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[*1] In re Nicholas Casale, Petitioner-Respondent, v Metropolitan Transportation Authority, et al., Respondents, Matthew D. Sansverie, s/h/a Martin Sansverie, Inspector General, Metropolitan Transportation Authority, Respondent-Appellant.

2600, 115718/03

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

2008 NY Slip Op 423; 47 A.D.3d 519; 850 N.Y.S.2d 79; 2008 N.Y. App. Div. LEXIS 402

**January 24, 2008, Decided
January 24, 2008, Entered**

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: Berke-Weiss & Pechman LLP, New York (Louis Pechman of counsel), for appellant.

Norman Siegel, New York and McLaughlin & Stern, LLP, New York (Steven J. Hyman of counsel), for respondent.

JUDGES: Tom, J.P., Saxe, Friedman, Buckley, JJ.

OPINION

[**519] [***80] Order, Supreme Court, New York County (Sherry Klein Heitler, J.), entered on or about August 10, 2006, which, in a proceeding against the Metropolitan Transit Authority (MTA) and various of its officials seeking a name-clearing hearing, petitioner's reinstatement to his position as MTA's Deputy Director of Security, and damages pursuant to 42 USC β 1983 based on respondents' failure to afford petitioner due process, denied respondent-appellant MTA Inspector General's motion [**520] to dismiss the amended petition as against him, unanimously reversed, on the law, without costs, and the petition dismissed as against appellant.

"[D]efamation alone, even by a government entity, does not constitute a deprivation of a liberty interest protected by the *Due Process Clause*. Some stigma plus' must be shown before mere defamation will rise to the level of a constitutional deprivation [I]n the context of defamation involving a government employee, defamation . . . is not a deprivation of a liberty interest unless it occurs in the course of dismissal or refusal to rehire the individual as a government employee or during termination or alteration of some other legal right or status" (*Aquilone v City of New York*, 262 A.D.2d 13, 13-14, 690 N.Y.S.2d 558, lv denied 93 NY2d 819, 719 N.E.2d 927, 697 N.Y.S.2d 566 [1999], quoting *Martz v Incorporated Vil. of Valley Stream*, 22 F3d 26, 32 [2d Cir 1994]). While appellant, as MTA's Inspector General, has authority to investigate alleged abuses and frauds in the maintenance and operation of MTA's facilities, [***81] he does not have the authority to provide petitioner with the process he has requested or to reinstate him to his position with MTA (*Public Authorities Law* β 1279[4]). While petitioner proposes various remedial actions that appellant could have taken, including withdrawing or revising his report based upon his subsequent findings, recommending petitioner's reinstatement, and monitoring MTA's implementation of that recommendation (*see id.*), in the absence of statutory authority permitting appellant to provide the pre- or post-termination process to which petitioner alleges he was deprived, these [*2] proposed remedies relate only to the stigma caused by appellant's report, not the "plus" of termination required to establish petitioner's due process claim (*Anemone v Metropolitan Transp. Auth.*, 410 F

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*Supp 2d 255, 270 [SD NY 2006], citing Velez v Levy, 401
F3d 75 [2d Cir 2005]).*

THIS CONSTITUTES THE DECISION AND OR-
DER OF THE SUPREME COURT, APPELLATE DI-
VISION, FIRST DEPARTMENT.

ENTERED: JANUARY 24, 2008