

Matter of Schuler v State of New York

2006 NY Slip Op 30576(U)

December 13, 2006

Supreme Court, New York County

Docket Number: 104033/06

Judge: Lewis Bart Stone

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. LEWIS BART STONE

PART 508M

(HON. LEWIS BART STONE Justice

SHADER, JEFFREY

INDEX NO. 104033/01

MOTION DATE _____

MOTION SEQ. NO. 000

MOTION CAL. NO. _____

- v -
STATE OF NEW YORK

Acme??

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied in accordance
with the attached judgment and order.

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B).

Dated: 12 Feb 06

Lewis Bart Stone
HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X
In the matter of the Application of :
JEFFERY SCHULER :

Petitioner, :

For a judgment pursuant to Article 78 :
Of the Civil Practice Law and Rule :

-against- :

**STATE OF NEW YORK, THE STATE : JUDGMENT AND
UNIVERSITY OF NEW YORK and ORDER**

John Ryan, as Chancellor for the State University :
of New York, **SUNY DOWNSTATE MEDICAL** :

CENTER, ANDREW A. BARNA, as :
ASSISTANT DIRECTOR OF EMPLOYEE **IND. NUMBER**

RELATIONS, at THE STATE UNIVERSITY : 104033/06
OF NEW YORK, **JOHN C. LAROSA, M.D.** :

as PRESIDENT of SUNY DOWNSTATE :
MEDICAL CENTER, **DAVID C. PAPPALARDO**, :

as DIRECTOR OF LABOR RELATIONS AND :
HUMAN RESOUVES at SUNY DOWNSTATE :

MEDICAL CENTER, **LEONZO A. CUIMAN** :
as FIRST DEPUTY DIRECTOR OF HUMAN :

RESOURCES, LABOR RELATIONS at SUNY :
DOWNSTATE MEDICAL CENTER, :

STEVEN KASS as VICE PRESIDENT OF :
HUMAN RESOURCES at SUNY DOWNSTATE :

MEDICAL CENTER, :
:

Respondents. :

-----X

Justice Lewis Bart Stone,

This proceeding was commenced by petitioner Jeffrey Schuler ("Schuler") under Article 78 of the Civil Practice Law and Rules ("CPLR") against Respondents, the State of New York (the "State") and State University of New York ("SUNY") to challenge his dismissal from his job at Downstate Medical Center ("Downstate") by respondents. Also named as respondents are various officials and supervisors of SUNY and Downstate. Schuler also sought attorney's fees.

On June 5, 2006, Respondents cross moved to dismiss on the grounds that (1) the petition was time-barred under CPLR § 217, (2) documentary evidence provided a complete defense to proceeding; and (3) by statute, the State could not be named a respondent under Article 78 procedures. Respondents further alleged that Schuler was not entitled to attorney's fees pursuant to CPLR § 8601.

On July 3, 2006, the Honorable Faviola Soto granted the Respondent's cross-motion to the extent of dismissing any and all claims against the State and Schuler's demand for attorney's fees, but otherwise denied all other cross-motions and ordered all remaining Respondents (hereafter collectively "SUNY") to answer. On August 24, 2006 SUNY submitted its answer.

Schuler was hired by Downstate as a Cleaner-grade 6, a Civil Service title. He was represented by his union, the Civil Service Employees Association

("CSEA"). Although Schuler states that he was hired on October 12, 1989, Downstate challenges he was hired on March 16, 1993. For the purpose of this proceeding, Schuler's hire date is irrelevant.

On June 14, 2005, Schuler was issued a Notice of Discipline ("NOD") in accordance with Disciplinary Procedure § 33.3 (the "Disciplinary Procedure") of the collective bargaining agreement between SUNY and CSEA which governed Schuler's employment at SUNY, which set forth six specifications of alleged misconduct committed on February 4, 2005 and May 2, 2005.

The NOD advised Schuler that the proposed penalty for his conduct was termination. On June 20, 2005, pursuant to the Disciplinary Procedure and without resorting to arbitration, Schuler settled the NOD, in writing, with respect to the specifications "exclusive of specification III," which alleged physical threats by Schuler against a supervisor.¹

For the NOD's proposed penalty of dismissal for the five settled charges the settlement agreement substituted a fine (instead of termination) for those charges should Schuler engage in any future acts similar to those five charges. Furthermore, the agreement stated that the settlement "supercedes any other understanding either oral or written, between the parties, and contains all terms and conditions agreed by the parties."

¹ Specification I, II, IV, V and VI were of less serious allegations

("CSEA"). Although Schuler states that he was hired on October 12, 1989, Downstate challenges he was hired on March 16, 1993. For the purpose of this proceeding, Schuler's hire date is irrelevant.

On June 14, 2005, Schuler was issued a Notice of Discipline ("NOD") in accordance with Disciplinary Procedure § 33.3 (the "Disciplinary Procedure") of the collective bargaining agreement between SUNY and CSEA which governed Schuler's employment at SUNY, which set forth six specifications of alleged misconduct committed on February 4, 2005 and May 2, 2005.

The NOD advised Schuler that the proposed penalty for his conduct was termination. On June 20, 2005, pursuant to the Disciplinary Procedure and without resorting to arbitration, Schuler settled the NOD, in writing, with respect to the specifications "exclusive of specification III," which alleged physical threats by Schuler against a supervisor.¹

For the NOD's proposed penalty of dismissal for the five settled charges the settlement agreement substituted a fine (instead of termination) for those ~~five~~² charges should Schuler engage in any future acts similar to those five charges. Furthermore, the agreement stated that the settlement "supercedes any other understanding either oral or written, between the parties, and contains all terms and conditions agreed by the parties."

¹ Specification I, II, IV, V and VI were of less serious allegations

In October and November of 2005, Schuler engaged in new acts similar to the five specifications set forth in the June 14, 2005 NOD which had been the subject of the settlement agreement. Downstate then notified Schuler that the fine specified in the Settlement Agreement was to be imposed, and also notified Schuler that, because of Schuler's failure to resolve Specification III, as required by Disciplinary Procedure § 33.3 (c)(1), Downstate would implement the proposed penalty of termination for such transgression as set forth in the original NOD, and notified Schuler by letter dated November 18, 2005 that he would be terminated, effective November 25, 2005.

CONCLUSION OF LAW

Schuler commenced this proceeding to challenge his termination on the basis that it was arbitrary and capricious, an abuse of discretion, and "undertaken in bad faith." CPLR § 7803.

In considering whether Downstate acted in an arbitrary and capricious manner, this Court is limited to an assessment of whether a rational basis exists for the exercise of discretion or the action complained of Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action was without a foundation in fact. (1 NY Jur. Administrative

Law § 184, at 609). Arbitrary action is defined as being without sound basis in reason and is generally taken without regards to facts. Colton v. Berman, 21 N.Y.2d 322 (1967).

This Court may not substitute its judgment for that of the agency, nor should it disturb the decision of the agency if the agency's determination can be supported by a reasonable basis. Pell at 231. Thus, to find that Downstate's decision to terminate Schuler was arbitrary and capricious, this Court would have to find that the Downstate's decision was not supported by a reasonable basis and was taken without regard to facts.

Under such test, this Court finds no basis to disturb Downstate's decision to terminate Schuler; it was rationally based on the procedures set forth in the Disciplinary Procedure Article 33.3(b)(i) which clearly states that:

“[t]he penalty proposed by the appointing authority... may not be implemented until the employee fails to file a grievance within (14) calendar days of the service of the notice of discipline...”

Schuler argues that the need to file a grievance under Article 33.3(b)(1) was noncompulsory since the terms of the settlement agreement were predicated on the withdrawal of Specification III. Based on the documentary evidence provided, his argument fails on two levels. First, the plain language of the Settlement Agreement

makes it clear that the settlement clearly excluded charges in Specification III. Second, the Settlement Agreement expressly provided that it was to supercede all other understandings, oral or written.

Schuler urges this Court to interpret the word “excluded” to mean “withdrawn.” In light of the ordinary meaning and usage of these terms, this Court finds it unlikely, within the context of the Settlement Agreement, to reconcile their respective meanings as Schuler would have them.

“Exclusion” is “to restrain or hinder the entrance of” a particular subject matter. “Withdraw” on the other hand, is “to eliminate from consideration or to abandon the prosecution of” a particular subject matter. Webster’s 3rd New International Dictionary. As a result, it is clear that, based on the plain language of the Settlement Agreement, both parties intended to “hinder the entrance of” Specification III into the agreed upon settlement thereby leaving it unresolved. Accordingly, the unresolved status of Specification III meant that Schuler was free to proceed to challenge it under the grievance proceedings of the Disciplinary Procedure and failing that, Downstate was at liberty to proceed with Specification III under the Disciplinary Process and to implement the original penalty proposed in the June 14th NOD, if Schuler elected not to challenge Specification III.

Schuler further attempts to overcome the plain language of the Settlement Agreement by relying on extrinsic evidence to support his interpretation of the document. Under New York law, “the parol evidence rule precludes giving any consideration to prior oral promises that alter or contradict the meaning of a written agreement.” Scalisi v. New York Univ. Med. Ctr., 24 A.D.3d 145, 147 (1st Dept. 2005). Schuler contends that extrinsic evidence demonstrates that “Specification III was to be withdrawn in the interest of the bigger picture, i.e. an overall Settlement Agreement and that [Downstate] concurred in this assessment on the merits.” (Ver. Pet. ¶10; Exh. C.; Schiowitz Affidavit). This Court cannot consider this “evidence” as it clearly contradicts the plain language of the Settlement Agreement which excluded and superceded any putative side agreement or understanding.

Because the plain language of the Settlement Agreement left Specification III unresolved and Schuler failed to address Specification III within the designated time frame of fourteen days, Downstate was at liberty to implement the original penalty proposed in the June 14th NOD. This Court may not direct Downstate to reinstate Schuler where Schuler and CSEA, his union, failed to follow the clearly expressed provisions of the Disciplinary Procedure. Schuler and CSEA had ample time to challenge Specification III, but failed to do so.

Supplementing the Disciplinary Procedures, SUNY and CSEA entered into a side letter agreement before this matter arose, known as the "Lazarus Letter," which grants CSEA an additional seven days to request permission to have an NOD heard on the merits where, despite the already expired 14-day deadline, a proposed NOD penalty is implemented.

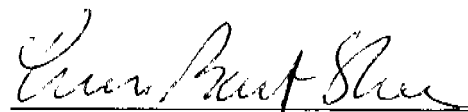
Neither Schuler nor CSEA requested permission under the Lazarus Letter to reinstate the NOD after the execution of the penalty. Instead, Schuler filed this Article 78 proceeding circumventing the agreed upon procedures in both the Disciplinary Procedure and the Lazarus Letter.

This Court therefore finds that Downstate took action consistent with the Disciplinary Procedure and the terms of the Settlement Agreement entered into between the Petitioner and the Respondents. Accordingly, Downstate's actions were neither arbitrary nor capricious.

The motion is denied.

This constitutes the Judgment and Order

DATED: DECEMBER 13, 2006
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B).