

**Matter of Quinones v
New York City Dept. of Probation**

2024 NY Slip Op 31333(U)

March 13, 2024

Supreme Court, Kings County

Docket Number: Index No. 504019/2023

Judge: Patria Frias-Colón

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 20
HON. PATRIA FRIAS-COLÓN, J.S.C.

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In the Matter of the Application of
Christian Quinones,

Index # 504019/2023
Cal. #s 50-51 Mot. Seq. #s 1-2

PETITIONER,

DECISION/ORDER

-against-

New York City Department of Probation, City of New York
and Ana M. Bermudez in his Official Capacity,

Recitation as per CPLR §§ 2219(a) and/or
3212(b) of papers considered on review of
this motion:
NYSCEF Doc #s 1-10; 13-14; 18-20 by Petitioner
NYSCEF Doc #s 15-17; 21 by Respondents

RESPONDENTS.
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Upon the foregoing cited papers and after oral argument on April 26, 2023, pursuant to CPLR §§ 3211(a)(7), 7804(f) and Article 78, the Decision and Order on Petitioner’s Article 78 proceeding, as well as Respondents’ Cross-Motion to Dismiss, is as follows:

Petitioner’s Article 78 petition (motion sequence # 1) seeks an Order: (1) reappointing Petitioner to the civil service title of Community Associate with the New York City Department of Probation (“DOP”) with no changes to his start date or title entry date; (2) restoring Petitioner to payroll with back pay and/or benefits due to him, including time and leave accruals for the period pending reappointment to his former title; (3) awarding Petitioner costs and reasonable attorney fees; and (4) awarding any such other and further relief as may be just and proper. Petitioner’s Article 78 petition is GRANTED to extent of this Decision and Order.

Pursuant to CPLR §§ 3211(a)(7) and 7804(f), Respondents cross-move (motion sequence # 2) seeking dismissal of the Article 78 petition and denial of the Order to Show Cause (“OSC”) for failure to state a cause of action. Respondents’ cross-motion is DENIED.

BACKGROUND

Petitioner is a former employee with the New York City Department of Probation (“DOP”) who worked under the title of Community Associate between December of 2018 and November 19, 2021, when he accepted a position with the New York City Department of Mental Health and Hygiene (“DOMH”). He submitted a signed “Conditional Resignation and Request for Leave of Absence, pursuant to Personnel Services Bulletin (“PSB”) § 200-10” form¹ to the personnel director at the DOP. Petitioner’s request was approved on or about December 18, 2021.² Subject to a probationary term with the DOMH, on or about February 4, 2022, he was notified that he was being terminated from the DOMH.³ As a result of his termination from DOHM, Petitioner requested to rescind his conditional resignation/leave of absence and return to his position with the DOP as a Community Associate.⁴ In a December 27, 2022 email, DOP General Counsel informed Petitioner that “[U]nfortunately, it was determined that you did not meet the PSB 200.10 requirements to return to the agency. If you believe this determination to be in error, you may provide any additional relevant information; or pursue any

¹ NYSCEF Doc. # 6.

² *Id.*

³ NYSCEF Doc. # 7.

⁴ NYSCEF Doc. # 8.

recourse available to you.”⁵

Petitioner then filed this Article 78 petition on February 7, 2023, arguing that DOP clearly failed to perform its duty, as required by law and its denial to reappoint him was in violation of lawful procedure and is arbitrary and capricious.⁶ Petitioner seeks immediate reappointment, reinstatement and/or restoration to the position of Community Associate with the DOP.⁷ Respondents argue that the instant Article 78 petition warrants dismissal because Petitioner failed to establish entitlement to the relief of mandamus to compel and that the determination of the DOP to deny Petitioner’s reappointment was not arbitrary, capricious or made in bad faith.⁸ The Court notes neither party included evidence regarding Petitioner’s residency and qualification requirements as it pertains to PSB 200-10.⁹

i. **Pertinent language of PSB 200-10:**

“When an employee granted a leave pursuant to this PSB does not satisfactorily complete the probationary period in the subsequent position, said employee shall be returned to his/her former title and agency, provided said employee continues to meet the qualification and residence requirements applicable to his/her former title. **If such requirements are met, there is no discretion on the part of the former agency with respect to this matter.**” (emphasis added).¹⁰

“If an employee working for a City agency covered by the PRR [Personnel Rules and Regulations of the City of New York] who is on a leave of absence from another position pursuant to this policy is notified that he/she is being terminated or resigns before the completion of the probationary period, such employee may apply to the Personnel Director of his/her former agency for reappointment to his/her former title. Upon receipt of such application for reappointment, the Personnel Director of the former agency **shall** remove the leave and reappoint the employee to his/her former title, **provided that the employee continues to meet the qualification requirements and residence requirements applicable to said former title.**” (emphasis added).¹¹

DISCUSSION

As an initial matter, based on the instant record, Petitioner is not entitled to such relief. “Mandamus is an extraordinary remedy that, by definition, is available only in limited circumstances.”¹² Mandamus may compel a governmental entity or officer to perform a ministerial

⁵ NYSCEF Doc. # 9.

