

**Matter of Seligson v Office of Admin. Trials & Hearings**

2025 NY Slip Op 31577(U)

April 3, 2025

Supreme Court, New York County

Docket Number: Index No. 101154/2024

Judge: Lynn R. Kotler

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

-----X

INDEX NO. 101154/2024

In the matter of the application of
Samuel Seligson
Petitioner,

MOTION DATE 09/20/2024

MOTION SEQ. NO. 001

- v -

The Office of Administrative Trials and Hearings
Respondent.

DECISION + ORDER ON MOTION

-----X

The following documents (Motion 001) 1, 2, 2A
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, this motion is decided as follows. In this special proceeding brought pursuant to CPLR Article 78, petitioner Samuel Seligson ("Seligson") seeks an order annulling a decision by respondent the Office of Administrative Trials and Hearings ("OATH"), which denied Seligson's adjournment request, and staying the OATH trial bearing the index number 0442/25 until after the resolution of the pending criminal charges against Seligson. OATH opposes the motion and argues that Seligson's Fifth Amendment rights are not violated by going forward with the proceedings and that a pending criminal trial does not constitute a basis to stay administrative proceedings. For the reasons that follow, the petition is denied.

Facts

The relevant facts are as follows. Seligson is a credentialed New York Press Card holder and independent video journalist. On or about August 6, 2024, Seligson was arrested for allegedly participating in the vandalism of two houses, belonging to the Director of the Brooklyn Museum and President/Chief Operating Officer of the Brooklyn Museum. The spray-painted

phrases included “Brooklyn Museum White-Supremacist” and “Blood on your Hands”. Seligson was charged with four felonies in connection with the arrest.

On August 15, 2024, the Mayor’s Office of Media and Entertainment (“MOME”), the agency in charge of issuing press cards in New York City, commenced a proceeding with OATH seeking the suspension of Seligson’s press card. A settlement conference was scheduled for August 28, 2024. On August 23, 2024, Seligson’s counsel requested an adjournment on the basis of judicial economy and to protect Seligson’s Fifth Amendment rights. The adjournment request was denied on August 26, 2024.

On August 28, 2024, the settlement conference was conducted, but no agreement was reached. At the conference, Seligson again argued for adjournment. Administrative Law Judge Faye Lewis (“ALJ Lewis”) denied the adjournment pursuant to 43 Rules of the City of New York (“RCNY”) § 16-06(b)(iii)(A) which allows MOME to petition for a suspension of a press card while the card holder has an open case against them.

The trial was scheduled for September 17, 2024. On September 6, 2024, Seligson renewed his adjournment request, which was denied on September 9, 2024 by ALJ Lewis who determined that that pending criminal charges are not a basis to adjourn the civil administrative trial. The parties made a joint adjournment request on September 10, 2024, to allow MOME to present an amended settlement offer and agreed to adjourn the trial to September 27, 2024. The instant petition was filed on September 20, 2024, requesting this Court adjourn the OATH trial until after resolution of Seligson’s criminal case.

### Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of

discretion (CPLR § 7803 [3]; *see also Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). “An action or determination is arbitrary and capricious when ‘it is taken without sound basis in reason or regard to the facts’” (*Matter of Ferrelli v State of New York*, 226 AD3d 504, 504 [1st Dept 2024] quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *see also Matter of Pell*, 34 NY2d at 231).

Pursuant to 43 RCNY § 16-06(b)(iii)(A), MOME may suspend a press credential when the press card holder:

“(1) has an open case for a lawful arrest for or was convicted of a misdemeanor while newsgathering or has an open case for a lawful arrest for or was convicted of a felony and (2) continued use of the press credential would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public”

For any OATH trial, “applications for adjournments are addressed at the discretion of the administrative law judge, and will be granted only for good cause” (48 RCNY § 1-32[b]). Generally, “[a] criminal defendant does not have a right to stay a related disciplinary proceeding pending the outcome of trial” (*Matter of Zekaria*, 230 AD3d 19, 24 [1st Dept 2024] quoting *Matter of Chaplin v New York City Dept. of Educ.*, 48 AD3d 226, 227 [1st Dept 2008]; *see also Matter of Espada 2001 v New York City Campaign Fin. Bd.*, 15 Misc 3d 647, 651 [Sup Ct 2007], *affd* 59 AD3d 57 [1st Dept 2008] [“the Board did not act improperly in denying petitioners the requested indefinite adjournment of the administrative proceeding”). Administrative proceedings do not violate a respondent’s Fifth Amendment rights as they are not being compelled to testify (*see Baxter v Palmigiano*, 425 US 308, 316-17 [1976]).

Seligson argues that OATH’s denial of his adjournment request was arbitrary and capricious. In denying petitioner’s request for an adjournment, ALJ Lewis relied on *Dep’t of Social Service (Human Resources Admin.) v Jaata* (OATH index No.1442/19 [July 25, 2019]).

