

Bull v Hanse

2007 NY Slip Op 32762(U)

September 6, 2007

Supreme Court, Greene County

Docket Number: 0020078/7110

Judge: Joseph C. Teresi

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SUPREME COURT
STATE OF NEW YORK

COUNTY OF GREENE

JOHN BULL, as Mayor of the Village of Coxsackie,

Petitioner,

-against-

DECISION and ORDER
INDEX NO.: 07-0871
RJI NO.: 19073079

STEPHEN HANSE, KENNETH MANNION, and
JOHN OLIVER, individually and as members of the
Board of Trustees of the Village of Coxsackie,

Respondents.

Supreme Court Albany County Special Term August 2, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioner, John Bull in his capacity of Mayor of the Village of Coxsackie, brings this Article 78 proceedings challenging the actions of Respondents, individual members of the Board of Trustees of the Village of Coxsackie. Respondents oppose the petition.

After fully reviewing the record, this Court dismisses the petition as moot.

Petitioner contends that Respondents have acted in violation of General Municipal Law § 51, Public Officer's Law § 107, Village Law §§ 4-400, 8-804, Civil Service Law § 75, the terms of the Collective Bargaining Agreement affective June 1, 2006 until May 31, 2009 between the Village of Coxsackie and Local 2790-C, et al and the Code of Ethics set forth in Code of the Village of Coxsackie, Article 8 § 8-3(E) by terminating the employment of former Police Chief Robert Helwig during an executive session of the Board of Trustees on May 14, 2007.

Specifically, Petitioner contends that Respondents, as individual members of the Board, acted to terminate Robert Helwig as Police Chief without observing proper due process considerations and possibly as an act of political retribution. Respondents contend that Robert Helwig was a provisional employee and they followed the proper procedure to end his provisional appointment.

Thereafter, at a Special Board Meeting on May 29, 2007, Respondents, as members of the Board, voted to appoint Don Meier to the position of Police Chief. Petitioner contends that Respondent, Stephen Hanse, committed an ethical violation by not disclosing that Don Meier is his father-in-law and by voting in the matter of Don Meier's appointment. Both sides acknowledge that without Stephen Hanse's vote, the Board would have been gridlocked and the appointment would not have prevailed.

Petitioner contends that Respondent's actions have interfered with his ability to conduct business as the Mayor of Village of Coxsackie and has made the Village of Coxsackie vulnerable to civil litigation. This Court agrees that the Petition raises interesting and relevant questions of law. The Petition, however, was subsequently rendered moot when, on July 13, 2007, former Police Chief Robert Helwig penned a letter tendering his complete resignation from the position

of Chief of Police effective May 14, 2007. Since Robert Helwig effectively resigned from the position of Police Chief, the question regarding the legality of his termination becomes academic, and thus outside of this Court's jurisdiction.

“It is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal. This principle, which forbids courts to pass on academic, hypothetical, moot, or otherwise abstract questions, is founded both in constitutional separation-of-powers doctrine, and in methodological strictures which inhere in the decisional process of a common-law judiciary.”
Hearst Corp. v. Clyne, 50 N.Y.2d 707, 713-714 (1980).

This Court acknowledges that this does not resolve the underlying issues, but those issues, if Petitioner were to prevail, no longer have a practical relief in the form of the reappointing Robert Helwig. Petitioner's argument that, if nothing else, Public Officer's Law § 107 allows the recovery of attorney's fees by an aggrieved party cannot redeem this petition, because no motion for attorney's fees or costs is before the Court in this proceeding.

Accordingly, the Petition is dismissed.

All papers, including this Decision and Order are being returned to the attorney for the Respondent. The signing of this Decision and Order shall not constitute entry or filing under

CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: September 6, 2007
Albany, New York



JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Petitioner's Order to Show Cause, dated June 18, 2007 with Attached Exhibits A-E.
2. Respondent's Answer, dated July 6, 2007 with Attached Exhibits A-F and Attached Affidavits by Hanse and Mannion.
3. Petitioner's Reply, dated July 16, 2007.
4. Respondent's Affidavit, dated August 2, 2007.
5. Petitioner's Reply by Letter, dated August 15, 2007