

<b>Patsakos v City of New York</b>
2026 NY Slip Op 30361(U)
January 29, 2026
Supreme Court, Kings County
Docket Number: Index No. 526192/25
Judge: Inga M. O'Neale
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At an IAS Term, Part 22 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 29th day of January, 2026.

P R E S E N T:

HON. INGA M. O'NEALE

Justice.

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DAMIEN PATSAKOS,

Petitioner,

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

-against-

Index No. 526192/25

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, CITY OF NEW YORK CIVIL SERVICE COMMISSION, JESSICA TISCH, in her official capacity as the Commissioner of New York City Police Department and JAVIER LOJAN, in his official capacity as the Commissioner of New York City Department of Sanitation and NANCY G. CHAFFETZ, in her official capacity as the Commissioner and Chair of City of New York Civil Service Commission,

Respondents.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_

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Upon the foregoing papers, petitioner Damien Patsakos seeks a judgment, under CPLR article 78: (1) annulling the determination of respondent City of New York Civil Service Commission (CSC), dated February 7, 2025, which affirmed the decision of respondent New York City Department of Sanitation (DSNY) terminating petitioner from employment with DSNY; (2) reinstating his employment position with DSNY; and (3) awarding petitioner back salary and all other benefits of his employment. Respondents

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City of New York, DSNY, CSC, Jessica Tisch, in her official capacity as the Commissioner of New York City Police Department, Javier Lojan, in his official capacity as the Commissioner of DSNY and Nancy G. Chaffetz, in her official capacity as the Commissioner and Chair of CSC (respondents) cross-move for an order, pursuant to CPLR 3211 (a) (7) and CPLR 7804 (f), dismissing the petition.

Petitioner was hired by DSNY on July 7, 2008 and promoted to the civil service title of Supervisor on May 8, 2016. According to the petition, beginning in 2021, petitioner's relationship with his immediate supervisor, Superintendent Nando Sala, became mired in discord, which allegedly motivated Sala to unreasonably issue numerous complaints against petitioner over the next several years. In addition to these complaints, petitioner had been issued three prior complaints in 2020. Based on the complaints, DSNY brought a disciplinary action against petitioner pursuant to Administrative Code § 16-106. Following a hearing before the Office of Administrative Trials and Hearings (OATH), the Administrative Law Judge (ALJ) issued a report and recommendation, dated April 11, 2024, finding that DSNY proved 18 of the 19 charges presented and recommending that petitioner be suspended for 89 workdays, with credit for pre-trial suspension already served.

By determination dated July 23, 2024, former DSNY Commissioner Jessica Tisch rejected the ALJ's recommendation of suspension, finding instead that termination was the appropriate penalty based on the charges. The DSNY Commissioner stated:

ALJ Casey sustained 18 of the 19 charges against Supervisor Patsakos and found that the Department met its burden of proof in demonstrating that Supervisor Patsakos' conduct violated several Department Code of Conduct Rules, including failure to carry out assigned, supervisory tasks

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(Code of Conduct Rule 8.1), failure to obey direct orders from superiors (Code of Conduct Rule 3.1), and failure to prepare reports and records (Code of Conduct Rule 8.6).

Fifteen (15) of the 18 charges against Supervisor Patsakos that were sustained by ALJ Casey were for disobeying orders and failing to complete assigned tasks. Twelve (12) of these sustained charges arose from Supervisor Patsakos' continued refusal to enforce or provide required reports on recent City-wide rules promulgated by the Department that reduce the number of hours that trash bags may be placed at the curb by commercial establishments for collection by private carters. Limiting the number of hours that trash bags are at the curb addresses a critical public health and quality of life issue in the City. Supervisor Patsakos demonstrated a blatant disregard to the mission of the Department and insubordination to his superiors when he repeatedly refused to follow their directives that he enforce the Department's rules regarding the new set-out times for commercial waste.

Six (6) charges sustained by ALJ Casey for failing to follow orders and carry out supervisory tasks occurred after Supervisor Patsakos returned from a 13-day pre-trial suspension for this same misconduct. Supervisor Patsakos did not find suspension to be a deterrent to continued violation of essential Department rules and policies that all supervisory staff must follow and enforce. This is an indication that any reliance on the concept of "progressive discipline" to correct Supervisor Patsakos' repeated, deliberate pattern of professional misconduct is misplaced. Allowing Supervisor Patsakos to continue his employment with the Department would set a dangerous precedent for supervisors and the example that they should set for employees.

On July 29, 2024, petitioner filed an appeal of the DSNY Commissioner's determination to the CSC, arguing, among other things, that the DSNY Commissioner's penalty of termination was excessive under the facts and proof adduced at the OATH hearing. On February 7, 2025, the CSC issued a decision affirming the DSNY Commissioner's determination, finding that there was sufficient evidence to support the

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determination and that the penalty imposed was appropriate. The instant Article 78 proceeding ensued.

Civil Service Law [CSL] § 76 (1) provides, in relevant part, that “[a]ny officer or employee believing himself[herself] aggrieved by . . . dismissal from the service . . . may appeal from such determination either by an application to the state or municipal Commission having jurisdiction, or by an application to the court in accordance with the provisions of [CPLR article 78].” If an employee elects to appeal to a state or municipal Commission, as petitioner did here, then “[t]he decision of such civil service Commission shall be final and conclusive, and not subject to further review in any court” (CSL § 76 [3]). Judicial review of CSC decisions is precluded in all but the “exceedingly limited” circumstances in which the CSC has acted “illegally, unconstitutionally, or in excess of its jurisdiction” (*Matter of New York City Dept. of Env'tl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318, 323 [1991]). The court is not “guided by the substantial evidence or arbitrary and capricious standards of review” of Article 78 (*Matter of Almanzar v City of N.Y. City Civ. Serv. Commn.*, 166 AD3d 522, 524 [1st Dept 2018]).

On a motion to dismiss a petition under CPLR 3211 (a) (7) and 7804 (f), all of the petition’s allegations are deemed true, and the petitioner is accorded the benefit of every possible favorable inference (*see Matter of Le Golgotha Lodge, Inc. v Tax Commn. of the City of N.Y.*, 196 AD3d 581, 582-583 [2d Dept 2021]; *Matter of Levy v SUNY Stony Brook*, 185 AD3d 689, 690 [2d Dept 2020]; *Matter of Tyson v Town of Ramapo*, 165 AD3d 805, 806 [2d Dept 2018]).

In his petition, petitioner expressly “does not challenge the factual findings made by the ALJ nor does he seek to overturn or modify the 89-day suspension recommended

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by the ALJ.” Rather, petitioner challenges the DSNY Commissioner’s decision to depart from the ALJ’s recommendation of suspension and impose the extreme penalty of termination. Petitioner alleges that his termination is rooted in unlawful retaliation for petitioner’s “protected activities, including: (a) filing a complaint with the Department of Investigation (DOI); (b) sending an email to DSNY Chief Harbin regarding an allegedly illegal summons, in which [petitioner] directly referenced and criticized [DSNY Commissioner] Tisch; and (c) filing a complaint with the Civilian Complaint Review Board (CCRB).” Accepting the allegations in the petition as true, there are no facts set forth demonstrating that the CSC acted illegally, unconstitutionally or in excess of its jurisdiction when it decided petitioner’s appeal.

In the petition, petitioner alleges that “Tisch’s termination of [petitioner] was in violation of Section 75-b of the New York Civil Service Law and therefore, the CSC’s determination affirming Tisch’s imposition of termination of [petitioner] violated Section 75-b of the New York Civil Service Law” and that “upholding a decision tainted by retaliation is an error of law and violates [petitioner’s] rights under Civil Service Law and other applicable provisions.” Petitioner contends, in essence, that where the CSC affirms a penalty which the employee claimed was rooted in unlawful retaliation, such renders the CSC’s decision illegal, unconstitutional, and in excess of jurisdiction.

However, petitioner does not proffer any authority to support this argument. The primary case cited by petitioner, *Matter of De Guzman v State of N.Y. Civ. Serv. Commn.* (129 AD3d 1189 [3d Dept 2015]), is inapposite. In *Matter of De Guzman*, the Appellate Division, Third Department (upon transfer from the Supreme Court under CPLR 7804 [g]) held that “[i]n affirming the discipline imposed upon petitioner for time-barred

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charges, respondent acted in excess of the grant of authority given [to it] by statute [and] in disregard of the standard prescribed by the legislature” (*Matter of De Guzman*, 129 AD3d at 1192 [citations and internal quotation marks omitted]). In contrast, the charges brought against petitioner here were not conclusively time-barred, thereby depriving the CSC of jurisdiction to consider the matter. Rather, the merits of the underlying charges, the propriety of the penalty imposed and petitioner’s implications that his termination constituted an unlawful retaliation were all properly before the CSC and subject to an analysis of the facts and evidence presented to that body. That the CSC rejected petitioner’s claims after such analysis did not render the CSC’s decision, “illegal, unconstitutional or in excess of jurisdiction,” even if a contrary finding could be plausible and rationally based in the record. Petitioner is effectively seeking judicial review of the merits underlying the CSC decision, which is precluded by CSL § 76 (3).

As a result, respondents’ cross motion is granted, and the instant proceeding is dismissed.

The foregoing constitutes the decision, order and judgment of the court.

ENTER,



J. S. C.

JAN 29 2026

**Hon. Inga M. O'Neale  
Justice, Supreme Court**

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KINGS COUNTY CLERK  
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