

Mohammed v New York City Hous. Auth.

2025 NY Slip Op 33919(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 161741/2024

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

GORDON MOHAMMED

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 161741/2024

MOTION DATE 12/16/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

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

Petitioner, formerly employed by respondent New York City Housing Authority (NYCHA), commenced this action to challenge the termination of his employment. Respondent answers and opposes the petition.

I. PERTINENT BACKGROUND

In his petition, petitioner alleges that his termination was arbitrary, capricious, irrational and done in bad faith. It is undisputed that petitioner began his employment with NYCHA in September 2023 and was terminated in April 2024, before the end of his probationary period (NYSCEF 12).

During petitioner’s probationary employment period, he received several probationary reports and instructional memoranda, to wit:

(1) in his first quarter probationary report from November 2023, while petitioner received an overall satisfactory rating, his supervisors noted that he had to improve his communication with his coworkers and supervisors, and he received an unsatisfactory rating on

“attendance and lateness,” with the notation that he needed to improve reporting to work on time and that he had received an AWOL memo in regards to his attendance (NYSCEF 32);

(2) in December 2023, petitioner received an instructional memorandum regarding an incident at work in December. In particular, petitioner was advised that “immediate improvements are expected regarding your situational awareness, communication with supervision, and missing [time card] swipes,” and that “any repeated instances of the same or similar conduct may be the subject of a future disciplinary action” (NYSCEF 33);

(3) in February 2024, petitioner received an overall “unsatisfactory” second quarter probation report, with the following categories checked: “shows some lack of ability to supervise. Somewhat indecisive”; “has more difficulty than normal in maintaining standard operations”; “is sometimes argumentative when willing cooperation is called for. Has difficulty in obtaining cooperation from subordinates”; and “sometimes overlooks factors or fails to give them sufficient weight. Some lack of foresight.” His attendance and lateness was also marked as unsatisfactory, and his supervisors wrote that petitioner was often in a rush to leave his job/task, that he had to be “constantly reminded on the proper attire he must wear in the office,” that he was frequently absent from work and missed swiping in and out, despite having received an instructional memo about it, and that, overall, he needed improvement in “multiple fields” (NYSCEF 34);

(4) in May 2024, petitioner received another instructional memorandum, with the specified purpose of outlining reporting to the on-duty Administrator before going into the field, and with his supervisor writing that petitioner, on several occasions, had left early in the shift and did not come back until very late, which was unacceptable. The supervisor advised that petitioner’s actions had violated NYCHA’s General Regulations of Behavior, and that the

occurrences were unacceptable and immediate improvements were expected. Finally, petitioner was warned that any repeated instances of the same or similar conduct could be the subject of future disciplinary action (NYSCEF 35);

(5) in June 2024, petitioner received a counseling memorandum regarding his abuse of NYCHA's vehicle privileges by making at least 20 unauthorized excursions in May 2024 to non-NYCHA locations during his shift for extended periods of time (NYSCEF 36);

(6) Also in June 2024, petitioner received a third-quarter probationary report, with an overall unsatisfactory rating, based on unsatisfactory ratings in all of the categories and with the note that he "continues to struggle in most aspects of his job" (NYSCEF 37); and

(7) in July 2024, petitioner received another counseling memorandum regarding his absence from work on two days in July 2024, ostensibly for doctors' appointments, but as petitioner was unable to document the appointments, he was marked A.W.O.L. and docked his pay (NYSCEF 38).

On July 9, 2024, pursuant to NYCHA's protocol for the termination of probationary employees following two consecutive unsatisfactory quarterly probation reports, petitioner's supervisor requested that petitioner be terminated (NYSCEF 39), and on August 21, 2024, petitioner's employment was terminated (NYSCEF 40).

II. APPLICABLE LAW

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts" (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assocs., Ltd. v Div. of Hous. & Community Renewal*, 225 AD2d 349 [1st Dept 1996]).

An agency's determination “is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record” (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *affd* 11 NY3d 859 [2008]).

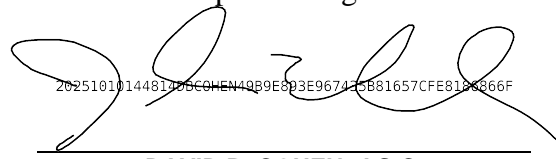
It is well-settled that a probationary employee may be discharged for any or no reason absent proof that the discharge was in bad faith, for a constitutionally impermissible purpose, or in violation of law (*Frasier v Bd. of Educ.*, 71 NY2d 763, 765 [1988]; *Matter of Brown v City of New York*, 280 AD2d 368 [1st Dept 2001]). “[T]he burden falls squarely on the petitioner to demonstrate, by competent proof, that a substantial issue of bad faith exists . . . and mere speculation, or bald, conclusory allegations are insufficient to shoulder this burden” (*Matter of Finkelstein v Bd. of Educ. of the City School Dist. of the City of New York*, 150 AD3d 464, 464 [1st Dept 2017]).

Here, given the documented record of the myriad disciplinary issues involving petitioner’s work at NYCHA, including two consecutive unsatisfactory evaluations, and the observations that petitioner’s performance was not improving over time despite being counseled about it and warned that a failure to improve could result in discipline, petitioner has not demonstrated that his termination was made in bad faith, for a constitutionally impermissible purpose, or in violation of law. Nor was it arbitrary and capricious or irrational as a matter of law (*see Matter of Vargas v Dept. of Educ. of the City of New York*, 222 AD3d 468 [1st Dept 2023] [documentary evidence of petitioner’s unsatisfactory performance while on probation sufficiently rebutted any allegations of bad faith]; *Matter of Lin v New York City Dept. of Educ.*, 191 AD3d 431 [1st Dept 2021] [as respondent’s decision to terminate probationary employment

was based on four unsatisfactory reports and two misconduct letters, there was evidence that plaintiff's performance was unsatisfactory and thus established that termination was made in good faith)). While petitioner claims that NYCHA "had no legitimate business reason" to fire him, that is not the standard by which NYCHA is judged here.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.



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10/10/2025
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: