SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS Part 25
HON. PATRIA FRIAS-COLÓN, J.S.C.

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Kareem B. Taylor,

PETITIONER,

-against-

New York City Department of Education,

RESPONDENT.

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Index # 50/2024
Cal. #s 29-32 Mot. Seq. #s 2, 6, 7, 9

DECISION/ORDER

Recitation as per CPLR §§ 2219(a) and/or 3212(b) of papers considered on review of this motion:
NYSCEF Doc #s 1-2, 23-30, 32-35, 46-67 by Pet.
NYSCEF Doc #s by 31, 37-45, 62 by Resp.

Upon the foregoing cited papers and after oral argument on August 21, 2024, pursuant to Article 78 of the New York State Civil Practice Laws and Rules ("CPLR"), Petitioner Kareem B. Taylor moves for review of Respondent New York City Department of Education's ("DOE") denial of his appeal of the unsatisfactory rating he was issued for the 2021-2022 school year. Petitioner further asserts a violation of his constitutional rights pursuant to 42 USC § 1983. Pursuant to CPLR § 3120, Petitioner also moves in motion sequence # 6, for an Order granting the issuance of a subpoena for certain records. Pursuant to CPLR §§ 2301 and 3120, he moves in motion sequence # 7, for an Order seeking subpoenas requiring the attendance of Respondent's rating officer/principal and Executive Director of Human Resources. Finally, Petitioner moves in motion sequence # 9, for an Order compelling Respondent to comply with Petitioner's Demand for a Bill of Particulars and Disclosure. For the reasons stated herein, the Article 78 petition (motion sequence # 2) is DENIED in its entirety.

Background

Petitioner commenced his employment with Respondent in October 2017 as a substitute teacher.[1] He performed this work in various DOE schools from October 2017 until the end of the 2021-2022 school year, after which he was terminated due to an unsatisfactory performance review.[2] In May of 2022, Petitioner was assigned to the Brooklyn Democracy Academy.[3] On May 25, 2022, he received an email from the DOE with the subject "Notice of Substitute Complaint" which stated, in pertinent part:

> "Brooklyn Democracy Academy K643 has filed a complaint against you. You will receive more information regarding this filing in a few days. Meanwhile you have been placed on this school's "Do Not Use" list and will no longer receive offers from this school."[4]

[1] NYSCEF Doc. # 21 at p. 38.
[2] *Id.*
[3] *Id.* at p. 39.
[4] *Id.* at p. 26.

On May 26, 2022, Petitioner received another email with the subject "Notice of DNU[5] Filing and Warning" which stated that it was a follow-up to the prior email and detailed the reason underlying the DNU complaint filed by the Brooklyn Democracy Academy, namely related to Petitioner's "failing to follow admin directives and dozing during class instruction."[6] The email further informed the incident occurred on May 23, 2022, he was placed on that school's DNU list and would no longer receive offers to work from that school, although he would be able to accept offers from other schools.[7] The email further confirmed that a copy of this letter would be placed in Petitioner's "SubCentral personnel file as warning #1."[8]

In accordance with DOE policy and procedures, as indicated in a document titled *The Handbook for NYC Substitute Teachers*: "Principals are required to rate Substitute Teachers who work ten (10) days or more in a school assignment."[9] As relevant herein, Petitioner worked 23 days at the subject school during the 2021-2022 school year, and thus the school was required to complete a rating of his performance as a substitute teacher.[10] In this regard, Principal Yesenia Peralta issued Petitioner an unsatisfactory rating ("U-rating") related to the performance of his work as a substitute teacher at the Brooklyn Democracy Academy.[11]

On August 3, 2022, Petitioner received an email from the DOE Office of HR School Support informing him that he was ineligible to work as a substitute teacher for the DOE as a result of the U-rating he received during the 2021-2022 school year.[12] The email further provided that "[i]f you disagree with your Unsatisfactory rating, you may file an appeal, in accordance with the Chancellor's Regulations on Unsatisfactory ratings, by contacting your UFT borough office....In the event that you are successful in having your Unsatisfactory rating(s) overturned, you may request this office to reconsider your renewal request."[13] On August 31, 2022, Petitioner emailed Respondent inquiring about the status of his substitute teacher renewal application[14] and Respondent replied within moments of this inquiry indicating he was "…suspended due to not meeting renewal requirements. If you submitted any of the requirements after the deadline, the Substitute Processing Unit will be reviewing it and your account will be re-activated"[15] On September 2, 2022, Petitioner received an email informing him that his substitute teacher renewal application had not been approved as he failed to meet the requirements and that he was suspended from the position and not eligible to serve as a NYC substitute teacher.[16] Respondent's notification further informed Petitioner that the deadline to submit any of the renewal requirements was extended to September 23, 2022, and failure to meet said deadline would result in termination.[17]

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[5] "Do Not Use"
[6] *Id*. at p. 27. The DNU Form itself contains the following explanation regarding Petitioner's removal: "Mr. Taylor was observed falling asleep during his coverage. Mr. Taylor refused to do a coverage for a class because it was the third in a row and he was needed to cover the class. Mr. Taylor refused to work with student because he said that they were disrespectful." The form indicates that it was completed by Ana Santos at the request of Principal Yesenia Peralta.
[7] *Id.*
[8] *Id.*
[9] NYSCEF Doc. # 43 at p. 3.
[10] NYSCEF Doc. 21 at p. 32.
[11] *Id.* at p. 40.
[12] NYSCEF Doc. # 41.
[13] *Id.*
[14] NYSCEF Doc. # 21 at p. 51.
[15] *Id.*
[16] NYSCEF Doc. # 42.
[17] *Id.*

Petitioner appealed his unsatisfactory rating, and a hearing was conducted on February 13, 2023.[18] During the February 13, 2023 hearing, Principal Yesenia Peralta testified that Petitioner was observed sleeping in the classroom by students and the Assistant Principal, was unhappy about his classroom assignments, refused to work with certain students, and on multiple occasions was not in the classrooms where he was assigned.[19] Principal Peralta also stated that these issues were internally documented and Petitioner was orally informed about them and the documents were not provided to Petitioner.[20] Petitioner also testified at this hearing and indicated he was unaware of the alleged complaints and believed the unsatisfactory rating stemmed from his refusal to cover a class because he had not had a lunch break.[21] It appears that Petitioner never received any notification regarding the status or outcome of his U-rating appeal.[22] On or about January 16, 2024, Mr. Taylor filed a petition seeking to compel Respondent to issue a determination regarding his U-rating appeal.[23] On May 3, 2024, Respondent provided Petitioner with the final decision regarding the appeal of his unsatisfactory ruling. The May 2, 2024 appeal decision stated:

> "Please be advised that the appeal of your rating of 'Unsatisfactory', from Brooklyn Academy, District 23, has been denied and the said rating is sustained because of poor pedagogical performance evidenced by you for the 2022 School Year."[24]

On or about May 13, 2024, Petitioner filed an amended petition seeking an Order and judgment pursuant to: 1) CPLR § 7806, ordering Respondent to change Petitioner's unsatisfactory rating into a satisfactory rating; 2) CPLR § 8601, awarding Petitioner reasonable court costs; and 3) 42 USC § 1983, granting monetary damages for violations of Petitioner's constitutional rights.[25]

Position of the Parties

The petition asserts he did not commit misconduct and was not consulted by the principal regarding any alleged misconduct.[26] Petitioner further contends that at the unsatisfactory rating appeal hearing, the principal stated she did not memorialize Petitioner's misconduct or any consultations she had with him as she was trying to work with him and only sought his removal when she could no longer work with him.[27] In this regard, Petitioner notes that the DNU Form dated May 25, 2022, indicates that no documents were submitted in support of Principal Peralta's placing Petitioner on the DNU list as a result of being observed sleeping during coverage and refusal to cover a class or work with a particular student.[28] Petitioner contends that there were deficiencies in the performance review

[18] NYSCEF Doc. # 21 at p. 21.
[19] A copy of a recording of the hearing was provided to the court for its review; *See* recording at 3:50 min. to 8:00 min. mark.
[20] *See Id.*
[21] *See Id.* at 14:00 min. to 16:36 min. mark.
[22] NYSCEF Doc. # 44 at p. 5.
[23] *See* NYSCEF Doc. # 44.
[24] NYSCEF Doc. # 21 at p. 24.
[25] *Id.*
[26] *Id.* at p. 9.
[27] *Id.*
[28] *Id.* at pp. 6-7

process that render his U-rating arbitrary and capricious, thus it should be changed to a satisfactory rating.[29]

In opposition, Respondent urges the amended petition should be dismissed as time barred. Respondent notes that Petitioner is challenging the unsatisfactory rating he received for the 2021-2022 school year, of which he received notice on August 3, 2022, informing him that he was not eligible to serve as a substitute.[30] Thus, Respondent contends that Petitioner was aggrieved by the rating at that time.[31] Additionally, Respondent maintains that Petitioner was notified on September 2, 2022, that as of August 30, 2022, he failed to meet the requirements for renewal as a substitute teacher and was suspended from serving in this position.[32] Accordingly, Respondent asserts that this is the latest that Petitioner could claim to have been aggrieved by Respondent's action and that he had four months from that time to commence a proceeding.[33] As the instant proceeding was not filed until January 16, 2024, Respondent maintains that it is time barred.[34] Next, Respondent asserts that the amended petition should be dismissed as Respondent's actions were reasonable and not arbitrary or capricious.[35] Finally, Respondent contends that Petitioner fails to state a cause of action under 42 USC § 1983.[36]

Statute of Limitation

The Court must first address the issue of timeliness of the petition. Here, Petitioner commenced this proceeding with the filing of a petition on or about January 16, 2024,[37] and the subsequent filing of an amended petition on May 13, 2024.[38] CPLR § 217(1) details the general statute of limitations applicable to Article 78 proceedings and, in pertinent part, 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."[39] "An administrative determination becomes final and binding when two requirements are met: completeness…of the determination and exhaustion of administrative remedies. First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be…significantly ameliorated by further administrative action or by steps available to the complaining party."[40]

Here, Respondent argues Petitioner was aggrieved by their determination to suspend him as a

[29] *Id.* at pp. 15-16.
[30] NYSCEF Doc. # 37 at p. 8.
[31] *Id.*
[32] *Id.* at p. 9.
[33] *Id.*
[34] *Id.*
[35] *Id.* at pp. 9-14.
[36] *Id.* at pp. 14-16.
[37] NYSCEF Doc. # 44.
[38] NYSCEF Doc. # 21.
[39] *See New York City Health & Hosps. Corp. v McBarnette*, 84 N.Y.2d 194, 204 (1994); *Palero Food Corp. v Zucker*, 186 A.D.3d 493, 495 (2d Dept. 2020); *Broadway Barbeque Corp. v New York City Dept. of Health & Mental Hygiene*, 160 A.D.3d 719, 720-21 (2d Dept. 2018); *Bonilla v Bd. of Educ.*, 285 A.D.2d 548, 549 (2d Dept. 2001).
[40] *Rock v New York City Employees' Retirement Sys.*, 2024 NY Slip Op 05121(2d Dept. 2024) (quoting *Rosado-Ciriello v Board of Educ. of the Yonkers City Sch. Dist.*, 219 A.D.3d 839, 840-841 [2d Dept. 2023] [citations and internal quotation marks omitted]); *see St. John's Riverside Hosp. v City of Yonkers*, 151 A.D.3d 786, 788-789 (2d Dept. 2017).

substitute teacher as of September 2, 2022, and thus had until January 2023 to commence this action.[41] Accordingly, Respondent maintains this action is time barred as it was not commenced until January 2024 and asserts that Petitioner's appeal of his unsatisfactory rating does not extend the statute of limitations.[42] In support of this contention, Respondent points to several cases, all of which are distinguishable from the facts herein as they deal with issues such as termination of employment, an application for a day off, and a determination denying religious exemption.[43]

Respondent would be correct that the action would be time barred if Petitioner was challenging the termination of his employment as a substitute teacher. However, Mr. Taylor is challenging Respondent's denial of his unsatisfactory rating appeal. Although the record indicates that a hearing regarding Petitioner's unsatisfactory rating appeal was conducted on February 13, 2023, the denial of said appeal was not communicated to Petitioner until May 2, 2024.[44] Significantly, the Court notes that the status of his appeal was not actually communicated to Petitioner until he filed his initial petition seeking to compel Respondent to issue a determination.[45] Here, the amended petition seeking an Order directing Respondent to change Petitioner's unsatisfactory rating to a satisfactory rating was filed on May 13, 2024, less than two weeks later, Respondent issued its denial of Mr. Taylor's U-rating appeal. Thus, it was well within the requisite four-month statute of limitations.[46] Accordingly, Petitioner's proceeding is not time barred.

Article 78

This Court is limited by CPLR Article 78 to a review of the record before Respondent and to the question of whether its determination was arbitrary and capricious based upon that record.[47] "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *See Pell v Board of Educ.*, 34 N.Y.2d 222, 231 (1974). If a rational basis exists for its determination, the decision of the administrative body must be sustained.[48] Stated simply, this Court cannot substitute its own judgment for that of the agency so long as the agency's decision is rationally based in the

[41] NYSCEF Doc. # 37 at pp. 8-9.
[42] *Id.* at p. 9.
[43] *Kahn v NYC Dep't of Educ.*, 79 A.D.3d 521, 522 (1st Dept. 2010), *aff'd* 18 N.Y.3d 457, 472 (2012) (termination of employment); *Jones v McGuire*, 92 A.D.2d 788, 789 (1st Dept. 1983) (application for an additional day off); *Strong v New York City Dep't of Educ.*, 62 A.D.3d 592, 592 (1st Dept. 2009) (termination of employment); *Baptiste v Bd. of Educ. of the City Sch. Dist. of the City of NY*, 2024 NY Slip Op 30080(U) (Sup. Ct. Kings County 2024) (denial of religious exemption).
[44] NYSCEF Doc. # 21 at pp. 23-24.
[45] *Id.* at pp. 25-26.
[46] *See Hazeltine v City of New York*, 89 A.D.3d 613, 614 (1st Dept. 2011) (the "determination that petitioner's teaching performance was unsatisfactory did not become final and binding until the Chancellor denied his appeal sustaining the rating"); *Andersen v Klein*, 50 A.D.3d 296, 297 (1st Dept. 2008) (the portion of the proceeding was timely as to challenge of an unsatisfactory rating, as petitioner received the determination of the appeal within four months of commencing the action, however, the action was untimely as to his challenge of his termination of employment); *Johnson v. Bd. of Educ.*, 291 A.D.2d 450, 450 (2d Dept. 2002); *Bonilla v Board of Educ.*, 285 A.D.2d 548, 549 (2d Dept. 2001) (an unsatisfactory rating does not become final and binding until an appeal of such determination is determined); *Mateo v Board of Educ.*, 285 A.D.2d 552, 553 (2d Dept. 2001); *see also Leo v New York City Dept. of Educ.*, 100 A.D.3d 536, 537 (1st Dept. 2012) (a challenge to an unsatisfactory rating was premature as petitioner had not exhausted his administrative remedies).
[47] S*ee Gray v New York State Div. of Hous. & Community Renewal,* 177 A.D.3d 738,740 (2d Dept. 2019); *65-61 Saunders St. Assoc., LLC v New York State Div. of Hous. & Community Renewal*, 154 A.D.3d 930, 931 (2d Dept. 2017).
[48] *See Pell*, 34 N.Y.2d at 230; *Clark v New York State Div. of Hous. & Community Renewal*, 193 A.D.3d 726, 727 (2d Dept. 2021); *Lucas v Board of Educ. of the E. Ramapo Cent. Sch. Dist.*, 188 A.D.3d 1065, 1067 (2d Dept. 2020).

record.[49] A challenge to an unsatisfactory rating requires a showing that the determination was arbitrary and capricious or without a rational basis.[50]

Petitioner asserts that his unsatisfactory rating should be set aside because he did not commit misconduct and the principal who assigned the rating never consulted with him regarding any issues of alleged misconduct.[51] He contends that there is no documentation regarding any alleged misconduct in his file and that an unsatisfactory rating may not be based on documents that were not presented to him prior to a hearing.[52] In this regard, he points to the DNU form which includes the explanation for why the principal no longer wanted to utilize Petitioner as a substitute at the Brooklyn Democracy Academy.[53] He notes that in the section labeled "Supporting Document" it states that there are "No Documents."[54] Petitioner states that at the U-rating appeal hearing, the rating principal indicated she consulted with Petitioner each time he engaged in misconduct but did not memorialize it because she was trying to work with him.[55] Petitioner maintains that any consultations regarding alleged misconduct should have taken place with Petitioner's union representative present.[56] Petitioner relies on the DOE Handbook for NYC Substitute Teachers to support this contention. Regarding grievances, the handbook indicates the United Federation of Teachers (UFT) is the exclusive bargaining representative of substitute teachers. The Handbook provides:

> "The Department of Education provides you, the Substitute Teacher, the opportunity to discuss incidents or events which may lead to disciplinary action. In all disciplinary matters at the Central level, only you and Representatives from the UFT are permitted to attend disciplinary conference, grievance hearings or ratings appeals. Outside counsel or other representation is not permitted. Union representation is recommended if complaints could result in your being permanently excluded from assignment as a day-to-day Substitute Teacher."[57]

In opposition, Respondent argues that the unsatisfactory rating was issued in good faith and in compliance with DOE policy requiring the school principal to rate Petitioner since he worked as a substitute teacher for more than ten days at the school.[58] Respondent asserts that the unsatisfactory rating was not arbitrary or capricious as it was based on his poor performance as a substitute teacher at the Brooklyn Democracy Academy, which was documented in the "Notice of Substitute

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[49] See *Borenstein v New York City Employees' Retirement Sys.*, 88 N.Y.2d 756, 761 (1996); *Vastola v. Board of Trustees of the N. Y. City Fire Dept., Art. 1-B Pension Fund*, 37 A.D.3d 478, 478 (2d Dept. 2007); *Santoro v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 217 AD2d 660, 660 (2d Dept. 1995).

[50] See CPLR § 7803 (3); *Brown v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 156 A.D.3d 451, 451-452 (1st Dept. 2017) (an unsatisfactory rating must be upheld when the evidence in the record rationally supports the rating and can only be annulled where a petitioner "demonstrates that it was made in bad faith or in violation of lawful procedure or a substantial right); *Hazeltine*, 89 A.D.3d at 614.

[51] NYSCEF Doc. # 21 at p. 9.

[52] *Id.* at pp. 9-10. The court notes that, according to Chancellor's Regulation C-31 subsection 2.2.3, "non-appointed pedagogical employees who are u-rated, where appropriate, shall receive the termination notice and reasons simultaneously with the u-rating." (See NYSCEF Doc. # 26 at p. 3.).

[53] *Id.* at p. 44.

[54] *Id.*

[55] *Id.* at p. 9.

[56] *Id.* at p. 10.

[57] NYSCEF Doc. # 43.

[58] NYSCEF Doc. # 37 at pp. 11-12.

Complaint,"[59] the DNU Form[60] and the "Notice of DNU Filing and Warning," which informed Petitioner that a copy of the letter would be placed in his "personnel file as warning #1."[61] In support of its position, Respondent properly relies on *Offong v N.Y. City Dep't of Educ.*, (2010 NY Slip Op 31529[U], *16 (Sup Ct. N.Y. County June 7, 2010]), which involved an Article 78 proceeding brought by an occasional per diem substitute teacher to challenge the DOE's decision to place her on the ineligible list. The Court held that "provisional employees, such as Petitioner herein, may be discharged for any or no reason at all in the absence of a showing that his or her dismissal was in bad faith, for a constitutionally impermissible purpose or in violation of law" and that "evidence in the record supporting the conclusion that performance was unsatisfactory establishes that the discharge was made in good faith." *Id.* Respondent further argues that Petitioner's claims lack evidentiary support.[62]

"Administrative decisions of educational institutions involve the exercise of highly specialized professional judgment and these institutions are, for the most part, better suited to make relatively final decisions concerning wholly internal matters." *Kinkle-Ansah v. New York City Dept. of Educ.*, 189 A.D.3d 1048 (2d Dept. 2020) (quoting *Maas v. Cornell Univ.*, 94 N.Y.2d 87, 92 [1999]). A court should not overturn a petitioner's unsatisfactory rating unless it is arbitrary and capricious, made in bad faith, or contrary to the law. *See Id.* at 1049-1050. The Court may not substitute its judgment for that of the agency, so long as the agency's decision is rationally based in the record. Here, petitioner failed to demonstrate that the unsatisfactory rating was arbitrary or capricious. The evidence, including the complaint form and U-rating appeal hearing testimony of Principal Yesenia Peralta, demonstrate the unsatisfactory rating was based on Mr. Taylor's misconduct, including Petitioner being observed sleeping during coverage, refusing to work with a particular student, and failing to cover assigned classes.[63] Therefore, the branch of the petition seeking to annul the unsatisfactory rating is denied.

Petitioner further alleges that Respondent violated 42 USC § 1983 by depriving him of his substantive and procedural due process rights.[64] Specifically, he contends that Respondent violated its custom and policy by failing to provide him with a copy of the complaint and the DNU filing.[65] As a result, he was harmed by causing his termination and undermining his ability to refute his unsatisfactory rating.[66] In opposition, Respondent contends Petitioner failed to state a cause of action under 42 USC § 1983 by not identifying any specific policy or practice that was violated in support of his claim.[67] Respondent claims that Petitioner merely speculated that it is custom and practice that a copy of a complaint or removal request be provided but fails to allege any facts in support of this assertion.[68] Moreover, Respondent notes that Petitioner only alleges a single incident that does not involve officials at the policy-making level, and thus fails to allege any conduct that would amount

[59] NYSCEF Doc. # 38.
[60] NYSCEF Doc. # 39.
[61] NYSCEF Doc. # 40.
[62] NYSCEF Doc. # 37 at pp. 12-14.
[63] NYSCEF Doc. # 21 at p. 44 & hearing recording at 3:50 min. to 8:00 min. mark; *See Kinkle-Ansah*, 189 A.D.3d at; *see also Brown v. Bd. of Educ. of City Sch. Dist. of City of New York*, 156 A.D.3d 451 (1st Dept. 2017) (where court found that Petitioner failed to demonstrate unsatisfactory rating based on misconduct was arbitrary or capricious).
[64] NYSCEF Doc. # 21 at pp. 2, 12-14.
[65] *Id.* at p. 12.
[66] *Id.* at p. 13.
[67] NYSCEF Doc. # 37 at pp. 14-16.
[68] *Id.*

to a constitutional violation.[69] 42 USC § 1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."[70]

"To hold a municipality liable under section 1983 for the conduct of employees below the policymaking level, a plaintiff must show that the violation of his or her constitutional rights resulted from a municipal custom or policy."[71] A § 1983 claim must plead specific allegations of fact; broad, conclusory allegations are insufficient.[72] Moreover "[a] single incident alleged in a complaint, especially if it involved only actors below the policy-making level, does not suffice to show municipal liability."[73] Here, there is no merit to Petitioner's 42 USC § 1983 claim. Petitioner failed to identify a specific policy violated by Respondent.[74] At most, Petitioner alleges a single incident, the unsatisfactory rating he was issued for the 2021-2022, involving a DOE employee (the school principal) who was not in a policy-making role.[75] Finally, the record indicates that on May 25, 2022, Petitioner was in fact provided with notice of the complaint filed against him and informed that he would be placed on the Do Not Use list.[76] This was followed up with another email on May 26, 2022, informing him of the proffered reasons underlying the complaint and noting that it would be placed in his personnel file as warning number one.[77] Accordingly, that branch of the petition seeking monetary damages related to a violation of Petitioner's procedural and substantive due process rights is denied.

All other relief not expressly addressed is hereby denied. Therefore, the petition is denied in its entirety and dismissed.

This constitutes the Decision and Order of the Court.

Date: December 5, 2024
Brooklyn, New York

Hon. Patria Frias-Colón, J.S.C.

[69] *Id.*
[70] *See* 42 USC § 1983.
[71] *Vargas v City of New York*, 105 A.D.3d 834, 837 (2d Dept. 2013); *Monell v New York City Dept. of Social Servs.*, 436 U.S. 658, 694 (1978); *Dwares v City of New York*, 985 F.2d 94, 100 (1993).
[72] *See Fludd v City of New York*, 199 A.D.3d 894, 897 (2d Dept. 2021); *Leung v City of New York*, 216 A.D.2d 10, 11 (1995).
[73] *Harley ex. rel. Johnson v City of New York*, 36 F.Supp.2d 136, 142 (E.D.N.Y. 1999) (internal quotation marks and citation omitted).
[74] *See Vargas*, 105 A.D.3d at 837; *Monell*, 436 U.S. at 694; *Dwares*, 985 F.2d at 100.
[75] S*ee Harley ex. rel. Johnson*, 36 F.Supp.2d at 142.
[76] NYSCEF Doc. # 21 at p. 26.
[77] *Id.* at p. 27.