

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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ALEXANDER DELETTA,

Petitioner,

- v -

ERIC ADAMS, in his Official Capacity as Mayor of the City of
New York, ASHWIN VASAN, MD, PhD in his Official
Capacity as the Commissioner of the New York City
Department of Health and Mental Hygiene, THE CITY OF
NEW YORK

Respondents.

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INDEX NO. 156459/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for ARTILCE 78.

The petition is granted to the extent that petitioner is entitled to a religious exemption from the Covid-19 vaccine mandate.

Background

Petitioner works for the respondent New York Police Department (“NYPD”) and refused to comply with respondents’ requirement that he receive a Covid-19 vaccine. He explains that his religious beliefs compelled him to refuse receiving vaccinations. Petitioner alleges that he has been testing weekly and working (although he is unvaccinated) since the mandate became effective in October 2021.

Petitioner applied for a religious exemption from the vaccine mandate (NYSCEF Doc. No. 2 [petitioner’s application]). On February 15, 2022, petitioner’s request was denied (NYSCEF Doc. No. 15). The initial denial cited three grounds, all of which were pre-printed

reasons checked off by respondents. They were 1) “Objection was personal, political, or philosophical,” 2) “Statement does not appear to be written by the applicant/generic statement that does not support candidate’s request” and 3) “No demonstrated history of vaccination/medicine refusal” (*id.*).

Petitioner then filed an appeal with a Citywide Panel (NYSCEF Doc. No. 16). In his appeal, he addressed each of the purported reasons for his denial and explained why he disagreed with respondents’ decision. The Citywide Panel denied his request for a religious exemption, writing simply that his application “Does Not Meet Criteria” (NYSCEF Doc. No. 3). That was it – no reasoning, no discussion of petitioner’s arguments, not a single mention of anything particular to petitioner at all– just “Does Not Meet Criteria.” Petitioner contends that he will be terminated unless he gets the vaccine.

In opposition, respondents contend that the denial of petitioner’s request for a religious exemption was rational and that this Court must sustain the determination. They detail the process by which an employee, such as petitioner, could apply for a religious exemption. Respondents explain that the Citywide Panel was created to consider appeals filed by employees whose exemption requests had been denied by their agencies.

Respondents claim that the objections raised by petitioner about the private employer vaccine mandate are irrelevant to the mandate applicable to public employees. They claim that the decision to terminate petitioner’s employment complied with the applicable laws.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious

when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the petition only to the extent that petitioner is entitled to a religious exemption from the Covid-19 vaccine mandate and may not be terminated by the NYPD due to a lack of Covid-19 vaccine. The Court’s analysis begins with petitioner’s application and the initial denial of his request for a religious exemption. Petitioner cited various reasons in his application for why he thinks he should be entitled to an exemption. Essentially, petitioner argues that his religious beliefs forbid him from getting the required vaccination. The initial denial failed to include any specific or individualized reasons for denying petitioner’s application – the denial checked off three boxes.

As stated above, the denial was indicated on what appears to be a standard form containing various reasons for why a religious exemption might be denied (NYSCEF Doc. No. 15). The problem for this Court is that these reasons are entirely conclusory and the Court is unable to analyze how those checked boxes relate to petitioner’s application without the Court imagining what the person who checked the boxes could possibly have been thinking. For instance, the first reason “checked off” is that the “Objection was personal, political or philosophical” (*id.*). While that might be a good topic sentence, it is not followed by any analysis as to why petitioner’s specific application was personal, political, or philosophical. It is not this Court’s role to imagine what the agency might have said or should have said – it is the duty of the agency to explain why it made the decision. Here, the Court has no idea why the

agency thought, or even if it did think, that the objection was personal or political or philosophical.

Similarly, the second reason—that the application did not appear to be written by petitioner or that it lacked support for the exemption—is also unaccompanied by any rationale. As is the third stated basis—that petitioner has no demonstrated history of vaccine refusal. The Court has no idea how respondents came to their initial conclusion and so the Court cannot properly evaluate whether the initial denial was rational or just some random checking of these boxes.

The denial by the Citywide Panel is even more lacking. It merely stated that petitioner's request did not meet the criteria. Such a determination is wholly devoid of any reason whatsoever and cannot therefore be viewed as rational. Respondents' assertion that the Citywide Panel did not have to provide any reason for the denial of petitioner's application is without merit and contrary to the applicable law concerning Article 78 reviews of governmental determinations. The hollow and generic phrase "does not meet criteria" cannot be rational because not a single item particular to petitioner was discussed and not a single reason for the decision was given. There is no indication that anybody even read petitioner's arguments.

"Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent" (*Matter of Figel v Dwyer*, 75 AD3d 802, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

What would be the purpose of permitting judicial review of the denial of petitioner's application if respondents could simply deny the requested exemption and not cite a reason? The fact is that respondents set up a process by which a city employee (such as petitioner) could request a religious exemption. They cannot create such a process and then seek to terminate petitioner's employment without even offering a basis for that determination. This is not a situation, such as where an agency fires a probationary employee, where a governmental agency need not provide any reason for its decision (*e.g.*, *Soto v Koehler*, 171 AD2d 567, 567 NYS2d 652 [1st Dept 1991]).

The Court also observes that the Citywide Panel determination made no mention of the initial denial of petitioner's exemption request. Therefore, the Court is unable to assess whether the Citywide Panel incorporated the initial denial in whole, in part, or not at all. Even if the initial determination was rational (which the Court has found it was not), the Court emphasizes that it has no bearing on the final determination that petitioner challenges here. The Court cannot simply assume that those reasons, as conclusory as they are, were the basis for the Citywide Panel determination. The absolute lack of any rationale whatsoever makes it just as likely that the Citywide panel flipped a coin to make the challenged decision. Such a decision, with no discussion of anything whatsoever, can only be arbitrary and capricious.

