

Matter of Bueno v Village of Haverstraw

2025 NY Slip Op 35349(U)

January 16, 2025

Supreme Court, Rockland County

Docket Number: Index No. 035070/2024

Judge: Keith J. Cornell

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the matter of the Claims of
RAFAEL BUENO, JR.,

Petitioner,

-against-

DECISION & ORDER

Index # 035070/2024

Mot. Seq. No. 1

THE VILLAGE OF HAVERSTRAW,

Respondent.

-----X
HON. KEITH J. CORNELL, A.J.S.C.

Before the Court is an Article 78 proceeding brought by a Village employee challenging the determination of the Village Mayor, who had rejected hearing officer recommendation of suspension and instead terminated petitioner’s employment. The Court considered the following papers electronically filed on NYSCEF in making its decision:

Motion Sequence 1: NYSCEF Docs. 1-7, 12-27

- Notice of Petition, Petition, Exhibits 1-5
- Answer, Affirmation in Opposition, Exhibits A – J;
- Memorandum of Law in Opposition
- Reply Memorandum of Law
- Letter of Objection with Response

Petitioner was a twenty-year employee with the Village of Haverstraw. At the time of his termination, he was employed as an Assistant Building Inspector. By notice dated February 2, 2024, the Village charged the petitioner with two counts of misconduct – contacting a Village resident who was a defendant in an active building code violation case and instructing him on how to have his case dismissed against the Village on November 18, 2023 (Charge 1) and conducting a follow-up inspection of the subject property unannounced (Charge 2). After a hearing, a hearing officer found that the Village failed to meet its burden of proof concerning the allegations in

Charge 2 but had submitted substantial evidence in support of Charge 1 – that petitioner did contact the Village resident by phone on November 18, 2023 concerning his pending building code violation case and did provide information in having his violation case dismissed. The hearing officer recommended that the petitioner be suspended without pay for two weeks. On April 19, 2024, the Village Mayor issued a determination adopting the hearing officer’s findings of fact and found petitioner guilty of Charge 1, Specifications 1, 2 and 3 and terminated him from his employment. The petitioner commenced this Article 78 proceeding, seeking only to annul the Village’s imposition of the penalty of termination and did not raise issues of substantial evidence.

“An administrative penalty must be upheld unless it is so disproportionate to the offense as to be shocking to one’s sense of fairness, thus constituting an abuse of discretion as a matter of law” (Matter of Idahosa v Farmingdale State Coll., 97 AD3d 580, 581 [2d Dept 2013]; see CPLR 7803[3]; Matter of Ellis v Mahon, 11 NY3d 754, 755 [2008]; Matter of Harp v New York City Police Dept., 96 NY2d 892, 894 [2001]; Matter of Sassi v City of Beacon, 145 AD3d 789 [2016]). “[A] result is shocking to one’s sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure, or turpitude of the individual, or the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals” (Matter of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 234 [1974]; see Matter of Kelly v Safir, 96 NY2d 32, 38 [2001]; Matter of Tomczak v Board of Educ., Eastchester Union Free Sch. Dist., 144 AD3d 1165, 1166 [2d Dept 2016]; Matter of Smith v Tuckahoe Hous. Auth., 111 AD3d 642, 643 [2013]).

Here, the penalty imposed is so grave in its impact on the petitioner that it is disproportionate to the misconduct, or the risk of harm to the Village or the public. Under the

circumstances of this case, the penalty of termination of employment for a single incident – for which petitioner has acknowledged and expressed remorse - is so disproportionate to the offense as to be shocking to one’s sense of fairness and constitutes an abuse of discretion as a matter of law (see Matter of Diefenthaler v Klein, 27 AD3d 347, 348 [1st Dept 2006]; Matter of Murray v Ilion Water Commn., 9 AD3d 903, 904 [4th Dept 2004]; Matter of Lewandowski v Port Auth. of N.Y. & N.J., 229 AD2d 360, 361 [1st Dept 1996]; Matter of Allman v Koehler, 161 AD2d 114, 115 [1st Dept 1990]). The petitioner's actions were not so egregious or of such moral turpitude as to justify termination of his employment in light of his previously unblemished record (see Matter of Sullivan v County of Rockland, 150 AD3d 743 [2d Dept 2017]). While this Court recognizes that the petitioner committed a serious infraction, the gross disparity between the Hearing Officer’s recommendation of a two-week suspension and the imposed penalty of dismissal is shocking to one’s sense of fairness (see Matter of Sequist v. County of Putnam, 40 AD3d 1003 [2nd Dept 2007]). There is simply no evidence before this Court that the petitioner during his twenty years of employment with respondent had presented a disciplinary problem or that the incident was anything but isolated (see McDougall v. Scopetta, 76 AD3d 338 [2nd Dept 2010], lv granted 16 NY3d 704 [2011], appeal withdrawn 17 NY3d 902 [2011]).

Accordingly, it is hereby

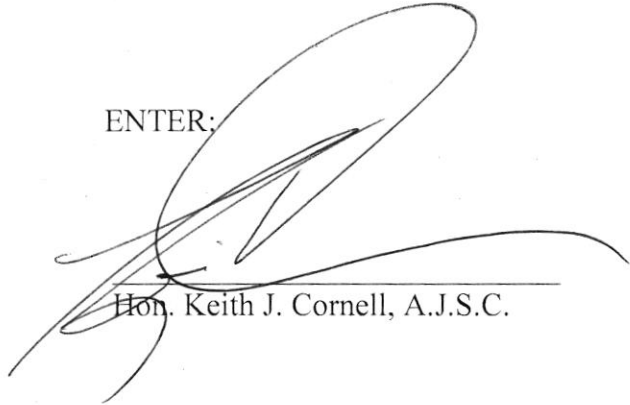
ORDERED that the petition is GRANTED and the penalty portion of the determination is annulled; and it is further

ORDERED that this matter is remanded to the Village for reconsideration of a more appropriate penalty.

This constitutes the decision, and order of this Court on Motion 1.

Dated: New City, New York
January 16, 2025

ENTER:

A large, stylized handwritten signature in black ink, appearing to read 'Keith J. Cornell', is written over a horizontal line. The signature is highly cursive and loops back.

Hon. Keith J. Cornell, A.J.S.C.

TO: All parties via NYSCEF