

**SUPREME COURT- STATE OF NEW YORK**

**Honorable Gregg Roth**

**Justice**

\_\_\_\_\_ X

**In the Matter of the Application of  
JOSEPH MINICOZZI, JR.,**

**Trial IAS Part 29  
Nassau County**

**Index No.: 601060/25**

**Petitioner(s),**

**Motion Seqs. No.: 001 & 002  
Motions Submitted: 3/17/25**

**-against-**

**For a Judgment under Article 78 of  
the Civil Practice Law and Rules in the nature of  
a *mandamus* review,**

**- against -**

**OYSTER BAY FIRE DEPARTMENT, INC.  
d/b/a OYSTER BAY FIRE DEPARTMENT  
COMPANY NO. 1 and FRANK MANTEGARI,  
III, individually and in his official capacity as  
Fire Chief,**

**Respondent(s).**

\_\_\_\_\_ X

The following papers read on this motion:

- Notice of Petition/Supporting Exhibits.....X
- Notice of Cross Motion/Supporting Exhibits/Memorandum of Law/  
Objections to Petition.....X
- Memorandum of Law in Opposition to Cross Motion.....X
- Reply Affirmation to Cross Motion.....X

### Relief Requested

Petitioner, Joseph Minicozzi, Jr. (Minicozzi), petitions this court (Motion Seq. 001) for an Order, pursuant to Article 78 of the CPLR, reversing, annulling, and setting aside the determinations of Respondents, Oyster Bay Fire Department, Inc. d/b/a Oyster Bay Fire Department Company No. 1 (OBFD) and Frank Mantegari III (Mantegari), individually and in his capacity as Fire Chief, and directing them by invoking mandamus to reinstate Minicozzi as a Life Member. Respondents deny the allegations in the petition and cross move (Motion Seq. 002) to dismiss the petition. Minicozzi opposes the cross motion.

### Background

Minicozzi has been a firefighter for over 40 years. He has been a member of various fire houses over his career, with multiple tenures with OBFD. OBFD is also the fire house he has been associated with the longest. Due to his tenure with OBFD, Minicozzi has reached the status of Life Member which entitles him to the same privileges of an active member. Mantegari was an Assistant Chief on the dates relevant to this proceeding.

According to the petition, on May 21, 2024 Minicozzi was having a conversation with another OBFD member and was discussing his disability when Mantegari inserted himself into the conversation and began to insult Minicozzi including questioning whether his disability was real. Minicozzi claims Mantegari continued to “verbally

assault, bully and berate” him, all of which was unprovoked. Mantegari then said that Minicozzi was suspended for 30 days. Minicozzi objected and stated he would be taking action including filing formal charges against Mantegari which resulted in Mantegari adding another 30 days to the suspension. When Minicozzi continued to object and stated that Mantegari could not suspend him for being disabled, Mantgari increased the suspension to 90 days. Fearing he would be assaulted, Minicozzi left the premises.

On May 23, 2024, Minicozzi received a letter from Thomas Rahilly, Jr., Chief of OBFD. The letter directed Minicozzi to cease all OBFD “extracurricular activities” while waiting for the department lawyer “to rule” on the conflict between Minicozzi being a Class B firefighter and his claim of being disabled. That ruling would never come.

By letter dated May 22, 2024, Chief Rahilly informed Minicozzi that his suspension was based on conduct unbecoming a member of the company. However, the suspension would be four days and would continue until May 26, 2024 at 11:59pm. The letter states “You have 24 hours to hand deliver a letter of appeal of this decision to the Chief of the Department.”

The petition alleges that Minicozzi did appeal his suspension, and as proof he offers a letter dated May 24, 2024, directed to “To whom it may concern”. The letter states “I submitted a letter of appeal as required by the by-laws.” That letter is not provided. The rest of the May 24, 2024 letter explains the incident from Minicozzi’s point of view, alleges he was being targeted and harassed, and indicates he will seek legal counsel.

At the next regular meeting, the date of which is not provided, Minicozzi claims that unnamed “Line Officers” informed the entire membership of Minicozzi’s disability and read a statement from the disciplinary board upholding the four-day suspension. Minicozzi claims he was prevented from speaking in his own defense and from filing formal charges against Mantegari.

On July 16, 2024, Minicozzi received a letter from Chief Rahilly, via email from Secretary Tim Marchisotto, that stated Mincozzi was suspended pending an investigation of allegations Minicozzi’s “workplace violence”. On August 7, 2024, Minicozzi received another letter from Chief Rahilly, via email from Mr. Marchisotto, requesting Minicozzi meet with “the Chief and Officers” on August 12, 2024 at 5:00pm. The letter contains no further information about the nature of the meeting. Minicozzi responded that he was unavailable on that date. On September 4, 2024, Minicozzi received an email from Mr. Marchisotto indicating that Chief Rahilly had requested his presence on September 10 at the Fire House. The subject of the email stated “Hearing,” but provided no other details. Minicozzi did not respond. On September 6, 2024, Mr. Marchisotto emailed Minocozzi again asking if he would attend. The subject of the email again stated “Hearing” and again provided no other details. Minicozzi clams he informed Mr. Marchisotto he could not be at the Fire House at that date and time.

