

Matter of Iglhaut v City of New York
2025 NY Slip Op 35649(U)
January 21, 2025
Supreme Court, Bronx County
Docket Number: Index No. 815904/2023E
Judge: Wilma Guzman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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In the Matter of the Application of

RYAN IGLHAUT,

Petitioner,

DECISION & ORDER

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

Index No.: 815904/2023E

Motion Sequence No. 1

-against-

THE CITY OF NEW YORK and NEW YORK CITY
HEALTH + HOSPITALS,

Respondents.

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GUZMAN, J.

Petitioner Ryan Iglhaut filed this Article 78 proceeding on October 10, 2023, seeking, *inter alia*, a writ of mandamus directing Respondent New York City Health + Hospitals (“H+H”) to appoint him to the position of Senior Stationary Engineer at North Central Bronx Hospital, a title he previously held on a provisional basis.¹ Petitioner, a licensed engineer, held the provisional appointment since 2021 but was removed, effective September 15, 2023, after failing to pass a required civil service examination. In his place, a person from the eligible list of candidates who had passed the civil service examination was appointed. Petitioner was reassigned to his previous title of Stationary Engineer.

Petitioner also seeks a declaration that (1) the civil service examination for H+H senior Stationary Engineer was administered in bad faith and violated the New York State constitution; (2) the scoring methodology was arbitrary and capricious; and (3) the decision not to appoint and/or promote Petitioner was an abuse of discretion. *See* NYSCEF Doc. 1 at 1, 16. In their answer to the Petition, Respondents contend, *inter alia*, that this proceeding should be dismissed on the grounds that it is time-barred, and that Petitioner failed to name a necessary party—the individual appointed

¹ A provisional appointment may be made “[w]henver there is no appropriate eligible list” of candidates who have passed the civil service exam “available for filling a vacancy.” *See* Civ. Serv. Law § 65(1); H+H Personnel Rules and Regulations, Rules 5.5.1 and 5.5.4.

to fill his position at H+H North Central Bronx Hospital—and other candidates who may have been appointed to the title of Senior Stationary Engineer from the eligible list.

The position of Senior Stationary Engineer is a competitive class title that exists across multiple New York City agencies. The New York City Department of Citywide Administrative Services (“DCAS”), the municipal service commission for the City of New York, developed, administered, and scored the civil service examination at issue in this case. Although H+H has its own civil service commission, it contracts with DCAS to administer civil service examinations for certain competitive class titles within H+H.² DCAS provides similar contractual services to the City University of New York (“CUNY”), which, like H+H, has its own civil service commission that is not subject to DCAS jurisdiction. *See* NYSCEF Doc. 48 at ¶ 4.

On December 1, 2021, DCAS issued various notices of examination for the title of Senior Stationary Engineer under Exam Numbers 2092, 2093, 2094, 2534, 2535, and 2536. Exam No. 2092 was for the title in DCAS; Exam No. 2093 was for the title within CUNY; Exam Nos. 2094 and 2535 were for the title within H+H, and Exam No. 2536 was a promotional exam for the title within H+H.³ *See* NYSCEF Doc. 1; 10-13.

Petitioner applied for Civil Service Examination Numbers 2092, 2093, 2094, and 2536, and paid a separate application fee for each exam. The exam, administered on February 14, 2022, consisted of multiple-choice questions and required a score of at least 70% to pass. However, DCAS administered the same examination for the title within each agency. In other words, there was only one test.

Two days after the examination, on February 16, 2022, Petitioner received an email message with the subject line “Tentative Results: Senior Stationary Engineer (NYC H+H)(Prom), Exam No. 2536.” The email informed Petitioner that he had answered 41 out of 80 questions correctly and would be notified of his final score and list number within six to twelve months. It also advised Petitioner that he could attend a “Protest Review Session” to challenge specific exam questions. *See* NYSCEF Doc. 23.

² *See* H+H Personnel Rules and Regulations Rule 4, Section 4.1.1 (providing that “[t]he relative merit and fitness of applicants for positions in the competitive class shall be determined by such examinations as may be prescribed by the Senior Vice President”). Here, the Senior Vice President and/or their designee, designated DCAS to be the “Examining Authority.” *See* NYSCEF Doc. 41.

³ Only persons who held the permanent title of Stationary Engineer in the jurisdiction (DCAS, CUNY, or H+H) for which the examination was administered were eligible for the promotional exams.

During a protest review session, applicants are given the opportunity to review the exam questions and submit challenges to the answers by demonstrating why their selected answer is “as good as or better than” the key answer. *See* NYSCEF Doc. 48 at ¶ 22. Challenges submitted during a protest period are reviewed by a Test Validation Board (TVB). A protest may result in no change to the scoring, or the awarding of partial or full credit for the challenged questions, which is applied to all candidates who took the exam. *Id.* at ¶ 23; *see* N.Y. Civ. Serv. Law § 50-a.

Here, Petitioner attended a protest review session on March 14, 2022, during which he challenged 23 multiple-choice questions that he had marked incorrectly. *Id.* at ¶ 27. He also attended a TVB report reading session on April 27, 2023. *See* NYSCEF Doc. 1 at ¶ 64. Six of the questions Petitioner protested were granted in his favor. In addition, DCAS subsequently scaled the exam, which increased the scores of all test takers from their raw scores. As a result, Petitioner’s score increased by 8.75 percentage points, rising from 58.75 percent to 67.5 percent. *Id.* at ¶ 29.

By email dated February 24, 2023, Petitioner received a “Notice of Result” from DCAS for Exam No. 2536 indicating that his final score was 67.5%. Since a score of at least 70% was required to pass, he was not placed on an eligible list for the position of Senior Stationary Engineer. The email also informed Petitioner that if he believed his examination had been “rated incorrectly,” he could submit a written appeal within 30 days to the “Committee on Manifest Errors,” a committee within DCAS that reviews claims of errors or mistakes on civil service examinations. *See* NYSCEF Doc. 45; Personnel Rules and Regulations of the City of New York, Rule VIII, Section I, Part 8.1.1.⁴

According to Petitioner, he “attempted” to appeal his final score to the Committee on Manifest Errors but was informed that H+H titles are subject to the H+H Personnel Review Board (“PRB”).⁵ *See* NYSCEF Doc. 1 at ¶ 68. Petitioner submitted an appeal to the PRB, arguing, *inter alia*, that (1) the Notice of Examination listed H+H-specific duties, but no questions related to those duties appeared on the examination; (2) the procedures and methodology used to calculate the final

⁴ Each notice of examination also stated, *inter alia*:

If you believe that your test part was rated incorrectly, you may submit an appeal of your score to DCAS, Committee on Manifest Errors, through the Online Application System (OAS). Your appeal must give specific reasons why your score should be higher. Your appeal may result in a higher or lower rating.

⁵ Petitioner submits no documentary proof of his alleged appeal to the Committee on Manifest Errors. However, the record in this proceeding reflects that Petitioner received an email from DCAS on March 2, 2023, notifying him that his appeal was untimely and that he could appeal that determination to the PRB. *See* NYSCEF Doc. 5 at 2.

test score were flawed; and (3) H+H had the discretion to appoint him to the job title permanently. In response, H+H filed a motion to dismiss the appeal, asserting that PRB's authority is limited to determining whether DCAS correctly applied the final answer key to exam questions.

By decision dated June 14, 2023, the PRB determined that it lacked jurisdiction to address the questions raised in Petitioner's appeal, except for challenges related to the scoring of the examination. On this issue, the PRB determined that the answer key had been properly applied to Petitioner's examination answers. *See* NYSCEF Doc. 5.

On August 22, 2023, Robert C. Miles was appointed to the title of Senior Stationary Engineer, replacing Petitioner, with an effective date of September 18, 2023. *See* NYSCEF Doc. 49. By letter dated September 6, 2023, H+H informed Petitioner that his provisional appointment as Senior Stationary Engineer would no longer be effective as of September 15, 2023. *See* NYSCEF Doc. 47.

As noted above, Petitioner filed this Article 78 proceeding on October 10, 2023. The Petition, verified only by counsel, alleges that the examination for the H+H Senior Stationary Engineer position was delegated to DCAS without regard to content; H+H staff did not participate in the test review process; scores were adjusted differently for similarly situated applicants; the examination lacked questions relevant to the subject matter outlined in the notice of examination; certain questions required the use of a graph that was illegible; Petitioner did not receive a written opinion from the TVB regarding his challenges; and the scoring, weighting, and curving of the examination lacked a rational basis and was therefore arbitrary and capricious.

With respect to Respondents' arguments, they first contend that insofar as Petitioner challenges the civil service examination based on the content of the multiple-choice exam, the Petition is time barred.

Civil Service Law § 50-a, entitled "Test Validation Boards," provides in pertinent part, that:

A candidate aggrieved by the determination of the test validation board may file a petition in supreme court pursuant to article seventy-eight of the civil practice law and rules in accordance with subdivision seven of section fifty of this chapter. Such petition must be filed within thirty days after service of the notice of availability of the determination of the test validation board upon the protesting candidate in accordance with the provisions of this section.

As noted above, Petitioner attended a TVB Report Reading Session on April 27, 2023. Respondent states that the TVB issued a report, which was made available to Petitioner at the reading session, and that the report included a written opinion explaining the rationale behind the correct answers.

See NYSCEF Doc. 48 at 32-34. Petitioner has not submitted an affirmation contesting this statement. Thus, to the extent that Petitioner challenges the scoring of specific questions in the exam (including questions alleged to have been illegible), these claims are time-barred.

The remaining claims raised by Petitioner do not challenge the specific scoring of questions, but rather the general content and administration of the examination. As far as this Court can ascertain, such claims would not be the proper subject of a Protest Review Session, TVB Report Reading Session, an appeal to the Committee on Manifest Errors, or an appeal to the H+H Personnel Review Board. These issues are therefore properly raised in this proceeding. Respondents contend that these claims are nevertheless time-barred.

CPLR § 217 provides that a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner. “For a determination to be final ‘upon the petitioner’ it must be clear that the petitioner seeking review has been aggrieved by it.” In *Martin v. Ronan*, 44 N.Y.2d 374, 380, 405 N.Y.S.2d 671, 674 (1978), the Court of Appeals held that in an Article 78 proceeding to challenge a civil service examination, the four-month statute of limitations begins to run on the date that the final revised eligible list is promulgated. It is unclear from the record in this proceeding when the final eligible list was promulgated. Nevertheless, the Court finds that Petitioner was actually aggrieved in September 2023, when he was notified that his provisional appointment as Senior Stationary Engineer at North Central Bronx Hospital had ended (and he would revert to the permanent title of Stationary Engineer), and non-party Robert C. Miles was appointed to replace Petitioner, effective September 18, 2023. See NYSCEF Doc. 49. Thus, Petitioner’s claims with respect to the validity of the examination are timely.

Nevertheless, the Court agrees with Respondents that Petitioner has failed to name a necessary party. “Pursuant to CPLR 1001 (a), a person should be joined in an action or proceeding where necessary if complete relief is to be accorded between the persons who are parties thereto or where the person to be joined might be inequitably affected by a judgment therein.” *Mahinda v. Board of Collective Bargaining*, 91 A.D.3d 564, 565, 938 N.Y.S.2d 505, 507 (1st Dep’t 2012) (quotation marks and citation omitted). “These compulsory joinder provisions are intended not merely to provide a procedural convenience but to implement a requisite of due process—the opportunity to be heard before one’s rights or interests are adversely affected.” *Id.* (quotation marks and citations omitted). A party whose interest may be adversely affected by a potential judgment must be joined as a party in a CPLR article 78 proceeding. Accordingly, “[p]ersons whose civil service status would be adversely affected by a judgment in an Article 78 proceeding must be joined

as necessary parties.” *McGuinn v. City of New York*, 219 A.D.2d 489, 490, 645 N.Y.S.2d 770 (1st Dep’t 1995), *dismissed in part, denied in part*, 87 N.Y.2d 966 (1996); *see also Matter of Farrell v. City of Kingston*, 156 A.D.3d 1269, 1271, 69 N.Y.S.3d 364, 366 (3d Dep’t 2017).

As noted above, the opening paragraph in the Petition states that “Petitioner seeks a Writ of Mandamus ordering H+H to appoint the Petitioner to his previous Senior Stationary Engineer position at North Central Bronx Hospital.” The candidate who was appointed from the eligible list to fill Petitioner’s position at North Central Bronx Hospital, Robert Miles, is therefore a necessary party, as he stands to be displaced from his appointment. *See, e.g., Matter of Adler v. Office of Ct. Admin. of Unified Ct. Sys. of State of N.Y.*, 9 Misc. 3d 1109(A), 806 N.Y.S.2d 443, 443 (Sup. Ct. New York Co. 2005), *aff’d* 35 A.D.3d 260, 827 N.Y.S.2d 31, 32 (1st Dep’t 2006) (finding that 150 Lieutenants appointed to the position of lieutenant through a challenged noncompetitive hiring process, and who held the position for nearly a year, were necessary parties because they would lose their posts if the petition were granted); *Lodge v. D’Aliso*, 2 A.D.3d 525, 767 N.Y.S.2d (2d Dep’t 2003), *lv. den.* 2 N.Y.3d 702 (2004) (finding that police officers promoted to sergeant were necessary parties in an Article 78 proceeding since they would lose their promotions if petitioners succeeded); *Samuel v. Ortiz*, 105 A.D.2d 624, 481 N.Y.S.2d 355 (1st Dep’t 1984) (holding that 406 individuals appointed to the position of permanent custodial assistant were necessary parties under CPLR 1001 and must be joined as parties); *Cassidy v. New York City Dep’t of Corr.*, 95 A.D.2d 733, 464 N.Y.S.2d 471 (1st Dep’t 1983) (in Article 78 proceeding brought by candidates who passed civil service examination prior to rescaling, notice and the right to intervene must be given to persons who passed the examination after rescaling); *see also Martin v. Ronan*, 47 N.Y.2d 486, 419 N.Y.S.2d 42 (1979) (in an Article 78 proceeding by unsuccessful candidates challenging a promotional examination conducted by the by the Manhattan and Bronx Surface Transit Operating Authority, candidates who had been promoted based on the examination should have been permitted to intervene). Since the Petition also seeks a judgment declaring the examination a nullity because it violated the New York State Constitution, and declaring the DCAS scoring methodology for the civil service examination to be arbitrary and capricious, other candidates appointed to the title of Senior Stationary Engineer after having passed the examination at issue herein and placed on the eligible list would be also be inequitably affected by any determination in this proceeding invalidating the examination.

CPLR §1001 (b) requires the court to order the necessary party or parties summoned, where they are subject to the court’s jurisdiction, and “[i]f jurisdiction over such necessary parties can be obtained only by their consent or appearance, the court is to determine, in accordance with CPLR

1001 (b), whether justice requires that the action proceed in their absence.” Five factors must be considered in reaching such a determination: (1) whether the plaintiff has another effective remedy in case the action is dismissed on account of the nonjoinder; (2) the prejudice which may accrue from the nonjoinder to the defendant or to the person not joined; (3) whether and by whom prejudice might have been avoided or may in the future be avoided; (4) the feasibility of a protective provision by order of the court or in the judgment; and (5) whether an effective judgment may be rendered in the absence of the person who is not joined. *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 819, 766 N.Y.S.2d 654, 665 (2003). No single factor is determinative in the discretionary analysis of whether an action may proceed in the absence of a necessary party who is not subject to mandatory jurisdiction. *Swezey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 19 N.Y.3d 543, 551, 950 N.Y.S.2d 293 (2012).

Nevertheless, with the exception of Robert C. Miles, the Court cannot order other necessary parties summoned pursuant to CPLR §1001 (b) because Petitioner has not identified them. In reply, Petitioner appears to argue only that joinder is not required. He states, without supporting evidence, that “Mr. Iglhaut could be placed into a [Senior Stationary Engineer] position elsewhere within an H+H facility, and Mr. Miles could remain in the [Senior Stationary Engineer] position at [North Central Bronx Hospital”]. See NYSCEF Doc. 52 at ¶ 24. However, Petitioner does not address Petitioner’s contention that “any Senior Stationary Engineer position who was on the Civil Service Eligible List for Exam No. 2535” should be joined in this proceeding or otherwise explain how such persons would not be equitably affected for purposes of CPLR §1001. See NYSCEF Doc. 34 at fn. 3. Thus, the Court find that joinder of necessary parties is not possible, and therefore dismissal is warranted.

The Court also notes that, as explained by Respondents, Section 4.7 of New York City Health and Hospitals Corporation’s Personnel Rules and Regulations provides that appointments or promotions shall be made from the eligible list most nearly appropriate for the position to be filled. However, Rule 4.7.1 further provides that “[a]ppointments or promotions from an eligible list to a position in the competitive class shall be made by selection of one of the three persons certified by the Senior Vice President as standing highest on such list who are available and willing to accept appointment or promotion.” Thus, candidates who have passed the relevant civil service examination and have been placed on the eligible list are entitled to be considered for the position, but are not necessarily entitled to the appointment since one of the three persons standing highest on the list may be appointed. H+H therefore has discretion to select an individual other than the highest scoring applicant on the civil service exam, considering merit and fitness, as required by the New York

State Constitution, Article 5, Section 6. As such, even if Petitioner had passed civil service exam no. 2535, he would not automatically be entitled to the Senior Stationary Engineer position, under Rule 4.7.1.

Respondent's motion to dismiss this proceeding is therefore granted, as the Court determined that Petitioner failed to timely name Robert Miles and other candidates who passed the civil service examination and were appointed to the title of Senior Stationary Engineer as necessary parties to this proceeding. Accordingly, it is hereby:

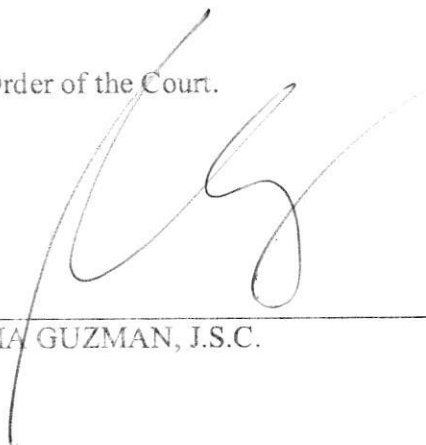
ORDERED AND AJUDGED that Respondent's motion to dismiss the instant proceeding is hereby granted; and it is further

ORDERED AND ADJUDGED that the instant Petition for relief is denied, and this proceeding is dismissed; and it is further

ORDERED AND ADJUDGED that Respondent shall serve a copy of this Decision & Order within twenty days of entry.

The foregoing constitutes the Decision & Order of the Court.

Dated: Bronx, New York
January 21, 2025



HON. WILMA GUZMAN, J.S.C.