

Binet, Inc. v Chancellor, N.Y. State Dept. of Educ.

2007 NY Slip Op 30947(U)

April 19, 2007

Supreme Court, New York County

Docket Number: 0103707/2006

Judge: Emily Jane Goodman

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SCANNED ON 4/27/2007

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

EMILY JANE GOODMAN

PRESENT: _____

PART 17

Index Number : 103707/2006

BINET, INC.

vs

HARD OF HEARING INTERPRETING

Sequence Number : 002

AMEND

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

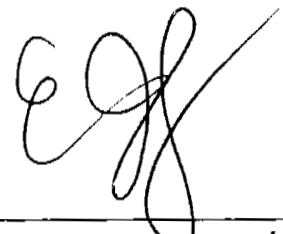
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided per attached*

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

FILED
APR 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/19/07



EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 17

-----X
BINET, INC.,

Petitioner,

Index No. 103707/06

-against-

CHANCELLOR, NEW YORK STATE DEPARTMENT
OF EDUCATION and DEAF AND HARD OF HEARING
INTERPRETING SERVICES, INC.,

Respondents.

FILED
APR 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

EMILY JANE GOODMAN, J.S.C.:

Petitioner moves to amend the Petition to add a claim that New York State Department of Education (DOE) acted arbitrarily because it followed a certain practice regarding redacting employees' names in FOIL responses, except with respect to the instant matter. Petitioner also moves to amend its Petition to clarify that disclosure of its employees' names are protected not only as a trade secrets, but are protected under the Chancellor's Regulations because disclosure would cause substantial injury to its competitive position. The motion is denied as lacking merit regarding the first request and denied as unnecessary regarding the second request, given that paragraph 16 of the Petition already alleges that disclosure of Petitioner's employees' names are protected under the Chancellor's Regulations because disclosure would cause substantial injury to movant's competitive position.

In Footnote 1 of its Decision and Order, dated July 13, 2006 (Decision), the Court stated that even if the argument that DOE arbitrarily deviated from its usual practice had

been raised in the Petition, Petitioner's conclusory affidavit did not demonstrate that DOE had such an arbitrary policy. Petitioner's new affidavit fares no better.¹ The affidavit of Dr. Geliebter states that on "at least five occasions spanning over the 10-year period during which I submitted requests under FOIL to the New York City Board of Education for the identical type of contact, i.e., related services contract, as is the case in this proceeding, I have in all cases seen that the DOE redacted the names of staff." He further states that in a recent request from another entity for the contract at issue, Susan Holtzman (the same officer who informed Petitioner that its staff names would be released, unless Petitioner obtained a court stay) redacted the staff names.²

In opposition to the motion, Holtzman states that the policy of DOE is to enable an applicant to initially designate whether certain information is confidential, and if so designated, redact the information listed, which was initially done here. However, because defendant DHHIS challenged DOE's redacting of the information (which Holtzman states she has not previously encountered in her four year experience as the records access officer), the agency reviewed the application and determined that the information was not protected.

¹The Court rejects the affidavit of Jeffrey S. Zellan, Esq., as untimely, as well as the untimely submission of new evidence attached as Exhibit C to the Reply Affidavit In Further Support of Motion To Amend The Petition.

²The Court rejects Petitioner's attempt to reargue, in this motion to amend, its argument that because DOE allows an applicant to initially designate whether certain information is "confidential" DOE has agreed to keep such information confidential. That argument was previously rejected in Footnote 2 of the Decision and movant has not made a motion to reargue that Decision.

Petitioner has not demonstrated that there is any merit to its claim that DOE acted arbitrarily when it came to the instant dispute. Even assuming Dr. Geliebter's limited experience would be sufficient to raise any issue, his affidavit does not indicate that the situations referenced are similar to the situation here-i.e., involved instances where DOE's initial determination not to release information was later challenged. Thus, there is no evidence to contradict Holtzman's affidavit, which only suggests to the Court that DOE acted consistently with its policies, and that movant's claim has no merit.

This constitutes the Decision and Order of the Court.

Dated: April 19, 2007

ENTER:



J.S.C.
EMILY JANE GOODMAN

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