SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

In the Matter of the Application of

ROBERT DOREMUS,

Petitioner,

-against-

TALLMAN FIRE DISTRICT,

Respondent.

DECISION & ORDER

No. 031011/2023

Mot. Seq. No. 003

D'ALESSIO, J.S.C.

Robert Doremus ("Petitioner") initiated this special proceeding by way of a Notice of Petition and Verified Petition on March 7, 2023. (*See* Docs. 1-12). Tallman Fire District ("Respondent") moves to dismiss for lack of subject matter jurisdiction under CPLR 3211(a)(2) and CPLR 7804(f). (*See* Docs. 22-34).[1]

For the reasons set for the below, Respondent's motion is GRANTED.

BACKGROUND

Petitioner began his career as a volunteer firefighter with Respondent in December 1982. (Doc. 1 ¶ 3). On November 8, 2022—almost forty years later—Petitioner responded to a small fire on Lichult Court in Airmont, New York. (*Id.* ¶ 24). At least one firefighter, Kyle Lynch ("Lynch"), arrived before Petitioner. (*Id.* ¶¶ 24-25). Petitioner parked his vehicle alongside Lynch's truck. (*Id.* ¶ 25). Petitioner states that he parked his vehicle "approximately two feet to the left side of Lynch's truck, stopping short of the cab and leaving room for Lynch to reach the necessary equipment on his truck . . . ." (*Id.*).

Lynch saw things differently.

[1] The Court denied Respondent's first motion to dismiss without prejudice to renew for failure to comply with various rules. (Doc. 21). Given the clarity of the submissions, Petitioner's request for oral argument is denied. (Doc. 35).

The next day, November 9, 2022, Lynch e-mailed Respondent's leadership to complain that Petitioner "parked his truck inches from Lynch's truck, that the location impeded the use of the discharges and intakes on the left side of the truck and caused . . . difficulty in exiting." (*Id.* ¶ 26). Lynch reported further that Petitioner "almost struck a firefighter pulling up to the scene," and that his overall behavior reflected "a blatant failure to conduct oneself with the level of care owed to others as a reasonabl[y] prudent person . . . ." (*Id.*).

Petitioner was given a Notice of Disciplinary Hearing, Notice of Rights, and Statement of Charges on November 15, 2022. (*Id.* ¶ 29; *see also* Doc. 2). The hearing was held on November 29, 2022, and the decision issued on January 2, 2023. (Doc. 1 ¶¶ 44, 66; *see also* Doc. 5). Per that decision, "termination is the only appropriate remedy." (Doc. 5 at 16). Respondent's Board of Fire Commissioners ("Board"), on January 10, 2023, accepted the recommendation and resolved that Petitioner could "resign in 48 hours or be terminated." (Doc. 6 at 7; *see also* Doc. 1 ¶ 86).

Respondent's Chair, Michael Rosenblum ("Rosenblum"), e-mailed Petitioner on January 12, 2023. (Doc. 1 ¶ 88; *see also* Doc. 7). Rosenblum, in that message, advised Petitioner of the resolution and asked for a response (i.e., resignation or refusal) by "5 pm on January 17 2023." (Doc. 7 at 2). Petitioner submitted his resignation via e-mail at 3:32 p.m. on January 17, 2023. (*See* Doc. 8; Doc. 10). The letter, self-stylized as a "Notice of Involuntary Resignation," alleged a variety of infirmities with the hearing process and closed with a reservation of the "right to challenge this outcome by Article 78 proceeding or a lawsuit for money damages." (Doc. 8 at 3).

Rosenblum, at 5:07 p.m. that day, mistakenly advised Petitioner that he had been terminated. (*See* Doc. 9). About thirty minutes later, at 5:40 p.m., Rosenblum—after being referred to the timely submission—confirmed that Petitioner's resignation was accepted. (Doc. 10 at 2).

The litigation followed.

STANDARD OF REVIEW

CPLR 3211(a)(2) allows a party to move to dismiss based on the nonwaivable defense of subject matter jurisdiction. *See GMAC Mortg., LLC v. Winsome Coombs*, 191 A.D.3d 37, 44 (2d Dep't 2020). "The question of subject matter jurisdiction is a question of judicial power: whether the court has the power, conferred by the Constitution or statute, to entertain the case before it." *Ballard v. HSBC Bank USA*, 6 N.Y.3d 658, 663 (2006) (quoting *Fry v. Vill. of Tarrytown*, 89 N.Y.2d 714, 718 (1997)). "The Supreme Court is a court of general jurisdiction, and it is competent to entertain all causes of actions unless its jurisdiction has been specifically proscribed." *In re Adam S.*, 285 A.D.2d 175, 177 (2d Dep't 2001) (quoting *Thrasher v. U.S. Liab. Ins. Co.*, 19 N.Y.2d 159, 166 (1967)); *see also* N.Y. Const. art. VI, § 7. A court's subject-matter jurisdiction cannot be modified by private parties. *See Henry v. New Jersey Transit Corp.*, 39 N.Y.3d 361, 372 (2023) (noting that "subject matter jurisdiction, as a rule, cannot be dispensed with by litigants and can never be forfeited or waived" (internal citations and quotation marks omitted)).[2]

CPLR 7804(f), applicable to special proceedings such as this, instructs that "[t]he respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer."

ANALYSIS

The Court, under Article 78, has jurisdiction to review final determinations. CPLR 7801(1). Generally, where an individual resigns before termination, no final (i.e., reviewable) determination exists. *See, e.g.*, *Garcia v. New York City Prob. Dep't*, 208 A.D.2d 475, 476 (1st Dep't 1994) ("Petitioner chose to resign, and his resignation was accepted by respondent. Under the circumstances, we find that petitioner voluntarily resigned, and therefore, the . . . proceeding[] . .

[2] In the vein of being unable to expand the Court's subject matter jurisdiction, neither party substantively addressed the jurisdictional implications regarding Petitioner's purported "reservation of rights" vis-à-vis Article 78 review. This appears to the Court, however, to be an improper attempt to expand Article 78 jurisdiction.

. should have been . . . dismissed . . . ."); *Stefandel v. Sielaff*, 176 A.D.2d 651, 651-52 (1st Dep't 1991) ("Since the petitioner resigned from his position, there was no determination made on behalf of respondent for the lower court to review. Therefore, there was no subject matter jurisdiction in respect to this proceeding and the petition was properly dismissed."); *DeMarco v. McLaughlin*, 69 A.D.2d 882, 882 (2d Dep't 1979) (affirming decision to dismiss an Article 78 proceeding where the petitioner resigned before disciplinary charges were filed). It is, however, "well settled that '[a] resignation under coercion or duress is not a voluntary act and may be nullified.'" *Ortlieb v. Lewis Cty. Sheriff's Dep't*, 155 A.D.3d 1628, 1629 (4th Dep't 2017) (quoting *Meier v. Bd. of Educ. Lewiston Porter Cent. Sch. Dist.*, 106 A.D.3d 1531, 1531-32 (4th Dep't 2013) (alteration in original)); *see also Manel v. Mosca*, 216 A.D.2d 468, 469 (2d Dep't 1995) (observing that "fraud, duress, coercion, or other affirmative conduct" may "render a resignation involuntary").

Although Respondent resolved to terminate Petitioner, the latter was given a choice: (1) accept termination with the opportunity to appeal the litany of alleged infirmities under Article 78; or (2) forego that review and resign. Petitioner opted for the latter. In making this decision, Petitioner—not Respondent—terminated the employment relationship. Indeed, as the Appellate Division, First Department, explained persuasively in a similar case:

> [s]ince petitioner's cessation of his employment with the Department of Correction was . . . accomplished by voluntary resignation, rather than by administrative determination, petitioner's present challenge to the termination . . . does not implicate any determination by respondent Department of Correction, and in the absence of such a determination to review, this proceeding was properly dismissed for lack of subject matter jurisdiction.

Quaranta v. Jacobson, 250 A.D.2d 544, 545 (1st Dep't 1998). The appellate court's logic is applicable here: there is no determination for the Court to review because none ever issued. Petitioner resigned.

Petitioner counters that his resignation was *involuntary* because, if he failed to resign, he would have been "deprive[d] . . . of numerous tangible benefits such as annual annuity earnings, life insurance coverage, additional accruals to length of service award programs, tax credits, tax rebates, real property tax exemptions, and drill incentive program benefits . . . ." (Doc. 29 at 10). While threat of termination depriving Petitioner of retirement benefits might render a resignation invalid, *see Marland v. Ambach*, 79 A.D.2d 48, 50 (3d Dep't 1981), that is not the case here. Petitioner, in short order, has: (1) under N.Y. Gen. Mun. Law § 217(b), a "nonforfeitable" right to 100% of the service award he has earned; (2) like all volunteer firefighters, cancer disability benefits for five years after separation, per N.Y. Gen. Mun. Law § 205-cc(4); (3) given his length of service, entitlement to a tax exemption under N.Y. Real Prop. Tax Law § 466-a(3); and (4) no right to (or need for) drill incentives or life insurance coverage offered to active volunteer firefighters because he no longer serves as a volunteer firefighter.[3] The Court, on this record, finds no evidence of coercion or duress that could render the resignation involuntary.

Respondent never issued its final determination terminating Petitioner because Petitioner short-circuited the process through his voluntarily resignation. This proceeding must, therefore, be dismissed because the Court lacks jurisdiction to review the alleged infirmities underlying an administrative process that never reached a final determination.

CONCLUSION

In light of the foregoing, Respondent's motion to dismiss is GRANTED. The Clerk of the Court is respectfully directed to terminate Motion Sequence No. 003 and close this case.

SO ORDERED.

Dated: December 12, 2023
New City, New York

HON. CHRISTIE L. D'ALESSIO, J.S.C.

[3] This final reality, it appears, would eventuate regardless of how Petitioner's separation came into existence.