⁶ NYSCEF Doc. # 1.

⁷ *Id.*

⁸ NYSCEF Doc. # 16.

⁹ See NYSCEF Doc. #s 16, 18 & 21. In reply to Respondents’ cross-motion, Petitioner merely makes conclusory statements that “Petitioner attests that he is a New York City resident...it is safe to presume that Petitioner already met and continues to meet any educational qualification requirements.” (see NYSCEF Doc. # 18 at pg. 2).

¹⁰ NYSCEF Doc. # 10 at pg. 3.

¹¹ *Id.* at pg. 4.

¹² *Willows Condo. Ass’n v. Town of Greenburgh*, 153 A.D.3d 535 (2d Dept. 2017) (quoting *Klostermann v. Cuomo*, 61 N.Y.2d 525 [1984]).

duty but may not compel an act that involves an exercise of judgment or discretion. *Id.* at 536. However, a party seeking mandamus must show a clear and absolute right to the relief sought.¹³

Because the record is unclear whether Petitioner met the qualifications and residency requirements necessary to be reappointed to his former DOP position of Community Associate in accordance with PSB 200-10, the petition would warrant dismissal. However, if the Petitioner has met the qualification and residency requirements, then Respondents would be compelled to reappoint him, as the express language of PSB 200-10 states, in pertinent part, “if such requirements are met, **there is no discretion on the part of the former agency with respect to this matter.**”¹⁴ (emphasis added). However, there’s no evidence confirming whether Petitioner met these requirements, other than the allegations¹⁵ and DOP’s denial of Petitioner’s reappointment request.¹⁶ Thus, Petitioner has failed to show that he has a clear and absolute right to such relief.

Next, the scope of judicial review in an Article 78 proceeding is limited to whether a governmental agency’s determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law.¹⁷ In reviewing an administrative agency’s determination, courts must ascertain whether there is a rational basis for the agency’s action or whether it is arbitrary and capricious.¹⁸ Where the agency’s determination is based on detailed methods derived from legislation, within an area of the agency’s expertise and amply supported by the record, judicial deference and substantial weight must be accorded to the determination.¹⁹ The Court may not substitute its judgment for that of the decision-making agency, as it must only ascertain whether the agency’s determination was rationally based. *Flacke* at 363; *Halloran*, 172 A.D.3d at 717.

Additionally, an agency is to be afforded wide deference in the interpretation of its regulation and, to a lesser extent, in its construction of the governing statutory law. *Vink v. New York State Div. of Hous. and Community Renewal*, 285 A.D.2d 203, 210 (1st Dept. 2001). However, an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation. *Id.* at 210; *Matter of Schenkman v. Dole*, 148 A.D.2d 116 (1st Dept. 1989).

Here, DOP’s denial of Petitioner’s reappointment application seems is arbitrary and capricious because it is conclusory and offers no explanation, or evidence explaining why Petitioner did not meet the qualifications and/or residency requirements to be reappointed to the title of Community Associate per DOP’s PSB 200-10. This is troubling because in the same conclusory denial response, DOP instructs Petitioner that “if you believe this determination to be in error, you may provide any additional relevant information”²⁰, with no indication given to Petitioner as to what additional information would be relevant based on the necessary qualifications and residency requirements. The record is absent of evidence explaining whether Petitioner met the necessary requirements, crucial information in deciding whether Respondents would be compelled to reinstate Petitioner to his former

¹³ *County of Fulton v. State*, 76 N.Y.2d 675 (1990).

¹⁴ See NYSCEF Doc. # 10 at pg. 3.

¹⁵ See NYSCEF Doc. # 18 at pg. 2.

¹⁶ See NYSCEF Doc. # 9 at pg. 2.

¹⁷ See CPLR § 7803(3); *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 230 (1974); *Scherbyn v. BOCES*, 77 N.Y.2d 753, 757-758 (1991).

¹⁸ *Matter of Murphy v. New York State Div. of Hous. And Community Renewal*, 21 N.Y.3d 649 (2013); *McCullum v. City of New York*, 184 A.D.3d 838 (2d Dept. 2020).

¹⁹ *Flacke v. Onondaga Landfill Sys., Inc.*, 69 N.Y.2d 355 (1987); *Halloran v. NYC Employees’ Ret. Sys.*, 172 A.D.3d 715 (2d Dept. 2019).

²⁰ See NYSCEF Doc. # 9 at pg. 2.

position.

Therefore, the instant Article 78 petition is granted to the extent that the December 27, 2022 denial of Petitioner's reappointment/reinstatement application is vacated. The instant matter is remanded to Respondents for a new determination pursuant to PSB §200-10 and specifically the qualification and residency requirements needed for reappointment/reinstatement.

Respondents' cross-motion to dismiss is denied in its entirety.

This constitutes the Decision and Order of the Court.

Date: March 13, 2024
Brooklyn, New York



Hon. Patria Frias-Colón, J.S.C.