

**Setton-Levantrosser v Department of Educ. of
City of N.Y.**

2007 NY Slip Op 31797(U)

June 18, 2007

Supreme Court, New York County

Docket Number: 0106925/2004

Judge: Karen Smith

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

PRESENT: KAREN S. SMITH
Justice

PART 62

KETTY SETTON-LEVANTROSSER

INDEX NO. 106925/2004

- v -

MOTION DATE 05/03/07

DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK a/k/a
THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE
CITY OF NEW YORK, JOEL KLEIN, and the CITY OF NEW YORK

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

The following papers, numbered 1 to 4 were read on this petition pursuant to CPLR Article 78

Notice of Petition — Affidavits — Exhibits ...

PAPERS NUMBERED

1

Answer - Affidavits — Exhibits — Memorandum _____

2 - 3

Replying Affidavits — Memorandum _____

4

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this petition pursuant to CPLR Article 78 is decided in accordance with the attached memorandum decision, order and judgment.

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 41B).

Dated: 6/18/07

K.S.S.
Hon. Karen S. Smith, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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 62

-----X
KETTY SETTON-LEVANTROSSER,

Plaintiff,

-against-

Index No.: 106925/2004

Motion Seq.: 003

Motion Date: 05/03/2007

DEPARTMENT OF EDUCATION OF THE CITY OF NEW
YORK a/k/a, THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,
JOEL KLEIN, Chancellor, and the CITY OF NEW YORK,

**DECISION, ORDER
AND JUDGMENT**

Defendants.
-----X

PRESENT: KAREN S. SMITH, J.S.C.:

This petition, pursuant to CPLR Article 78, is denied and the instant proceeding is dismissed.

Petitioner, Ketty Setton-Lavantrosser (hereafter referred to as "Levantrosser"), was a probationary Assistant Principal at Chelsea Vocation High School. Prior to the expiration of the probationary period of Levantrosser's service, the New York City Board of Education terminated Levantrosser. Levantrosser commenced this CPLR Article 78 proceeding to review of the termination of her services and to review two unsatisfactory performance ratings she received from her supervising principal prior to the termination of her services. Levantrosser argues that her termination and the unsatisfactory ratings were arbitrary, capricious and in bad faith.

The respondents have answered the petition and submitted numerous items of correspondence as well as relevant evaluations of Levantrosser which the respondents contend constitutes the record considered in connection with Levantrosser's negative performance ratings

[* 3]

and her termination from employment.

In reply, Levantrosser has presented a letter of recommendation and a recommendation form submitted on her behalf by her supervising principal to another potential employer, the New Paltz Central School District, in or around June of 2003. Levantrosser contends that these recommendations were written at by her supervising principal at the same time as he was writing unsatisfactory internal performance evaluations for Levantrosser. She further contends that the external recommendations constitute inconsistent statements which demonstrate the respondents' bad faith in confirming Levantrosser's negative performance ratings and terminating her employment. Levantrosser also contends that these documents were part of the record considered by the respondents in Levantrosser's appeal of her negative performance ratings and her termination from employment with the New York City Board of Education.

All parties are currently satisfied that the applicable administrative appeals process has been exhausted and this matter is ripe for consideration by the court.

It is well settled that the Board of Education has the authority and right to terminate probationary staff members, with or without reason, and that the burden then rests upon the terminated staff member to establish; "... that the termination was for a constitutionally impermissible purpose, violative of a statute, or done in bad faith" (*Frasier v Board of Education of the City School District of the City of New York et al*, 71 NY2d 763, 765 [1988] [internal citations omitted]).

In the instant matter, Levantrosser has not established a constitutionally impermissible purpose, a violation of statute or any bad faith on the part of the respondents. Assuming *arguendo* that the information provided by Levantrosser's supervising principal to another

[*4]

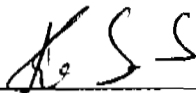
potential employer was contained in the administrative record relied upon by the respondents herein, it does not establish that the New York City Board of Education either confirmed Levantrosser's negative performance ratings or terminated her employment in bad faith. The New York City Board of Education didn't need any reason to discontinue Levantrosser's employment before she became a tenured assistant principal. Nevertheless, Levantrosser's personnel records gave the Board of Education many reasons, even without relying upon the two negative performance evaluations, to discontinue Levantrosser's employment. The apparent effort of Levantrosser's supervising principal to enable Levantrosser to obtain employment with a different school system before the New York City Board of Education terminated Levantrosser's employment in the New York City School System does not alter the propriety of the New York City Board of Education's determination. Accordingly, it is;

ORDERED, ADJUDGED AND DECREED that the instant petition is denied and this proceeding is dismissed.

The foregoing constitutes the decision, order and judgment of this court.

Dated: June 18, 2007

ENTER:



Hon. Karen S. Smith, J.S.C.