

Under Real Property Tax Law § 523-b, the State Legislature authorized Nassau County to establish the ARC for the purpose of "reviewing and correcting all assessments of real property" (RPTL 523-b [2][d]). The ARC was created "as an alternative" to a Board of Assessment Review, which is maintained by other local governments under RPTL 523 to fulfill the same purpose. The purpose of the statute was to combat the growing number of property tax grievances that were being filed and to increase the accuracy of the assessments, thereby avoiding having to make refunds and interest payments on improperly assessed parcels (see Memorandum in Support, New York State Senate, L 1998, ch 593). Section 523-b allowed the ARC to function year round, as opposed to the previously existing Board of Assessment Review that met for three months out of the year, and also increased the number of commissioners in the hope that more tax grievances would be "resolved without court involvement and in a more timely manner" (Memorandum in Support, New York State Senate, L 1998, ch 593). The Nassau County Legislature adopted RPTL 523-b as §§ 6-40.1 et seq. of the Nassau County Administrative Code.

The ARC is comprised of nine commissioners who are appointed by the County Executive subject to approval by the County Legislature (see RPTL 523-b [2][a]). The statute provides that the commissioners shall have staggered five-year terms and that no more than six of the commissioners can be enrolled voters

of the same political party (see RPTL 523-b [2][a], [2][c]). The duration of the term is consistent with that of a member of a Board of Assessment Review (see RPTL 523 [1][b], [c] [boards are comprised of three to five members with staggered five-year terms]).

On December 24, 2009, the outgoing Nassau County Executive appointed six ARC Commissioners, including the three petitioners herein, to fill vacancies.¹ On January 14, 2010, counsel to the then-newly elected County Executive (respondent herein) sent letters to each of the nine commissioners, informing them that they were being removed from office pursuant to section 203 of the Nassau County Charter. The letter stated that, "the County Executive must select his own Commissioners of ARC to promote and implement the new administration's plans and policies," including reducing the costs of government and ameliorating problems that had arisen within the assessment system. The letter also opined that it would frustrate the County Executive's mandate and the will of the voters to allow the previous administration to wield a continuing influence over the ARC. The letter stated that, under County Charter § 203 the County Executive's decision was final, but in any event offered the commissioners an opportunity to be heard, if they so desired.

Eight of the nine commissioners responded to the County

¹Petitioners were not appointed for full terms, but to fill the remaining portions of existing terms.

Attorney, requesting that he provide them with legal representation under County Charter § 1102 and asking for an opportunity to be heard by the County Executive.² The County Attorney responded, notifying the commissioners that he would not appear on their behalf due to a conflict presented by his representation of the County Executive but advising them that he had retained independent special counsel on their behalf. Petitioners met with the proffered counsel but, as the result of strategic and philosophical differences, decided to retain their own attorney.³

Petitioners commenced this combined declaratory judgment/article 78 proceeding seeking an order declaring that the County Executive does not have the power to remove the commissioners during their terms absent cause, enjoining respondents from taking any such action and directing that petitioners are entitled to reasonable attorneys' fees incurred by their independently retained private counsel. Supreme Court denied the petition and, in effect, dismissed the proceeding, finding that the provision governing petitioners' removal -- Nassau County Charter § 203 -- contained no requirement of cause

² One of the nine commissioners was retained by the County Executive and two others ultimately decided to resign.

³ The three remaining commissioners accepted the representation of special counsel and were permitted to intervene in this action at Supreme Court. The intervenors are not parties to this appeal.

for termination. The court also denied petitioners' request for attorneys' fees.

The Appellate Division modified solely to declare that the County Executive has the authority to remove the ARC commissioners from their offices prior to the expiration of their statutory terms in the absence of cause (78 AD3d 716 [2d Dept 2010]). The Court found that the language of Nassau County Charter § 203 was clear and unambiguous in requiring only that appointees be given notice of the reasons why they were being removed and provided with an opportunity to be heard. The Court found it significant that the County Charter did not explicitly state that appointees were removable only for cause. This Court granted petitioners leave to appeal and we now modify.

The Nassau County Charter vests the County Executive with authority to appoint members of county boards and commissions, subject to approval of the County Legislature (see Nassau County Charter § 203 [1]). Concomitantly,

"[t]he County Executive may at any time remove any person so appointed; provided that in the case of members of boards and commissions appointed for definite terms, no removal shall be made until the person to be removed has been serv[ed] with a notice of the reasons for such removal and given an opportunity to be heard, publicly if he or she desires, thereon by the County Executive. The decision of the County Executive shall be final"

(Nassau County Charter § 203 [1]). Respondents therefore argue that, according to the plain language of the County Charter, the

County Executive was within his authority to terminate petitioners, despite the absence of any wrongdoing on their part and regardless of the statutory term of office, in order to appoint individuals of his choosing. In our view, this argument is inconsistent with the salutary purpose of the legislation at issue.

As we have repeatedly recognized, "[i]n matters of statutory . . . interpretation, 'legislative intent is the great and controlling principle, and the proper judicial function is to discern and apply the will of the [enactors]'" (Nostrom v A.W. Chesterton Co., 15 NY3d 502, 507 [2010], quoting Matter of ATM One v Landaverde, 2 NY3d 472, 477 [2004]). To that end, ascertaining legislative intent involves considering "'the spirit and purpose of the act and the objects to be accomplished'" (Ferres v City of New Rochelle, 68 NY2d 446, 451 [1986], quoting People v Ryan, 274 NY 149, 152 [1937]).

Although RPTL 523-b does not set forth any procedure for the removal of commissioners, the statute demonstrates the legislative intent to protect the ARC from political influence. It is evident that the fixed, staggered terms of office along with the requirement that all of the commissioners must not be members of a single political party, are designed to promote stability of membership and political diversity. Notably, the five-year term of office exceeds the length of the County Executive's own. This design may frustrate the most recent

expression of the electorate's mandate, but it is meant precisely to avoid a wholesale change of membership of the ARC upon the installation of each successive administration.

When County Charter § 203 is read in light of the purposes of RPTL 523-b, the Charter provision does not convey the "plain" meaning that respondents attribute to it. Section 203 refers specifically to "commissions appointed for definite terms," and makes clear that, when members of such commissions are removed, "reasons for such removal" must be provided. "Reasons," in this context, can reasonably be read as a synonym for "cause": thus, section 203 permits removal of commissioners serving fixed terms for cause, but not otherwise. Accordingly, we find that RPTL 523-b and County Charter § 203 are not incompatible and read them together to accomplish the clear legislative intent.

In addition, although the commissioners, as County employees, are not protected by the Public Officers Law (see e.g. Public Officers Law § 36 [public officers are subject to removal "for any misconduct, maladministration, malfeasance or malversation in office"]), it is instructive that a finding of some type of misconduct would be required to remove members of the similarly situated Board of Assessment Review (see 4 Ops Counsel SBEA No. 27 [1974]).

Removing the Commissioners without cause under County Charter § 203, as respondents urge, would frustrate the

legislative intent by nullifying the requirements of the RPTL and rendering the staggered statutory terms of office in RPTL 523-b superfluous. Under these circumstances, the commissioners are not essentially at-will employees, subject to termination for any reason whatsoever.

Petitioners' argument that they are entitled to attorneys' fees, however, was properly rejected. The County is required to "provide for the defense" of an employee involved in a civil action arising out of an act or omission that occurred during the scope of his or her employment (see Nassau County Administrative Code § 22-2.8 [2][a]). Where, as here, the employees commenced the action, there is no obligation on the part of the County to pay for their "defense." Nor does the Administrative Code otherwise obligate the County to bear responsibility for the commissioners' legal fees.

Accordingly, the order of the Appellate Division should be modified, without costs, by granting judgment declaring that in the absence of cause, the County Executive does not have authority to remove Commissioners of the Nassau County Assessment Review Commission prior to the expiration of their statutory terms, and remitting to the Supreme Court for further proceedings in accordance with this opinion and, as so modified, affirmed.

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Order modified, without costs, by granting petitioners judgment declaring in accordance with the opinion and remitting to Supreme Court, Nassau County, for further proceedings in accordance with the opinion, and as so modified, affirmed. Opinion Per Curiam. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 21, 2012