

**Matter of Chalom v New York City Dept. of  
Educ.**

2007 NY Slip Op 30248(U)

March 8, 2007

Supreme Court, New York County

Docket Number: 0106293

Judge: Lewis Bart Stone

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

PRESENT: STONE  
Justice

PART 505

~~HON. LEWIS BART STONE~~  
CHALOM, YOUNG

INDEX NO. 106293/06

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 02

MOTION CAL. NO. \_\_\_\_\_

- v -

N.Y.C. DEPT. OF EDUCATION

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 decided in accordance with the annexed Decision and Order

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

**FILED**  
MAR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 8 Mar 07

Lewis Bart Stone

[\*1]

HON. LEWIS BART STONE S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 59

----- X  
In the Matter of the Application :  
YVONNE CHALOM, :  
 : DECISION AND  
 Petitioner, : ORDER  
 :  
 - against- : INDEX NUMBER  
 : 106293/06  
NEW YORK CITY DEPARTMENT OF EDUCATION :  
 Respondent :

**FILED**

MAR 23 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Hon. Lewis Bart Stone:

This motion was brought by respondent, New York City Department of Education ("DOE") against petitioner, Yvonne Chalom, ("Chalom") to vacate a default order entered against DOE by this Court on May 19, 2006, which order stayed an arbitration which DOE had been commenced against Chalom, pending the resolution of a pending appeal by Chalom of a misdemeanor conviction to the Appellate Term of the Supreme Court.

This dispute concerns a disciplinary proceeding brought against Chalom, a tenured teacher for seventeen years at DOE for allegedly improper acts performed by her during the 2002-2003 and 2003-2004 school years. Although there were fourteen charges leveled against her in the initial charges, all but the first six center around an assertion that Chalom made a series of harassing telephone calls which led to her

arrest and conviction on September 26, 2005 for Aggravated Harassment in the Second Degree on April 24, 2004, which was added as a specification to the charges against her. (The eight charges relating to harassment each cite alleged acts of harassment or relate to procedural aspects and pre-trial actions of the Courts in processing the misdemeanor case).

Although Chalom was convicted, after trial, the conviction is on appeal to the Appellate Term on the grounds of inadequate representation of counsel who failed to assert his client's allegedly meritorious defense that the harassing calls were automatically redialed by a malfunctioning fax machine which recorded the background noise from radio and television. At the trial, the only proof heard by the jury was the facts of the calls and the tape of the calls.

This Court may not decide what the Appellate Term may eventually make of the appeal, or what an arbitrator may eventually make of the specifications. It is, however, clear that most of the remaining specifications, alleging improper conduct, which supposedly occurred over a year to over three years prior to the date charges were filed, evincing a lack of urgency on DOE's part as to such charges, and the remainder of the remaining specifications appear trivial on their face. Thus, the centrality of the harassment issue to the charges against Chalom is patent.

The default was entered as a result of DOE's failure to appear on the return day. DOE contends both that there was a breakdown of communication between it

and Corporation Counsel and improper service. As the record in Court on the return date showed, DOE was served and Corporation Counsel was aware of the relief sought and failed to appear, although calls were made even on the return day to have them do so. The Court was indeed aware of the need for notice to a governmental agency prior to the issuance of restraint. However, the Court found at that time that notice had been given but that DOE did not appear, thus satisfying all notice requirements.

The Court's concern as to DOE's default was further manifested by the May 19, 2006 order itself, expressly making the default order "subject to modification by application of DOE on notice to the Petitioner." The fact that it took DOE over six months to make the instant motion again belies any urgency as now asserted by DOE. This Court will, however, deem DOE's motion as an application to modify the Order as the Court had so provided in the order, and will set down this motion for argument of Chalom's initial petition on such date as either party may designate on not less than ten (10) days notice to the other party. Until such hearing, the Order of the Court restraining the arbitration shall continue.

This is the Decision and Order of the Court.

DATED: MARCH 8, 2007  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
MAR 23 2007  
NEW YORK  
COUNTY CLERK'S OFFICE