

Matter of Lipsman v Anderson
2009 NY Slip Op 32376(U)
October 15, 2009
Supreme Court, New York County
Docket Number: 0109492/2009
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SOLOMON
Justice

PART 55

LIPSMAN, DANIEL JEFF,

INDEX NO. 109492/09

MOTION DATE 8/21/09

- v -
MICHELLE ANDERSON

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to 18 were read on this motion to/for Art 78 relief

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1-3
4-17
18

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered, ^{ad judge} that this motion petition is decided in accordance with the annexed 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 141B).

Dated: 10-15-09

JANE S. SOLOMON 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 REASONS:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X

In the Matter of the Application of
DANIEL JEAN LIPSMAN,

Index No. 109492/09

Petitioner,

DECISION, ORDER AND
JUDGMENT

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

MICHELLE ANDERSON, in her capacity
as CUNY Law School Dean,

Respondent.

UNFILED JUDGMENT

**This judgment has not been entered by the County Clerk
and notice of entry cannot be served hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).**

-----X
JANE SOLOMON, J.S.C.:

Petitioner Daniel Jean Lipsman brings this Article 78 proceeding pro se to annul a June 22, 2009 decision barring him from entering onto the premises of the City University of New York (CUNY) Law School (the School), located in Flushing, New York, without the prior authorization of respondent Michelle Anderson, the Dean of the School. Petitioner is the father of a 21-year-old second-year student at the School. The petition contends that respondent's decision is arbitrary, and that it constitutes an abuse of her authority.

Respondent's authority to bar individuals from the School derives from Education Law § 6203, which provides that "[t]he city university shall have the care, custody, control, and management of the lands, grounds, buildings, facilities and equipment used for the purposes of the educational units of the city university ... ," and from the Rules and Regulations for the Maintenance of the Public Order Pursuant to Article 129-A of the

Education Law, which the Board of Trustees of the City University of New York adopted, pursuant to Education Law § 6430 (1) (Rules). Paragraph 1 of the Rules notes that the Bylaws of the Board of Trustees of CUNY provide that the Dean of each unit of CUNY shall "c. [e]xercise general superintendence over the concerns, officers, employees, and students of his/her educational unit." Anderson Aff., Exh. A, at 89. Rule 2 provides, among other things, that "[i]ndividuals are liable for failure to comply with lawful directions issued by representatives of the University/college when they are acting in their official capacities." *Id.* at 89. Rule 6 provides, among other things, that "[a]ction may be taken against any and all persons ... whose presence ... interferes with the institution's educational process or facilities" *Id.* at 89-90. Among the sanctions that may be imposed for violation of the Rules are complaints to civil authorities and ejection. In addition, the School's Student Handbook (Handbook) provides that:

All visitors to the School are expected to comport themselves in a manner consistent with an academic environment. Guests must sign in at the front Security Desk and show identification to the officer on duty.

...
Guests must generally be in the same area as the host student Guests are subject to the lawful instructions of all members of the Security, as well as the Administrative staff.

Koster Aff., Exh. C, at 51.

An order, such as that at issue here, is "lawful" when it has a legitimate basis and does not impede the exercise of a constitutional or statutory right. See *People v Leonard*, 62 NY2d

404 (1984); *People v Cusamano*, 22 AD3d 427 (1st Dept 2005). So long as Dean Anderson's June 22, 2009 decision has a rational basis, it must be upheld, and the court may not substitute its judgment for that of the Dean. See *Matter of Tolliver v Kelly*, 41 AD3d 156 (1st Dept 2007), citing *Matter of Pell v Board of Education of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 (1974).

It is undisputed that, on March 7, 2008, at an "Open House," arranged by the School for students who had been admitted for the following fall, petitioner, but not his daughter, attended both a model law school class, and a subsequent discussion, both of which were intended for incoming students. In their affidavits in opposition to the petition, David Nadvorney, the Director of the Irene Diamond Professional Skills Center at the School, who had conducted the sample class, and Yvonne Cherena-Pacheco, the School's Director of Admissions, who had conducted the subsequent discussion, both state that petitioner dominated both events, keeping the admitted students from speaking, or from being heard. There are conspicuous signs at both entrances to the School, notifying visitors that they need to sign in and out. While the parties dispute how often petitioner visited the School after his daughter had become a law student, and while petitioner contends that, on some of his visits, he did not sign in because the guard on duty waved him in, it is undisputed that, at other times, petitioner also did not sign in. However, the order that is at issue here arose

primarily from the outgrowth of petitioner's June 16, 2009 visit, when he did sign in, specifying his destination as Room 335. Lea Bernstein, who is employed at the School as a support assistant to faculty members, states in her affidavit that Room 335-H is her office, and that petitioner did not have an appointment with her on that date. It appears that petitioner intended to pick up from Ms. Bernstein a legal brief that his daughter had written and that had already been graded. Steve Katz, the School's Director of Security, states in his affidavit that his attention had been drawn to petitioner on three previous occasions, including one when petitioner called the School's Director of Student Affairs, and requested the names of those students who were members of a student organization which had put up posters that petitioner found objectionable, and that when he saw petitioner enter the School elevator on June 16th, he went to the security desk, looked at the sign-in sheet, and proceeded to the third floor. The parties dispute how petitioner had identified himself to the officer at the security desk, and they dispute what petitioner and Mr. Katz said to each other, when they met on the third floor. It is undisputed, however, that Mr. Katz directed petitioner to accompany him to his office, asked him to wait on a chair outside that office, and called the Dean's counsel, Professor Franklin Siegel, who arrived within a minute or two. Petitioner demanded the name of Mr. Katz's superior, which he was told, and stated that one of the reasons why he had come to the School was to get copies of his daughter's

transcript. Professor Siegel told petitioner that transcripts were obtainable only by submission of a School form, copies of which he fetched for petitioner, and explained both that the forms would have to be signed by petitioner's daughter, and that the processing of transcript requests takes several days.

Petitioner left the School and, that same day, he wrote to Dean Gregory Koster, who, as Associate Dean for Administration and Finance, supervises the School's Security Department and is Mr. Katz's direct supervisor. Petitioner's letter, in which he complains that Mr. Katz treated him abusively by intercepting him and directing him to the security office, states that, when there are:

administrative or bureaucratic matters that need attending to--such as, but not limited to, things like registration, financial aid, bursar matters, going for a transcript, retrieving some written work my daughter's done--I normally go and take care of it.

Petitioner's letter continues as follows:

I am respectfully asking that you admonish Mr. Katz ... and, specifically, that he be advised to cease and desist from challenging or harassing me any further--absent evidence that I've done something wrong.

...
If this matter is not resolved, with a written response to me, indicating I will NOT be subject to such abuse again, I think that I can predict a future scenario. It goes like this: ... I seek to go to an office on legitimate business. Mr Katz gets wind of my presence and seeks to stop and/or cross-examine me. I refuse to submit to his interrogation and proceed to go about my business--without his "escort." He proceeds to try to stop me. He can press a criminal charge if he is so inclined.

...

I am not seeking to be belligerent or confrontational with this letter--only to assert what is legitimately my right. If that causes a problem for anybody, that isn't my concern.

Copies of that letter, as well as of the other letters quoted in this opinion, are attached to the petition. On June 18th, Mr. Katz wrote to petitioner, at Dean Koster's request. That letter stated that any visits by petitioner would need to comply with the building access procedures that Mr. Katz had already described to petitioner, including identifying all his destinations and waiting at the Security Desk until he was authorized to proceed. The letter also stated that, in any event, petitioner would thenceforth not be permitted to act on behalf of his daughter at the School.

On June 22, 2009, Dean Koster wrote to petitioner on behalf of Dean Anderson and himself, noting, among other things, that petitioner's June 16th letter expressly stated that petitioner intended to confront School staff who were enforcing the School's building rules, and informing petitioner that he would thenceforth be barred from the School's building and grounds, absent express authorization for his presence from Dean Anderson.

In response, petitioner wrote to Joan Waters, Esq., Associate Counsel at the CUNY Office of General Counsel, requesting that she order Dean Anderson, Messrs. Koster and Katz, and other School officials

to CEASE and DESIST from interfering, or threatening to interfere with, my right of access to [the School], with or without my daughter ...

UNLESS I have committed or threatened to commit a criminal act.

In this letter, petitioner reiterated his intention to "enter the building when I deem it appropriate," and again predicted an "ensuing confrontation wherein I seek to enforce my lawful rights." Jane M. Sovern, Deputy General Counsel of CUNY, wrote back that her office declined to intervene in the matter, and that it had forwarded petitioner's letter to the appropriate authorities at the School.

While the School is public property, it is not, as a general matter, open to the public at large, and visitors are subject to limitations on their movement. Petitioner, who is neither a student at, nor an employee of the School, has no greater rights than any other stranger to the School. Rules governing the access that members of the general public may have to the School's building serve a legitimate governmental purpose. Petitioner does not contend that the pertinent rules of the School invidiously discriminate against members of a class, or that they impede the exercise of any constitutional or statutory right. His claims of an unfettered right to visit the School and to go about what he considers his business, without his movements being monitored or constrained, and his stated intention of disobeying directives of the Director of Security, simply because petitioner does not consider such directives to be lawful, insofar as they hinder his free movement in the School, are a rational basis for Dean Anderson's decision. The School is not required to allow petitioner to enter upon its premisses so as to

act in such a way as to provoke his own arrest.

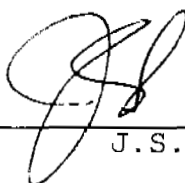
Moreover, even had petitioner consistently complied with the School's security provisions as to signing in and out, and even had he not stated that he would refuse to comply with any directions from Mr. Katz, to the very degree that petitioner succeeded in fulfilling his stated purpose in visiting the School, to wit, to perform certain administrative tasks on his daughter's behalf, his visits would necessarily violate the Handbook rule that a guest must remain in the same area of the School as the student who invited him or her. Petitioner has not sought to accompany his daughter to one or another School event, but on the contrary, to substitute himself for her with regard to certain tasks.

Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated: October 15, 2009

ENTER:



J.S.C.

JANE S. SOLOMON

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 141B).