

New York City Campaign Fin. Bd. v Mahadeo

2010 NY Slip Op 33155(U)

November 4, 2010

Supreme Court, New York County

Docket Number: 401380/09

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE

PART 10

Justice

NYC Campaign
Plaintiff(s)

INDEX NO.

401380/09

- v -

Mahadeo

MOTION DATE

MOTION SEQ. NO.

003

MOTION CAL. NO.

Defendant(s)

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

FILED

NOV 09 2010

NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

Dated: Nov 4 2010

[Signature]
Hon. Judith J. Gische, 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 REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X
NEW YORK CITY CAMPAIGN FINANCE BOARD,

Plaintiff,

DECISION/ORDER

-against-

Index No. 401380/09
Seq No.: 003, 004

ROBBY MAHADEO, RAY L. TROTMAN as
Treasurer of DR. ROBBY FOR CITY
COUNCIL and DR. ROBBY FOR CITY COUNCIL,

Defendants.

-----X
Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of
this (these) motion(s):

Papers	Numbered
Motion Seq No. 003	
Pltff's n/m (3212) w/PH affid, MPG affirm (sep backs, exhs)	1, 2, 3, 4
Def's opp w/exhs	5
Pltff's reply	6
Def's sur-reply w/RLT affid, exhs	7
Motion Seq No. 004	
Def's OSC w/TRO, w/RM, RLT affids, exhs	8
Pltff's opp w/MPG affirm, exhs	9
Transcript of OA 7/15/10	10
Interim order 9/29/10	11
Complaint and Answer	12, 13

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NOV 09 2010
NEW YORK
COUNTY CLERK

-----X
Upon the foregoing papers, the court's decision and order is as follows:

GISCHE, J.:

This is an action by plaintiffs to recover public matching campaign funds from the
defendants and other relief. The court now has before it two motions which are

consolidated for disposition in this decision and order.

In motion sequence number 003, plaintiff New York City Campaign Finance Board (the Board) moves, pursuant to CPLR 3212, for summary judgment on its complaint, which seeks an order directing defendants to pay \$19,952 in overdue penalties. Plaintiff also asks the court to dismiss defendants' counterclaims on the ground that those counterclaims are barred by the statute of limitations.

In motion sequence 004, defendants Robby Mahadeo (Mahadeo), Ray L. Trotman as treasurer of Dr. Robby for City Council (Trotman) and Dr. Robby for City Council (the Committee) (collectively the Defendants), move for an order nullifying the Board's decision to impose penalties against the Defendants and compelling the Board to pay the Committee \$82,500 in public matching funds.

BACKGROUND

Defendant Mahadeo was a candidate in the 2005 election for City Council from District 28 in Queens County. In June 2005, Mahadeo joined the New York City Campaign Finance Program which is administered by the Board. A candidate for public office who wishes to receive public matching funds must enter into an agreement with the Board wherein he/she consents to abide by the requirements of the Campaign Finance Act. Pursuant to those requirements a candidate must, inter alia: (1) accept a cap on the total amount of money he/she may spend to promote his/her nomination or election; (2) file periodic disclosure statements reporting contributions, expenditures and other transactions; and (3) respond to the Board's requests for information and documentation (see, Administrative Code of the City of New York, §§ 3-701, et seq [the

* 4]
Act]).

Mahadeo endorsed and filed a Candidate Certification in which he agreed to abide by all of the requirements of the Campaign Finance Act (the Act) and rules, whether or not he met the threshold eligibility for public funds. Mahadeo also agreed that, in the event that he did not comply with the Act and rules, he, Trotman and the Committee would be jointly and severally liable for civil penalties assessed in accordance with section 3-711 of the Act and other applicable laws and rules (Horowitz Aff., Ex. B).

PUBLIC MATCHING FUNDS AND PENALTIES

According to the Board, the defendants did not qualify for the payment of public matching funds because they did not report a sufficient number of valid contributions from district residents (Sur-Reply, Exs., A and B).

In addition, during a routine post election audit, the Board determined that the defendants had exceeded the primary election expenditure limit and that they had committed several other violations of the Act, including, but not limited to exceeding the expenditure limit, accepting over-the-limit contributions from Mahadeo and other entities and failing to timely file required disclosure statements (September 14, 2007 Notice, Horowitz Aff., Ex. E).

Defendants disputed the Board's findings (Horowitz Aff., Ex. F) but, on October 18, 2007, in the Final Board Determination, it assessed a total of \$19,592 in penalties against the Defendants for the violations alleged in the September 14, 2007 Notice (Horowitz Aff., Ex.H). Defendants were also notified of the penalties in the final audit

report (FAR) issued to Defendants on November 5, 2007 (Horowitz Aff., Ex. I). Both the September 14, 2007 Notice and FAR demanded payment no later than December 5, 2007. To date, the Defendants have failed to remit the penalties to the Board, and the entire \$19,592 remains unpaid.

PRIOR PROCEEDINGS

In June 2009, the Board commenced this action to collect the \$19,592 in penalties from the Defendants, and in September 2009, it moved for summary judgment on the complaint. However, on November 24, 2007, Mahadeo filed and served an Article 78 petition against the Board in Queens County Supreme Court¹, and in February 2010, this court marked the Board's summary judgment motion off the calendar, pending resolution of the Queens litigation. On March 16, 2010, Justice Cullen of the Queens Supreme Court granted the Board's motion to dismiss the Article 78 petition on statute of limitations grounds, stating as follows:

"CPLR 217(1) provides that a proceeding against a body or officer must be commenced within four (4) months after the determination to be reviewed becomes final. In the instant matter, the Final Audit Report was issued on November 5, 2007. Accordingly, petitioner had until March 10, 2008 to commence an Article 78 proceeding.

While petitioner contends that this proceeding was commenced on March 12, 2008, it is noted that the papers filed consisted of an Order to Show Cause and Complaint and was [sic] filed on March 13, 2008. Said Order to Show Cause and Complaint were not properly designated as an Article 78 petition, and due to defects thereto was not signed by the court. Now, some eighteen months later petitioner

¹ *Robby Mahadeo v New York City Campaign Finance Board*, Index No. 6629/08 (Sup Ct, Queens County 2008)

[* 6] .

files a Notice of Petition and Petition commencing this Article 78 proceeding.

It is clear that petitioner has not commenced this action in a timely manner as prescribed by CPLR 217(1)."
(Griffin Aff., Ex. B at 2).

Following Justice Cullen's decision, the Board filed a motion to restore this motion for summary judgment to the calendar. The motion was granted on May 5, 2010 and the motion for summary judgment was restored to the calendar for consideration (Griffin Aff, Ex. C). Shortly thereafter, the court granted the Defendants' issued a temporary restraining order prohibiting the Board from collecting the assessed penalties from the Defendants, pending determination of these motions(Griffin Aff., Ex. D). The Board's summary judgment motion and Defendants' order to show cause have been consolidated for consideration and determination in this single decision.

DISCUSSION

In New York state, an agency's determination, including the assessment of a penalty, can only be challenged by means of timely-commenced Article 78 proceeding (CPLR 7801 et seq). In the Queens County Article 78 proceeding, Justice Cullen ruled that Defendants had until March 10, 2008 to challenge the Board's November 5, 2007 determination by filing an Article 78 petition; that the March 13, 2008 proceeding that Defendants filed was a nullity; and that the November 24, 2009 petition, filed more than eighteen months late, was not timely. Accordingly, Justice Cullen granted the Board's motion to dismiss the Article 78 petition on statute of limitations grounds finding that the Article 78 proceeding had not been commenced in a timely manner.

It is well settled that failure to seek a timely review of an agency's determination

precludes any collateral challenge to that determination in subsequent litigation (see *Matter of Lewis Tree Serv. v Fire Dept. of City of N.Y.*, 66 NY2d 667, 669 [1985]); *Matter of Public Serv. Comm. of State of N.Y. v Rochester Tel. Corp.*, 55 NY2d 320, 325-326 [1982]; *City of New York v East N.Y. Wrecking Corp.*, 161 AD2d 489 [1st Dept 1990]). This rule is supported by strong policy considerations because permitting the Defendants to challenge an agency's penalty ruling long after the four month statute of limitations has run would reward dilatory conduct and undermine the Article 78 time-frames articulated in the CPLR.

In this action, the Defendants cannot collaterally challenge the Board's ruling because they failed to commence a timely Article 78 proceeding, and so they are without any defense to the Board's complaint (see *New York City Campaign Fin. Bd. v Lynn*, index No. 405097/01, at 6 [Sup Ct, NY County June 3, 2002][attached to Horowitz Aff. as Ex. L]).

Moreover, by failing to commence a timely Article 78 proceeding, the Defendants have forfeited their counterclaim and the relief sought in the order to show cause (motion sequence 004). The relief sought in the counterclaim is indistinguishable from that which would be available in an Article 78 proceeding. The counterclaim and order to show cause seek to annul the Board's decisions that: (1) the Committee was not entitled to \$82,500 in public matching funds; and (2) that the Defendants should be assessed \$19,592 in penalties. The allegations in the counterclaim and the order to show cause are virtually identical to the allegations and arguments that the Defendants presented in the time-barred Queens County Article 78 proceeding that was dismissed. Accordingly, the Defendants may not collaterally challenge the Board's determination in

this proceeding.

Finally, the Defendants' argument that Mahadeo and Trotman have no personal liability for the payment of penalties is without merit. It is well settled that a candidate and treasurer may be found, "jointly and severally liable for . . . campaign finance violations and the assessed penalties" (*Matter of Espada 2001 v New York City Campaign Fin. Bd.*, 59 AD3d 57, 62-63 [1st Dept 2008]; see also *New York City Campaign Fin. Bd. v Ortiz*, 38 AD3d 75, 81 [1st Dept 2006][noting that under section Administrative Code § 3-711 where a candidate, his or her principal committee and/or the principal committees' treasurer has committed a violation or infraction, the candidate or treasurer shall be personally subject to civil penalties assessed by he Board].

Therefore, Campaign Finance Board's motion for summary judgment is granted in its entirety and the counterclaims are dismissed. Plaintiff is entitled to a money judgment against the defendants Robby Mahadeo, Ray L. Trotman as Treasurer of Dr. Robby for City Council and Dr. Robby for City Council in the amount of \$19,592 with interest from December 5, 2007.

Likewise, the defendants' motion, for an order vacating and nullifying the Board's decision to impose penalties against the Defendants and compelling the Board to pay the Committee \$82,500 in public matching funds is denied in its entirety.

Conclusion

In accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion for summary judgment (motion sequence 003) is granted in all respects and the counterclaims are dismissed; and it is further

ORDERED that the clerk shall enter a money judgment in favor of plaintiff, the New York City Campaign Finance Board in the amount of Nineteen Thousand Five Hundred Ninety Two Dollars (\$19,592.00) together with interest at the statutory rate from December 5, 2007, together with costs and disbursements as taxed by the court; and it is further


ORDERED that defendant's motion (sequence number 4), for an order vacating and nullifying the New York City Campaign Finance Board's decision to impose penalties against the Defendants and compelling the New York City Campaign Finance Board to pay the Committee \$82,500 in public matching funds is denied; and it is further

ORDERED that any relief requested but not specifically addressed is hereby denied.

This constitutes the decision and order of the court.

DATE: New York, New York
November 4, 2010

So Ordered:



Hon. Judith Gische, JSC

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