SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** 33M
Justice

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INDEX NO. 152004/2025

In the Matter of the Application of
AMIRUL ISLAM,

MOTION DATE 02/13/2025

Petitioner,

MOTION SEQ. NO. 001

For a judgment pursuant to Article 78 of the Civil Practice Law and Rules

- v -

DECISION + ORDER ON MOTION

POLICE COMMISSIONER OF THE CITY OF NEW YORK, THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,[1] and THE CITY OF NEW YORK

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, and after a final submission date of May 23, 2025, Petitioner Amirul Islam's ("Petitioner") Petition annulling the determination of the Respondent Police Commissioner of the City of New York (the "Commissioner"), directing that Petitioner be restored to his position as a Police Officer in the Police Department of the City of New York ("NYPD"), or in the alternative directing Respondents conduct a name clearing hearing is granted in part and denied in part. Respondents Commissioner, NYPD, and the City of New York (collectively "Respondents") cross-motion to dismiss the Petition pursuant to CPLR 7804(f), 3211(a)(1), and (a)(7) is granted in part and denied in part.

[1] The correct name for Respondent is the New York City Police Department, as referenced in Respondents' motion papers.

I. Background

On January 17, 2023, Petitioner was sworn in as a Police Officer with the NYPD. Petitioner's probationary period was scheduled to end on January 17, 2025. On September 3, 2024, Petitioner was selected for a random drug test. Hair samples were taken, and on September 18, 2024, Respondents were informed by non-party Psychmedics, Inc that Petitioner's hair sample tested positive for cocaine (NYSCEF Doc. 3). On September 19, 2024, Petitioner was suspended due to the positive drug test. On September 21, 2024, Petitioner allegedly took his own hair sample and ordered a drug test from Quest Diagnostics, which came back negative (NYSCEF Doc. 4). Respondents' then provided Petitioner the option of a third hair sample tested by another laboratory. Petitioner proceeded with the third test on October 1, 2024. The third test, which was reported on October 17, 2024, also came back positive for cocaine (NYSCEF Doc. 6).

On October 19, 2024, Petitioner was restored to modified duty and was served with Departmental Disciplinary Charges and Specifications (NYSCEF Doc. 5). Petitioner asked the NYPD Advocate's Office for the "Litigation Package" regarding the drug test, but he was never provided it. The Litigation Package allegedly contains information regarding the collection, handling, and testing of Petitioner's hair sample. On October 24, 2024, Petitioner received notice that he was terminated (NYSCEF Doc. 7). He did not receive the Litigation Package until October 30, 2024. Now, Petitioner asks this Court to annul Respondents' decision to terminate him, or alternatively seeks a name clearing hearing. Respondents cross-move to dismiss.

II. Discussion

Generally, a probationary employee may be terminated "for any reason or for no reason, and without explanation, as long as the termination was not in bad faith or for an impermissible reason" (*Nieves-Diaz v City of New York*, 37 AD3d 356, 356-57 [1st Dept 2007]). The burden falls

on the Petitioner "to demonstrate, by competent proof, that a bad faith motive for termination existed, or that the termination was for an improper or impermissible reason" (*Che Lin Tsao v Kelly*, 28 AD3d 320, 321 [1st Dept 2006]). Absent a showing of bad faith or impropriety, courts may not disturb the termination of probationary employees (*Garnes v Kelly*, 51 AD3d 538, 539 [1st Dept 2008). It has been held repeatedly that the termination of probationary employees after reliable drug tests demonstrated they used cocaine does not constitute bad faith or illegality (*Matter of Deitch v City of New York*, 90 AD3d 924, 925 [2d Dept 2011]; *Hicks v City of New York*, 1 AD3d 218, 218 [1st Dept 2003]; *Brown v City of New York*, 250 AD2d 546, 546-47 [1st Dept 1998]).

Here, given the two positive drug tests, Petitioner has failed to allege a bad faith or improper motive for his termination which would permit this Court to annul Respondents' determination. Petitioner's conclusory allegations that the hair sample tested was too small or that Respondents were delayed in providing him the Litigation Package are insufficient to allege bad faith or impropriety. Petitioner admits Respondents provided him the opportunity to take a subsequent drug test through a different laboratory to challenge the initial drug test which showed a positive result for cocaine use, but that subsequent drug test also yielded a positive result. Moreover, if there were improprieties found in the Litigation Package disclosed to Petitioner which would give rise to an inference of bad faith or impropriety, Petitioner was required to allege those improprieties. But he has not made those allegations, even though it is his burden to do so. Nor has Petitioner alleged any violation of internal policies, rules, or regulations with respect to his delayed receipt of the Litigation Package.

Petitioner's reliance on *Castro v. Schriro*, 140 A.D.3d 644 (1st Dept 2016) is misplaced. In that case, which has nothing to do with an employee terminated as a result of two positive drug

tests, the First Department held that the petitioner sufficiently alleged bad faith when he claimed he was inexplicably terminated despite following Department of Correction's rules and protocol, following all orders from his supervisor, and acting in full cooperation with an investigation of an inmate's death, which led to a Department of Correction Captain's indictment (*Castro, supra at* 647). Moreover, the respondent in *Castro* provided no reason for the petitioner's termination and simply argued that because he was a probationary employee, he was not required to be furnished with charges and could be dismissed without a reason (*Id.* at 648). In this case, unlike *Castro*, Petitioner was provided charges, and Respondent has provided ample reason for terminating him – namely two positive drug tests for cocaine.

