

**Izquierdo v City of N.Y. Civ. Serv. Commn.**

2025 NY Slip Op 34106(U)

October 22, 2025

Supreme Court, New York County

Docket Number: Index No. 161388/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

INDEX NO. 161388/2024
MOTION SEQ. NO. 001

HENRY IZQUIERDO,
Petitioner,

- v -

CITY OF NEW YORK CIVIL SERVICE COMMISSION,
NANCY G. CHAFFETZ, Chair Commissioner of the City Of New
York Civil Service Commission, CITY OF NEW YORK POLICE
DEPARTMENT, JESSICA TISCH, Police Commissioner of the
City of the New York Police Department, and EDWARD A.
CABAN, emeritus Police Commissioner of the New York City
Police Department,
Respondents.

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6, 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for ARTICLE 78

Pursuant to CPLR Article 78, Henry Izquierdo ("petitioner") seeks an order, inter alia,
annulling and vacating the determination of the New York City Police Department ("NYPD")
that petitioner is not qualified for the position of police officer and restoring his name to an
eligible list of candidates. The verified petition is opposed by the City of New York Civil
Service Commission ("CSC"); CSC Chair Commissioner Nancy G. Chaffetz; the NYPD; Police
Commissioner Jessica Tisch; and emeritus Police Commissioner Edward A. Caban (collectively,
"respondents"). Petitioner brings this action under CPLR 7803(1), (3), and (4). Respondents
cross-move to dismiss the petition, which petitioner opposes.

Petitioner filed his verified petition on December 5, 2024 (NYSCEF Doc No. 1).
Petitioner seeks an order annulling and vacating his disqualification, directing respondents to
find him immediately qualified for appointment, and place his name on a preferred eligible list
enabling him to be appointed to the title of police officer. Alternatively, petitioner seeks an order
remanding his application for reconsideration by respondents. Petitioner also seeks an order: for
a hearing to determine whether his prior alleged conduct would reasonably prohibit him from
performing the requirements of the job of police officer; preventing respondents from
disqualifying him on the grounds of the expiration of his civil service examination eligibility list;
and preventing respondents from disqualifying him due to his age.

In his verified petition, petitioner requests relief pursuant to CPLR 7803(1), (3), and (4)
(id. ¶ 1). Petitioner requests CPLR 7803(1) relief on the grounds that respondents failed to
perform a duty enjoined upon them by law (NYSCEF Doc. No. 1 ¶¶ 30-38). Petitioner
specifically asserts that respondents discriminated against him by disqualifying him from

employment “by reason of having been convicted of one or more criminal offenses” even though the charges were “alleged, all dismissed and expunged” (*id.* ¶ 33). Petitioner also requests CPLR 7803(3) relief on the grounds that respondents acted in an arbitrary and capricious manner and in violation of law (*id.* ¶¶ 39-51). Specifically, petitioner asserts that respondents “ignored both fact and law in reaching their determination, which impermissibly and improperly factored in circumstances surrounding incidents which were disposed, dismissed and expunged,” and that this was “entirely arbitrary and capricious” because the expungement of his criminal charges has “res judicata effect” (*id.* ¶ 48). Petitioner did not articulate an argument for CPLR 7803(4) relief. Petitioner also seeks counsel fees pursuant to CPLR 8601 (*id.* ¶¶ 58-59).

Petitioner’s verified petition alleges as follows: Petitioner “competed in a Civil Service examination for appointment as Police Officer with the City of New York Police Department” during the “Application and Scheduling Period May 25, 2018 – July 28, 2018” (*id.* ¶ 6, *see also* NYSCEF Doc. No. 4, *Notice of Examination, at 1*). He passed the examination with an adjusted final average of 74.972 and was given a list number of 13449 (NYSCEF Doc. No. 1 ¶ 7; NYSCEF Doc. No. 5, *Notice of Result, at 1*).<sup>1</sup> Thereafter, as part of his application, he submitted disclosure statements to the NYPD Candidate Assessment Division (“CAD”) (NYSCEF Doc. No. 1 ¶ 10; NYSCEF Doc. No. 6, *Omnibus Candidate Statements*), which included disclosure of a domestic dispute in New Jersey (NYSCEF Doc. No. 6 at 1-6) and multiple traffic violations (*id.* at 7-13). Petitioner received a Notice of Proposed Disqualification from CAD on November 1, 2022 (NYSCEF Doc. No. 1 ¶ 11; NYSCEF Doc. No. 7) containing a preliminary determination that he was not qualified for the position of police officer on the grounds of his “Arrest(s)/criminal accusation(s)”, “Driving record”, and “Other DOMESTIC INCIDENTS, CRIMINAL COURT SUMMONS” (NYSCEF Doc. No. 7 at 1).

On November 29, 2022, petitioner sent a letter in response to his preliminary disqualification “by submitting written proof of [his] qualifications and to explain why the NYPD should reconsider its proposed disqualification” (NYSCEF Doc. No. 1 ¶ 12; NYSCEF Doc. No. 8). In this letter, Izquierdo argued that his driving record should not be considered because he had “not had a moving violation in over ten years” (NYSCEF Doc. No. 8 at 1). The letter also stated that there were “four charges, all for the same incident” which occurred in 2010 and that Izquierdo “was falsely accused of all the charges” (*id.*). The letter stated that a “dispute with my child’s mother’s sister led to a charge that was given”, but “there was no probable cause for any arrests” (*id.*). Izquierdo described the incident in the letter as follows: “As I was putting my daughter into her car seat, my daughter’s aunt repeatedly pushed me not allowing me to properly strap my daughter into the car seat.” (*id.* at 2). The letter asserted that “[s]ecurity footage back in 2010 at the Garden State Mall, New Jersey confirmed that [his] child’s aunt lied about the event that occurred” (*id.* at 1). It further asserted that both parties withdrew their complaints, that all charges against Izquierdo were dismissed, and that he was granted an expungement of all charges in March 2017 (*id.* at 1-2).

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<sup>1</sup> Candidates must achieve an examination score of at least 70 to be placed on the civil service list of eligible candidates; Izquierdo’s list number of 13449 meant that there were 13,448 candidates who had received higher final examination ratings and were listed above petitioner’s name on the eligible candidates list (NYSCEF Doc. No. 25, *memorandum of law in support of respondent’s cross-motion to dismiss the verified petition, at 2-3*).

In his verified petition, petitioner states that he received a Notice of Disqualification from CAD on February 16, 2024, asserting that he was not qualified for the same reasons identified in the earlier Notice of Proposed Disqualification (NYSCEF Doc. No. 1 ¶¶ 13-14; NYSCEF Doc. No. 9, *Notice of Disqualification, at 1*). Petitioner states that he submitted a “Letter of Appeal” to the New York City Civil Service Commission (CSC) contesting his disqualification on March 13, 2024 (NYSCEF Doc. No. 1 ¶ 15; NYSCEF Doc. No. 10). Petitioner also states that he received a copy of respondents’ reply letter to the CSC on June 7, 2024 (NYSCEF Doc. No. 1 ¶ 17; NYSCEF Doc. No. 12). Respondents’ reply letter was entitled “Respondent’s Response And Exhibits” (NYSCEF Doc. No. 12 at 1) (hereinafter, the “Response”).

