

**Matter of Croghan v New York City Health & Hosps.  
Corp.**

2014 NY Slip Op 33631(U)

August 26, 2014

Supreme Court, New York County

Docket Number: 101634/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY  
HON. EILEEN A. RAKOWER

EA  
9/2/14  
E

Index Number : 101634/2013  
CROGHAN, ROBERT J.  
vs  
N.Y.C.H.H.C.  
Sequence Number : 001  
ARTICLE 78

PART 15

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) 1-2  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s) 3-4  
Replying Affidavits \_\_\_\_\_ No(s) 5

Upon the foregoing papers, it is ordered that this motion is

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DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER

FILED

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COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 8/26/14

 J.S.C.

HON. EILEEN A. RAKOWER

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

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In the Matter of the Application of

ROBERT J. CROGHAN, as Chairman of Organization of  
Staff Analysts, and CHRISTINE LOMAX, Individually,

Petitioners,

Index No. 101634/2013

Decision and Order

- against -

Mot. Seq. 01

THE NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION, ALAN D. AVILES, as President and  
Chief Executive Officer,

Respondents.

For Judgment under Article 78  
of the Civil Practice Law and Rules,

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HON. EILEEN A. RAKOWER

**FILED**

SEP 02 2014

COUNTY CLERK'S OFFICE  
NEW YORK

Petitioners, Robert Croghan, as Chairman of Organization of Staff Analysts (“OSA” or the “Union”) and Cristine Lomax (“Lomax”)(“Petioners” collectively), commenced this proceeding seeking a declaration that Respondents, The New York City Health and Hospitals Corporation (“HHC”) and Alan D. Aviles as President and Chief Executive Office of HHC, “have and are acting arbitrarily, capriciously and in violation of Section 7.3.4 of HHC’s Personnel Rules and Regulations” by failing to offer a vacant position to Lomax. Petitioners also seek an Order directing Respondents to reinstate Lomax into her former title of Senior Systems Analyst. If no position exists, Lomax seeks to be appointed to one of the positions that have been filled since Lomax was placed on the preferred list. Petitioners also seek relief in the form of back-pay.

As alleged in the Verified Petition, Lomax was employed by HHC on July

13, 2004 at the Woodhull Hospital in Brooklyn, as “Coordinating Manager B.” Lomax was promoted to the title of Senior Systems Analyst on January 10, 2005 at Woodhull Hospital’s Police Department. On June 10, 2010, Lomax sustained serious injuries during a non-work related car accident. As a result of her injuries, Lomax was unable to perform her job duties and took a medical leave commencing in June 2010. Lomax returned to work on June 1, 2011, but due to complications related to her injuries, she had to take a second leave commencing on October 27, 2011.

While on disability leave, by letter dated August 8, 2012, Lomax received notice from HHC that she had been terminated from her employment with HHC effective August 8, 2012. By notice of appeal filed on or about October 9, 2012, Lomax appealed her termination to the HHC Personnel Review Board (“the HHC Board”) seeking, among other things, reinstatement to her position.

In Decision No 1454, dated January 15, 2013, the HHC Board granted Lomax’s appeal, affirming that Lomax “is able to return to work as a computer analyst without restrictions”. Pursuant to that Decision, Lomax was to be reinstated to her former position. The HHC Board ordered that if there is no vacancy in her former position, she was to be placed on a preferred list for her former position in her former department or agency.

The Decision stated:

Appellant is eligible for reinstatement as a Senior Systems Analyst. Therefore her appeal is granted. It is so ordered that Appellant be reinstated to her position. However, in accordance with Section 7.3.4 of the Corporation’s Personnel Rules and Regulations, if there is no vacancy in her former position, or in a similar position or a position in a lower grade in the same occupational field, or if the workload does not warrant the filling of such vacancy, Appellant shall be placed on a preferred list for her former position in her former department or agency, and she shall be eligible for reinstatement in her former department or agency from such preferred list for a period of four years.

By letter dated April 17, 2013, HHC notified the Union that Lomax had been officially placed on the HHC preferred list for Senior Systems Analyst. The letter stated in relevant part:

Please be advised . . . Ms. Lomax was immediately placed on the preferred list for Senior Systems Analyst held by my office. In addition, an updated list of all current preferred lists has been sent out to Human Resources at all HHC facilities.

Petitioners assert that pursuant to the Decision, once Lomax was placed on the preferred list, Lomax was entitled to the next available eligible position in her former department or agency.

The Petition further states that on or about August 8, 2013, that Union received notice that HHC had hired individuals into other positions within the Senior Systems title series.

In the first cause of action, the Petitioners allege, “By filling positions in Senior Systems Analyst title series, with individuals not coming off the preferred list for the title series Senior System Analyst, and by failing to offer these eligible vacant positions to Petitioner Lomax, Respondents violated Section 7.3.4 of HHC’s Personnel Rules and Regulations.”

The second cause of action of the Petition alleges, “In failing to place Lomax into an eligible vacancy, and by instead placing other individuals not called from the preferred list for Senior Systems Analyst, into said vacancies, HHC has violated PRB decision 1454 dated January 15, 2013.”

Respondents submit an Answer, which states, that on or about January 3, 2013, prior to the HHC Board’s decision in this matter, HHC’s Metropolitan Hospital Center extended a verbal offer to an individual for appointment to a Systems Analyst position and his pre-employment process was initiated. The appointment was processed and effective as of April 1, 2013.

Additionally, Respondents state that on or about January 10, 2013, prior to the Board’s decision, HHC’s Queen Hospital Center extended an offer to an individual for a Senior Systems Analyst Position, which was accepted by the employee on or about January 11, 2013. Employment for this position was effective February 11, 2013. Respondents contend that as those offers had already been extended to other employees prior to the Board Decision, Lomax could not have been appointed to the positions.

Respondents’ Answer further states that while individuals have been

appointed to titles of Senior Systems Analyst (EDP), Senior Systems Analyst (Finance), Systems Analyst, and Systems Analyst, these positions required specialized credentials which Lomax did not have. These positions and the credentials they required are set forth in the affidavit of Lisa Hoffman.

Respondents contend that Petitioners' Claims are, in part, time-barred and further that Petitioners have failed to demonstrate that Petitioners are entitled the relief requested.

CPLR § 217 provides that an article 78 proceedings "must be commenced within four months after the determination... received becomes final and binding upon the petitioner. "[F]or a determination to be final it must be clear that the petitioner seeking review has been aggrieved by it." *Lubin v. Board of Educ. of the City of N.Y.*, 60 N.Y.2d 974, 976 (1983).

The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). "A reviewing court, in dealing with a determination which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis." *Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d 753, 758 (N.Y. 1991)(citations omitted).

Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Lomax was effectively placed on a preferred list as of January 15, 2013. Two employees commenced employment in relevant job titles after January 15, 2013. However, respondents claim the offers to those employees for those jobs were made prior to January 15, 2013. Therefore, the two placements of employees other than Lomax were not arbitrary and capricious and in violation of the January 15, 2013 decision. Respondents have shown a rational basis for those placements.

Further, the placements by which Lomax was arguably aggrieved commenced on February 11, 2013 and April 1, 2013. The Union received notice of the placements on August 8, 2013. This petition was commenced December 9, 2013. Thus, the Petition is time barred.

Wherefore, it is hereby,

ORDERED that the Petition is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: August 26, 2014



EILEEN A. RAKOWER, J.S.C.

**FILED**

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