

Matter of Alonso v Douglas

2009 NY Slip Op 33067(U)

November 6, 2009

Supreme Court, New York County

Docket Number: 115443/2009

Judge: Alice Schlesinger

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

PRESENT: S ALICE SCHLESINGER
SCHLESINGER
Justice

LA PART 16
PART 16

SMOKE, SKYLER

INDEX NO. 115443/09

- v -
DONALD DOUGLAS,
ET AL

MOTION DATE _____

MOTION SEQ. NO. 01

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~~ Article 78 proceeding is determined on an interim basis in accordance with the accompanying memorandum decision.

FILED
NOV 16 2009
NEW YORK
COUNTY CLERK'S OFFICE

NOV 06 2009

Dated: November 6, 2009

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

-----X
In the Matter of the Application of
CARMEN ALONSO, as temporary guardian of
SKYLER SMOKE,

Index No. 115443/2009
Mot. Seq. 001

Petitioner,

for a judgment pursuant to CPLR Article 78,

-against -

DONALD DOUGLAS and PUBLIC SCHOOL
ATHLETIC LEAGUE,

Respondents
-----X

SCHLESINGER, J:

FILED
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This proceeding was commenced on behalf of Skyler Smoke, a sophomore at a New York City public high school in the Bronx known as Lehman College High School of American Studies. Apparently, Skyler is not only a top student academically, but he also is an excellent football player. Skyler very much wants to play football with the Harlem Hellfighter's, a high school football team, but he was found ineligible to play because his school is located in the Bronx and PSAL claims that the only students who are eligible to play are those students who attend school in Manhattan. It is the location of the school attended, rather than the residence of the student, which is the key to eligibility, PSAL says.

Skyler commenced this proceeding by Order to Show Cause seeking immediate relief. He asserts that a very important football game is scheduled for this Saturday, November 7, 2009, where football scouts will be in attendance to consider high school athletes for college scholarships. He has therefore asked this Court to order PSAL to allow him to play Saturday's game while the issues in the case are being considered by the Court.

PSAL vigorously opposes Skyler's request. In addition to raising some procedural errors, some of which have been corrected at this point, PSAL insists that they have properly enforced their rules and cannot make any exception to the rules for Skyler. According to PSAL, the rule is as stated above: only students who attend public high schools in Manhattan are eligible to play on the Harlem Hellfighter's. While PSAL cannot point to any explicit rule in writing, it has offered two affidavits from Donald Douglas explaining the history of the Harlem Hellfighter's and the implicit rule limiting participation to students in Manhattan schools.

Donald Douglas is the Executive Director of the Public Schools Athletic League (PSAL) of the New York City Department of Education. Apparently, the practice in all five boroughs in New York City had long been that a student could only participate in the football team hosted by his own school. If the student's school did not field a team, then the student could not play football. This arrangement apparently presented a particular problem in Manhattan; because so few Manhattan schools fielded football teams, many students were unable to play the sport. To address that problem, Coach Duke Ferguson, with the assistance of a football parent Assemblyman Keith Wright, petitioned Department of Education Chancellor Joel Klein to make an exception to the rule. The exception was granted, and the Harlem Hellfighter's team became a recognized New York City public high school team.

The difficulty is that there is very little, if anything, in writing explaining the eligibility requirements for the team. The only thing we have is Assemblyman Wright's September 14, 2003 letter request endorsed "OK" by Chancellor Joel Klein. The letter talks about the creation of the team to serve the needs of three high schools in the Harlem area of Manhattan. No mention is made of any other school or any other borough.

PSAL states that the history of the Hellfighter's and the language in the letter imply that eligibility is limited to students of Manhattan schools. At oral argument, Coach Ferguson indicated that in prior years, students from other boroughs also played on the team. At the Court's request, PSAL did a further investigation and confirmed Coach Ferguson's statement. According to the Douglas affidavit dated November 6, 2009, during the 2004-2005 season, 5 students from non-Manhattan high schools played on the team; in 2005-2006, the number was zero; in 2006-2007 the number was about 3; in 2007-2008, the number was about 2. In the 2008-2009 season, the Hellfighter's did not participate because they were unable to obtain a host school. However, for this season, 2009-2010, they were able to establish a team.

According to Douglas, those non-Manhattan students who did play in the past were not then eligible to play, but they played because the Athletic Director for the Harlem Hellfighter's host school was in charge of the roster and he did not enforce the eligibility rules. Beginning in 2009, however, PSAL took over responsibility for the teams, and it is monitoring the rosters and strictly enforcing the rules. PSAL asserts that strict enforcement is necessary to ensure the health and safety of all students participating.

Sports is an important part of the lives and development of many of our students in this City. Unfortunately, however, the City of New York, for a variety reasons, cannot provide to all its students the opportunity to play the sport they choose, and this Court cannot compel PSAL to allow Skyler to play this Saturday's game. To grant Skyler's request, this Court would need to find a likelihood of success on the merits, irreparable injury to Skyler if he is not allowed to play, and a balancing of the equities in his favor. On the first point, this Court cannot find at this point based on the evidence presented that the

rules and practices developed by PSAL to protect its students violate some law or for some other reason should not be enforced. Nor will Skyler be irreparably injured if he cannot play on Saturday; he has two years to go before college and will have other opportunities to seek out scholarships. As to the equities, they balance fairly evenly. Skyler's desire to play high school football is important, but so is the right and responsibility of PSAL to develop rules for its athletic programs for the good of all students. Therefore, the Court denies Skyler's request to play in the game this Saturday over the objection of PSAL.

However, all hope is not lost. PSAL has indicated that Skyler can appeal the denial of eligibility administratively. He should do that immediately. Perhaps through the appeals process, something can be worked out so Skyler can play with the Hellfighter's in the future. This case will therefore be held in abeyance pending the administrative appeal process, which this Court has asked counsel for PSAL to expedite. Once Skyler has received a decision on appeal, he should forward a copy to this Court so any further action that is needed can be considered.

This constitutes the interim decision of this Court.

Dated: November 6, 2009

NOV 06 2009



ALICE SCHLESINGER, J.S.C.

FILED
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