Therefore, *Castro* does not control, but the line of cases finding a good faith basis for terminating probationary employees due to positive drug tests does control and requires dismissal (*Matter of Deitch v City of New York*, 90 AD3d 924, 925 [2d Dept 2011]; *Hicks v City of New York*, 1 AD3d 218, 218 [1st Dept 2003]; *Brown v City of New York*, 250 AD2d 546, 546-47 [1st Dept 1998]). Because Petitioner has not alleged bad faith or improper motive, his Petition to annul Respondents' decision to terminate him is denied (*see also Goldin v Kelly*, 77 AD3d 475 [1st Dept 2010]; *Nieves-Diaz v City of New York*, 37 AD3d 356, 357 [1st Dept 2007]).

Petitioner's request for a name-clearing hearing is granted. A name-clearing hearing is a limited remedy for damages to an individual's "due process rights when an employee is terminated along with a contemporaneous public announcement of stigmatizing factors, including illegality, dishonesty, immorality, or a serious denigration of the employee's competence" (*Aquilone v City of New York*, 262 AD2d 13, 13 [1st Dept 1999]). A petitioner seeking a name-clearing hearing must establish "stigma plus" which must involve alleged defamation interfering with a due process liberty interest (*Swinton v* Safir, 93 NY2d 758, 764 [1999]). As for the stigma element, where a

personnel file contains nothing more than that of "individual or isolated instances of bad judgment…correctable by learning from one's mistakes" there can be no finding of a "stigma of constitutional proportions" mandating a name-clearing hearing (*Swinton*, *supra* at 765 quoting *Petix v Connelie*, 47 NY2d 457, 460 [1979]; *see also Matter of Garnes v Kelly*, 51 AD3d 538, 539 [1st Dept 2008]). Moreover, absent allegations of likely dissemination, a name-clearing hearing is not warranted (*Matter of Gil v Department of Educ. of the City of N.Y.*, 146 AD3d 688, 689 [1st Dept 2017]).

Respondents' argument that because Petitioner was a probationary employee he is not entitled to a name-clearing hearing or cannot allege a due process stigma plus claim is contrary to the precedent of all four appellate departments (*see, e.g. Vandine v Greece Cent. School Dist.*, 75 AD3d 1166, 1167 [4th Dept 2010]; *Wilcox v Newark Valley Cent. School Dist.*, 74 AD3d 1558, 1563 [3d Dept 2010]; *Browne v City of New York*, 45 AD3d 590, 591 [2d Dept 2007]; *Budd v* Kelly, 14 AD3d 437, 438 [1st Dept 2005]). Moreover, the Court finds that the alleged reason for termination, namely a police officer testing positive for cocaine, is sufficiently stigmatizing. Petitioner has also shown a likelihood of dissemination to warrant a name-clearing hearing (*see, e.g. Swinton v Safir*, 93 NY2d 758, 765 [1999] ["where petitioner is seeking only expungement of stigmatizing material in a personnel file…a likelihood of dissemination is sufficient to trigger one's right to a departmental name-clearing hearing"]).

Petitioner alleges that he seeks the permanent removal from his personnel record and his Central Personnel Index the allegations of cocaine use. It can be inferred from Petitioner's allegations that the allegedly inaccurate drug tests and the charges of misconduct will likely be disseminated if and when Plaintiff applies for future law enforcement or government jobs via background checks. Based on the likelihood of dissemination, and because Petitioner has always

denied the charges and results of the drug test, Petitioner is entitled to a name-clearing hearing (*see Browne v City of New York*, 45 AD3d 590, 591 [2d Dept 2007]; *Budd v Kelly*, 14 AD3d 437, 438 [1st Dept 2005]; *Napoleoni v Safir*, 277 AD2d 179, 180 [1st Dept 2000]).

Accordingly, it is hereby,

ORDERED that Respondents' cross-motion to dismiss the Petition is granted solely to the extent that Petitioner's request that this Court annul Respondents' decision to terminate Petitioner's employment and restore his position with full back pay, benefits, and seniority is dismissed, and Respondents' cross-motion is otherwise denied; and it is further

ORDERED and ADJUDGED that Petitioner Amirul Islam's Petition is granted solely to the extent that Petitioner's request for a name-clearing hearing is granted, and the matter is referred to Respondent New York City Police Department to, within ninety days of entry of this decision and order, conduct a name-clearing hearing on the issue of whether or not there is stigmatizing information related to Petitioner's alleged cocaine use in his personnel file and his Central Personnel Index, and if there is, to determine whether it should be expunged, and the Petition is in all other respects denied; and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/22/2025
DATE

Mary V Rosado J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	x	CASE DISPOSED		NON-FINAL DISPOSITION			
	x	GRANTED	☐ DENIED	GRANTED IN PART		☐ OTHER	
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		☐ REFERENCE	