

Salami v City of New York

2024 NY Slip Op 32101(U)

June 21, 2024

Supreme Court, New York County

Docket Number: Index No. 160975/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

MIRIAM SALAMI

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 160975/2023

MOTION DATE 11/14/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for REINSTATE.

This is an Article 78 petition that arises out of Respondent’s decision to discharge a Petitioner from her position as a Community Coordinator and Intervention Specialist at the Rose M. Singer Center Riker’s Island.¹ Respondent, the City of New York, opposes the instant petition. For the reasons, set forth below the petition is denied.

Background

Petitioner began her employment for the New York City Department of Correction (DOC), a subdivision of the Respondent City, as Community Coordinator in April 2023. Petitioner's employment was governed by an at-will contract, subject to a six-month probationary period, during which the probationary employee could be terminated at any time, with or without cause.

On August 10, 2023, Petitioner submitted a memorandum alleging, inter-alia, that she was being subjected to a hostile work environment by a co-worker and that she had been

¹ The Court would like to thank Frederick Jackson for his assistance in this matter.

wrongfully criticized by her supervisor for reporting another co-worker for bringing contraband into the facility. On August 17 Petitioner met with the Department's Workplace Violence Committee Board ("Committee") where she was informed that the allegations she outlined in the August 10 memorandum were being investigated.

On August 31, 2023, Petitioner submitted another memorandum alleging that her co-worker had engaged in certain acts that she regarded as sexual harassment. As a result of Petitioner's complaints, her co-worker resigned from his employment with the Department to avoid facing the consequences of his sexual harassment of Petitioner.

On September 27, 2023, the Petitioner was suspended, and on October 13, 2023, she was discharged, effective October 10, 2023, the last day of her probationary period.

As a result of the termination in October 2023, Petitioner commenced an Article 78 proceeding challenging respondents' decision to terminate, alleging that the decision by the Department was in retaliation for having filed complaints regarding her co-worker and her treatment as an employee. Petitioner alleges that their discharge from employment was arbitrary, capricious, and done in bad faith.

Standard of Review

Article 78 review is permitted, where a determination was made that "was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed...." CPLR §7803(3).

"Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” *Id.* If the court reviewing the determination finds that “[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed.” *American Telephone & Telegraph v State Tax Comm’n* 61 NY2d 393, 400 [1984].

It is well established that the court should not disturb an administrative body’s determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass’n, Inc. v Glasser*, 30 NY2d 269 [1972]; *Presidents' Council of Trade Waste Assns. v New York*, 159 AD2d 428, 430 [1st Dept 1990].

Discussion

Here, the Court finds Petitioner has failed to establish that her termination was arbitrary, capricious, or done in bad faith. There is insufficient evidence to prove that the Petitioner’s complaints were causally related to the City’s decision to terminate her probationary employment. Moreover, the Court finds Petitioner’s claim that her firing was retaliatory unpersuasive, as the investigation by the Committee was independent of Respondent’s decision to terminate Petitioner’s employment.

The Court finds that the record reflects multiple instances of the Petitioner’s conduct being found to violate DOC rules, which supports the rational basis for the City’s actions. Furthermore, Assistant Commissioner McCarty, a party uninvolved in the allegations raised by the petitioner, raised significant concerns about Petitioner, including behavioral issues, timesheet complaints, and a transfer due to Petitioner’s reported slandering of her peers, supporting the assertion that the City's decision was made independently, and not in retaliation for any reports

that she made. While the petitioner submits an affidavit that purports to explain the concerns raised during her employment, even giving her every favorable inference, she fails to address all of the issues raised in Mr. McCarty’s report.

As it is well established that the determination of the City must be given deference, the record before the Court is devoid of any interpretation or application of the underlying laws, rules, or policies that are so irrational as to require this Court to intervene. As such, the Court finds that the City’s actions were not arbitrary and capricious pursuant to an Article 78 proceeding. Based on the foregoing, it is hereby

ADJUDGED that the petition is denied.


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6/21/2024
DATE

LYLE E. FRANK, 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