Respondents' memorandum of law provides a clear example of why the Court is compelled to grant petitioner a religious exemption. Respondents argue that "the letter Petitioner submits by Father Carl Sulzen is a blanket letter, which makes no mention of Petitioner and his involvement of St. Michael the Archangel Church" (NYSCEF Doc. No. 13 at 20). "The letter is devoid of how often Petitioner attends services at the church, how long he's been pastored under Father Carl Sulzen, and moreover, the letter is written in a manner that fails to evince any

relationship between Petitioner and Father Sulzen. Father Carl Sulzen does not indicate that he has ever met Petitioner, ever provided him religious counsel, or has even spoken to Petitioner” (*id.*). (Petitioner included a letter from Father Sulzen as part of his application).

The Court observes that these might all be good reasons to deny petitioner’s application *if* they had been included *anywhere* in the decisions below. The Court is unsure why this type of analysis—which is the exact sort of attention and reasoning in which an agency considering whether someone has sincerely held religious beliefs should engage—was not done until after this special proceeding was commenced. While counsel for respondents’ assertions could be compelling, it was not his role to generate arguments before this Court by doing his own evaluation of petitioner’s application. The fact is that respondents’ counsel did not get any of that reasoning from either decision below; had it been there, then this Court would have had something to evaluate. But it was not.

Of course, this Court cannot entertain or rely upon after-the-fact rationales. None of these reasons were cited below and respondents may not make these arguments for the first time in this proceeding. The time to analyze petitioner’s application was before the agencies below, not this Court. And respondents failed to ask the Court to remand this proceeding so that they could issue another determination (assuming, of course, respondents could cite a sufficient justification for doing so).

The Court emphasizes that the description of the religious exemption appeals process by the Citywide Panel (as detailed by respondents) seems, on its face, to involve careful consideration (NYSCEF Doc. No. 14 at 5 [Eichenholtz affirmation]). Apparently, representatives from three different entities (the Law Department, DCAS and the City Commission on Human Rights) all weigh in. While the process might have had good intentions, the fact is that the result

in this case was an unsupported decision stating that petitioner's application "Does Not Meet the Criteria." The problem for this Court is that it cannot tell whether the members of the Citywide Panel debated petitioner's requested exemption for weeks or not at all because they did not produce a written determination capable of being evaluated by this Court.

Petitioner's Other Claims

The remaining requested relief by petitioner is denied. Among these claims are an apparent request that the Court enjoin respondents from enforcing the vaccine mandate altogether, a declaration that respondents violated petitioner's constitutional rights and that respondents be enjoined from violating petitioner's constitutional rights. Petitioner failed to meet his burden for any of this relief.

As an initial matter, the vaccine mandate on city employees has been routinely upheld by various courts (*see e.g., Broecker v New York City Dept. of Educ.*, 21-CV-6387(KAM)(LRM), 2022 WL 426113 [ED NY 2022]; *Garland v New York City Fire Dept.*, 574 F Supp 3d 120 [ED NY 2021]). Based on these decisions, there is no basis to find that the vaccine mandate somehow violates petitioner's constitutional rights and, specifically, the free exercise clause. In fact, a vaccine mandate does not violate the free exercise clause under the New York State Constitution (*see C.F. v New York City Dept. of Health and Mental Hygiene*, 191 AD3d 52, 139 NYS3d 273 [2d Dept 2020] [finding that a vaccine mandate for measles did not violate the free exercise clause]). In other words, the broad, sweeping relief sought by petitioner is denied. This proceeding is limited solely to petitioner's individual exemption request and respondents' arbitrary and capricious denial with respect to that application.

Petitioner's argument that the differences between the private employer vaccine mandate and the mandate affecting public employees justifies the vacating the vaccine mandate is wholly

without merit. Public employees, because they work for the public, are subjected to many more restrictions than employees for private companies. These restrictions can include political activities, strict codes of conduct, and financial disclosure requirements—the Court does not endeavor to provide an exhaustive list here. The point is that differences between how private and public employees are treated is not a basis to vacate the vaccine mandate. Disagreeing with the policy choices between them does not justify vacating one or both of these orders.

The Court also denies petitioner's request for legal fees (contained in the wherefore clause of the petition) as he did not cite any basis for this relief.

Summary

This Court is well aware that there have been many disputes about public employee vaccine mandates. Therefore, it is critical to state exactly what this decision holds. This Court finds only that petitioner is entitled to a religious exemption and that he can continue working for the NYPD without being vaccinated for Covid-19. This conclusion is based on the fact that the Citywide Panel determination failed to cite any reason whatsoever for the denial of petitioner's application. And the Citywide Panel did not cite, reference, or incorporate the initial denial of petitioner's religious exemption request.

Moreover, the initial denial was also irrational because it did not provide any individualized analysis. Although three bases were cited, these general reasons, standing alone, are simply too conclusory. This initial determination did not address any of the specific justifications or apply the alleged facts that petitioner cited for why he sought a religious exemption.

Petitioner's purported attempt to make a facial challenge to the vaccine mandate is denied. And so is his request for relief arising out of purported constitutional violations

committed by respondents. As stated above, the exemption process provided comported with constitutional protections—petitioner was provided with a process by which he could apply for a religious exemption from the vaccine mandate. That does not violate his constitutional rights.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondents’ determination denying petitioner’s application for a religious exemption is vacated; and it is further

DECLARED that petitioner is entitled to a religious exemption from the Covid-19 vaccine mandate and petitioner may not be terminated from the NYPD based upon the lack of the Covid-19 vaccine; and it is further

ORDERED that the petition is denied with respect to the remaining relief requested; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents along with costs and disbursements upon presentation of proper papers therefor.

9/13/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE