

City of New York v City of N.Y. Civ. Serv. Commn.

2024 NY Slip Op 31307(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 450746/2021

Judge: Alexander M. Tisch

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH

PART 18

Justice

-----X

INDEX NO. 450746/2021

CITY OF NEW YORK, LISETTE CAMILO, DERMOT SHEA,

MOTION DATE 08/09/2021

Petitioners,

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK CIVIL SERVICE COMMISSION,
NATHANAEL AUGUSTIN,

**DECISION + ORDER ON
MOTION**

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 14, 15, 16, 18, 23

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Petitioners seek an order reversing or vacating a determination of respondent City of New York Civil Service Commission (CSC), dated November 24, 2020, in which the CSC reversed petitioner New York City Police Department's (PD) determination that respondent Nathanael Augustin (Augustin) was not qualified to be a police officer. The petition alleges Augustin took Civil Service Examination No. 7323 to apply for a police officer position. He was eventually placed on an eligible list of passing candidates. During the processing of his application, it was discovered that Augustin was arrested for a felony robbery on February 12, 2011, at the age of 17, and was adjudicated as a youthful offender. Augustin admitted to approaching an acquaintance of his who was speaking on a cell phone. He wielded a toy gun while a friend demanded the victim's phone, seized it, and ran away. Augustin was arrested, sentenced to time served and 5 years' probation. An order of protection was imposed for eight years. This order was in effect when Augustin took his examination.

On June 25, 2019, PD sent Augustin a Notice of Proposed Disqualification indicating that pursuant to section 50 (4) of New York City Civil Service Law, his arrest record disqualified him from the position of police officer on character grounds. On July 1, 2019, Augustin requested reconsideration of his proposed disqualification, submitted additional documentation, including a written statement and two reference letters. After PD reviewed the submissions, it issued to Augustin a Notice of Disqualification, dated August 6, 2019, rejecting Augustin's application for police officer on character grounds.

On August 15, 2019, Augustin appealed his disqualification to CSC. On October 29, 2019, PD submitted a response and exhibits in defense of its disqualification. On February 5, 2020, CSC conducted a discretionary evidentiary hearing. During the hearing, CSC allowed and examined new evidence submitted by Augustin and allowed him to testify on his own behalf. While participating in the hearing, PD objected to the introduction of new evidence never before the PD during its own determination. Augustin testified that, at the time, he felt the robbery was initially a prank which went overboard. He stated that he had made efforts to "clean" his character since the crime, and that he knows the victim, to whom he has apologized for his actions. PD repeatedly objected to CSC considering the matter *de novo*.

On November 24, 2020, CSC issued its determination. Although acknowledging the PD's disqualification of Augustin had been "entirely justified on the record presented," (CSC Decision, Petition, exhibit 1, NYSCEF Doc. No. 3, at 7), CSC considered the new testimony and decided Augustin "has successfully overcome his 2011 arrest and has demonstrated that he currently has the requisite character for the Police Officer position" (*id.* at 9). Subsequently, petitioners filed this Article 78 proceeding with three causes of action, all seeking the reversal or vacatur of the CSC's determination.

The purpose of an Article 78 proceeding is to reverse or vacate a determination on the grounds that it is arbitrary and capricious and an abuse of discretion. It is undisputed that CSC conducted a *de novo* review of the PD's decision to reject Augustin. The parties dispute whether CSC applied the wrong standard of review and exceeded its authority. The Department of Citywide Administrative Services has "policy-making authority and functional responsibility for civil service matters in New York City, [including] the power to investigate and determine the qualifications of applicants for civil service positions. . . . DCAS has delegated its powers under Civil Service Law § 81 (7) to the Police Department, thus giving it the authority to disqualify respondent from employment" (*City of New York v New York City Civ. Serv. Com'n*, 20 AD3d 347, 347-48 [1st Dept 2005], *affd*, *Matter of Ciacciullo*, 6 NY3d 855 [2006]). The PD has "wide discretion, which is to be sustained unless clearly abused" (*Matter of Ciacciullo*, 20 AD3d at 348, quoting *Metzger v Nassau County Civ. Serv. Commn.*, 54 AD2d 565 [2d Dept 1976]). The CSC "is not empowered to decide the matter *de novo*" and "is limited to affirming, modifying or reversing a determination, . . . and its standard of review is the same as the judicial standard applicable in article 78 proceedings" (*Matter of Ciacciullo*, 20 AD3d at 348).

Respondents contend that the CSC had the authority to make a *de novo* decision because PD waived its objections to a *de novo* proceeding and because Title 60 section 2-02 (d) of the Rules of the City of New York allowed CSC to "hear oral argument to afford appellant an opportunity to make an explanation and to submit facts in opposition to the action or determination of the City Personnel Director." The CSC, itself, relied entirely on the Rules for its authority, as it noted the PD's objection to the *de novo* review (CSC Decision, at 2, fn 2).

Respondents cite several cases in which the courts upheld CSC's reversal of an underlying decision. However, in *Matter of Ciacciullo* (6 NY3d 855, 858 [2006]), the PD had

not objected to the CSC's *de novo* review, as the PD had here. In *City of New York v O'Connor* (9 AD3d 328, 329 [1st Dept 2004]), the CSC's decision was not made *de novo*, but based on the CSC's determination that the PD had acted improperly in making the underlying decision. In *City of New York v New York City Civ. Serv. Com'n* (12 AD3d 172 [1st Dept 2004]), regarding a prospective firefighter's appeal of the DCAS determination he was not medically fit to be a firefighter, and in *Carozza v City of New York* (10 AD3d 488 [1st Dept 2004]), the First Department decision did not indicate whether the CSC's decision was *de novo* or not, focusing on the standard of review the court applied to the CSC decision. In none of the cases cited by respondents does a court decision state the CSC may make a *de novo* review of any underlying decision over the PD's objection. While the cited Rule of the City of New York permits the CSC to hear argument at which an appellant may "make an explanation and to submit facts," it does not abrogate the well-settled law that "[t]he CSC applies the same standard of review as the judicial standard applicable in Article 78 proceedings, namely whether there is a rational basis to support the Police Department's determination" (*Matter of Doe v New York City Police Dept.*, 39 Misc 3d 1229(A) [Sup Ct, New York County 2013]; *The City of New York v The New York City Civ. Serv. Commn.*, 2011 N.Y. Slip Op. 31487[U] [Sup Ct, New York County 2011]). In the case at bar, the CSC recognized the decision of the PD was rational and then proceeded to act in excess of its jurisdiction.

For the reasons discussed above it is hereby

ORDERED that the petition is granted and the decision of the Civil Service Commission reversing the Police Department's disqualification of respondent Augustin is hereby vacated pursuant to Article 78 of the Civil Practice Law and Rules. This case shall be marked disposed.

This shall constitute the decision and order of the Court.



4/11/2024

DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: