



New York State Correctional Officers & Police Benevolent Association, Inc.

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To: NYSCOPBA Law Enforcement Members

From: John Harmon Jr., Law Enforcement Vice President

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RE: NYSCOPBA wins a key case against the Justice Center

Below is the explanation from NYSCOPBA's Law Firm, Lippes Mathias Wexler Friedman LLP, which details the monumental legal decision against the NYS Justice Center. NYSCOPBA has been fighting against the Justice Center and their practices against our Law Enforcement Members since its inception in 2013.

NYSCOPBA specifically has lobbied and fought against the Justice Center practice of litigating disciplinary cases twice, once as an agency disciplinary proceedings through the issuance of an NOD under Article 8 of the CBA and again as a Justice Center disciplinary/staff exclusion list hearing. This Appellate Court Decision eliminates that practice.

Please read and share.

"The Appellate Division, Third Department, just issued a decision in favor of a NYSCOPBA member who endured the grueling task of defending himself against false allegations of abuse in two separate forums – first in a disciplinary hearing, then in a Justice Center hearing. Since the beginning of Justice Center oversight, NYSCOPBA has been fighting against the reach of the Justice Center and the dual paths it takes to discipline or mark an employee as an abuser. In a key case, *Matter of Anonymous vs. Justice Center*, Case No. 527321, the Appellate Division, Third Department, again held that the Justice Center does not get "two bites of the apple" against an employee based upon the same incident.

In this case, Petitioner, an SHTA, was alleged to have committed physical abuse against a service recipient. He was issued a Notice of Discipline by OMH, as well as a "Report of Substantiated Finding" by the Justice Center, all within eight days of each other. Each separate document referenced the same Justice Center files numbers and Investigation numbers, and alleged physical abuse as defined by the Social Services Law (ie – the Justice Center provisions). Pursuant to Article 8 of the NYSCOPBA/State collective bargaining agreement, his Notice of Discipline proceeded to arbitration. A Justice Center attorney even prosecuted the Notice of Discipline (along with an agency representative). The SHTA was found not guilty of the allegations made against him and he returned to work with full back pay. The arbitrator reviewed the tape of the incident and concluded that the service recipient was the sole aggressor and no abuse occurred.

Based upon the same incident and videos, the Justice Center proceeded with its hearing against the member regarding the Report of Substantiated Charges. At the hearing, we

argued that the Administrative Law Judge was bound by the decision in the disciplinary case (based upon the legal theories of *res judicata* and collateral estoppel) and must dismiss the case and find the allegation unsubstantiated. The ALJ allowed the parties to brief this legal argument, but ultimately the ALJ ignored this legal argument and substantiated the findings of abuse against the SHTA.

NYSCOPBA challenged this decision on the Petitioners behalf by filing an Article 78 proceeding alleging that the ALJ was precluded from substantiating the charges based upon the decision by the arbitrator in the disciplinary matter. Simply put, NYSCOPBA argued that the Justice Center cannot re-litigate a matter it already lost. During the pendency of this Article 78 proceeding, the Appellate Division, Third Department had ruled in the favor of a similarly situated individual who had been prosecuted by the Justice Center for the same incident and in the same two forums, discipline and Justice Center charges. (*Matter of Anonymous v. Justice Center*,¹ 167 A.D.3d 113 (2018)). Based upon the first *Matter of Anonymous* decision, the Justice Center took a blow, but in the subsequent case pursued by NYSCOPBA, the Justice Center took a further hit.

In the case against the NYSCOPBA member, the State tried to argue that the charges in each of the cases against him were actually different. Specifically the State argued that there were additional charges in the second case (the Justice Center case) which were not heard and decided by the disciplinary arbitrator. They made this argument because the first set of charges stated “[he] struck and kicked a service recipient” and the second alleged “[he] pushed the service recipient, causing her to fall to the ground, hit her, and/or kicked her.” In response, NYSCOPBA argued that this was a parsing of words and that the ultimate question was whether the evidence (video) showed that the SHTA committed physical abuse. The State tried to argue it could re-litigate because the “push” allegation in the second case was not addressed in the first case. The Court disagreed.

The court held that the principles of *res judicata* and collateral estoppel applied and that the Justice Center could not re-litigate these allegations, which had already been decided. The fundamental point for the court was that the arbitrator reviewed the underlying event and determined that the service recipient fell to the floor and was the sole aggressor. As such, the Court concluded that the matter of whether the Petitioner physically abuse the service recipient could not be re-litigated.

Based upon this decision, it is clear that the Justice Center cannot get two bites at the apple against an employee for the same incident. Furthermore, the Justice Center doesn’t get to re-litigate its case in a second proceeding by alleging something more in one of the forums when it is all based on the same incident.

This is a huge win for the individual member, as well as for all NYSCOPBA members who are subject to Justice Center jurisdiction.”

Great Decision and long overdue successful litigation against the Justice Center.

¹ Both cases are entitled *Matter of Anonymous* because the court ruled in the Petitioners favor, which ultimately seals the Justice Case against the individual, so names are not included in these filed decisions.

