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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY**

Present:

HON. ANTHONY L. PARGA

Justice

-----X **PART 10**  
**MATTHEW NADOLECKI,**

**Petitioner,**

**INDEX NO. 14138/09**  
**X X X**

**For a Judgment Pursuant to Article 78 of the**  
**New York Civil Practice Law and Rules,**

**MOTION DATE: 9/21/09**  
**SEQUENCE NO. 001, 002**

**-against-**

**STATE OF NEW YORK INDUSTRIAL**  
**BOARD OF APPEALS,**

**Respondent.**

-----X

Notice of Petition, Affs. & Exs.....	<u>1</u>
Notice of Motion, Affs. & Exs.....	<u>2</u>

Upon the foregoing papers, it is ordered that the application by petitioner Matthew Nadolecki for an order setting aside a decision of the New York State Industrial Board of Appeals dated May 20, 2009 pursuant to CPLR Article 78 is denied.

The motion by respondent for an order dismissing this application is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

The undisputed facts note that on November 23, 2005 petitioner was terminated from a probationary position of the New York State Department of Taxation, Tax

Auditor Trainee I (Nassau County District Office). The termination was effective December 9, 2005, before the end of the two-year probationary period.

Petitioner argues that he was not given the opportunity to present evidence of New York State Department of Taxation employees' false testimony as well as errors and omissions from the hearing record.

Petitioner was assigned to perform audit duties in the basement of a Nassau County restaurant and filed a complaint with the Nassau County Board of Health alleging basement mold caused his illness and hospital visits. A Nassau County Health Department inspection found water on the floor, not mold or any other violations.

Petitioner was terminated on November 23, 2005 for a variety of reasons including repeated tardiness. After the termination, petitioner filed a complaint with the Federal OSHA alleging that he was terminated for filing the Nassau County Health Department complaint. That OSHA complaint was transferred to the New York State Department of Labor. After a New York State Department of Labor investigation, a report determined that there was insufficient merit to prosecute by the Attorney General. Petitioner appealed that New York State Department of Labor decision to the Industrial Board of Appeals (IBA).

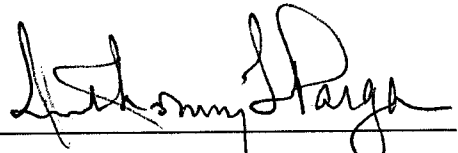
The IBA decision at issue in this proceeding was based upon a three-day IBA evidentiary hearing and concludes that: "We find no merit to Nadolecki's allegation that DOL retaliated against him . . . There is no evidence in the record to substantiate Nadolecki's allegation that DOL retaliated against him in any way for filing a . . . complaint against DOL . . .".

It is well settled that in a proceeding brought under Article 78 of the CPLR, the function of this Court is only to see that a determination of an administrative body or

officer was made in the manner prescribed by law (*see, Laureano v. Kuhlmann*, 75 N.Y.2d 141; *Voelckers v. Guelli*, 58 N.Y.2d 170). Generally, an administrative agency's determination requires deference in the area of its expertise (*see, Rosen v. Public Empl. Relations Bd.*, 72 NY2d 42, 47-48).

Petitioner, a probationary employee, has not met his burden of demonstrating any material issues as to arbitrary or unlawful reasons for the May 20, 2009 decision. The IBA record is replete with opportunities petitioner was given to present his case at the three-day IBA evidentiary hearing (*Cooke v. County of Suffolk*, 11 AD3d 610 (2<sup>nd</sup> Dept., 2004)).

Dated: November 23, 2009.



Anthony L. Parga, J. S. C.

**ENTERED**  
NOV 24 2009  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE