

**SUPREME COURT OF THE STATE OF NEW YORK  
I.A.S. PART 30 SUFFOLK COUNTY**

**PRESENT:**  
**HON. DAVID T. REILLY, JSC**

**INDEX NO.: 609282/2023**

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**In the Matter of the Application of**

**THOMAS J. KILLEEN, and**

**Petitioner,**

**Pinsky Law Group, PLLC  
Attorneys for Petitioner  
4311 East Genesee Street  
Syracuse, NY 13214**

**-against-**

***HYBRID PROCEEDING/ACTION FOR JUDGMENT  
PURSUANT TO CPLR ARTICLES 78 AND 30,  
AND 42 U.S.C. §1983***

**Bond Schoeneck & King, PLLC  
Attorneys for Respondents  
600 Third Avenue, 22nd Floor  
New York, NY 10016**

**-against-**

**STONY BROOK FIRE DISTRICT, and  
STONY BROOK FIRE DISTRICT BOARD OF  
FIRE COMMISSIONERS, and STONY BROOK  
VOLUNTEER FIRE DEPARTMENT, INC.,**

**Respondents.**

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**X**

MOTION DATE: 04/12/23  
SUBMITTED: 09/13/23  
MOTION SEQ. NO.: 001  
MOTION DEC.: MotD

Upon the reading and filing of the following papers in this matter: (1) Petitioner’s Notice of Motion dated April 12, 2023 and supporting papers; (2) Respondents’ Memorandum of Law in Opposition dated July 21, 2023 and supporting papers; and (3) Petitioner’s Memorandum of Law in Opposition dated September 5, 2023 and supporting papers (~~and after hearing counsel in support and in opposition to the motion~~) it is,

**ORDERED** the Article 78 petition is granted as against the Stony Brook Fire District and the Stony Brook Fire District Board of Fire Commissioners in that a suspension was made in violation of lawful procedure; and it is further

**ORDERED** the Article 78 petition is denied as against the Stony Brook Volunteer Fire Department, Inc.; and it is further

**ORDERED** the suspension issued in violation of lawful procedure is null and void.

In this hybrid proceeding, petitioner, Thomas J. Killeen is seeking a judgment pursuant to Articles 78 and 30 of the CPLR and 42 U.S.C. §1983 in that a suspension issued to him was in violation of lawful procedure. Petitioner prays that the suspension be declared null and void and that respondents be prohibited from pursuing the related charges and that his personnel records be cleared of this matter. Finally, petitioner seeks damages in the amount of \$50,000.00, plus costs and reasonable attorneys' fees.

Respondents Stony Brook Fire District (hereinafter referred to as "Fire District"), Stony Brook Fire District Board of Fire Commissioners (hereinafter referred to as "Fire Commissioners") and Stony Brook Volunteer Fire Department, Inc. (hereinafter referred to as "Fire Department") filed their answer on July 21, 2023 and issue was joined.

Petitioner alleges that he was a lieutenant and member of the Stony Brook Fire Department and on November 20, 2022 he was suspended by the Chief of the Fire Department for alleged misconduct. The suspension was in place until the next meeting of the Fire Commissioners which was held on December 15, 2022. The petitioner contends that at this meeting which he did not attend the Fire Commissioners suspended him for 180 days. By letter dated December 16, 2022 the Chief of the Fire Department notified petitioner of the suspension which would be in effect until May 28, 2023.

Respondents claim that petitioner's suspension was made solely by the Chief of the Fire Department. Petitioner's conduct was discussed at the Fire Commissioner's December 15, 2022 meeting in its executive session but no action was taken by the Fire Commissioners other than referring the matter back to the Chief. Town Law 176-a(1) requires the Chief to strictly hold the members of the department to account and may suspend them for improper conduct, subject to the action of the board of fire commissioners at its next meeting.

The Stony Brook Volunteer Fire Department, Inc. is a private, not for profit corporation incorporated under the laws of the State of New York and operates pursuant to its own by-laws. According to the Fire Department's by-laws, "... The Chief shall be responsible to the Board of Fire Commissioners for the behavior of all members while representing the Stony Brook Fire Department..." NYSCEF Doc. 7 Chapter 5, 1(a) Also, under its by-laws there is a Board of Hearing where any member of the Fire Department may prefer charges against any other member and a charging and hearing process is outlined therein. See Chapter 7, IV.

There is no record of the Chief, Fire Department, Fire District or Fire Commissioners filing any charges against the petitioner, providing notice of a hearing or conducting a hearing as provided for in the Department's by-laws or pursuant to statute. General Municipal Law 209-l(3) states:

Removals on the ground of incompetence or misconduct, except for absenteeism at fires or meetings, shall be made only after a hearing

upon due notice and upon stated charges and with the right to such officer or member to a review pursuant to article seventy-eight of the civil practice law and rules. Such charges shall be in writing and may be made by any such authority. The burden of proving incompetency or misconduct shall be upon the person alleging the same.

These requirements must be met whether removal or suspension of a person is being sought. See *Matter of McEvoy v Oyster Bay Fire Company No. 1*, 117 AD3d 953, 955 (2<sup>nd</sup> Dept 2014). General Municipal Law 209-1 grants to the Fire Commissioners the power to suspend a firefighter for misconduct after a hearing on written charges and the Commissioners may not divest themselves of this responsibility. *Acker v Board of Fire Comm'rs*, 25 AD2d 282 (2<sup>nd</sup> Dept 1966). Respondents have failed to show any lawful proceeding for the imposition of the long-term suspension by the Chief when the Fire Commissioners themselves failed to act.

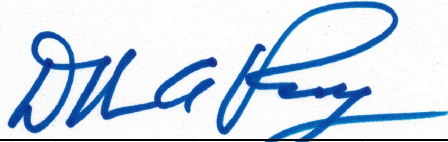
The petitioner's suspension was effectuated without written charges and a hearing, which was in violation of lawful procedure. Petitioner served his period of suspension and has returned to the Fire Department.

Accordingly, for the foregoing reasons, the Article 78 petition is granted as against the Fire District and Fire Commissioners. The suspension issued in violation of lawful procedure is null and void. Furthermore, the Court in considering the Article 78 claims in this proceeding, severs the remaining claims and directs that a proposed preliminary conference order be submitted to the Court within 30 days of the filing of notice of entry of this decision and order.

This constitutes the decision and Order of this Court.

Dated: February 4, 2025  
Riverhead, New York



  
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**DAVID T. REILLY**  
**JUSTICE OF THE SUPREME COURT**

\_\_\_\_\_ FINAL DISPOSITION        X   NON-FINAL DISPOSITION