

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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VICTOR E RODRIGUEZ,

Petitioner,

- v -

KEECHANT SEWELL, THE BOARD OF TRUSTEES OF
THE NEW YORK CITY POLICE PENSION FUND, ARTICLE
II

Respondent.

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INDEX NO. 154204/2023
MOTION DATE 05/09/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

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

Upon the foregoing documents, it is

Pursuant to its decision in Matter of Ciccone v Sewell, Index No 155142/2023, this Court grants the petition to the extent that it is remanding the matter back to the Board of Trustees for reconsideration as to the issue of whether the petitioner's disabling injuries were the result of a qualifying accident under the New York City Administrative Code. This case is substantially on all fours with Ciccone and the same result is warranted.

In Ciccone, the Court overruled the respondent's determination that the police officer's injury, sustained when she fell into a recessed stairwell without a guardrail while looking for a stolen cellphone in an unfamiliar location, was not an accident. Here there is evidence that the subject staircase was in a defective or dangerous condition and that the petitioner was in an unfamiliar location engaged in police duties at the time he suffered his injury. Again, this is the identical fact pattern to Ciccone. Additionally, the petitioner herein submitted an expert report which opined that the condition of the staircase violated the Building Code. Respondent attempts to discredit the expert's opinion but has failed to submit any documentation from the City, such as inspection records, which shows that the staircase was considered safe at the time of the plaintiff's accident. The petitioner also brought a personal injury action against the owner of the building which he claims resulted in a monetary settlement. Upon remand, the Board should carefully consider all of these factors in light of this Court's decision in Ciccone.

For the reasons set forth herein and on the record at oral argument, it is hereby;

ADJUDGED and ORDERED that the petition is granted to the limited extent that this matter is remanded back to the Board of Trustees for reconsideration on the issue of whether the

petitioner’s disabling injuries were the result of a qualifying accident under the New York City Administrative Code; and it is further

ADJUDGED and **ORDERED** that the petition is otherwise denied.

This constitutes the decision and order of the court.


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11/6/2024

DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE