

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

**X**

In the Matter of the Application of  
**JAMES NOVA,**

Petitioner,

Index No.:

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

Verified Petition

Against

ORAL ARGUMENT  
REQUESTED

**FIRE DEPARTMENT OF THE CITY OF NEW YORK and  
CITY OF NEW YORK,**

Respondents.

**X**

Petitioner James Nova (“**Inspector Nova**”) through his attorneys, Siri & Glimstad LLP and the Mermigis Law Group, P.C., as and for his Article 78 Petition against the Fire Department of the City of New York and City of New York (collectively, “**Respondents**”), as set forth herein, respectfully states and alleges, upon information and belief, as follows:

Inspector Nova was deemed essential when the COVID-19 pandemic first hit in 2020 and worked tirelessly throughout the pandemic without complaint. While most of the world stayed “safe at home,” Inspector Nova worked overtime, selflessly serving the citizens of New York City (“**City**”). Inspector Nova often relied on his faith to get him through these and other difficult times.

But when Inspector Nova requested a religious accommodation to the City’s COVID-19 vaccine mandate, it was denied. Inspector Nova was one of the thousands of the Fire Department of the City of New York (“**FDNY**”) personnel issued arbitrary and capricious

religious accommodation denials. The FDNY and City's option and process for seeking religious accommodation are illusory, contrived, and amount to nothing more than theater. The nearly universal rubber stamp denial of religious exemption requests and forced Leave Without Pay violates applicable law.

### PRELIMINARY STATEMENT

1. This action is brought to challenge FDNY's June 6, 2022 Final Decision to wrongfully deny Associate Fire Protection Inspector Nova's application for a religious accommodation from Respondents' COVID-19 vaccination mandate based on Inspector Nova's sincerely held religious beliefs and challenge Inspector Nova's termination, which occurred on July 1, 2022.

2. Respondents' actions violate the New York City Human Rights Law ("NYCHRL"), codified in Title 8, Chapter 1 of the New York City Administrative Code, which is construed broadly in favor of plaintiffs (*Albino v. City of New York*, 16 NY3d 473, 477 (2011)) because Inspector Nova qualifies for a religious accommodation, an accommodation exists that allows Inspector Nova to perform his job duties, and FDNY can accommodate.

3. Respondent's denial of Inspector Nova's religious accommodation request is a form denial that lacks meaningful justification and cannot be considered rational. (*See DeLetto v. Eric Adams*, Index No. 156459/2022, Judge Bluth's Decision and Order, attached as **Exhibit A**). The denial is arbitrary and capricious because it is not individualized to Inspector Nova's position, job duties, or beliefs. Additionally, FDNY issued form denials and provides no indication that anyone actually reviewed and processed Inspector Nova's application utilizing the applicable standard of law.

4. Respondents created the process by which Inspector Nova was required to request

a religious exemption. Thus, Respondent is estopped from failing to adhere to its own procedure, and it cannot deny Inspector Nova's request without even offering a rational basis for the denial; otherwise, Respondents are unfettered in creating a process for obtaining a religious accommodation that is smoke and mirrors and an option for religious accommodation that is illusory. For example, the Court is not presented with a situation wherein an agency has fired a probationary employee and need not provide any reasoning for its decision (*See, e.g., Soto v. Koehler*, 171 AD2d 567 (1st Dept 1991)). *See DeLetto v. Eric Adams*, Index No. 156459/2022; Judge Bluth's Decision and Order, attached as **Exhibit A**.

5. Respondent's processing and denial of Inspector Nova's religious accommodation request was affected by an error of law and is an abuse of discretion.

6. Respondents violated N.Y. Admin. Code § 8-107 (19) by using a discriminatory practice to coerce, intimidate, threaten, or interfere with, or attempt to coerce, intimidate, threaten, or interfere with Inspector Nova in his exercise or enjoyment of his closely held religious beliefs.

#### **STATEMENT OF FACTS**

7. The former Mayor and the City of New York issued a COVID-19 vaccine mandate (the "**Mandate**") that all City employees verify vaccination against COVID-19 by October 29, 2021. (Mandate, attached as **Exhibit B**).

8. On October 26, 2021, Inspector Nova filed a request for religious accommodation based on his sincerely held religious beliefs, which included a personal statement and supporting Clergy letter. (Application for Religious Exemption, attached as **Exhibit C**).

9. Inspector Nova worked at FDNY before the Mandate became effective on October 26, 2021 until he was terminated on July 1, 2022. (Termination Letter, attached as **Exhibit D**.)

10. On December 30, 2021, Inspector Nova received a denial from FDNY stating that

“[t]he asserted basis for the accommodation is insufficient to grant the requested accommodation, particularly in light of the **potential undue hardship** to the Department.” The denial provided Inspector Nova with seven calendar days to appeal. (Religious Accommodation Request Denial, attached as **Exhibit E**) (emphasis added).

11. On January 4, 2022 Inspector Nova appealed his denial.

12. On March 24, 2022, Mayor Eric Adams issued New York City Emergency Executive Order No. 62 (Mayor’s Order, attached as **Exhibit F**), exempting professional athletes and performing artists from the Mandate. However, the Mandate continued to apply to all other employees who work at Yankee Stadium, Citi Field, and other venues such as Madison Square Garden. Thus, unvaccinated baseball players and performers have been able to perform their job duties unencumbered by the Mandate since March 24, 2022; meanwhile, Respondents’ terminated Inspector Nova over his non-vaccination status on July 1, 2022. The Mayor’s Order justifies this duplicity by rationalizing that a mandate for professional athletes renders New York professional athletic teams at a competitive disadvantage that has negatively impacted the teams’ success, which is important to the City’s economic recovery and the morale of City residents and visitors. *Id.*

13. The March 24, 2022 Mayor’s Order continued to exempt those with a reasonable accommodation from the Mandate. *Id.*

14. On June 6, 2022, FDNY issued a final denial, stating, “[t]he Fire Department has been informed that the New York City Appeals Panel (“Appeals Panel”) has denied your appeal for a reasonable accommodation . . . .” (Final Denial, attached as **Exhibit G**). On the same day, Inspector Nova received an email from the Appeals Panel denying his request for religious accommodation on the grounds that it “Does Not Meet Criteria.” (Final Denial, attached as **Exhibit**

G). No further explanation was provided.

15. On August 5, 2021, the Director of US Centers for Disease Control and Prevention (“CDC”), Dr. Rochelle Walensky, stated on CNN that the COVID-19 vaccine cannot prevent the transmission of the disease. (<https://twitter.com/CNNSitRoom/status/1423422301882748929>).

16. On August 11, 2022, the CDC’s updated its guidance for the prevention of COVID-19 and does not differentiate based on a person’s vaccination status “because breakthrough infections occur . . . and persons who have had COVID-19 but are not vaccinated have some degree of protection against severe illness from their previous infection.” (*Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems — United States, August 2022* available at <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm>).

17. In line with relevant and up-to-date science, on September 14, 2022, the District of Columbia rescinded its vaccine mandate for all District employees because CDC guidance “has shifted due to higher levels of immunity and the increased availability of effective COVID-19 prevention and management tools.” (<https://edpm.dc.gov/issuances/covid-19-vaccination-requirements/>).

18. On September 18, 2022, President Biden declared the COVID-19 pandemic “over.” (<https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/>).

19. On September 20, 2022 Mayor Adams rescinded the COVID-19 vaccine mandate for private sector workers and student-athletes and justified keeping the Mandate in place for City workers stating, “I don’t think anything dealing with COVID makes sense, and there’s no (one) logical pathway.” (<https://nypost.com/2022/09/20/adams-ends-vaccine->

[mandates-for-private-biz-student-athletes/](#) ).

20. Dr. Harvey A. Risch, Professor Emeritus of Epidemiology of the Yale School of Public Health, stated the following under oath:

There is no rational public health reason to condition the salaries, jobs or benefits of NYPD police officers on receiving a COVID-19 vaccine, particularly where vaccination was required by July 1, 2022. Due to the waning effectiveness of the COVID-19 vaccine against infection, there is no meaningful difference in the risk of infection or transmission between an officer who complied with the vaccine requirement and an unvaccinated officer. Additionally, natural immunity provides more durable, longer-lived and wider-spectrum protection against existing and future COVID-19 virus strains than vaccine immunity, and therefore there is no rational public health reason for a vaccine mandate that deems individuals who were vaccinated to be compliant but that requires the termination of employment of individuals with prior COVID-19 infection.”

(Affidavit of Dr. Harvey A. Risch, attached as **Exhibit H**).

**Inspector Nova’s Sincerely-Held Religious Beliefs Conflict with Receiving a COVID-19 Vaccine**

21. Inspector Nova’s sincerely held religious beliefs as a Christian require him to refuse a COVID-19 vaccine, as stated in **Exhibit C** Inspector Nova’s Application for a Religious Exemption, and are, in part, summarized as follows:

- Inspector Nova believes that all life is sacred and that abortion is murder and shedding innocent blood.
- Inspector Nova objects to the COVID-19 vaccines’ use aborted fetal cell lines and believes that taking one goes against his faith.

22. Respondents’ adopted, authorized, mandated, and approved policies force Inspector Nova to inject a medical product in direct opposition to, and in violation of, his sincerely held religious beliefs and convictions and violation of law and Respondents’ own policies, as described throughout this Petition.

### **PARTIES**

23. Petitioner JAMES NOVA was employed as an Inspector for FDNY. Respondents wrongfully denied Inspector Nova's religious exemption on June 6, 2022 with no rational justification. After almost four years of hard work and dedication to FDNY, Inspector Nova was terminated as an FDNY Inspector over his sincerely held religious beliefs on July 1, 2022.

24. Respondent, CITY OF NEW YORK, is a municipality organized and existing under the laws of New York State. The City of New York was and is responsible for the policy, practice, supervision, and conduct of its personnel and Agencies at all relevant times hereto. The City of New York is a body within the meaning of Article 78 of the New York Civil Practice Law and Rules ("CPLR"). The City of New York's principal office is located at 1 Centre Street, New York, New York 10007.

25. Respondent FIRE DEPARTMENT OF THE CITY OF NEW YORK is an agency of The City of New York. The Fire Department of the City of New York is a body within the meaning of Article 78 of the CPLR. The Fire Department of the City of New York's principal office is located 9 MetroTech Center, New York, New York 11201.

26. Venue is proper in New York County because it is where the material events otherwise took place in accordance with CPLR 506(b).

### **FIRST CLAIM FOR RELIEF** **Arbitrary and Capricious Under Article 78**

27. Inspector Nova repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

28. Inspector Nova commenced this special proceeding under CPLR §§ 3001 and 7803.

29. The Court's role in an Article 78 proceeding is to determine, upon the facts before an administrative body, whether a challenged administrative body determination had a "rational

basis” in the record or was “arbitrary and capricious.” See *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v. New York State Div. of Haus. & Community Renewal*, 232 AD2d 302 (1st Dept 1996).

30. An administrative decision is “arbitrary and capricious” if it is “without sound basis in reason, and in disregard of the facts.” See *Matter of Century Operating Corp. v. Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell*, 34 NY2d 222 at 231.

31. The Court may overturn administrative action where it is “taken without sound basis in reason” or “regard to the facts” *Id.* A rational basis exists where the determination is “[supported] by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination.” *Ador Realty, LLC v. Division of Housing and Community Renewal*, 25 AD3d 128, 139-140 (2d Dept 2005), quoting *Matter of Pell*, 34 NY2d 222 at 231).

32. For the reasons set forth throughout this Petition, Respondents’ actions are arbitrary and capricious under Article 78 of the CPLR.

33. Respondents’ justified its first denial by issuing a form denial that stated, “[t]he asserted basis for the accommodation is insufficient to grant the requested accommodation, particularly in light of the **potential undue hardship** to the Department.” (Religious Accommodation Request Denial, attached as **Exhibit E**) (emphasis added). Respondents’ issued a form denial and provided no rational explanation for its assertion of potential undue hardship or evidence that it provided an individualized assessment of the religious exemption request. Such a determination is wholly devoid of any reasoning and cannot be viewed as rational. See *DeLetto v. Eric Adams*, Index No. 156459/2022; Judge Bluth’s Decision and Order, attached as **Exhibit A**.



34. The NYCHRL places the burden on the employer to show the unavailability of any safe and reasonable accommodation and to show that any proposed accommodation would place an undue hardship on its business. *Jacobsen v. N.Y.C. Health & Hosps. Corp.*, 22 NY3d 824, 825.

35. Respondents' denial does not meet its burden under the NYCHRL. Not only does it lack substance or evidence that Inspector Nova's request was reviewed based on his job duties and religious beliefs, but it also justifies the denial based on **potential undue hardship**. (Religious Accommodation Request Denial, attached as **Exhibit E**). However, the US Equal Employment Opportunity Commission ("EEOC") guidance states:

To prove undue hardship, the employer will need to demonstrate how much cost or disruption a proposed accommodation would involve. **An employer cannot rely on potential or hypothetical hardship when faced with a religious obligation that conflicts with scheduled work, but rather should rely on objective information. A mere assumption that many more people with the same religious practices as the individual being accommodated may also seek accommodation is not evidence of undue hardship.**

(EEOC Compliance Manual on Religious Discrimination § 12-IV(B) available at <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>).

36. On June 6, 2022 Respondents issued a final denial, stating, "The Fire Department has been informed that the New York City Appeals Panel "Appeals Panel" has **denied your appeal** for a reasonable accommodation . . . ." and that the request "Does Not Meet Criteria." (Final Denial, attached as **Exhibit G**).

37. On this record of facts, Respondents cannot meet its burden to show that undue hardship existed at any point in time for all the reasons stated throughout this Petition and also because Respondents accommodated Inspector Nova for eight months prior to his termination.

38. Hollow and generic phrases such as those provided in the denials cannot be rational

because not a single item particular Inspector Nova was discussed, and not a single rational reason for the decision was given. Moreover, there is no indication that anybody even read Inspector Nova's request. *See, DeLetto v. Eric Adams*, Index No. 156459/2022; Judge Bluth's Decision and Order, attached as **Exhibit A**.

39. Thus, Respondents' denial is arbitrary and capricious because of the inadequate record support for the decision. *See Koch v. Sheehan*, 21 NY3d 697, 704, 998 N.E.2d 804 (2013) (annulling determination by the Office of Medicaid Inspector General on the ground that the decision was arbitrary and capricious because of the "inadequate record support for the decision.").

40. Furthermore, if "competitive advantage," "economic recovery," and "morale" are more imperative than the Mandate, then (1) the Mandate is not rationally related to a legitimate public health interest, and (2) FDNY's denial of Inspector Nova's religious accommodation request is arbitrary and capricious because it cannot show that accommodating him was ever an undue burden, especially when Respondents accommodated him in the eight months prior to his termination.

41. Moreover, Mayor Adams' actions on September 19, 2022 of exempting non-City workers and student-athletes from the Mandate means that students no longer need to be vaccinated for any school-related purpose, yet City teachers do. Likewise, employees at private employers in the City no longer need to be vaccinated, but City employees do. Respondents' actions are the epitome of arbitrary and capricious.

42. Additionally, because the COVID-19 vaccine cannot prevent disease transmission, the Mandate serves no legitimate public interest, and Respondents cannot justify denying Inspector Nova's request for religious accommodation, especially where Respondents accommodated him for eight months prior to his termination. *See* Affidavit of Dr. Harvey A. Risch, attached as **Exhibit**

H. See also *Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems — United States*, August 2022 available at <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm> (stating that “breakthrough infections occur . . . and persons who have had COVID-19 but are not vaccinated have some degree of protection against severe illness from their previous infection.”)

43. Respondents cannot cite any current science or health agency guidance to justify their refusal to accommodate Inspector Nova’s request for religious accommodation.

44. On September 13, 2022, New York State Supreme Court Judge Arlene P. Bluth granted an Article 78 Petition to the extent that the Petitioner in that case, Police Officer Deletto, was entitled to a religious exemption from the COVID-19 vaccine mandate based on a substantially equivalent set of facts as is presented before this Court. In that case, NYPD and the City’s premise for denying Police Officer Deletto’s religious accommodation was that it “d[id] not meet criteria,” and NYPD did not explain why it denied the exemption. See *DeLetto v. Eric Adams*, Index No. 156459/2022; Judge Bluth’s Decision and Order, attached as **Exhibit A**. Here, Respondents’ denials lack any substance and are based on *potential* undue hardship.

45. On October 5, 2022, New York State Supreme Court Judge Ralph J. Prozio granted an Article 78 Petition, to a Firefighter terminated by FDNY under similar facts as presented here, ordering that (1) Petitioner is entitled to a religious exemption from the Mandate; (2) Petitioner’s termination from FDNY annulled; (3) reinstating full employment status; and (4) granting back pay in salary and benefits. Judge Prozio held that “the denial of the Petitioner’s religious reasonable accommodation request only included the reasons” potential undue hardship” from the FDNY and, on appeal, an “undue hardship” from the City Panel. This court finds the denial of the Petitioner’s reasonable accommodation request was arbitrary and capricious because the reasons given for the

denial were vague and conclusory.” *Rivicci v. New York Fire Department, et al.*, Index No. 85131/2022; Judge Prozio Decision and Order, attached as **Exhibit I**.

### **Aborted Fetal Cell Lines**

46. The New York City Department of Law’s guidance explicitly acknowledges that “if a worker says that they cannot take the vaccine because it was developed and/or tested using fetal cells that may have been the result of an abortion, the worker may qualify for a religious exemption.” (NYC Dept. of Law Guidance for Accommodations, attached as **Exhibit J**).

47. Inspector Nova is a Christian who is prohibited from receiving the COVID-19 vaccines based in part on their use of aborted fetal cell lines in the testing, production, manufacturing, and/or research. The Johnson & Johnson vaccine is manufactured using the aborted fetal cell lines PER.C6. The Novavax, Pfizer, and Moderna vaccines are tested using the aborted fetal cell lines HEK 293.

48. Courts have accepted a refusal to take COVID-19 vaccines based upon their association with abortion as a sincerely held religious belief that conflicts with COVID-19 vaccine mandates. *Loiacono v. the Bd of Educ. of the City of New York, et al*, Index no. 154875/2022, ECF Doc. No. 46, p. 4 (granting Article 78 petition, awarding religious exemption from vaccine mandate, back pay, costs, and disbursements based upon religious refusal to accept a vaccine that “was brought to market by experimenting with cells that she contends violate her religious beliefs concerning abortion”); *Poffenbarger v. Kendall*, No. 3:22-CV-1, 2022 WL 594810, at \*4 (S.D. Ohio Feb. 28, 2022) (accepting as a sincerely held religious belief refusal to take COVID-19 vaccines because “all currently available COVID-19 vaccines are associated with abortion”); *Navy Seal v. Austin*, No. 8:21-CV-2429-SDM-TGW, 2022 WL 534459, at \*15, 20 (M.D. Fla. Feb. 18, 2022) (accepting plaintiff’s “opposition to abortion irreconcilable with accepting any COVID-19

vaccine” and holding that the “sincere religious belief [was] substantially burdened by the military’s COVID-19 vaccination requirement”).

49. By reason of the foregoing, Respondents’ denial of Inspector Nova’s Request for a Religious Exemption and his termination should be declared arbitrary and capricious, and its decision to deny the religious exemption and terminate Inspector Nova should be annulled, voided, and vacated.

**SECOND CLAIM FOR RELIEF**  
**Error Of Law Under Article 78**

50. Inspector Nova repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

51. Inspector Nova commenced this special proceeding under CPLR §§ 3001 and 7803.

52. Pursuant to the NYCHRL, “[i]t shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, such person’s creed or religion . . . and the employer shall make reasonable accommodation to the religious needs of such person.” N.Y.C. Admin. Code § 8-107(3)(a).

53. Respondents are required to apply the NYCHRL in determining Inspector Nova’s request for a reasonable accommodation to the Mandate. However, it failed to apply the standards of law properly and meet the requirements under the NYCHRL in making accommodation determinations; thus, its decisions are affected by an error of law pursuant to CPLR § 7803 (3).

54. Respondents’ vague assertion that accommodating Inspector Nova was a “potential” undue hardship or that it did not “meet criteria” was devoid of any rational basis and provided Inspector Nova no notice as to why his religious accommodation request “was

insufficient.” (Religious Accommodation Request Denial, attached as **Exhibit E**) (emphasis added).

55. Additionally, regarding accommodation, the NYCHRL requires FDNY to engage in a cooperative dialogue prior to making a determination. “It shall be an unlawful discriminatory practice for an employer . . . to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation . . . .” N.Y.C. Admin. Code § 8-107 (28)(a)(1). *See also* N.Y.C. Admin. Code § 8-107 (28)(e) (stating “[t]he determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.”); *Jacobsen*, 22 NY3d 824, 838 n.2 (2014) (holding that an “employer’s failure to hold a constructive dialogue about the possibility of a reasonable accommodation may indicate that the employer has discriminated . . . within the meaning of . . . the [NYCHRL].”); *Wellner v. Montefiore Med. Ctr.*, No. 17 CIV. 3479, 2019 U.S. Dist. LEXIS 147844, 2019 WL 4081898, at \*11 (SDNY Aug. 29, 2019) (holding that “a court can consider a defendant’s failure to engage in an interactive process as evidence that the defendant engaged in discrimination or retaliation.”); Citywide Administrative Services, “Reasonable Accommodation Procedural Guidelines” (2021), p. 14, available at [https://www1.nyc.gov/assets/dcas/downloads/pdf/agencies/reasonable\\_accommodation\\_procedural\\_guidelines.pdf](https://www1.nyc.gov/assets/dcas/downloads/pdf/agencies/reasonable_accommodation_procedural_guidelines.pdf) (stating that “[t]he cooperative dialogue is critical. Failure to engage in the cooperative dialogue within a reasonable time with a person who has requested an accommodation . . . is a violation of law.”).

56. “The term ‘cooperative dialogue’ means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the

law, engage in **good faith in a written or oral dialogue** concerning the person’s accommodation needs; potential accommodations that may address the person’s accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity.” N.Y.C. Admin. Code § 8 (emphasis added).

57. Respondents denied Inspector Nova’s request for reasonable accommodation and terminated him without engaging in any cooperative dialogue or contacting Inspector Nova regarding his accommodation request.

58. Furthermore, the NYCHRL places the burden on Respondents to show the unavailability of any safe and reasonable accommodation and that any proposed accommodation would impose an undue hardship on its business. *Jacobsen*, 22 NY3d at 835. FDNY’s denial lacks any rational basis and does not suffice under the obligations imposed by the NYCHRL. Additionally, Respondents **cannot** meet its burden to show that no reasonable accommodations exist for all the reasons stated throughout this Petition, including the fact that Respondents accommodated Inspector Nova for the eight months prior to his termination. *See also* Affidavit of Dr. Harvey A. Risch, attached as **Exhibit H**.

59. Furthermore, “[t]he record clearly indicates that [FDNY’s] administration of the accommodation requests proceeded without any ‘cooperative dialogue.’” *In The Matter of The Application of Andrew Ansbro, Individually and As President of The Uniformed Inspectors Association et al. v. Nigro, Daniel et al.*, Index No. 150230/2022 (holding FDNY failed to engage in “meaningful/ cooperative” dialogue with petitioners regarding the accommodations for religious exemptions to the vaccine mandate in violation of the State Human Rights Law and the NYCHRL.).

60. On October 5, 2022, New York State Supreme Court Judge Ralph J. Prozio granted

an Article 78 Petition, to a Firefighter terminated by FDNY under similar facts as presented here, Judge Prozio held that the Petitioner's denial was made in violation of lawful procedure" and "[n]either the FDNY, nor any other City agency, engaged in a cooperative dialogue with the Petitioner regarding an accommodation to satisfy the essential requisites of a job, in direct violation of the New York City Human Rights Law." *Rivici v. New York Fire Department, et al.*, Index No. 85131/2022; Judge Prozio Decision and Order, attached as **Exhibit I**.

61. By reason of the foregoing, Respondents' denial of Inspector Nova's Request for Religious Exemption and termination should be declared an error of law, and its decision to deny the religious exemption and terminate Inspector Nova should be annulled, voided, and vacated.

**THIRD CLAIM FOR RELIEF**  
**Abuse of Discretion under Article 78**

62. Inspector Nova repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

63. In evaluating the appropriateness of discipline, constituting an abuse of discretion, the Court is limited to evaluating whether the penalty imposed is so disproportionate to the offense as shocking to one's sense of fairness. *Powers v. St. John's Univ. School Of Law*, 25 NY3d (2015); *Beilis v. Albany Medical Coll. of Union Univ.*, 136 AD2d 42, 45 (3d Dept 1988). "A result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals." *Pell*, 34 NY2d 222 at 234.

64. Mayor Adams is the Chief Executive of the City. (New York City Charter § 3).

65. "The Mayor shall be responsible for the effectiveness and integrity of city



government operations and shall establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility. . . .” (New York City Charter § 8 (a)).

66. Exempting professional athletes, performing artists, student-athletes, and non-City workers from the Mandate while terminating FDNY employees who hold religious convictions that prevent them from receiving a COVID-19 vaccine is unjustifiable and an abuse of discretion.

67. Mayor Adams’ act of removing the Mandate for professional athletes and Broadway performers to increase “morale,” “competitive advantage,” and “economic recovery” while simultaneously denying a valid exemption to Inspector Nova and terminating him is an abuse of discretion.

68. Respondents cannot cite any science or health agency guidance to justify their refusal to accommodate Inspector Nova’s request. Respondents’ duplicitous enforcement of the Mandate and subsequent denial of Inspector Nova’s valid religious accommodation request and termination is a clear abuse of discretion.

69. By reason of the foregoing, Respondents’ denial of Inspector Nova’s Religious Exemption Request and termination should be declared an abuse of discretion, and Respondents’ decision to deny the religious exemption and terminate Inspector Nova should be annulled, voided, and vacated.

**FOURTH CLAIM FOR RELIEF**  
**Violation of N.Y. Admin. Code §8-107**

70. Inspector Nova repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

71. Pursuant to the NYCHRL at N.Y. Admin. Code §8-107(3)(a), “it shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance

with which would require such person to violate, or forego a practice of, such person's creed or religion . . . and the employer shall make reasonable accommodation to the religious needs of such person."

72. The NYCHRL requires a more rigorous process than the New York State Human Rights Law, and courts must construe it broadly in favor of plaintiffs. *Albino v. City of New York*, 16 NY3d 473, 477 (2011).

73. The NYCHRL places the burden on the employer to show the unavailability of any safe and reasonable accommodation and that any proposed accommodation would impose an undue hardship on its business. *Jacobsen*, 22 NY3d 824 at 825. Respondents have not and cannot meet this burden.

74. FDNY's failure to provide Inspector Nova a religious accommodation and his termination is unlawful because he qualified for a religious accommodation, an accommodation existed that allowed Inspector Nova to perform his job duties, and FDNY could have accommodated, as it did for eight months and during the height of the Delta variant.

75. For the reasons stated throughout this Petition, Respondents violated N.Y. Admin. Code §8-107 (19) by using a discriminatory practice to coerce, intimidate, threaten, or interfere with, or attempt, coerce, intimidate, threaten, or interfere with Inspector Nova in his exercise or enjoyment of his closely held religious beliefs and protection of his right to reasonable accommodation.

76. By reason of the foregoing, Respondents' denial of Inspector Nova's Religious Exemption Request and continuing terminating him should be declared a violation of N.Y. Admin. Code §8-107(3)(a), and Respondents' decision to deny the religious exemption and terminate Inspector Nova should be annulled, voided, and vacated.

**WHEREFORE**, Inspector Nova respectfully requests an order and judgment:

1. Declaring that Respondents' denial of Inspector Nova's request for religious accommodation and his termination as arbitrary, capricious, an error of law, and an abuse of discretion; and
2. Declaring that Respondents' decision to deny the religious exemption and terminate Inspector Nova is annulled, voided, and vacated; and
3. Granting the Petition to the extent that Inspector Nova is entitled to a religious accommodation from the COVID-19 vaccine mandate and may not be subjected to other adverse employment action due to a lack of COVID-19 vaccine.; and
4. Reimbursing the lost wages and fringe benefits incurred by Inspector Nova as a result of his termination; and
5. Declaring that Respondents violated Inspector Nova's rights under the NYCHRL and N.Y. Admin. Code §8-107; and
6. Awarding Inspector Nova his reasonable attorneys' fees, costs, and expenses because the Respondents' position was not "substantially justified"; and
7. Granting such further relief to which Inspector Nova may be entitled as a matter of law or equity or which the Court determines to be just and proper.

Dated: October 6, 2022  
New York, New York

**SIRI & GLIMSTAD, LLP**

/s/ Aaron Siri

By: Aaron Siri

Elizabeth A. Brehm

745 Fifth Ave, Suite 500

New York, NY 10151

(212) 532-1091

**THE MERMIGIS LAW GROUP, P.C.**

/s/ James Mermigis

By: James G. Mermigis, Esq.

85 Cold Spring Road, Suite 200

Syosset, NY 11791

(516) 353-0075

*Attorneys for Petitioners*

**ATTORNEY'S VERIFICATION**

**James G. Mermigis, Esq.**, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney and the owner of THE MERMIGIS LAW GROUP, P.C., attorneys of record for Petitioner James Nova, in the action within.

I have read the annexed VERIFIED PETITION and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

The source of deponent's information and the grounds for his belief are communications, papers, reports, and investigations contained in the file.

The reason that this verification is made by deponent and not by the Petitioner is that the Petitioner James Nova herein resides in a county other than one in which Petitioner's attorney maintains his office.

Dated: October 6, 2022  
Syosset, New York

**THE MERMIGIS LAW GROUP, P.C.**

/s/ James Mermigis  
By: James G. Mermigis, Esq.  
85 Cold Spring Road, Suite 200  
Syosset, NY 11791  
(516) 353-0075