

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Scarpulla, Shulman, Higgitt, O'Neill Levy, JJ.

2412

CAF DOWLAH,
Plaintiff-Appellant,

Index No. 151561/22
Case No. 2023-06121

-against-

PROFESSIONAL STAFF CONGRESS (PSC-CUNY),
et al.,
Defendants-Respondents.

Caf Dowlah, appellant pro se.

Levy Ratner, P.C., New York (Patricia McConnell of counsel), for Professional Staff Congress/City University of New York and Peter Zwiebach, respondents.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Richard W. Boone, Jr. of counsel), for Hanan Kolko, respondent.

Order, Supreme Court, New York County (Eric Schumacher, J.), entered October 25, 2023, which granted defendants' motions to dismiss the complaint pursuant to CPLR 3211(a)(7), unanimously affirmed, without costs.

Plaintiff's legal malpractice claim against his union-appointed attorney who represented him in arbitration is preempted by Federal labor law, as "attorneys who perform services for and on behalf of a union may not be held liable in malpractice to individual grievants where the services performed constitute part of the collective bargaining process" (*Mamorella v Derkasch*, 276 AD2d 152, 155 [4th Dept 2000]).

Plaintiff's claims against his union, Professional Staff Congress (PSC-CUNY), and its legal director, arising from their selection of an allegedly biased arbitrator are barred by res judicata and collateral estoppel based on this Court's resolution of that issue in

plaintiff's prior appeals (*see Matter of Dowlah v City Univ. of N.Y.*, 189 AD3d 533, 534 [1st Dept 2020]; *Dowlah v American Arbitration Assn.*, 221 AD3d 426, 426 [1st Dept 2023]). Plaintiff's instant claims are based on the same transaction as in both earlier actions, and therefore they are barred even though they are based upon different legal theories (*Dowlah*, 221 AD3d at 427). "That plaintiff has pleaded different causes of action and included new parties is of no moment" since "plaintiff, the party against whom preclusion is sought, was a party in the earlier action[s]" (*id.*).

To the extent plaintiff's claim against PSC-CUNY arises from its appointment of plaintiff's allegedly negligent attorney and thus raises a distinct issue, his allegations constitute a claim that he was improperly represented by his union, which is untimely under CPLR 217(2)(a)'s four-month limitations period (*see Roman v City Empls. Union Local 237*, 300 AD2d 142, 142 [1st Dept 2002], *lv denied* 100 NY2d 501 [2003]).

Res judicata also bars plaintiff from relitigating his prior appeals, and his arguments for recusal of Justices who participated in those appeals are entirely unsupported by evidence.

Plaintiff cites several nonexistent cases in his initial memorandum of law. In his reply brief he acknowledges that these citations were the result of research using "legal software applications" that deploy artificial intelligence. Plaintiff avers that he has an LLM (among other advanced degrees) but not much "legal expertise" and he apologizes for the fictitious precedents. We caution plaintiff that his pro se status does not excuse

his failure to check the legal citations that he offers to a court.

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 30, 2024

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name being the most prominent.

Susanna Molina Rojas
Clerk of the Court