

Fecteau v City of Mount Vernon
2024 NY Slip Op 35465(U)
September 12, 2024
Supreme Court, Westchester County
Docket Number: Index No. 67945/2023
Judge: Anne E. Minihan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

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

-----X
MICHAEL J. FECTEAU,

Petitioner,

DECISION & ORDER

for a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules

Index No.: 67945/2023

Motion Seq.: 3-4

Motion Date: 9/11/2024

- against -

CITY OF MOUNT VERNON and the
MOUNT VERNON POLICE DEPARTMENT,

Respondents.

-----X
MINIHAN, J.

The following papers, numbered 1 to 10, were read on Petitioner's Notice of Motion, dated July 13, 2024, seeking an order to reopen his Article 78 proceeding, and on Petitioner's Notice of Motion, dated August 9, 2024, seeking to compel Respondents' compliance with the Court's August 1, 2024 Order, to submit the required investigation report and related documents, and to impose sanctions.

PAPERS

NUMBERED

Notice of Motion (seq. #3)/Affidavit in Support
Petitioner's July 17, 2024 Letter
Respondent's July 31, 2024 Letter
Notice of Motion (seq. #4)/Affidavit in Support
Respondent's August 8, 2024 Letter
Affirmation in Opposition (seq. #4)
Reply Affidavit (seq. #4)
Petitioner's August 25, 2024 Letter

1-2
3
4
5-6
7
8
9
10

Upon the foregoing papers, the motions are determined as follows:

Background and Party Contentions

On March 12, 2024, this Court rendered a Judgment, Decision, and Order ("March Judgment") with respect to Petitioner's Article 78 proceeding against Respondents, *inter alia*:

1. Dismissing the Petition, except for the branch of the Petition seeking mandamus to compel Respondents to proceed on Petitioner's civilian complaints filed with the Internal Affairs Bureau of the City of Mount Vernon on or about February 26, 2023 and March 3, 2023;
2. Granting that branch of the Petition seeking mandamus to compel Respondents to review and respond to Petitioner's civilian complaints filed with the Internal Affairs Bureau of the City of Mount Vernon on or about February 26, 2023 and March 3, 2023, and directing that within 15 days of the Decision and Order, Respondents shall investigate and adjudicate such complaints consistent with City Charter § 119, MVPD Administrative Procedure 2.061-2, and MVPD Organization Policy [Internal Affairs Unit] Article VII-7;
3. Ordering that if Respondents require additional time to comply with the Court's mandate, then they may apply to this Court before the expiration of time, by filing to NYSCEF a letter, not exceeding two pages in length, particularizing good cause for the extension they request. Such application shall demonstrate why further time is required in view of Respondents' delays in proceeding since the dates of such complaints and, in particular, the commencement date of this proceeding when Petitioner attached such complaints and served them on Respondents; and
4. Ordering that this Court will retain jurisdiction if noncompliance with the foregoing mandate renders further relief necessary.

On July 13, 2024, Petitioner moved to reopen this case (seq. #3) to address Respondents' "continuous failures" "in investigating civilian complaints and to provide the necessary relief to ensure accountability and protection of my Constitutional rights" (July 13, 2024 Affidavit). Upon receiving the motion, the Court discovered that due to an oversight, the March Judgment was not filed with the County Clerk because it was never uploaded to NYSCEF. The Court rectified that lapse on July 17, 2024, and judgment was entered the next day (NYSCEF Doc. Nos. 25-28). On August 21, 2024, Respondents filed the March Judgment with Notice of Entry by uploading the same to NYSCEF (NYSCEF Doc. No. 38).

While the motion (seq. #3) was pending and before the Court received Respondents' opposition papers, on July 18, 2024, Petitioner filed a letter, indicating that he had not received a variety of items – specifically the body-worn camera footage from February 26, 2023 and March 3, 2023 – pursuant to his FOIL request. He also claimed that the subject footage was not reviewed by anyone (NYSCEF Doc. No. 29 at 1).

On July 30, 2024, the Court issued a Court Notice, setting a briefing schedule for motion seq. #3 with a return date of September 11, 2024. On July 31, 2024, Respondents requested an additional week to complete their investigation. Respondents stated that the "one-week extension will allow the IAB unit to finish a thorough investigation which has included conducting witness interviews and reviewing evidence" (NYSCEF Doc. No. 31). The Court granted the brief adjournment, slightly adjusting the briefing schedule, but keeping the same return date of September 11, 2024 (NYSCEF Doc. No. 32).

On August 9, 2024, Petitioner filed another motion (seq. #4), seeking an order to compel Respondents' compliance with the Court's August 1, 2024 Order, to submit the required investigation report and related documents by August 8, 2024, and to impose sanctions.

On August 14, 2024, Respondents filed a letter, stating that "the Mount Vernon Police Department completed the investigation and mailed its standard letter to Petitioner on August 8, 2024, via certified mail" (NYSCEF Doc. No. 36). Respondents attached two letters to Petitioner regarding the two complaints (NYSCEF Doc. No. 36 at 2-3).

On August 20, 2024, the Court issued a Court Notice, setting a briefing schedule for Motion Seq. #4 with a return date of September 11, 2024 – the same return date as Seq. #3 (NYSCEF Doc. No. 37).

On August 23, 2024, Respondents filed their opposition to the motion to compel (seq. #4), stating that the investigation was completed timely, and Petitioner filed a FOIL request, notifying Respondents of the same in an email on August 14, 2024 (NYSCEF Doc. No. 39). Accordingly, Respondents argue that Petitioner's motion to compel is moot and academic.

In reply, Petitioner demands this Court compel Respondents to provide the complete findings of the investigation along with all related documents described in his motion. Petitioner asserts that the motion is neither moot nor academic because "the investigation conducted by the Mount Vernon Police Department has not been adequately disclosed" (NYSCEF Doc. 40 at 1). Petitioner has "not received the full report or all related documents that are essential for a comprehensive understanding of the investigation" (NYSCEF Doc. No. 40 at 1). Petitioner claims he is entitled to "full disclosure" of the complete investigation report and all associated documents, not just the standard communication (NYSCEF Doc. No. at 1-2). Petitioner argues that Respondents have failed to respond to his FOIL request in a timely and lawful manner. Then, without permission to file additional papers, Petitioner followed up his reply with a letter on August 25, 2024, indicating that Respondents have not responded to his FOIL request and that "this situation requires more than just a standard letter" (NYSCEF Doc. No. 41 at 1-2).

Sequence #3 – Motion to Reopen

To the extent Petitioner is seeking to reopen his matter, the motion is denied as academic because the Court explicitly stated in its Decision and Order that it would retain jurisdiction if noncompliance with the March Judgment mandate renders further relief necessary.

Sequence #4 – Motion to Compel

The Court directed Respondents to complete their investigation within 15 days of the Court's March 12, 2024 Judgment, Decision and Order. However, the Court failed to file the same to NYSCEF – only discovering this failure once Petitioner filed his motion to reopen the case. Consequently, the Court filed the Judgment, Decision and Order on July 17, 2024, and the County Clerk entered it on July 18, 2024.

Because there is no evidence before the Court that the parties knew of the March Judgment prior to the July 17, 2024 filing, Respondents should have finished their investigation by August 1, 2024 – 15 days later. Needing additional time, Respondents wrote to the Court, pursuant to the March Judgment (NYSCEF Doc. No. 27 at 17), requesting such additional time, which was granted until August 8, 2024. According to the documents before the Court, the investigation was concluded on August 8, 2024, and Petitioner was notified in writing (NYSCEF Doc. 36 at 2).

Respondents argue that the motion to compel is rendered moot as they have complied. However, this Court stated in its March 12, 2024 Decision and Order that a “[r]eport at [the] completion of investigation . . . shall be submitted within fifteen (15) days” (MVPD Administrative Procedure at 2.061.2-III[8][G] [emphasis added]), and such report “shall contain,” among other things, a record of the original complaint and details of its receipt, a summary of the investigation, findings and recommendations (MVPD Administrative Procedure at 2.061.2-III[8][A]-[F] [emphasis added]).

Here, the Court finds no evidence that Respondents “investigate[d] and adjudicate[d] the complaints consistent with . . . MVPD Administrative Procedure 2.061-2” as directed (NYSCEF Doc. 27 at 17). They only sent two simple letters stating that they concluded the investigations. In the first letter related to Petitioner’s July 29, 2023 complaint, Respondents stated that “there was no evidence of misconduct or violations of department policy,” and “[i]nstruction via a written directive has been provided to Department members” (NYSCEF Doc. No. 36 at 2). In the second letter related to Petitioner’s March 3, 2023 complaint, Respondents stated that “[a] portion of the investigation has been deemed founded. Instruction via a written directive has been provided to Department members” (NYSCEF Doc. No. 36 at 3). However, there is no “record of the original complaint and details of its receipt, a summary of the investigation, findings and recommendations” pursuant to the Court’s directive. Thus, the Court rejects Respondents’ claim of mootness and finds that they plainly did not comply as directed by this Court.

The Court is baffled by Respondents’ inability to comply with the Court’s order and their own administrative procedures. The Court noted in the March Judgment that the four prior actions between the parties, and this one, “share a common allegation that the City and/or its constituent entities or officers systematically fail to act on the petitions, document requests, permit applications, and complaints that Fecteau files with them” (NYSCEF Doc. No. 25 at 2). Having no proof that Respondents have since provided the missing records, the Court directs Respondents to provide the same within ten (10) days of the Court’s filing of this Decision and Order. If Respondents fail to comply, Petitioner is granted leave to bring a contempt motion.

Accordingly it is hereby

ORDERED that Petitioner’s motion (seq. #3) is denied as academic for the reasons stated herein; and it is further

ORDERED that Petitioner’s motion (seq. #4) is granted to the extent stated herein; and it is further

ORDERED that Respondents shall provide the missing documents as detailed herein within ten (10) days of the Court’s filing of this Decision and Order; and it is further

ORDERED that if Respondents fail to comply, Petitioner is granted leave to bring a contempt motion; and it is further

ORDERED that this Court shall retain jurisdiction if noncompliance with the foregoing mandate renders further relief necessary; and it is further

ORDERED that because all parties participate in electronic filing, this Court's NYSCEF filing of this instrument shall constitute good and sufficient service hereof on *pro se* Petitioner and defense counsel; and it is further

ORDERED that any argument not directly addressed herein is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 12, 2024



Honorable Anne E. Minihan
Justice of the Supreme Court

To: All parties via NYSCEF