The Response included, among other allegations, reference to multiple domestic incidents and police reports that the NYPD identified which involved Izquierdo (NYSCEF Doc. No. 12 at 3). The Response stated that, according to the police report concerning an incident on July 30, 2010, Izquierdo “punched the aunt during the child custody exchange”, the child “then fell out of the unbelted car seat resulting in injury” and was taken to the hospital, and at the hospital Izquierdo “approached the aunt in the waiting room and told her he was going to kill her, her family, and her friends” (*id.* at 3-4). The Response further stated that the “police contacted a judge who issued a temporary restraining order against [Izquierdo], which [Izquierdo] refused to sign” (*id.* at 4). Pursuant to a police report concerning a separate domestic incident on November 14, 2010, the Response stated that Izquierdo met his child’s mother in a parking lot, blocked her car from exiting, and started arguing with her about child custody (*id.*). The Response stated that the NYPD found it “significant” that “the reporting officer noted that [Izquierdo] appeared at the police department 10 to 15 minutes before the complaining victim arrived at the police department and asked if the complaining victim filed a complaint against him” (*id.*). It also stated that Izquierdo “took no responsibility for his role in the incidents and simply stated that the charges were false and any summonses were expunged” (*id.* [footnote omitted]).

The Response asserted that “[o]ut of state expungements are not recognized in New York” and that “an expungement is not an adjudication of the merits in favor of the accused” (*id.* at 3). Moreover, the Response described a “high standard” of conduct for police officers, who “need to exercise the utmost in good judgment and professional conduct to de-escalate emotionally charged situations so that they do not explore into violence, potentially harming themselves or members of the public” (*id.* at 5). The Response asserted that “by his own misconduct, [Izquierdo] has demonstrated that he cannot live up to this high standard” (*id.*). It also argued that his actions demonstrate “a callous disregard of the concerns of victims of domestic violence and an even more alarming tendency to attempt to violently intimidate persons from making domestic incident complaints” and so therefore “CAS has a reasonable basis to conclude that [Izquierdo] lacked the requisite character to be appointed a police officer” (*id.*).

The Response also included the NYPD’s review of Izquierdo’s alleged driving record (*id.* at 5-7). The Response noted that Izquierdo “merely stated that he doesn’t understand why his driving record would be relevant to his duties as a police officer” (*id.* at 6). The Response asserted that “[d]riving is a skill that is essential to the position of police officer”, as officers “must operate a motor vehicle while on patrol”, and that “negative traffic incidents while on patrol could place the public and [Izquierdo’s] co-workers at risk for serious injury, and could

result in litigation against the Department or the City of New York” (*id.* at 7). The Response asserted that Izquierdo’s “driving record has demonstrated that he does not possess the driving skills required of a police officer” (*id.*).

The Response argued that Izquierdo’s “arrests/criminal accusations, driving record, domestic incidents, and criminal summons have shown that [he] does not meet these high standards,” and so “the NYPD has a reasonable basis to conclude that [Izquierdo] would not be able to suitably perform the duties required of a police officer” (*id.*). The Response also argued that the “NYPD’s investigation developed a factual record that supports [Izquierdo’s] disqualification, and that determination is entitled to deference” (*id.* at 7-8 [footnote omitted]). Additionally, the Response argued that the factors identified “have a direct bearing on his ability to serve as a responsible and reliable member of the New York City Police Department”, and therefore, the decision to disqualify him was “lawful, proper, rationally, based on record, and within the Police Commissioner’s discretionary authority” (*id.* at 10).

The verified petition states that petitioner submitted an “Appellant’s Rebuttal” to the CSC on December 9, 2024 (NYSCEF Doc. No. 1 ¶ 18; NYSCEF Doc. No. 13), arguing that the NYPD’s determination was “arbitrary and capricious” (NYSCEF Doc. No. 13 at 2) for the following reasons: Izquierdo argued that he had never been criminally convicted, that the underlying allegations were dismissed, and that they were without basis in fact or law (*id.*). He also asserted that the New Jersey expungement constituted “an adjudication of the merits in favor of the accused” on the grounds that the “Final Order for Expungement, filed June 05, 2017, specifically states that all charges were disposed and dismissed, and that it is ORDERED that the arrest and/or conviction which is the subject of this Order shall be deemed not to have occurred” (*id.* at 2-3 [internal quotations omitted]). Further, Izquierdo argued that the NYPD “ignored both fact and law in reaching their determination, which impermissibly and improperly factored in circumstances surrounding incidents which were disposed, dismissed, and expunged” (*id.* at 3). Izquierdo also repeatedly stated that the criminal allegations and traffic incidents occurred over fifteen years before his application, when petitioner was 24 years old or younger (*id.* at 4-5). He argued that he has since “functioned as a law-abiding citizen, indicated no disregard for the law or inability to follow rules and regulations” and so “should be considered reformed” (*id.* at 5).

The CSC issued a decision affirming Petitioner’s disqualification on August 7, 2024 (NYSCEF Doc. No. 1 ¶ 19; NYSCEF Doc. No. 14, *Notice of City Civil Service Commission Action*). According to the decision, the CSC “carefully reviewed the entire record” and “adopt[ed] the arguments supporting the disqualification that were presented in NYPD’s June 7, 2024, report and concludes that the record supports [Izquierdo’s] disqualification” (NYSCEF Doc. No. 14 at 2). Petitioner received this notice on August 7, 2024 (NYSCEF Doc. No. 1 ¶ 19).

Petitioner filed the verified petition and his first Notice of Petition on December 5, 2024. The Notice of Petition was returned for correction and was received by the court on December 9, 2024 (NYSCEF Doc. No. 2). Petitioner did not file affidavits or affirmations of service indicating that he served respondents with the initial Notice of Petition. He filed an Amended Notice of Petition on January 11, 2025, which was returned for correction and was received by the court on January 17, 2025 (NYSCEF Doc. No. 15). Petitioner served respondents with the

verified petition and both notices on January 28, 2025 (NYSCEF Doc. No. 18, *Affirmation of Service*).

On March 13, 2025, respondents filed a cross-motion to dismiss the petition (NYSCEF Doc. No. 24) and an accompanying memorandum of law (NYSCEF Doc. No. 25). Respondents did not file an answer. Respondents raise a CPLR 7804(f) objection arguing that the Article 78 petition must be dismissed by operation of law on statute of limitations grounds because petitioner did not serve respondents notice of the petition within the time required by CPLR 306-b (*id.* at 7-8). Respondents also argue that petitioner is not entitled to relief under CPLR 7803(1) (*id.* at 8-9) or CPLR 7803(4) (*id.* at 10), and that the verified petition failed to state a cause of action pursuant to CPLR 7803(3) (*id.* at 11-14). Additionally, respondents argue against petitioner's assertion that his disqualification is barred by *res judicata* (*id.* at 15-16).

Petitioner filed a memorandum of law opposing respondents' cross-motion on March 18, 2025 (NYSCEF Doc. No. 27), arguing as follows: Petitioner argues that service of process was timely within the scope of CPLR 7804(c) (*id.* ¶¶ 4-12). He requests that the court exercise its discretion to extend the time for him to effectuate service under CPLR 306-b for good cause shown (*id.* ¶¶ 13-16) and in the interests of justice (*id.* ¶¶ 17-27), and asserts that respondents would not be prejudiced by an extension of time (*id.* ¶ 16). Petitioner argues that his petition is cognizable under CPLR 7803(1), as respondents have a "legal duty to give full faith and credit to the judicial proceedings of another state" and their "failure to honor this expungement order constitutes a failure to perform a duty enjoined upon them by law" (*id.* ¶¶ 28-33). Petitioner argues that relief under CPLR 7803(4) is appropriate because both the NYPD determination and the CSC appeal constituted a hearing within the meaning of CPLR 7803(4) (*id.* ¶¶ 34-38). Petitioner argues that CRPL 7803(3) relief is also appropriate because his disqualification was arbitrary, capricious, and affected by errors of law (*id.* ¶¶ 39-45). Finally, petitioner argues that *res judicata* applies to his disqualification because the New Jersey expungement order constituted a final judgment on the merits (*id.* ¶¶ 46-53).

As an initial matter, the "four-month statute of limitations to commence an Article 78 proceeding begins once an administrative determination is final and binding" (*Matter of Dourdounas v City of New York*, 211 AD3d 466, 466 [1st Dept 2022] [internal quotations omitted]; CPLR 217[1]). "An administrative determination becomes final and binding when two requirements are met: completeness (finality) of the determination and exhaustion of administrative remedies" (*Walton v New York State Dept. of Correctional Servs.*, 8 NY3d 186, 194 [2007] [internal quotations omitted]). The statute of limitations begins to run when a petitioner receives notice of the final determination (*Bludson v Popolizio*, 166 AD2d 346, 346-347 [1st Dept 1990]).

CPLR 306-b provides that in an action "where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service."

“The failure to properly effectuate service on, and acquire personal jurisdiction over, the agency respondents warrants dismissal” of an Article 78 petition (*Matter of Crichlow v NYS Off. of Mental Health*, 136 AD3d 503, 503 [1st Dept 2016]). When a proceeding is properly dismissed “on the basis that no personal jurisdiction was acquired over respondents” due to defective service, “the fact that respondents received actual notice does not confer jurisdiction upon the court” (*Matter of Jiggetts v MTA Metro-N. R.R.*, 121 AD3d 414, 414-415 [1st Dept 2014]).

“An extension of time for service is a matter within the court’s discretion” (*Leader v Maroney*, 97 NY2d 95, 101 [2001]). When exercising that discretion, the CPLR 306-b standards of “good cause” and “interest of justice” are separate and distinct queries (*id.* at 104). A plaintiff must “establish reasonably diligent efforts at service as a threshold matter” to establish good cause (*id.* at 105). Good cause excludes conduct characterized as “law office failure”; instead, “good cause is likely to be found where the plaintiff’s failure to timely serve process is a result of circumstances beyond its control” (*Henneberry v Borstein*, 91 AD3d 493, 496 [1st Dept 2012] [internal quotations omitted]).

The “interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties” (*Leader v Maroney*, 97 NY2d at 105). In making that analysis, “the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff’s request for the extension of time, and prejudice to defendant.” (*id.* at 105-106). “No single factor is determinative” (*de Vries v Metro. Transit Auth.*, 11 AD3d 312, 313 [1st Dept 2004]). An “inference of substantial prejudice” may be found where defendant lacked actual notice of the action because service was made after the expiration of the applicable statute of limitations (*Yardeni v Manhattan Eye, Ear & Throat Hosp.*, 9 AD3d 296, 297 [1st Dept 2004]). A “protracted delay” will give rise to the inference of substantial prejudice (*Nationstar Mtge. LLC v McCallum*, 191 AD3d 480, 481 [1st Dept 2021]). In a case where the plaintiff has a good excuse for the delay and the delay is short, there may be no such inference (*de Vries*, 11 AD3d at 313-314).

Petitioner received notice of the final determination on August 7, 2024 (NYSCEF Doc. No. 1 ¶ 19). Petitioner filed his initial Notice of Petition on December 5, 2024, which was subsequently corrected and received by this court on December 9, 2024, and it bears a return date of January 13, 2025 (NYSCEF Doc. No. 1). Petitioner then filed an Amended Notice of Petition on January 11, 2025, which was also subsequently corrected and received by the court on January 17, 2025, and it bears a return date of February 24, 2025 (NYSCEF Doc. No. 15). Petitioner filed four affirmations of service dating service of the Amended Notice of Petition, Notice of Petition, verified petition and all exhibits, and the RJI on January 28, 2025 (NYSCEF Doc. Nos. 18-22). Respondents do not contest that they were served on that date (NYSCEF Doc. No. 25 at 6-7).

