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

PRESENT: Smith Justice

PART 62

JOY HOCHSTADT

- v -

CITY OF NY

INDEX NO. 106430/07

MOTION DATE 11/1/07

MOTION SEQ. NO. 6

MOTION CAL. NO.

The following papers, numbered 1 to 4 were read on this motion to/for various interim relief

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits Memorandum	2
Replying Affidavits Memorandum	3-4

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion by plaintiff for various interim relief is denied in accordance with the annexed memorandum decision and order

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

Dated: 11/2/07

KSS

HON. KAREN SMITH J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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JOY HOCHSTADT,

Plaintiff,

-against-

CITY OF NEW YORK, DEPARTMENT OF EDUCATION, JOEL KLEIN, CHANCELLOR; EMPOWERMENT SCHOOLS, ERIC NADELSTERN, CEO; REGIONS 9/10 OPERATIONS CENTER PHIL CROWE,

Defendants.

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Index no.: 106430/2007
Motion seq.: 006
Motion date: 11/01/2007

DECISION AND ORDER

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

Plaintiff's motion seeking; 1) leave to amend her amended complaint, 2) to allow the information she has presented with this Order to Show Cause to be considered as part of her opposition to defendants' pending motion to dismiss the amended complaint and 3) staying a currently pending arbitration proceeding pursuant to the New York State Education Law §3020-a is denied in its entirety.

Plaintiff (hereafter referred to as "Hochstadt") brought this action against her employer by the filing of a Summons and Complaint on May 11, 2007 contending her employer unlawfully discriminated against her because of her disability by denying her the use of a service dog while engaged in her employment. Defendants moved to dismiss Hochstadt's original complaint but withdrew the motion after Hochstadt filed her amended complaint on July 12, 2007[1]. Thereafter, Defendants moved to dismiss Hochstadt's amended complaint.

Hochstadt now moves for an order; 1) granting her leave to amend her amended complaint "...to include documents, events, acts .... which ... occurred between August 28, 2007

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[1] There is no indication in the record of how the original complaint was amended. Additionally, neither party has attached the original complaint or the amended complaint to its current papers.

and September 26, 2007...", 2) declaring that the information set forth in the instant Order to Show Cause will be considered as part of Hochstadt's opposition to the defendants' pending motion to dismiss Hochstadt's amended complaint and 3) staying arbitration proceedings pending pursuant to New York State Education Law §3020-a.

First of all, Hochstadt has failed to submit a copy of the amended complaint she now seeks to amend with her instant motion papers. Nor did she submit a copy of her proposed second amended complaint until she submitted her reply papers. These failures alone constitute sufficient grounds to deny Hochstadt's motion. However, the proposed "Re-Amended Complaint" is 84 pages long, contains nine unnumbered paragraphs and 245 numbered paragraphs. It does not comply with the requirements of CPLR §3013 and §3014 which require a complaint to set forth the material elements of each cause of action asserted and contain sufficiently particular statements to put the parties and the court on notice of the transactions and occurrences the plaintiff intends to prove. Nor does Hochstadt's proposed "Re-Amended Complaint" consist of plain and concise statements in consecutively numbered paragraphs with each paragraph containing, as far as practicable, a single allegation. Instead, Hochstadt's proposed "Re-Amended Complaint" is so verbose, convoluted and confusing that it is difficult to discern any causes of action within its ramblings. Although the complaint ofter repeats that the defendants have violated the New York State Civil Rights Law and New York State Executive Law as well as the Federal Americans with Disabilities Act, no attempt is made to lay out the elements of any causes of action pursuant to those laws or appropriate factual allegations relevant thereto[2]. Under similar circumstances, where a complaint was found to be; "... prolix, confusing

[2] The court also notes that the complaint seeks, *inter alia*, punitive damages against two individuals who are not named defendants and millions of dollars to establish certain specified educational programs in the New York City School System.

and difficult to answer ..." and its "... paragraphs contain a confusing succession of discrete facts, conclusions, comments ... and considerable other subsidiary evidentiary matter whose relevance to a particular cause of action is frequently obscure ..." the Appellate Division, First Department has held; "Defendants should not be required to answer such a jumble" (*Rappaport et al. v Diamond Dealers Club, Inc.* 95 AD2d 743 [1st Dept. 1983]). Therefore, Hochstadt's instant motion to re-amend her complaint is denied.

The second branch of Hochstadt's motion requests that the court consider the information Hochstadt has submitted with the instant motion in opposition to the defendants' pending motion to dismiss Hochstadt's first amended complaint. CPLR §2214 establishes that papers to be considered on a motion are to be served with the moving papers, opposition or reply. More specifically, with respect to any given motion, CPLR §2214(c) provides, in the absence of a showing of good cause, the court shall only consider papers served upon the parties and furnished to the court in connection with the motion. As Hochstadt has not offered any good cause to support her request that the court take the extraordinary measure of considering information not served and filed with the separately pending motion papers.

The third branch of Hochstadt's motion seeks a stay of arbitration proceedings pending pursuant to New York State Education Law §3020-a ("3020-a proceedings"). However, the motion papers contain no indication of when the arbitration proceedings were commenced, by whom or under what circumstances. It is apparent that the 3020-a proceedings involve disciplinary charges against Hochstadt. However, a review of Education Law §3020 establishes that the provisions of §3020-a may be supplanted by terms agreed upon in a collective bargaining agreement. If Hochstadt's 3020-a proceedings are governed by the provisions of a collective bargaining agreement, CPLR Article 75 provides the mechanism, grounds and time limits for an

application to stay the arbitration proceedings. The instant litigation is not the proper means for Hochstadt to make such an application. On the other hand, if no collective bargaining agreement has altered the procedures of §3020-a of the Education Law, the statutory provisions govern. Pursuant to §3020-a of the Education Law, it is the aggrieved employee who institutes arbitration proceedings by requesting a hearing pursuant to Education Law §3020-a (2)(c). Under these circumstances, Hochstadt, as the aggrieved employee, instituted the arbitration hearing of her disciplinary charges and she may not now forum shop by seeking a stay of the proceedings she instituted. Moreover; "...courts have long since abandoned their distrust and hostility toward arbitration as an alternative means for the resolution of legal disputes, in favor of a policy supporting arbitration and discouraging judicial interference with either the process or its outcome ..." (*In Re New York City Transit Authority v Transit Workers Union of America, Local 100, AFL-CIO, et al.* 99 NY2d 1 [2002], internal citations omitted). The conclusory, speculative and unsupported allegations contained in Hochstadt's affidavit in support of the instant motion do not provide a compelling reason for this court to interfere in the arbitration process prescribed by the Education Law. Therefore, this branch of Hochstadt's motion must also be denied. Accordingly, it is;

ORDERED that Hochstadt's instant motion is denied in its entirety.

The foregoing constitutes the decision and order of this court.

Dated: November 2, 2007

ENTER:

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