The employee had been indicted and pled guilty to mail fraud but was attempting to vacate his guilty plea (*id.* at \*3). In denying the employee's adjournment request, it was determined that his Fifth Amendment rights were not violated because he was not compelled to testify at the OATH trial (*id.* at \*3). The Administrative Law Judge found that in lieu of testifying, the employee could challenge the agency's evidence against him (*id.*).

Seligson argues that *Jaata* is distinguishable from the instant petition, and that it was arbitrary and capricious for ALJ Lewis to rely on that case when she denied the adjournment request. Seligson contends that the employee in *Jaata* had already been indicted and pled guilty, whereas here Seligson has not been indicted yet. Petitioner further argues that the employer in *Jaata* had a strong interest in going forward with the hearing to be able to terminate the employee, whereas here, MOME would not be prejudiced by Seligson's continued use of the press card.

While there are distinguishable facts between the two cases, the court finds that the legal principals applied to *Jaata* are relevant in the instant case. ALJ Lewis's decision to deny the adjournment was not arbitrary and capricious in determining that a pending criminal trial did not constitute good cause for adjournment (*see* 48 RCNY § 1-32[b]). Furthermore, ALJ Lewis reasoned that a suspension cannot be based on a pending criminal case alone and that OATH must also prove that "continued use of the press credential would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public" (43 RCNY § 16-06[b][v]).

Seligson contends that good cause has been shown as it would be an inefficient use of judicial resources to proceed with the OATH trial, which is based upon the early stages of an

undecided criminal trial, and that his right to due process would be significantly compromised should the trial proceed.

Seligson relies on *Britt v International Bus Servs.*, which states “[f]actors to consider include avoiding the risk of inconsistent adjudications, application of proof and potential waste of judicial resources” when a motion is made seeking to stay a civil action pending the resolution of a related criminal action (255 AD2d 143, 144 [1st Dept 1998]). *Britt* also states that the determination “is at the sound discretion of the trial court” (*id.*).

The court is not persuaded by the argument that the case should be stayed for judicial economy. ALJ Lewis was under no obligation to stay the case simply because a related pending criminal trial was ongoing and she was within her discretion to deny the adjournment. Further, Seligson has every opportunity at trial to prove that allowing him to keep his press card would not involve any unreasonable risk without violating his Fifth Amendment rights.

Seligson argues that in other cases where an adjournment has been denied, there have been “significant public policy issues at stake” (*see e.g. Matter of Germaine B.*, 86 AD2d 847, 848 [1st Dept 1982] [public policy interest necessitated an expeditious determination of the child abuse proceedings]; *Matter of New York City Com'r of Social Services on Behalf of Jason C. v Elminia E.*, 134 AD2d 501, 503 [2d Dept 1987] [the State had an overriding interest in the quick disposal of cases where the child had been removed from the home pending the hearing]; *Matter of Derra G.*, 232 AD2d 211 [1st Dept 1996] [the court acted within its discretion when it denied respondent’s motion for adjournment where the court drew no negative inference from respondent’s failure to testify]).

All of the cases cited by Seligson relate to child abuses cases where the state had an interest in an expedient trial to protect the child’s interests. No similar public interests exist here.

The standard is not whether New York has a significant public interest at stake, but whether good cause was provided that would warrant an adjournment. Public interest can act as a factor in determining whether it outweighs the good cause provided but is not the determinative factor in and of itself. As Seligson's due process rights would not be significantly compromised, ALJ Lewis's decision to deny the adjournment request was not arbitrary and capricious in denying the adjournment request.

Finally, Seligson argues that he will suffer irreparable harm should his press card be suspended. The court disagrees. While Seligson does operate as a videographer and makes at least a portion of his income through selling his content to media outlets, the suspension of his press card will not cause irreparable harm. While Seligson may suffer short-term economic damages during his suspension, "damages compensable in money and capable of calculation, albeit with some difficulty, are not irreparable" (*SportsChannel Am. Assoc. v Natl. Hockey League*, 186 AD2d 417, 418 [1st Dept 1992]). Seligson has not shown that revocation of his press card will prevent him from working or creating content to sell to media distributors.

Moreover, his press card has not been suspended yet. Seligson claims that he is being given the choice of "testifying in his defense at the OATH hearing or asserting his constitutionally guaranteed right to remain silent". The court disagrees. Seligson still has the opportunity to introduce evidence or mitigating factors proving that his continued use of the press card would not present an unreasonable risk to the public and that suspension is not necessary.

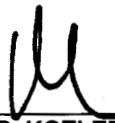
For all the reasons stated herein, the petition is denied.

### **Conclusion**

Accordingly, it is hereby

**ADJUDGED** that the petition is denied and this proceeding is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>4/3/2025</u> DATE	 LYNN R. KOTLER, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE