

Matter of Ansah v Douglas

2010 NY Slip Op 33323(U)

November 15, 2010

Supreme Court, New York County

Docket Number: 113204/10

Judge: Joan B. Lobis

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

PRESENT: COBIS
Justice

PART 6

ELISHA ANSARI

- v -

NYC PUBLIC SCHOOL ANTIOTIC
COUNCIL

INDEX NO. 113204/10
MOTION DATE 10/18/10
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 48 were read on this motion to/for Article 78

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

PAPERS NUMBERED

1-34
35-41 supp aff. 42-4
45-48

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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).

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

Dated: 11/15/10

JSh
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASONS:

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

-----X
In the Matter of the Application of Elisha Ansah and 24
other unnamed members of the Harlem Hellfighters High
School Football Team,

Petitioners,

Index No. 113204/10

For a Judgment Pursuant to Articles 78 and 30
of the Civil Practice Law and Rules,

Decision, Order and Judgment

- against -

Donald Douglas, The New York City Public School
Athletic League, and the New York City Department of
Education

Respondents.

UNFILED JUDGMENT

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appear in person at the Supreme Court Clerk (Room
4**

-----X
JOAN B. LOBIS, J.S.C.

Petitioner Elisha Ansah and twenty four of his teammates (unnamed) from a club football team known as the Harlem Hellfighters (the "Hellfighters") commenced this Article 78 proceeding against respondents New York City Public School Athletic League ("PSAL"), Donald Douglas, the Executive Director of PSAL, and the New York City Department of Education ("DOE"), by order to show cause, seeking a court order directing respondents to immediately allow the Hellfighters to compete in the 2010 football season, which is operated and administered by PSAL; remove all losses imposed upon the Hellfighters for the 2010 football season; and refrain from interfering with the Hellfighters for the remainder of the 2010 football season. Petitioners also moved for a temporary restraining order allowing the Hellfighters to compete in the 2010 football season pending the resolution of the petition. The temporary restraining order was denied. For the reasons discussed below, the petition is denied and the proceeding is dismissed.

PSAL operates under the supervision of DOE and administers an interscholastic football league (the "League") pursuant to its rules and regulations. At the time of the creation of the Hellfighters in 2003, no high school in Harlem had its own football program. The Hellfighters were established to fill this void, but they were not affiliated with PSAL until Joel Klein, the Chancellor of DOE, issued a waiver allowing the Hellfighters to compete in the League. The team participated in the League from 2005 through 2007. In 2008, the Hellfighters did not participate in the League. Petitioners allege that the Hellfighters were not given a schedule for the 2008 season and that PSAL never explained its reason for doing so. Respondents do not dispute this version of the events.

By letter dated September 17, 2009, Mr. Douglas informed Henry Rubio, principal of A. Phillip Randolph High School ("Randolph High") in Harlem, that PSAL had "developed a plan to create a Varsity Level football program for the 2009-2010 season for students who currently attend public high school in the borough of Manhattan." The letter contains no reference to the Hellfighters, but sets forth that Randolph High "has agreed to be the host school responsible for this team[.]" At oral argument, petitioners set forth that, after this letter, the Hellfighters became Randolph High's football team. The letter states that Randolph High's Athletic Director, Richard Pichardo, would be responsible for ensuring that the team's members and coaching staff complied with PSAL rules, regulations, and guidelines.

Petitioners maintain that PSAL failed to schedule any games for the Hellfighters during the 2009 season. Respondents contend, in opposition, that during the 2009 season, the Hellfighters' coaching staff violated numerous PSAL rules and regulations related to player safety. According to a letter dated March 18, 2010, from Mr. Douglas to Duke Fergerson, head coach of the Hellfighters, a meeting was

held on January 21, 2010 to discuss the violations. At the meeting, Mr. Fergerson was accused, *inter alia*, of holding practices without medical and parental consent forms and conducting practices in August 2009 despite not having any staff with First Aid, CPR, or automated external defibrillator training. By the March 18 letter, Mr. Douglas set forth that Mr. Fergerson's performance amounted to professional misconduct and terminated him from his "per session position as the football coach of the [Randolph High] Campus Football team, effective immediately."

According to a second letter dated April 7, 2010, from Mr. Douglas to Mr. Fergerson, Mr. Douglas set forth that PSAL had decided to terminate its relationship with the Hellfighters and that the Hellfighters would no longer be eligible to participate in the League. The April 7 letter was copied to Mr. Rubio, among others. At oral argument, Mr. Fergerson contended that he never saw or received this letter. In response to the petition, Mr. Douglas affirms that on or about August 16, 2010 he sent a letter to parents of students on the Hellfighters' team. The letter, a copy of which is attached to Mr. Douglas' affidavit, does not indicate to whom it was sent. It explains that the Hellfighters, "which participated as part of the [Randolph High] athletic program," were no longer participating in the League. The letter asserts that members of the Hellfighters could play for George Washington High School's football program. Petitioners allege that the Hellfighters were scheduled to play in the League for the 2010 season. They attach a print-out from PSAL's website of a schedule for Randolph High's team. According to the schedule, Randolph High was supposed to play weekly games from September 11, 2010, through November 13, 2010. At oral argument, respondents claimed that the schedule was for Randolph High, but not the Hellfighters. Respondents explained that Randolph High had attempted to establish a football team for the 2010 season consisting of only Randolph High students, but the team never materialized. Petitioners allege that prior to their first game the Hellfighters were assessed losses for every game

scheduled resulting in an 0-10 record, but respondents counter that the 0-10 record was for Randolph High's aborted football team and not the Hellfighters.

Petitioners commenced this proceeding, by order to show cause, on or about October 8, 2010. At the time, four games for the League's 2010 season were already complete. Petitioners argue that respondents arbitrarily and capriciously terminated their season without notice and without an opportunity to be heard. Petitioners further allege that respondents acted in violation of their own rules.

Respondents set forth that Elisha Ansah, the named petitioner, is a minor and does not have capacity to sue. They further assert that all but one member of the Hellfighters are minors and that only the player that is 18 years old is not a named petitioner nor capable of bringing the case on behalf of the other minors. Respondents further argue that the proceeding is time barred by the four month statute of limitations for bringing special proceedings, maintaining that the Hellfighters' relationship with PSAL was terminated in April 2010. In support of this argument, Mr. Douglas avers that, on April 7, 2010, he informed Mr. Ferguson of the termination by certified mail, return receipt requested, to Mr. Ferguson's home address, and by electronic mail to Mr. Ferguson's email address, identified as harlem-hellfighters@hotmail.com. A copy of the return receipt and a print out of an email to harlemhellfighters@hotmail.com is annexed to Mr. Douglas' affidavit. There is no body to the e-mail, the subject line reads "Harlem Hellfighters Youth Football Team", and there is an attachment named "2009-2010 - Hellfighter Dissolution.pdf."


In reply, petitioners argue that the minors are appearing by parents with legal custody since their affidavits were signed by their parents. In an affidavit, Mr. Ferguson maintains that both the e-mail address and the mailing address are incorrect, pointing out that his e-mail address is hyphenated, but the print out demonstrates that it was sent to an e-mail address that is not hyphenated, and attaching a jury summons notice sent to his actual home address.

Though there other issues that this petition raises, namely petitioners' standing, whether petitioners received notice of PSAL's determination in excess of the statute of limitations, and whether PSAL took any action that was arbitrary and capricious, the named petitioner as a minor does not have the capacity to sue. He must "appear by the guardian of his property or, if there is no such guardian, by a parent having legal custody, or, if there is no such parent, by another person or agency having legal custody, or, if the infant is married, by an adult spouse residing with the infant[.]" C.P.L.R. § 1201. While there is an indication, here, that the minors' parents approved of the filing of this petition, the mere presence of their signatures on the affidavits submitted by the minors is not considered an appearance. The case must be dismissed. See C.P.L.R. Rule 3211(a)(3). Accordingly, it is hereby

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

Dated: November 15, 2010

ENTER:



JOAN B. LOBIS, J.S.C.

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