

**Bryant v New York City Dept. of Educ.**

2010 NY Slip Op 32820(U)

September 29, 2010

Sup Ct, NY County

Docket Number: 113361/09

Judge: Emily Jane Goodman

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

EMILY JANE GOODMAN

PRESENT

PART 17

Index Number : 113361/2009

BRYANT, CHARLES

VS.

NYC DEPARTMENT OF EDUCATION

SEQUENCE NUMBER : # 001

ARTICLE 78

Justice

INDEX NO.

113361-09

MOTION DATE

MOTION SEQ. NO.

#001

MOTION CAL. NO.

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~~ PETITION

DECIDED PER ATTACHED DECISION

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

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:

9/29/10

[Signature]

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NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK I.A.S. PART 17

-----X  
CHARLES BRYANT,

Petitioner,

-against-

Index No.: 113361/09

NEW YORK CITY DEPARTMENT OF  
EDUCATION,

-----X  
EMILY JANE GOODMAN, J.S.C.:

Petitioner, Charles Bryant, (Bryant/Petitioner/Teacher) brings this Article 78 proceeding against the NYC Department of Education, (Respondent) which has terminated Petitioner's employment as a teacher and barred him from future employment. He was notified by letter that "your SS No. will be placed on the Department's ineligible list."

Bryant was employed by Respondent for more than 20 years at the school for teenaged inmates at Riker's Island, i.e., The Anna M. Kross Center (C-95) Mental Observation Unit as a "crisis management paraprofessional." In 2008 he acquired teaching credentials and was assigned to PS35M on Eighth Avenue in Manhattan, a school made up of students with severe learning disabilities, emotional and psychiatric problems and those released from jail. Mr. Bryant's experience at Riker's Island had prepared him to work productively with this population, but notwithstanding his two

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decades plus as a paraprofessional for a total of 23 years with the Department of Education, Bryant was still within his probationary period as a teacher when the events leading to these proceedings took place.

According to the verified petition, on October 2, 2008, "Student A," a 16-year old tenth grader, whose actual name is Charles Cherry, hit Mr. Bryant on his head and uttered a vulgarity. After reporting the incident to the Principal, Bryant left the building for his lunch break. (He is charged with not signing out.) While no finding was made as to how they met, Bryant told Cherry to report to the Principal. Bryant alleges that Cherry then accosted him again, leading to a scuffle. NYPD appeared at the time and place of occurrence, transported both men to the 18<sup>th</sup> Pct. and prepared a police report in which Bryant is described as the victim. No arrests were made and Cherry left with his mother who soon said he was "fine." Subsequently Cherry told the Principal that Bryant had assaulted him, after he, Cherry, had "slapped" Bryant on the back of his head. This allegation led to a corporal punishment inquiry by the Department of Education's Office of Special Investigation and the firing of Bryant.

Respondents claim, although they have adamantly refused to allow the court an in camera review of Investigation notes or documents, that Cherry and three other students were eventually interviewed (not necessarily in person), as were the Principal (not a witness to any of the underlying events) and Mr. Bryant. Cherry's statement, according to Respondent's final investigation report, accused Mr. Bryant of poking and punching him

in the eye. Three students, identified only as B, C, and D, gave statements, not to the police, but to the investigator; they had several days in which to compare their versions of events. The Principal's statement was that Cherry, 16, and six feet tall was crying and bleeding. However, no medical attention was sought and no mention of this is in the NYPD report prepared by officers on the scene, or in the friends' statements. Moreover, the Principal does not remember what Cherry told her had happened. There is no indication that any statements are under oath. The NYPD report was omitted from the Respondent's investigative report.

Although Petitioner had spent over 20 years at the Riker's Island inmate school, he was still a probationary teacher. "A probationary employee may be discharged without a hearing and without a statement of reasons so long as the act is done in good faith and not for constitutionally impermissible purposes (Matter of Rainey, 111 AD2d 616 [1<sup>st</sup> Dept 1985] [internal citations omitted]). The Court is mindful that it cannot substitute its judgment for that of the agency. However, the Court cannot be expected to rubber stamp administrative decisions (see Matter of McDougall, 905 NYS2d 262 [2<sup>nd</sup> Dept 2010]).

Still, it would more than surprise a reasonable person that this 16 year old, 6' tall young man, took a punch in the eye, that he was bleeding and crying in the presence of his peers, and that officers of the NYPD noted no injury. Yet the Office of Special Investigation relies on the statements of the Principal who was not an eye witness and

who cannot remember what Cherry told her. No specific findings were made as to the credibility of the young men though clearly their statements supporting their friend were deemed more credible than those of a licensed school teacher. (As an aside, the Court has been informed at oral argument that Cherry is on remand at Riker's Island, held without bail on felony charges of possession of a weapon and robbery for which a warrant had been issued.)

Student "A," Cherry, was issued a citation for truancy while at 18<sup>th</sup> Precinct. He pressed no charges against Mr. Bryant nor did his mother who arrived to pick him up and soon said he was "fine." There is a reference in the investigator's report to some claimed redness in his eye, but teenagers often have red eyes for entirely different reasons, especially when they have absconded from the school house. (No search of Cherry was carried out by the NYPD.) Mr. Bryant, however, filed a complaint for harassment against Cherry. Captain Kelly concluded that Mr. Bryant had committed no crime but called the dynamic "unprofessional" and concluded furthermore that the student's story "did not hold up."

It is extraordinary that the investigator could base his findings on the Principal's statement when, according to his own report, she was "unsure" of what Cherry said. Such uncertainty as the basis for ending a man's productive life shocks the conscience. Petitioner alleges, and it is not disputed by Respondent, that "[d]uring the interview process by the OSI Investigator, he became hostile [to Bryant] and started out by stating, *I*

do not believe you.” Petitioner further states that the Investigator “got up and walked out of the room several times, once for twenty minutes. The entire interview was short and he continued to insult the Petitioner until the conclusion of the interview.” Since Respondent does not dispute these allegations, they are deemed true for purposes of this proceeding.

Added together, all of the foregoing leads the Court to question whether this “investigation” was in good faith. While Respondent correctly asserts that Petitioner’s counsel failed to raise this argument until his reply, the Court has accepted the tardy argument in the interest of justice and Respondent has had the opportunity to rebut it. The stakes here are so great, depriving a man of his profession and ability to work at it - - or perhaps anything else - - that the Court questions the investigator’s procedures, and whether the determination - - which was adopted by his superiors - - was in good faith. The Court concludes that it was not.

ADJUDGED, Respondent’s decision to terminate Petitioner’s teaching license /certificate is vacated and the matter is remanded for a new investigation and hearing under the auspices of a different investigator nunc pro tunc.

**This constitutes the Decision and Order of the Court.**

Dated: September 29, 2010

ENTER:



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**EMILY JANE GOODMAN**