

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW  
YORK, FOURTH DEPARTMENT**

**Jackson v. Annucci**

122 A.D.3d 1288 (N.Y. App. Div. 4th Dep't 2014) · Decided November 14, 2014

**SUMMARY**

The court unanimously confirmed a tier III prison disciplinary determination finding that the petitioner violated various inmate rules and dismissed the CPLR article 78 petition. The court held that the determination was supported by substantial evidence, rejected claims of hearing-officer bias and denial of witnesses or documentary evidence, and upheld the transfer of the proceeding despite the missing administrative appeal record.

**CASE DETAILS**

|                              |                                                                                                                                                                                  |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Appellate Division of the Supreme Court of the State of New York, Fourth Department                                                                                              |
| <b>WRITING FOR THE COURT</b> | Presiding Justice Scudder; Justice Centra; Justice Lindley; Justice Sconiers; Justice DeJoseph                                                                                   |
| <b>JURISDICTION</b>          | New York                                                                                                                                                                         |
| <b>DECIDED</b>               | November 14, 2014                                                                                                                                                                |
| <b>DISPOSITION</b>           | dismissed                                                                                                                                                                        |
| <b>PROCEDURAL POSTURE</b>    | CPLR article 78 proceeding transferred from Supreme Court, Wyoming County, to the Fourth Department to review a determination made after a tier III inmate disciplinary hearing. |
| <b>STANDARD OF REVIEW</b>    | Whether the administrative determination was supported by substantial evidence and whether the hearing complied with applicable procedural and impartiality requirements.        |
| <b>PRECEDENTIAL VALUE</b>    | Published intermediate appellate opinion                                                                                                                                         |
| <b>PARTIES</b>               | Jackson v. Annucci                                                                                                                                                               |

**TOPICS**

agency adjudication

judicial review of agency action

exhaustion of remedies

administrative law

appellate procedure

## PRACTICE AREAS

administrative law

prison disciplinary proceedings

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the prison disciplinary determination was supported by substantial evidence, including confidential testimony.
2. Whether the hearing officer was biased and whether alleged bias affected the determination.
3. Whether petitioner was improperly denied the opportunity to call witnesses and present documentary evidence in support of his retaliation defense.
4. Whether the absence of the administrative-appeal record required dismissal or prevented transfer of the CPLR article 78 proceeding to the Appellate Division.

## HOLDINGS

1. The determination was supported by substantial evidence, including confidential testimony, and therefore was properly confirmed.
2. Petitioner failed to establish that the hearing officer was biased or that the determination resulted from alleged bias.
3. The hearing officer properly rejected petitioner's requested additional testimony and documentary evidence because the material would have been redundant or immaterial.
4. The absence of the administrative-appeal record did not constitute a fatal defect requiring dismissal or preventing transfer of the proceeding to the Appellate Division.

## KEY QUOTATIONS

*“The additional testimony [and documentary evidence] requested by petitioner would have been either redundant or immaterial” (1289)*

## FACTUAL BACKGROUND

Following a tier III prison disciplinary hearing, petitioner was found to have violated various inmate rules. He challenged the determination on the grounds that it was unsupported by substantial evidence, that the hearing officer was biased, that he was improperly denied witnesses and documentary evidence relevant to a retaliation defense, and that the proceeding was improperly transferred because the administrative-appeal record was missing.

## PROCEDURAL HISTORY

Petitioner commenced a CPLR article 78 proceeding in Supreme Court seeking to annul a prison disciplinary determination finding that he violated various inmate rules. Supreme Court transferred the proceeding to the Fourth Department after determining that the absence of the administrative-appeal record was not a fatal defect because respondent would not assert failure to exhaust administrative remedies. The Fourth Department unanimously confirmed the determination and dismissed the petition.

## DISPOSITION

dismissed

## CASES CITED

- Matter of Stewart v. Fischer, 109 A.D.3d 1122, 1123 (2013), lv. denied, 22 N.Y.3d 858 (2013)
- People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985)
- Matter of Colon v. Fischer, 83 A.D.3d 1500, 1501-1502 (2011)
- Matter of Sanchez v. Irvin, 186 A.D.2d 996, 996 (1992), lv. denied, 81 N.Y.2d 702 (1993)
- Matter of Burr v. Fischer, 95 A.D.3d 1538, 1538-1539 (2012), lv. denied, 19 N.Y.3d 811 (2012)
- Matter of Duchmann v. Town of Hamburg, 93 A.D.3d 1289, 1289 (2012)

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