary employee, the DOC could terminate Petitioner for any reason or no reason at all, as long as its decision did not violate the law or was made in bad faith. Respondents argue in substance that Petitioner failed to sufficiently allege that the DOC terminated her in bad faith and that she merely made a conclusory allegation that the termination was arbitrary and capricious or in bad faith without any support.

Respondents further argue that the determination was not arbitrary and capricious, or made in bad faith. They argue that the DOC's actions were rational, lawful, proper, reasonable, constitutional and made in good faith, that Petitioner failed to state a cause of action, and that probationary employees can never be reinstated to any competitive class civil service title, so

Petitioner is not entitled to the relief requested. They argue that Petitioner violated several DOC rules and regulations and that since she failed to report her association with the inmate for more than one month after learning of his incarceration, such conduct was unprofessional, unbecoming of an officer and threatened the good order and discipline of the DOC.

Petitioner opposes Respondents' cross-motion to dismiss.

In an Article 78 proceeding, the scope of judicial review 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 (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; *Scherbyn v BOCES*, 77 NY2d 753, 757-758 [1991]).

It is well settled that probationary or provisional employees "may be discharged for any or no reason at all in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of law" (*Brown v City of New York*, 280 AD2d 368, 370 [1<sup>st</sup> Dept 2001]; *Matter of Duncan v Kelly*, 43 AD3d 297, 298 [1<sup>st</sup> Dept 2007]; *Matter of Swinton v Safir*, 93 NY2d 758, 762-763 [1999]).

However, as cited by Petitioner, in *Rosenkrantz v McMickens*, "[w]hile an administrative agency's construction and interpretation of its rules are entitled to greatest weight, that agency may not arbitrarily disregard relevant facts bearing on such construction and interpretation (*Rosenkrantz v McMickens*, 131 AD2d 389, 390-91 [1<sup>st</sup> Dept 1987] [internal citations and quotations omitted]). The court held that because of the "severe limitations on the availability of judicial review of administrative determinations," the respondents were required to make "a careful and painstaking assessment of all the available evidence" (*id.* at 391 [internal quotations

omitted]). The court found that the DOC failed to consider material and relevant evidence so it remanded the matter back to the DOC for further consideration (*id.* at 392).

Here, the court finds that Petitioner met her burden of demonstrating that Respondents' termination of her employment was arbitrary and capricious and that it rose to the level of bad faith. The court finds that the DOC failed to consider material and relevant evidence when it terminated Petitioner's employment and that she was not properly trained on the rules requiring disclosure in this matter. The court is persuaded by the cases cited by Petitioner and finds that Respondents failed to provide sufficient support that the DOC carefully and painstakingly assessed the available evidence. Such evidence includes, but is not necessarily limited to, whether the testimony from the other trainees and the Correction Officer who trained Petitioner directed Petitioner to familiarize herself with the Inmate Look-up System as part of Petitioner's on-the-job training, whether that statement gave Petitioner the impression that she was authorized to enter data into the system, and whether there was any evidence supporting Petitioner's arguments about being trained on Rule and Regulation 3.25.050, which did not require disclosure of her relationship with the inmate, but not trained on Rule and Regulation 3.25.041, which arguably required disclosure of her association with the inmate. This evidence was readily available to the DOC through the testimony of the instructors at the academy, the material provided to Petitioner at the academy, testimony from the other trainees and witnesses during the on-the-job training and evidence of the nature of Petitioner's relationship and contact with her ex-boyfriend's brother in law. Respondents failed to demonstrate that such evidence was obtained, considered or adequately assessed. It is of no moment that Respondents now claim that Petitioner should have been aware of all rules governing her employment and that her motive is insignificant. The issue is whether the DOC appropriately considered the evidence at

the time the determination was rendered and if so, whether the punishment of termination was harsh enough to shock the conscience.

Therefore, the court finds that it appears that the DOC disregarded material evidence and failed to make “a careful and painstaking assessment of all the available evidence.” Thus, the DOC’s determination to terminate Petitioner was not rationally based, as it was arbitrary and capricious and made in bad faith.

Additionally, the court finds that the termination shocks the conscience as it is excessive and disproportionate to the alleged misconduct. Here, the court finds that there is no evidence that Petitioner knowingly or intentionally misused the Inmate Look-up System, that she deliberately concealed her association with the inmate, or that she acted unprofessionally, in an undignified manner or unbecoming of a Correction Officer. She simply made a mistake by not being aware of every rule in the training guide and making a judgment call based on the information taught to her at the academy.

Additionally, there is no indication that there was any security concern since Petitioner had no relationship with the inmate and he was not housed in the facility to which she was assigned to work. There was no risk that he could have been transferred to Petitioner’s all women’s facility. Although there was a risk that Petitioner could have been assigned to the inmate’s facility, it is only speculation as to whether Petitioner would have notified the DOC of her association, despite not having any relationship to him, just to err on the side of caution.

The court recognizes what a tremendous accomplishment and opportunity it was for Petitioner, a single mother, to have graduated from the academy and been appointed as a Correction Officer with the DOC. Therefore, under these circumstances, to be terminated based on Respondents’ allegations of misconduct is excessive and shocks the conscience.

The court finds that Respondents' cross-motion to dismiss the Verified Petition is unpersuasive and the court denies the cross-motion.

Therefore, the court grants in part Petitioner's Verified Petition to the extent that the court annuls and reverses Respondents' determination to terminate Petitioner's employment, the court remands the matter back to the DOC for reconsideration and further proceedings and the court denies Petitioner's request for reinstatement with back pay and benefits and denies the remainder of the relief requested in the Verified Petition.

The court has considered any additional arguments raised by the parties which were not specifically addressed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court grants in part Petitioner Samantha Mesidor's Verified Petition to the extent that the court vacates and annuls Respondents The New York City Department of Corrections' and The City of New York's termination of Petitioner's employment as a Probationary Correction Officer, the court remands that matter back to Respondent The New York City Department of Corrections for reconsideration and further proceedings, and the court denies the remainder of the relief requested in the Verified Petition; and it is further

ORDERED that the court denies Respondents' cross-motion to dismiss the Verified Petition; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Petitioner as against both Respondents.

This constitutes the decision and order of the court.

1/22/2024  
DATE

  
ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE