

Matter of Brown v Fire Dept. of the City of N.Y.

2024 NY Slip Op 32705(U)

July 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 533299/2022

Judge: Ingrid Joseph

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 29th day of July 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

Index No: 533299/2022

-----X
In the Matter of the Application of RASHAAD BROWN
Petitioner(s)

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

ORDER

-against-
FIRE DEPARTMENT OF THE CITY OF NEW YORK
and CITY OF NEW YORK,

Respondent(s)
-----X

The following e-filed papers read herein:

NYSCEF Nos.:

- Notice of Motion/Petition/Affidavits Annexed Exhibits Annexed.....
- Notice of Motion/Affirmation in Support/Affidavits Annexed Exhibits Annexed.....
- Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

- 1-17
- 19-28
- 30-33

In this matter, Rashaad Brown (“Petitioner”) moves (Motion Seq. 1) for an order pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) declaring that the Fire Department of the City of New York (“FDNY”) and the City of New York’s (the “City”) (Collectively “Respondents”) denial of Petitioner’s request for religious accommodation and the existing Leave Without Pay (“LWOP”) were arbitrary and capricious, an error of law, and an abuse of discretion in violation of Petitioner’s rights under the New York City Civil Human Rights Law (“NYCHRL”) and New York City Administrative Code § 8-107. Petitioner also seeks an order vacating the Respondents’ decision to deny the religious exemption, granting him entitlement to a religious accommodation from the COVID-19 vaccine mandate and precluding Respondents from terminating or taking any other adverse employment action towards him due to a lack of COVID-19 vaccination status. Petitioner seeks backpay, lost wages, and/or benefits incurred as a result of his religious exemption denial and Leave Without Pay from November 1, 2021, through August 27, 2022, reasonable attorneys’ fees, costs, and expenses. Respondent’s move (Motion Seq. 2) for an order pursuant to CPLR § 7804(f) and 3211 to dismiss the Petition on the grounds that Petitioner’s claims are now moot. Petitioner has opposed the motion.

This action is brought to challenge FDNY’s August 22, 2022, Final Decision denying Petitioner’s application for a religious accommodation from the Respondents’ COVID-19 vaccination mandate based on Petitioner’s sincerely held religious beliefs and to receive payment for Petitioner’s LWOP period from November 1, 2021, through August 27, 2022. Petitioner is a firefighter with the FDNY who initially served as an essential worker during the COVID-19 pandemic. On March 12, 2020, Mayor Bill DeBlasio issued Emergency Executive Order No. 98 declaring a state of emergency in New York City to address

the threat posed by COVID-19 to the health and welfare of city residents. Thereafter, on March 25, 2020, the New York City Commissioner of the Department of Health and Mental Hygiene (“DOHMH”) also declared the existence of a public health emergency. Subsequently, on or about October 20, 2021, DOHMH issued an order that required all New York City employees to receive COVID-19 vaccination no later than 5 p.m. on October 29, 2021.¹ Any city employee who failed to provide the requisite proof of vaccination was subjected to being placed on Leave Without Pay beginning on November 1, 2021.

On October 21, 2021, FDNY Chief of Operations sent buck slip OPS-21- 10-08 (“Buck Slip”) to all commands informing employees of the City Order.² The Buck Slip contained a summary of the COVID-19 vaccine mandate, a copy of the order, a FAQ sheet and also the process by which an employee could apply for a religious or medical accommodation or exemption. Pursuant to the Buck Slip, City employees who opt to file a reasonable accommodation request must apply with their agency’s EEO Officer for an exemption from this vaccine requirement no later than October 27, 2021, to avoid being placed on LWOP on November 1, 2021. Employees who seek reasonable accommodations from their agencies after October 27, 2021, will be placed on LWOP until the reasonable accommodation is decided, including any appeals. For reasonable accommodation requests filed on or before October 27, 2021, employees will be permitted to continue to submit weekly negative PCR test results while their accommodation request is under consideration or on appeal. Pursuant to the order, the only allowable accommodation from the vaccination mandate that will not cause undue hardship and/or disruption is weekly testing and submission of negative PCR results.

On November 1, 2021, Petitioner was placed on LWOP for failing to comply with the COVID-19 vaccination mandate. On November 3, 2021, Petitioner filed a request for a religious accommodation based on his sincerely held religious beliefs and included a clergy letter of support.³ In his application, Petitioner states that he is a Christian who believes that based on his faith and worship that his “body is a sacred temple given to him by God” and that if his accommodation is to be granted that “submitting to weekly testing would suffice.” On December 1, 2021, FDNY notified Petitioner in writing that his religious accommodation request was denied.⁴ In the denial letter, the FDNY states that Petitioner’s “asserted basis for the accommodation is insufficient to grant the requested accommodation, particularly in light of the potential undue hardship to the Department,” and set forth the appeal procedure, which required Petitioner to appeal within 7 days of receipt of the denial as well as the potential consequences of

¹ The order states, in pertinent part, that by October 29, 2021, City employees must provide proof to the agency or office where they work that: (1) they have been fully vaccinated against COVID-19; or (2) they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or (3) they have received the first dose of a two-dose COVID-19 vaccine.

² (Respondents’ Exhibit E).

³ (Petitioner’s Exhibit E).

⁴ (Petitioner’s Exhibit F; Respondents’ Exhibit C).

failing to receive a vaccination. On December 6, 2021, Firefighter Brown appealed his denial and requested more information regarding his denial so that he could submit an informed appeal.⁵ Petitioner received a “Supplemental Information: Denial of Religious Request for Vaccine Mandate Exemption” letter dated January 7, 2022, wherein the FDNY states that Petitioner’s request was denied “because the asserted religious basis seeking the exemption was insufficient in light of the potential undue hardship to the Department, and that “given the state of the public health emergency, the nature of the Department’s life-saving mission, and the impact to the safety and health of Department members and the public that Department members regularly interact with, the requested accommodation could not be granted.”⁶ Thereafter, Petitioner appealed to the City of New York Reasonable Accommodation Appeals Panel (“City Panel”).

On July 29, 2022, the FDNY EEO Office contacted Petitioner in writing concerning his pending request for an accommodation.⁷ In the letter Petitioner was informed that the Novavax vaccine was recently approved as protection against COVID-19 and that based on a review of his application that it may resolve any religious objections previously asserted because the Novavax vaccine did not use fetal cells in its development, testing or production. Petitioner refused to take the alternative vaccination. On August 22, 2022, Petitioner was notified by the FDNY that his appeal had been denied by the City Panel, and that he had “three business days from the date of the denial notice to submit proof of vaccination.” Petitioner was further advised that if he did not submit such proof, he would be “placed on leave without pay.”⁸ As part of its determination the City Panel stated that it carefully reviewed the Agency’s determination, all of the documentation submitted in connection with the appeal and that based on the review, the City Panel’s decision classification for Petitioner’s appeal “does not meet criteria.” This determination was the final decision with respect to Petitioner’s accommodation request. On August 24, 2022, Petitioner received the first dose of Pfizer COVID-19 vaccine and was subsequently reinstated to his position at the FDNY.

In support of his Petition, Petitioner argues that the administrative decision to deny his request for a religious accommodation was arbitrary and capricious, error of law, and an abuse of discretion. Petitioner asserts that Respondents’ issued form denials which provided no rational explanation for its assertion of potential undue hardship or evidence that it conducted an individualized assessment of his request. Petitioner also states that Respondents violated the NYCHRL and NY Administrative Code 8-107 because it is an employer’s burden to show the unavailability of any safe and reasonable accommodation and to show that any proposed accommodation would place an undue hardship on its

⁵ (Petitioner’s Exhibit G).

⁶ (Petitioner’s Exhibit H; Respondents’ Exhibit D).

⁷ (Petitioner’s Exhibit J).

⁸ (Petitioner’s Exhibit k).

business, which they failed to do. Further, Petitioner contends that Respondents failed to comply with the statute by not engaging in cooperative dialogue regarding alternative accommodation requests, and that Petitioner's refusal to take the Novavax vaccine was because it does use fetal cells. Moreover, Petitioner argues that Mayor Adam's March 22, 2022, order wherein he exempted professional athletes and artists from the vaccination mandate in order to increase morale, competitive advantage, and economic recovery but upheld it against city employees was an abuse of discretion, and that forcing an employee to be on LWOP for nine months is a discriminatory practice subjecting Petitioner to ongoing coercion based on his religious beliefs. Petitioner submits an affidavit and report of Dr. Harvey A. Risch ("Risch"), a practicing academic epidemiologist who provides his professional opinion on issues related to the City of New York's imposition of a mandatory COVID-19 vaccine requirement. Risch opines, in part, that because the COVID-19 vaccine cannot prevent disease transmission, there is no rational public health reason to condition employment on receiving a vaccine.

In support of its motion to dismiss, Respondents argue that Petitioner's challenges to the vaccination mandate are moot and must be dismissed because DOHMH issued an order dated February 9, 2023, lifting the requirement that city employees be excluded from their workplace for failure to get vaccinated, and therefore Petitioner is no longer required to demonstrate proof of vaccination and is no longer entitled to a declaratory judgment. Respondents also assert that the denial of Petitioner's accommodation request was not arbitrary and capricious, error of law, or an abuse of discretion because the potential of undue hardship is a rational basis for denial and the letters clearly articulated the reasoning to Petitioner. Additionally, Respondents contend that it engaged in ongoing cooperative dialogue with Petitioner by establishing and adequately informing its employees of its procedure for City employees to submit accommodation requests and appeal denials, thus no further individualized dialogue was required, especially considering the high volume of requests. Respondents argue that nonetheless, as a matter of law, an employer is not required to engage in a cooperative dialogue until an employee establishes that he or she is or may be entitled to an accommodation due to a sincerely held religious belief, which Petitioner failed to do by only offering conclusory allegations.

In opposition, Petitioner argues that his claims are not moot even if proof of vaccination is no longer required because Respondents deprived him of his rights and therefore, he has a valid claim for damages. Furthermore, Petitioner contends that while portions of the DBOH order were repealed or amended, the vaccination requirement is still in effect for city employees. Additionally, Petitioner asserts that he has a legally cognizable interest in the outcome and that assuming arguendo that his sought relief was moot, the exception to mootness would apply because the issues raised are likely to recur, are substantial and novel, and are capable of evading judicial review.

It is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal (*People ex rel. Napoli v Annucci*, 219 AD3d 496 [2d Dept. 2023]; *Matter of Kirkland v Annucci*, 150 AD3d 736 [2d Dept. 2017]; quoting *Matter of Hearst Corp. v Clyne*, 50 NY2d 707 [1980]). Courts are generally prohibited from issuing advisory opinions or ruling on hypothetical inquiries (*Kirkland* at 738). Typically the doctrine of mootness is invoked where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy (*Matter of Citi neighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Comm.*, 2 NY3d 727 [2004]; *Chang v Maliq M.*, 154 AD3d 653 [2d Dept. 2017]). Where a controversy is otherwise moot, a court may nevertheless review it if it presents for review “important and recurring issues which, by virtue of their relatively brief existence, would be rendered otherwise nonreviewable” (*Id.*; *Clyne* at 714).

Article 78 proceedings are used to challenge action (or inaction) by agencies and officers of state and local government (*Levine v Bd. of Educ.*, 186 AD2d 743 [2d Dept. 1992]). A petitioner may recover monetary damages in an Article 78 proceeding only if the damages are incidental to petitioner’s primary relief (CPLR 7806; *Gross v Perales*, 72 NY2d 231 [1988]). Such damages may include full back pay and benefits retroactively (*Brown v Waterloo*, 187 AD3d 1493 [4th Dept. 2020]). Whether the monetary relief is incidental to the primary claim, is dependent upon the facts and issues presented in a particular case (*Id.*). Monetary relief may be incidental to an Article 78 proceeding if the relief is contingent on the court’s determination that action by an agency or its official was unlawful, and the damages flow directly from that action (*Id.*; *Hughes Village Restaurant, Inc. v Village of Castleton-on-Hudson*, 46 AD2d 1044 [3d Dept. 2007]).

Here the court finds that Petitioner’s challenges are not moot. By order dated February 6, 2023, Mayor Adams issued Executive Order 25, which revoked Executive Orders 75 and 76 mandating COVID-19 vaccination for city employees. Additionally, by order dated February 9, 2023, the DBOH amended portions of the October 20, 2021, and October 31, 2021, orders which required COVID-19 vaccinations for city employees.⁹ However, because Petitioner was placed on LWOP and is seeking damages in part for back pay, he has a right or interest that would be affected by the court ruling on his petition (see *Clyne* at 714; *New England Health Care Emps. Union, Dist. 1199, SEIU AFL-CIO v Mount Sinai Hosp.*, 65 F3d 1024, 1029 [2d Cir. 1995]).

In a hybrid proceeding and action, separate procedural rules apply to those causes of action which are asserted pursuant to CPLR Article 78, on the one hand, and those to recover damages for declaratory

⁹ Pursuant to the amendment, Paragraph 3 of the October 20, 2021, order was repealed, so that a city employee who does not provide the required proof of vaccination no longer needs to be excluded from their work premises.

relief, on the other hand (*Crown Castle NG East, LLC v City of Rye*, 207 AD3d 624 [2d Dept. 2022]; *Muller v Zoning Board of Appeals Town of Lewisboro*, 192 AD3d 805 [2d Dept. 2021]; quoting *Bonacker Property, LLC v Village of East Hampton Board of Trustees*, 168 AD3d 928 [2d Dept. 2019]). The Supreme Court may not employ the summary procedure applicable to a CPLR article 78 cause of action to dispose of causes of action to recover damages or seeking a declaratory judgment (*Alltow, Inc. v Village of Wappingers Falls*, 94 AD3d 879 [2d Dept. 2012]). In general, a verified petition in a proceeding to challenge an administrative determination pursuant to CPLR Article 78, may be accompanied by affidavits or other written proof (CPLR 7804[d]; *Levy v Suny Stony Brook*, 185 AD3d 689 [2d Dept. 2020]). The relevant questions raised in such proceedings are whether an agency's determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious or was an abuse of discretion (*Id.*; *CPLR 7803[3]*; *Matter of Save America's Clocks, Inc.*, 33 NY3d 198 [2017]).

Under CPLR 7804(f), a Respondent may "raise an objection in point of law by...a motion to dismiss the petition, made upon notice within the time allowed for answer" (CPLR 7804[f]; CPLR 3211[a]; *Miller v Ravitch*, 60 NY2d 527 [1983]). If the motion to dismiss is denied, typically service of the Respondent's answer to the Petition is to be made within five days after service of the order denying the motion with notice of its entry (CPLR 7804[f]). Thereafter, a new hearing date on the merits of the petition shall be scheduled (*Id.*). However, the Court of Appeals has recognized an exception wherein the court may immediately proceed to the merits of the petition if "the facts are so fully presented in the papers of the respective parties that it is clear that no dispute as to the facts exists and no prejudice will result from the failure to require an answer" (*Nassau BOCES Cent. Council of Teachers by Dreaper on Behalf of Adult Educ. Instructors v Board of Co-op. Educational Services of Nassau County*, 63 ny2D 100 [1984]; *Lucas v Board of Education of East Ramapo Central School District*, 188 AD3d 1065 [2d Dept. 2020]; *Laurel Realty, LLC v Planning Bd. of Town of Kent*, 40 AD 3d 57 [2d Dept. 2007]).

On a CPLR 3211 motion to dismiss, the Court will accept the facts alleged in the complaint as true, afford plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 N.Y.2d 83, [1994]; *Nonnon v City of New York*, 9 N.Y.3d 825 [2007]; *Benjamin v Yeroushalmi*, N.Y.S.3d [2d Dept. 2023]; *Sokol v Leader*, 74 A.D. 3d 1180, [2d Dept. 2010]). Upon a motion to dismiss pursuant to CPLR 3211 (a)(1), dismissal is warranted where documentary evidence refutes plaintiff's factual allegations, resolves all factual issues as a matter of law, conclusively disposes of the claims at issue, and establishes a defense as a matter of law (*Leon* at 88; *Goshum v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]; *Brio v Roth*, 121 A.D.3d 733 [2d Dept. 2014]). To constitute documentary evidence, the evidence must be "unambiguous, authentic, and undeniable," such as judicial records and documents reflecting out-of-court

transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable (*Granada Condominium III Assn. v. Palomino*, 78 A.D.3d 996 [2d Dept. 2010]; *Prott v. Lewin & Baglio, LLP*, 150 AD3d 908 [2d Dept 2017]). An affidavit is not documentary evidence because its contents can be controverted by other evidence, such as another affidavit (*Xu v Van Zqienen*, 212 A.D.3d 872 [2d Dept. 2023]; *Phillips v Taco Bell Corp.*, 152 A.D.3d 806 [2d Dept. 2017]; *Fontanetta v John Doe 1*, 73 A.D.3d 78 [2d Dept. 2010]). Similarly, neither deposition testimony nor letters are considered documentary evidence within the intended meaning of CPLR 3211 (a)(1) (*Cives Corp. v George A. Fuller Co., Inc.*, 97 A.D.3d 713 [2d Dept. 2012]; *Integrated Const. Services, Inc., v Scottsdale Ins. Co.*, 82 A.D.3d 1160 [2d Dept. 2011]).

Where documentary evidence contradicts the allegations of the complaint, the court need not assume the truthfulness of the pleaded allegations (*West Branch Conservation Assn, Inc., v County of Rockland*, 227 A.D.2d 547 [2d Dept. 1996]; *Greene v Doral Conference Center Associates*, 18 A.D.3d 429 [2d Dept. 2005]); *Penato v. George*, 52 A.D.2d 939, 941 [2d Dept 1976]). Allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137 [2017]; *Duncan v Emeral Expositions LLC*, 186 A.D.3d 1321 [2d Dept. 2020]; *Dinerman v Jewish Bd. of Family & Children's Services Inc.*, 55 A.D.3d 530 [2d Dept. 2008]; *Nisari v. Ramjohn*, 85 A.D.3d 987, 989 [2d Dept 2011]). The defendant bears the burden of demonstrating that the proffered evidence conclusively refutes plaintiff's factual allegations (*Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]; *Kolchins v Evolution Mkts. Inc.*, 31 NY3d 100 [2018]; *Goshen v Mutual Life Ins. Co. of NY*, 98 NY2D 314 [2002]).

As an initial matter, this action must be dismissed as against the FDNY because agencies are not legally cognizable entities and therefore not proper parties to actions (see NY City Charter § 396; *Jenkins v City of New York*, 478 F3d 76 [2d Cir. 2007]; *Barrerra v City of New York*, 47 Misc 3d 1028 [Sup Ct. Queens County 2015]).

Here, the Respondent's submitted documentary evidence, which includes the Mayoral Press Release dated February 6, 2023, the DBOH Resolution amending and repealing requirements for COVID-19 vaccinations for city employees dated February 9, 2023, the FDNY's Denial of Request for Vaccine Mandate Exemption dated December 1, 2021, the FDNY's Supplemental Letter dated January 7, 2022, and the FDNY's Buck Slip Order dated October 8, 2021. Dismissal based upon documentary evidence is only warranted if the evidence resolves all factual issues and disposes of the Petitioner's claim as a matter of law. These documents however do not utterly refute Petitioner's factual allegations because the parties' conflicting arguments regarding whether the agency's denial of Petitioner's religious accommodation request was arbitrary and capricious, error of law, or an abuse of discretion and the issue of whether Respondents violated NYCHRL and NY Administrative Law create genuine issues of fact on the record.

On a motion to dismiss pursuant to CPLR 3211(a)(7) and 7804(f), only the petition is considered, all of its allegations are deemed true, and the petitioner is accorded the benefit of every possible favorable inference (*Levy v SUNY Stony Brook*, 185 AD3d 689 [2d Dept. 2020]; *Johnson v County of Orange*, 138 AD3d 850 [2d Dept. 2016]; *Brown v Foster*, 73 AD 3d 917 [2d Dept. 2010]). 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, was arbitrary and capricious or an abuse of discretion (CPLR 7803[3]; *Kunik v New York City Dept. of Educ.*, 142 AD3d 616 [2d Dept. 2016]; *Oddone v Suffolk County Police Dept.*, 96 AD3d 762 [2d Dept. 2012]). Dismissal of the petition is warranted if the petitioner fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery (*Levy* at 690; *Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137 [2017]). Although the factual averments set forth in a petition must be taken as true in the context of a motion pursuant to CPLR 3211(a) and 7804(f), no such deference is given to the legal conclusions drawn by the pleader nor its interpretation of the statutes involved (*Levy* at 690; *Cardinale v New York City Department of Education*, 204 AD3d 994 [2d Dept. 2022]; *City of Albany v McMorran*, 16 AD2d 1021 [3d Dept. 1962]). Accordingly, bare legal conclusions set forth in a petition, without more, are insufficient to state a valid claim for relief (*Id.*; *Brown* at 918; *Myers v Schneiderman*, 30 NY3d 1 [2017]).

Under the New York City Human Rights Law (“NYCHRL”), “it shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, such person’s creed or religion... and the employment shall make reasonable accommodation to the religious needs of such person.. unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee’s ... sincerely held religious observance or practice without undue hardship on the conduct of the employer’s business” (New York City, N.Y., Code 8-107[3][a], [b]). Under the NYCHRL, a reasonable accommodation is an “accommodation to an employee’s ... religious observance or practice as shall not cause undue hardship in the conduct of the employer’s business” (*Id.*).

In *Marsteller v City of New York*, 217 AD3d 5443 (1st Dept. 2023), the Appellate Division First Department held that the city respondents were compliant with the cooperative dialogue requirements of the NYCHRL by publicly offering information on its process for reviewing accommodation requests and informing employees on how to submit applications and appeal denials. Further, the court held that because the city respondents received a voluminous number of requests for accommodations that needed to be resolved under a constrained timeline during the ongoing pandemic, that the petitioner failed to

allege facts demonstrating that under the unique circumstances of the pandemic, that he required “a more robust or individualized dialogue” than the process he received (*Id.*).

Here the court finds that the Petitioner’s complaint has failed to sufficiently plead a valid cause of action cognizable at law alleging that the Respondent’s process for denying his request for a religious accommodation to the COVID-19 vaccination mandate violated the city’s Human Rights Law. Petitioner availed himself of the City’s accommodation procedure and engaged with Respondents throughout the process. Contrary to Petitioner’s contentions that Respondents issued form denials which provided no rational explanation for its assertion of potential undue hardship or evidence that it conducted an individualized assessment of his request, an agency does not need to state with specificity its detailed analysis or point to any contemporaneously created record that demonstrates that it considered all relevant factors (see *Hogue v Bd. of Educ. of City School Dist. of City of New York*, 220 AD3d 416, 417 [1st Dept 2023]; citing *Matter of Acosta v New York City Dept. of Educ.*, 16 NY3d 309 [2011]). Respondents’ denial forms state that it has carefully reviewed the agency’s determination and all of the documentation submitted to the agency and the additional information submitted in connection with the appeal and ultimately concluded that Petitioner’s religious exemption did not qualify for a reasonable accommodation from receiving the COVID-19 vaccine. Petitioner has failed to plead sufficient facts to support that under the circumstances that further individualized dialogue was required given the high volume of requests received.

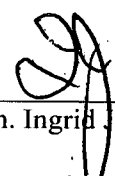
Additionally, Petitioner has failed to establish entitlement to backpay, lost wages, and/or benefits incurred as a result of being placed on LWOP from November 1, 2021, through August 27, 2022. The record reflects that he was placed on LWOP after failing to receive vaccination or submit a timely accommodation request by the deadline. For timely submitted requests, employees were permitted to continue working and submit to weekly testing while their accommodation request was under consideration or on appeal.

Accordingly, it is hereby,

ORDERED, that Petitioner’s motion (Motion Seq. 1) for an order pursuant to CPLR Article 78 declaring that Respondents’ denial of his request for religious accommodation and placement on Leave Without Pay was arbitrary and capricious, error of law, and an abuse of discretion is denied, and it is further,

ORDERED, that Respondents’ motion (Motion Seq. 2) for an order pursuant to CPLR 7804(f) and 3211 to dismiss the Petition is granted.

This constitutes the decision and order of the court.


Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**