On September 10, 2024, a hearing was held and evidence was received regarding the allegations against Minicozzi. The Findings of Fact, signed by Chief Rahilly, found

that it was Minicozzi who, on May 21, 2024, engaged in “violent, intimidating and harassing conduct”, was “screaming, threatening, spitting, and touching another individual”, in violation Fire House policy and state and federal laws. Further, it was determined that Minicozzi was insubordinate and that he had a history of these types of outbursts. As a result, Minicozzi was suspended as a member for 12 months, and could be reinstated after 12 months if he wrote an apology and took anger management classes. Minicozzi alleges these actions were all in retaliation for his threat to file formal charges and try to hold others accountable.

In opposition to the petition, and in support of the motion to dismiss, Respondents offer, inter alia, the affidavit of Chief Rahilly, letters of complaint against Minocozzi and a transcript of the September 10, 2024 proceeding. Chief Rahilly’s affidavit and the other exhibits paint a vastly different picture of what occurred on May 21, 2024. However, Respondents first make some technical arguments.

Initially, Chief Rahilly points out that OBFD by-laws give the chief the authority to discipline a member. The member may then seek a disciplinary hearing before the Disciplinary Review Board by requesting such a hearing in writing and hand delivering the request to a Chief. Minicozzi never followed this procedure, and thus failed to exhaust all administrative remedies, precluding him from seeking Art. 78 relief. Next, Rahilly points out that there is a four month statute of limitations on Art. 78 cases, thus Minicozzi is precluded from challenging any actions OFBD took in May, June and July 2024 as he is

time-barred.

Regarding the September 10, 2024 proceeding, Chief Rahilly states that Minicozzi was asked by email and text message to attend. He ignored the emails, and finally responded to a text from Mr. Marchisotto that simply said he could not attend. Mr. Marchisotto then asked Minicozzi if he could call in, or if he could offer a date he was available, but Minicozzi did not respond. The emails and text message chain are provided.

Regarding the September 10, 2024 proceeding, Chief Rahilly states it was a mistake to refer to it as a hearing. Instead, it was an investigatory proceeding during which four members testified about Minicozzi's actions on May 21, 2024 and at other times. Tracy Zangary testified that on multiple occasions, after meetings, Minicozzi got "in [her] face" and began yelling. Mantegari testified that on May 21, 2024, Minicozzi was "nose to nose" with John Kornrumpf, and Minicozzi was yelling about his disability and was cursing and screaming. Mantegari got between them and tried to calm Minicozzi down, but Minicozzi repeatedly cursed at Mantegari, which caused Mantegari to get heated. They were nose-to-nose. This is when Mantegari suspended him. Mr. Kornrumpf testified that on May 21, 2024, Minicozzi started screaming at him, poking his finger into Mr. Kornrumpf's chest and got nose-to-nose with him. Mr. Kornrumpf became concerned that Minicozzi could hurt him. Steven O'Neill appeared toward the end of the incident and helped get Minicozzi outside. He said that Minicozzi was

“manic” and was ignoring orders being given to him.

Based upon the testimony, Chief Rahilly decided to suspend Minicozzi. Again, Chief Rahilly points out that, regardless of what this proceeding was called, based upon the suspension Minicozzi had the right to seek an appeal by requesting one in writing and delivering it to chief within three days. He did not do so. Further, Minicozzi was suspended, not terminated, and he remains “on the rolls”, but Chief Rahilly believed he had to take action because Minicozzi was causing an unsafe environment.

#### Applicable Law

“In reviewing the actions of an administrative agency, courts must assess whether the actions at issue were taken without sound basis in reason and without regard to the facts” (*Matter of Lindenthal v Town of New Castle*, 48 Misc3d 1231(A) [Sup Ct, Westchester County 2015], citing *Matter of County of Monroe v Kaladjian*, 83 NY2d 185 [1994]). “The agency’s determination need only be supported by a rational basis” (*Matter of Lindenthal, supra*, citing *Matter of County of Monroe, supra*). “Unless the agency’s determination was arbitrary and capricious, it must be sustained” (*Matter of Lindenthal, supra*, citing *Matter of Jennings v Comm. N.Y.S. Dept. of Social Svcs.*, 71 AD3d 98 [2d Dept 2010]).

It is well settled under CPLR Article 78, that judicial review of an administrative determination is limited to consideration of whether the determination was made in

violation of lawful procedure, affected by an error of law, is arbitrary and capricious or whether it is a reasonable exercise of the agency's discretion (*see Matter of Hollander v Suffolk County Dept. Of Social Servs., Child Support Enforcement Bur.*, 140 AD3d 1064 [2d Dept 2016]); *Quirolo v Liebowitz*, 111 AD3d 641 [2d Dept 2013]). An action is arbitrary if it is without sound basis in reason and is generally taken without regard to the facts (*see Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). If the determination has a rational basis, it will be sustained even if a different result would not be unreasonable (*Id.*). Where a rational basis exists for an agency's action, a court may not substitute its judgment for that of the agency, and the determination of the agency, acting pursuant to the legal authority and within its area of expertise, is entitled to deference (*see Roberts v Gavin*, 96 AD3d 669, 671 [1<sup>st</sup> Dept 2012]; *Tockwotten Associates, LLC v New York State Div. of Housing and Community Renewal*, 7 AD3d 453, 454 [1<sup>st</sup> Dept 2004]). Before a party commences an Art. 78 proceeding, they are required to exhaust administrative remedies, or argue that doing so would be futile (*Buono v NYC Dept. of Bldgs.*, 227 AD3d 1062 [2d Dept 2024]).

Mandamus is an "extraordinary remedy" and one that should only be invoked in limited circumstances (*Id.* at 1063]). Mandamus is only available to compel a governmental entity to perform a ministerial act, but cannot be used to compel a discretionary act (*Id.*).

### Discussion

There appear to be four separate instances when Minicozzi was suspended. On May 21, 2024, Mantegari suspended him for 90 days. Without explicitly saying so, Chief Rahilly appears to have overruled that determination and then suspended Minicozzi for four days on May 22, 2024. On July 16, 2024, Minicozzi was suspended by Chief Rahilly again, this time indefinitely pending an investigation into his actions. Finally, on September 10, 2024, Minicozzi was suspended for a year after a proceeding that was referred to as a hearing at the time, but which Chief Rahilly now claims was merely an information-gathering proceeding. Regardless, what is not in dispute is that Minicozzi failed to appeal any of them. The by-laws are clear that to appeal a disciplinary action, a member must seek the appeal in writing and hand the writing to a Chief within three days. The only time Minicozzi claims to have done so was for the Mantegari suspension which either never took effect or was rendered moot when Chief Rahilly lessened the suspension to four days. Minicozzi does not claim he followed the proper procedure to appeal the May 22, 2024, July 16, 2024 or September 10, 2024 suspensions. As such, he failed to exhaust his administrative remedies or claim that doing so would have been futile (*Buono v NYC Dept. of Bldgs, supra*). Further, by the time Minicozzi commenced this proceeding the four-month statute of limitations had run on the May, 21, 2024, May, 22, 2024 and July 16, 2024 suspensions. Yet while it is possible that all four suspensions were part of a continuing wrong, and thus the statute of limitations were tolled, that does not resolve the failure to exhaust administrative remedies, nor does it render the

suspensions arbitrary and capricious.

The evidence presented by Respondent shows that the suspensions had a rational basis. There were multiple witnesses who confirmed that Minicozzi was aggressive, screaming and refusing to abide by orders to leave on May 21, 2024. There was also evidence that May 21, 2024 was not an isolated incident as other witnesses also complained about Minicozzi's conduct of starting arguments with them and immediately going "nose-to-nose" with them. The court also notes that Minicozzi was given the opportunity to not only appear, but when he claimed he was not available, he was, at one point, asked when he could appear via text from Mr. Marchisotto, a question he chose to ignore. While it is true that the emails provided no details, the September emails were at least labeled "Hearing", and there was nothing stopping Minicozzi from inquiring what the hearing would involve. He cannot refuse to follow the by-laws, refuse to appear and refuse to inquire and then claim he was the one wronged. Finally, Minicozzi offers no evidence or justification for naming Mantegari individually in the petition. It is clear that each action that Mantegari took to which Minicozzi objected was an action made in Mantegari's role as Assistance Chief.

Upon the foregoing, it is hereby

**ORDERED** that Minicozzi's petition (Motion Seq. 001) is DENIED; and it is further

**ORDERED**, that Respondents' motion (Motion Seq. 002) to dismiss the petition

is GRANTED in its entirety.

The petition is dismissed

The court has considered the remaining arguments of the parties and finds they are without merit. Any relief not specifically granted is denied. This shall constitute the decision and order of the Court.

Dated: May 14, 2025  
Mineola, N.Y.



---

Hon. Gregg Roth, J.S.C.