

Matter of Giusto v Fire Dept. of the City of N.Y.

2025 NY Slip Op 34885(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 533294/2022

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of DECEMBER, 2025

P R E S E N T:
HON. RICHARD VELASQUEZ

Justice.

-----X

In the Matter of the Application of
ANDREW GIUSTO,

Petitioner,

Index No.: 533294/2022
Decision and Order
Motion Seq. No. 3

For an Order and Judgment under and pursuant to
Article 78 of the New York Civil Practice Law and
Rules and for other relief

-against-

**FIRE DEPARTMENT OF THE CITY OF NEW YORK and
CITY OF NEW YORK,**

Defendants,

-----X

The following papers NYSCEF Doc #'s 1 to 69 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	1-26
Opposing Affidavits (Affirmations) _____	28-69
Reply Affidavits _____	69

After having come before this Court and the Court having heard Oral Argument on MAY 22, 2024 and upon review of the foregoing submissions herein the court finds as follows:

Petitioner moves for an Order and Judgment: (a) Declaring that Respondents' denial of Petitioner's request for religious accommodation and forcing leave without pay as arbitrary, capricious, an error of law, and an abuse of discretion; and b) Declaring that Respondents' decision to deny the religious exemption and place Petitioner on leave

without pay is annulled, voided, and vacated; and c) Granting the Petition to the extent that Petitioner is entitled to a religious accommodation from the COVID-19 vaccine mandate and may not be terminated by the Respondents' or be subjected to other adverse employment action due to a lack of COVID-19 vaccine.; and d) Awarding Petitioner backpay, lost wages, and/or benefits incurred as a result of his religious exemption denial and Leave Without Pay on November 8, 2021; and e) Declaring that Respondents violated Petitioner's rights under the NYCHRL and N.Y. Admin. Code §8-107; and f) Awarding Petitioner his reasonable attorneys' fees, costs, and expenses because the Respondents' position was not "substantially justified"; and g) Granting such other and further relief as the Court deems just and proper. Respondent opposes the same.

FACTS

This action arises from the FDNY's denial of Petitioner's application for a religious accommodation from Respondents' COVID-19 vaccination mandate based on Petitioner's religious beliefs. On November 8, 2021 petitioner was put on leave without pay and ultimately terminated on September 7, 2022 for his failure to comply with the COVID-19 vaccination mandate.

The former Mayor and the City of New York issued a COVID-19 vaccine mandate requiring all City employees verify vaccination against COVID-19 by October 29, 2021. (NYSCEF DOC NO.4). On November 5, 2021, Petitioner filed a request for religious accommodation based on his religious beliefs. (NYSCEF DOC NO.5). On December 8, 2021, Petitioner received a denial from FDNY stating "[t]he asserted basis for the accommodation is insufficient to grant the requested accommodation, particularly in light

of the potential undue hardship to the Department." (NYSCEF DOC NO.6) The denial provided Petitioner with seven calendar days to appeal. On December 15, 2021, Petitioner appealed his denial. (NYSCEF DOC NO.7). On March 24, 2022, Mayor Eric Adams issued New York City Emergency Executive Order No. 62 (NYSCEF DOC NO.8), exempting professional athletes and performing artists from the Mandate, however city employees were not exempted from the mandate. On August 30, 2022 the FDNY sent petitioner a termination letter which stated if the petitioner failed to provide proof of vaccination by September 6, 2025 he would be terminated effective September 7, 2022. (NYSCEF DOC NO.10) On September 14, 2022, the District of Columbia rescinded its vaccine mandate for all District employees. On September 20, 2022 Mayor Adams rescinded the COVID-19 vaccine mandate (effective November 1, 2022) for private sector workers and student-athletes but kept the Mandate in place for City workers.

ARGUMENTS

Petitioner contends Respondent's denial of Petitioner's religious accommodation request is a form denial that lacks meaningful justification and cannot be considered rational. Petitioner contends Respondents created the process by which Petitioner was required to request a religious exemption. Thus, Respondent is estopped from failing to adhere to its own procedure, and it cannot deny Petitioner's request without even offering a rational basis for the denial; otherwise, Respondents are unfettered in creating a process for obtaining a religious accommodation that is smoke and mirrors and an option for religious accommodation that is illusory. Respondents oppose the same.

ANALYSIS

Pursuant to Article 78 of the CPLR “The only questions that may be raised in a proceeding under this article are... whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; ...”. NY CPLR 7803 (McKinney). The Court of Appeals explained the nature of the arbitrary and capricious standard in *Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 1974, 34 NY2d 222, 356 NYS2d 833, 313 NE2d 321: “**Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.**” *Id.* at 231, 356 NYS2d at 839, 313 NE2d at 325; See also *Tedeschi v. Wagner College*, 49 NY2d 652, 661, 404 NE2d 1302, 1307, 427 NYS2d 760, 765 (1980); *Pell v. Board of Educ. Union Free Sch. Dist. No. 1*, 34 NY2d 222, 356 NYS2d 833, 313 NE2d 321(1974); *Matter of Gray v. Canisius College of Buffalo*, 109 AD2d 1100, 486 NYS2d 1018 NYAD,1985. The arbitrary and capricious test has been said to chiefly relate to whether a particular action should have been taken, is justified or is without a foundation in fact or without a sound basis in reason. See *Pell, supra.*; See also *Peckham v. Calogero*, 12 NY3d 424, 431 (2009). Pursuant to *Pell v. Board of Education*, “the arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact”. *Pell, supra Accord, Bigler v Cornell University*, 266 AD2d 92 (1st Dept. 1999). See also *Gilman v. N.Y.State Div. of Hous. & Cmty. Renewal*, 99 NY2d 144, 149 (2002). “judicial review of an agency decision is limited to the reasons given by the agency in its decision. **An agency cannot use its answer in a CPLR Article 78 proceeding as a substitute for providing a rational reason in its**

determination.” *Central N.Y. Coach Lines, Inc. v. Larocca*, 120 AD2d 149, 152 (3d Dep’t 1986).

Respondents placed Petitioner on leave without pay and denied his religious exemption request due to “potential undue hardship”. The appeal denial stated, “Does Not Meet Criteria.” These determinations are devoid of any rationale. Respondents’ conclusory denials lack justification as to why accommodating Petitioner constituted a “potential undue hardship.” *See Perez v. N.Y.C. Police Department, et al.*, Index No. 718825/2022 (Feb. 2, 2023) (“The depth of reasoning and basis in the initial denial, and in the appeal . . . are insufficient to support those determinations and was irrational because it did not provide any individualized analysis of his exemption request. Although two bases were cited, these general reasons are conclusory and did not address any of the specific details . . .”). Moreover, Respondents fail to articulate any hardship let alone the exact nature of the undue hardship. Notably, Respondents do not articulate how Petitioner’s accommodation request is directly related to their hardship, or again what the “potential hardship” for the accommodation is. Frankly, this court notes the record is completely devoid of any proof of any dialogue of any accommodation discussions, just a blanket nonspecific denial of the accommodation request citing an unspecified hardship.

The FDNY failed to offer any evidence of any accommodation, nor have they provided any evidence of an interactive process, regarding the reasonable accommodation nor have they demonstrated that an accommodation would cause an undue hardship. (*See DeLetto v. Eric Adams*, Index No. 156459/2022, *See also Rivicci v. New York Fire Department, et al.*, Index No. 85131/2022; (finding that FDNY accommodated some of its employees; thus, its failure to provide any reasoning for

denying Petitioner's religious exemption, "rational or otherwise," renders the denial arbitrary and capricious. As such, it is clear Respondent acted arbitrarily and capriciously by failing to reasonably accommodate petitioners religious accommodation request, and failing to engage in the interactive process and afford them the same accommodations or options of accommodations. See *James Nova v. Fire Department of the City of New York, City of New York*. Index No. 158587/2022; *Starna v. New York City Fire Dep't, et. al.*, Index No. 526921/2022; *Christopher Hughes v. New York City Fire Department and City of New York*, Index No. 532524/2022.

Accordingly, the petition is granted to the extent the petitioner be reinstated with full backpay of salary and benefits and attorney's fees, Respondents religious exemption denial and termination of petitioner was arbitrary and capricious "because no sufficient explanation specific to this Petitioner was given. Respondents did not demonstrate undue hardship." (MS#2)

It is further ordered that this matter is referred to a JHO to hear and determine reasonable attorney's fees. See attached JHO Order. This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
December 12, 2025

ENTER FORTHWITH:

HON. RICHARD VELASQUEZ
Hon. Richard Velasquez, JSC

DEC 11 2025

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KINGS COUNTY CLERK
FILED