Respondents argue in their memorandum of law that petitioner had until December 23, 2024, to effectuate service of the Notice of Petition pursuant to CPLR 306-b, but that service of process was not made within the applicable statute of limitations (*id.* at 7-8). Respondents

contend that this is fatal to the petition (*id.*). Petitioner argues in his memorandum of law that he timely served the Amended Notice of Petition per CPLR 7804(c) (NYSCEF Doc. No. 27 ¶ 12). Petitioner requests that the court exercise its discretion to extend the time to effectuate service under CPLR 306-b for good cause shown, on the grounds that petitioner timely contacted the process server but “needed time to collect/save the funds in order to remit payment” for service (*id.* ¶ 15). Petitioner asserts that respondents would not be prejudiced by an extension of time (*id.* ¶ 16). Respondents do not make a showing of prejudice.

Petitioner failed to demonstrate good cause for an extension of time to serve pursuant to CPLR 306-b. The four-month statute of limitations to file the action began to run on August 7, 2024, when petitioner received notice of the CSC’s final determination. That statute of limitations expired on December 7, 2024, two days after petitioner timely filed his initial Notice of Petition. The CPLR 306-b timeframe to serve respondents expired fifteen days later. Petitioner did not serve respondents within that CPLR 306-b timeframe, nor did petitioner promptly file a motion to extend time. Instead, petitioner filed an Amended Notice of Petition without leave of the court and served respondents on January 28, 2025, over a month after the expiration of the CPLR 306-b time expired. Petitioner also did not request for an extension of time until March 18, 2025, in his reply papers to respondents’ cross-motion to dismiss. Petitioner failed to establish that “reasonably diligent efforts” were made to timely serve respondents or to obtain the funds necessary to timely remit payment to his process server. Petitioner also proffered no excuse for his delay in moving to extend time to serve respondents. Petitioner has failed to demonstrate good cause for untimely service.

Petitioner’s argument that the court should grant an extension of time to serve CPLR 306-b notice in the “interests of justice” (NYSCEF Doc. No. 27 ¶¶ 17-27; CPLR 306-b) is also without merit. Among other arguments, petitioner claims that respondents “waited nearly two years before issuing the Final Notice of Disqualification” and that this “contributed to cause the list to expire in bad faith” (*id.* ¶ 23). Petitioner also argues that respondents violated the Constitution of the United States by “failing to give full faith and credit to the laws of the state of New Jersey and [the] Final Order for Expungement” (*id.*) and further argues that respondents discriminated against him in violation of New York City Human Rights Law “based on unemployment status, *inter alia*, arrest or conviction record” (*id.*). Additionally, petitioner argues that he should be placed on a “special eligible list” for reconsideration of his application because the civil service examination eligibility list expired (*id.* ¶ 26). These arguments are unavailing.

The court finds that petitioner failed to demonstrate a meritorious cause of action. Petitioner seeks judicial review of an administrative determination pursuant to CPLR 7803(1), (3), and (4). Respondents correctly argue that petitioner is not entitled to relief pursuant to CPLR 7803(1) (NYSCEF Doc. No. 25 at 8-9) or to CPLR 7803(4) (*id.* at 10). The sole mechanism for petitioner to seek relief in this action is CPLR 7803(3). “[T]he standard of judicial review of the Civil Service Commission’s action under Civil Service Law § 50(4) is whether that body’s action was arbitrary or capricious, or an abuse of discretion” (*City of New York v O’Connor*, 9 AD3d 328, 329 [1st Dept 2004]; see CPLR 7803[3]). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Pell v Board of Education*, 34 NY2d 222, 231 [1974]).

“If the court finds that the determination is supported by a rational basis, it 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 Peckham v Calogero*, 12 NY3d 424, 431 [2009]). Moreover, “courts must defer to an administrative agency’s rational interpretation of its own regulations in its area of expertise” (*id.*). “An appointing authority has wide discretion in determining the fitness of candidates ... particularly ... in the hiring of law enforcement officers, to whom high standards may be applied” (*Matter of City of New York v New York City Civ. Serv. Comm’n*, 61 AD3d 584, 584 [1st Dept 2009]). “[T]he judicial function is exhausted once a rational basis for the conclusion is found” (*id.* at 585-585).

Petitioner alleges in his verified petition that his disqualification was “arbitrary and capricious, unlawful and discriminatory in that said finding alleged reasons which in no way prevent or hinder [petitioner] in carrying out the reasonable requirements of the job of police officer” (NYSCEF Doc. No. 1 ¶ 40). Specifically, petitioner states that “almost all” of the incidents considered by respondents of him occurred before 2010, and that the New Jersey domestic criminal charges were withdrawn and expunged (*id.* ¶¶ 45-48). Petitioner asserts that respondents are “branding [petitioner] as a person of poor moral character and denying him due process” (*id.* ¶ 49). Petitioner also asserts that respondents “acted in bad faith by deliberately and intentionally delaying final notice of disqualification for 473 days” so that “any appeal would be nearing expiration of [petitioner’s] examination number and list number (*id.* ¶ 42).

Respondents argue in their memorandum of law that petitioner’s disqualification “was not arbitrary and capricious, and the agency’s decision was made with a sound basis in reason and with regard to the facts” (NYSCEF Doc. No. 25 at 12). Among other arguments, respondents argue that the NYPD and the CSC have discretion to determine who is qualified for civil service (*id.*) and they point to records supporting that determination (*id.* at 12-13). Respondents further argue that “*res judicata* and the fact that the prior criminal charges were expunged does not preclude the NYPD from considering the underlying conduct” (*id.* at 13-14), and that the determination to disqualify petitioner is not barred by *res judicata* under either New York or New Jersey law (*id.* at 15-16).

In his memorandum of law, petitioner argues that the disqualification was arbitrary, capricious, and affected by errors of law (NYSCEF Doc. No. 27 ¶¶ 39-53). Among other arguments, petitioner argues that his disqualification “was primarily based on expunged records that, by operation of law, shall be deemed not to have occurred” (NYSCEF Doc. No. 27 ¶ 40). Petitioner argues that respondents “inappropriately faulted Petitioner for not taking responsibility for events that were legally deemed not to have occurred” (*id.* ¶ 42). Petitioner also argues that respondents’ refusal to give “full faith and credit” to the expungement under New Jersey law amount to a violation of the United States Constitution (*id.* ¶¶ 48-52). Petitioner argues that respondents failed to consider his “actual character as demonstrated” in the time since those incidents (*id.* ¶ 41). Petitioner also argues that respondents mischaracterized his driving record, which constituted “minor violations that do not indicate any pattern of disregard for law and order” (*id.* ¶ 43).

Petitioner has failed to meet his burden. He has not demonstrated that respondents did not act rationally or abused their discretion in deciding that petitioner failed to meet the high

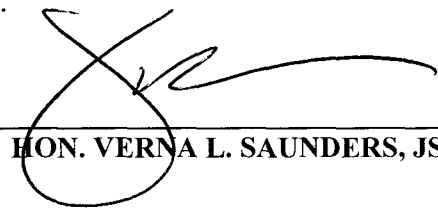
standard of exercising the "utmost in good judgment and professional conduct" by which the NYPD measures applicants for the position of police officer. Upon full review of the record herein, respondents acted rationally in making this determination and did not abuse their discretion. Petitioner's other arguments are without merit. Based on the foregoing, it is hereby

**ORDERED AND ADJUDGED**, that the petition is denied and respondent's cross-motion to dismiss the proceeding is granted, that the proceeding is dismissed, and that the Clerk of the Court shall enter a judgment accordingly; and it is further

**ORDERED AND ADJUDGED**, that within 20 days of entry of this order that counsel for the respondents shall serve a copy of this order with notice of entry upon petitioner and the Clerk of the Court.

This constitutes the decision and order of this court.

October 22, 2025



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE
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