

**Matter of Manka v New York State Dept. of
Corrs. & Community Supervision**

2024 NY Slip Op 35125(U)

December 10, 2024

Supreme Court, Albany County

Docket Number: Index No. 906445-24

Judge: Sharon A. Graff

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This opinion is uncorrected and not selected for official publication.

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

In the Matter of the Application of
CONAN MANKA,

Petitioner,

DECISION & ORDER
Index No. 906445-24

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

-against-

NEW YORK STATE DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION and DANIEL F.
MARTUSCELLO III, in his capacity as Commissioner of the
New York State Department of Corrections and Community
Supervision,

Respondents.

Supreme Court, Albany County Special Term
Motion Return Date: October 11, 2024

Present: Sharon A. Graff, JSC

Appearances: Tully Rinckey, PLLC
(Francis M. Curran, Esq., of Counsel)
Attorney for Petitioner
441 New Karner Road Floor
Albany, New York 12205

Hon. Letitia James
Attorney General for the State of New York
(Lela M. Gray, Esq., Assistant Attorney General, of Counsel)
Attorney for Respondents
The Capitol
Albany, New York 12224-0341

GRAFF, J

By Petition dated July 10, 2024, the Petitioner herein challenges his March 12, 2024,
removal from the position of Bureau Chief of the Albany Belt Area Office. The Petitioner

asserts that his removal, which followed his unsuccessful completion of his probationary term, was arbitrary and capricious. In this regard, the Petitioner alleges that the “nature of offenses in this case are not egregious” and “(t)here is no substantial evidence in the record to support the determination of Respondents to terminate Petitioner’s employment” such that the “penalty of termination...is excessive, shocks the conscience, and one’s sense of fairness (and) is an abuse of discretion.” NYSCEF Doc. No. 1, paragraphs 26, 29, 30. Furthermore, the Petitioner asserts that there is no evidence of any investigation into his alleged misconduct, that the allegations that the Respondents relied upon were “unestablished and unsubstantiated” and that “Respondents’ findings and recommendation to terminate Petitioner’s employment was arbitrary, capricious, unreasonable, and not supported by the record.” NYSCEF Doc. No. 1, paragraphs 32, 33, 36.

The Respondents have answered the Petition, raised objections in point of law, and presented the record before the agency.

The Petitioner was appointed to the position of Bureau Chief, aka Supervising Parole Officer, of the Albany Belt Area Office on March 23, 2023. That appointment was subject to a probationary period of one year with an end date of March 21, 2024. NYSCEF Doc. No. 28, paragraph 5. On March 12, 2024, by letter from Sherry McGuinness, New York State Department of Corrections and Community Supervision’s (“DOCCS) Director of Personnel, the Petitioner was formally notified that he was “being demoted for failure to satisfactorily complete your probationary period as a Supervising Parole Officer” and returned to his “permanent hold item of Senior Parole Officer at the Utica Area Office.” NYSCEF Doc. No. 10. Prior to his removal, the Petitioner had received five Probationary Period Evaluation Reports (“Report”) from his supervisor, Regional Director Sabrina R. Drayton covering, respectively, the time periods of March 23, 2023 to May 4, 2023, May 5, 2023 to June 1, 2023, June 2, 2023 to August 10, 2023, August 11, 2023 to October 19, 2023, and October 20, 2023 to December 28, 2023.

NYSCEF Doc. Nos. 2-6. Due to a delay in requesting the personnel forms by the personnel office the Petitioner did not receive the Reports covering March 23, 2023 to October 19, 2023, until January 3, 2024. He received the Report of the time period spanning October 20, 2023 to December 28, 2023, on February 2, 2024. The first four Reports authored by Regional Director Drayton recommended continuing the Petitioner's probation and were unremarkable other than the Report covering August 11, 2023 to October 19, 2023, which noted that during the relevant period of time the Bureau supervised by the Petitioner had "not been able to consistently maintain excellent performance standards" and that while the Petitioner had put controls in place "ensuring consistent compliance with standards had been a challenge." NYSCEF Doc. No. 5. However, in the Report dated January 22, 2024, and covering the period of October 20, 2023 to December 28, 2023, Regional Director Drayton recommended that the Petitioner be terminated from his position noting that he continued "to struggle in guiding and directing staff in the supervision of releasees and communicating to his supervisors on matters that require the notification to supervisory or executive staff" and that certain "supervisory and managerial actions taken by...(Petitioner)...during this period did not demonstrate the effective applications of DOCCs employee rules and directive." NYSCEF Doc. No. 6, p. 2. The Report detailed several instances in which the Petitioner's performance was found wanting. In particular, the Petitioner failed to facilitate detailed case actions ordered by Assistant Regional Director Jennifer A. Armstrong regarding a "Noteworthy Case" that involved potential workplace interaction between a paroled murderer and the son of the murderer's victim, that had been brought to the attention of the Albany Belt Area Office by the Columbia County District Attorney's Office. Moreover, the Petitioner failed to share with his immediate supervisor a further email from the Columbia County District Attorney's Office regarding the matter that warned that there was the potential that legal action could be taken against DOCCS. In addition,

the Report documented that the Petitioner did not follow the Workplace Violation Prevention Program Directive 4960 in that he failed, inter alia, to direct the filing of an “Unusual Incident Report” regarding an incident between probation officers at his official workstation on November 20, 2023, and did not “address any other reporting/documentation requirement” in that he did not forward to his immediate supervisor an email, dated November 21, 2023 that memorialized the incident, until December 4, 2023. NYSCEF Doc. No. 6, pp. 2-3. On January 30, 2024, and again on February 1, 2004, Regional Director Drayton supplemented the Report in emails to Margaret M. Rehm, DOCCS Associate Director of Human Resources that outlined other instances of the Petitioner’s substandard performance as Bureau Chief. Among those instances was the Petitioner’s failure to properly supervise a case involving a releasee who had been arrested on a drug charge. Notwithstanding that arrest Petitioner failed to facilitate the timely submission of a Merit Termination Report, failed to notify the reviewer of the Merit Termination Report of the deficiencies by his supervisees that had caused the delay and his plans to address same, and then engaged in prolonged dissembling when questioned about the incident by Assistant Regional Director Armstrong. NYSCEF Doc. No. 24, pp. 1, 5-11, 30-33. In addition, the Petitioner failed to notify his supervisor after being informed of the death of a releasee, failed to direct the timely preparation and submission of a Point of Information regarding the death, and dissembled when questioned about the reasons for such failures. NYSCEF Doc. No. 24, pp. 1-2, pp. 13-26. Regional Director Drayton again forwarded additional information to Associate Director Rehm on February 5, 2024, showing that the Petitioner directed a parole officer (“PO”) who had discovered child pornography on a releasee’s phone to photograph the images, a direction that exposed the PO to potential charges of disseminating and possessing child pornography. The Petitioner may have dissembled regarding his role in the taking of the photographs and further, ordered that the PO not enter her

information of the act of taking the photographs pursuant to his orders into the Case Management System. NYSCEF Doc. No. 24, pp. 50-52. Finally, by email dated February 7, 2024, Regional Director Drayton provided Associate Director Rehm with information regarding the Petitioner's failure to update her with regard to information pertinent to a critical incident involving a PO who had been potentially exposed to Fentanyl. NYSCEF Doc. No. 24, pp. 53-54.

Based on the information provided to her by Regional Director Drayton, Associate Director Rehm "recommended probationary termination" pursuant to 4 NYCRR 4.5 to Director McGuinness who, in turn, notified the Petitioner of his demotion effective March 18, 2024. NYSCEF Doc. No. 28, paragraphs 28-31. After granting Petitioner's request and affording him an interview with her designees on April 10, 2024, Director McGuinness "informed Petitioner that her decision regarding termination of his probation remained 'unchanged'" by letter dated May 7, 2024. NYSCEF Doc. No. 10; NYSCEF Doc. No. 28, paragraph 32, 33. Thereafter, the Petitioner commenced the instant proceeding.

"As this case did not involve a determination made after a quasi-judicial hearing required by law, judicial review is limited to whether the challenged portion of (DOCCS's) determination was irrational, arbitrary and capricious or contrary to law." *Matter of Adirondack Wild: Friends of the Forest Pres. v. New York State Adirondack Park Agency*, 34 N.Y.3d 184, 191 (2019), citation omitted; see, CPLR 7803 (3). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts." *Matter of O'Hagan v. City of New York*, 226 A.D.3d 1026, 1027 (2nd Dept. 2024), internal quotation marks, ellipsis and citations omitted; see, *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222, 231 (1974). Upon finding that an agency's determination is rationally based, a court "must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency."

Matter of Brookdale Physicians' Dialysis Assoc., Inc. v. Department of Finance of City of N.Y., 41 N.Y.3d 608, 616, (2024), internal quotation marks, brackets and citations omitted.

Moreover, due to his status as a probationary employee the Petitioner “may be dismissed for almost any reason, or for no reason at all.” *Swinton v. Safir*, 93 N.Y.2d 758, 762-763 (1999); *Messenger v. State Dept. of Corrections and Community Supervision*, 151 A.D.3d 1433, 1433 (3rd Dept. 2017). Indeed, “(a) probationary employee...has no right to challenge his or her termination of employment absent a showing that the dismissal was done in bad faith or for any improper reason.” *Solomon v. New York State Office of Children and Family Services*, 170 A.D.3d 1297, 1297 (3rd Dept. 2019), citations omitted; see, *Triumpho v. County of Schoharie*, 200 A.D.3d 1134, 1135 ([j]udicial review of the discharge of a probationary employee is limited to whether the determination was made in bad faith or for an improper or impermissible reason.” [3rd Dept. 2021], citations omitted). To merit a hearing to examine the propriety of his termination, the Petitioner “bears the burden of submitting proof sufficient to raise a question of fact as to whether the dismissal was due to causes unrelated to work performances and/or improperly motivated.” *Shabazz v. New York State Dept. of Correctional Services*, 63 A.D.3d 1253, 1254 (3rd Dept. 2009), internal quotation marks and citations omitted. However, “allegations of a conclusory or speculative nature are insufficient to meet this burden.” *Messenger v. State Dept. of Corrections and Community Supervision*, at 1434; see, *Civil Service Employees Association v. New York State Office of Children and Family Services*, 174 A.D.3d 1206, 1209 (3rd Dept. 2019).

A review of the administrative record for this matter demonstrates to the Court's satisfaction that the determination by DOCCS to remove the Petitioner from his position as Bureau Chief was both rational and made in good faith, based as it was on numerous documented instances of the Petitioner's unsatisfactory job performance that included: a failure

to properly supervise those under his authority, a failure to follow directives from supervisors and/or to perform and/or document necessary tasks in a prompt manner, a lack of judgment, and a failure to provide his supervisors with vital information and/or respect the chain of command. Moreover, those shortcomings were demonstrated to be coupled with the Petitioner's apparent trait of dissembling when confronted with deficiencies; a trait that suggests an inability to confront shortcomings relative to his supervisory abilities and overall job performance. See, *Civil Service Employees Association v. New York State Office of Children and Family Services*, at 1210; *Solomon v. New York State Office of Children and Family Services*, at 1298; *Messenger v. State Dept. of Corrections and Community Supervision*, at 1434. Moreover, the Petitioner's assertion that his removal was motivated by bad faith is unsupported and therefore insufficient to trigger a hearing. See, *Swinton v. Safir*, at 763; *Shabazz v. New York State Dept. of Correctional Services*, at 1254. Finally, the voluminous record compiled by the Respondents belies the Petitioner's assertion that allegations against the Petitioner were inadequately investigated, thus rendering the removal determination arbitrary and capricious.

The Petitioner's assertion that the penalty administered was fundamentally unfair and disproportionate to the alleged wrongdoing" is also unavailing. NYSCEF Doc. No. 14, paragraph 7. "An administrative penalty must be upheld unless it is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness, thus, constituting an abuse of discretion as a matter of law." *Lalima v. New York State Department of State*, 214 A.D.3d 1501, 1054 (3rd Dept 2023), internal brackets, quotation marks and citations omitted; see, *Patel v. New York State Education Department*, 211 A.D.3d 1149, 1152 (3rd Dept. 2022). Here, the Petitioner's claim that his removal was disproportionate and unfair is largely based on what he characterizes as "his extensive service to Respondents and unblemished work record." NYSCEF Doc. 14, pp. 8. However, the Court notes that the record the Petitioner refers

to is one that was largely compiled in jobs other than that which is the subject of this proceeding, i.e., his probationary position as Bureau Chief. In view of the nature of a probationary appointment generally (see, 4 NYCRR 4.5; *Swinton v. Safir*, at 762-763), coupled with the documented instances of the Petitioner's failure to perform satisfactorily in his new position, the penalty of Petitioner's removal from the position of Bureau Chief is neither disproportionate nor shocking.

Based on the aforesaid, it is hereby Ordered that the Petition is dismissed.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Albany County Clerk's Office via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: 12/11/24
Albany, New York

ENTER,


SHARON A. GRAFF, JS



12/11/2024

Papers Considered:

1. "Petition" dated July 10, 2024, together with annexed Exhibits A-J.
2. "Notice of Petition" dated July 10, 2024,
3. "Petitioner's Memorandum of Law" by Francis M. Curran, Esq., dated July 10, 2024.
4. "Verified Answer" dated October 4, 2024, together with annexed Exhibits A-K.
5. "Affirmation of Margaret Rehm in Opposition to the Petition," by Margaret M. Rehm, filed October 4, 2024.
6. "Memorandum of Law in Support of Respondents' Verified Answer," by Lela M. Gray, Assistant Attorney General, dated October 4, 2024.