

**Civil Serv. Empls. Assn., Inc. v New York State Off.
of Mental Health**

2011 NY Slip Op 31869(U)

July 8, 2011

Supreme Court, New York County

Docket Number: 113352/1996

Judge: Alice Schlesinger

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

PRESENT: ALICE SCHLESINGER

PART IA PART 16

Index Number : 113352/1996
CIVIL SERVICE EMPLOYEES

vs
NY STATE OFFICE OF MENTAL

Sequence Number : 006

VACATE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

FILED
PAPER NUMBER

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

JUL 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

By the State
defendants to vacate the 1996 preliminary
injunction and dismiss the action is
granted in accordance with the accompanying
memorandum decision.

Dated: JUL 08 2011
July 8, 2011

Alice Schlesinger
ALICE SCHLESINGER 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 REASON(S):

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

-----X
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Plaintiff,

Index No. 113352/96
Motion Seq. No. 006

-against-

NEW YORK STATE OFFICE OF MENTAL HEALTH,
JAMES STONE, as Commissioner of the New York
State Office of Mental Health, MANHATTAN PSYCHIATRIC
CENTER, DR. MICHAEL FORD, as Executive Director
of the Manhattan Psychiatric Center, and GEORGE
E. PATAKI, as Governor of the State of New York,

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JUL 11 2011

Defendants.

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-----X
SCHLESINGER, J.:

Before the Court is a motion by the various New York State defendants (the State) for an Order pursuant to CPLR §6314 vacating the preliminary injunction issued by this Court on August 9, 1996 and granting dismissal of the action based on recent legislation temporarily suspending the law at issue. Both the plaintiff Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) and the plaintiff-intervenor James Sheedy, as President of the New York State Public Employees Federation, AFL-CIO (Sheedy) oppose the motion, arguing that a temporary suspension of the law does not justify an order vacating the injunction in light of the State's alleged history of statutory violations.

The law at issue is Mental Hygiene Law §7.17, which governs the operation of mental health facilities by the State of New York. In 1996 when this Court issued the preliminary injunction, subdivision (e) of the statute obligated the State to give at least twelve months notice to various affected parties, including labor organizations and employees, before implementing any "significant service reductions." CSEA commenced

this action in 1996, and Sheedy intervened in support, claiming that the State was implementing significant service reductions at Manhattan and Creedmoor Psychiatric Centers without the requisite notice. Plaintiffs therefore asked this Court to issue a preliminary injunction to prevent the State from implementing any further staff reductions at those facilities. Finding after a hearing that plaintiffs had established the necessary criteria for injunctive relief, including a likelihood of success on the merits, this Court in its August 9, 1996 decision granted a preliminary injunction staying any further involuntary staff reductions.

The State appealed, and the First Department affirmed this Court's order. *CSEA v New York State Office of Mental Health, et al.*, 244 AD2d 206 (1997). The Appellate Division held that the courts were authorized to enforce MHL §7.17 by granting injunctive relief and then stated (at p 207):

Further, while issues of fact exist concerning whether the subject reductions are indeed "significant service reductions" within the meaning of Mental Hygiene Law §7.17(e)(3), thus triggering the notice requirement, plaintiffs have demonstrated a likelihood of success on this issue and that they would be irreparably harmed without a preliminary injunction.

A few years later, plaintiffs moved for summary judgment. In keeping with the Appellate Division's decision, a hearing was held to determine whether "significant service reductions" did, in fact, exist. By decision and order dated March 13, 2001, this Court denied plaintiff's motion, finding that plaintiffs had failed to prove their assertions; that is, while staff reductions had been considered, plaintiffs had not proven that the State had actually effectuated those reductions. Absent "significant service reductions," the statutory notice provisions were not invoked and no notice was required to be given. Therefore, summary judgment was denied.

Ten years passed without activity on the case. The State was prompted to make this motion by recent State budgetary issues that led to the amendment of MHL §7.17. Specifically, Part G of Chapter 59 of the Laws of 2011 authorizes the Commissioner of the Office of Mental Health to undertake significant service reductions in mental health facilities in fiscal year 2011-12 "notwithstanding the provisions of subdivisions (b) and (e) of section §7.17 of the mental hygiene law ... or any other law to the contrary." Accordingly, the State argues, any continuing injunction relating to the notice provision in subdivision (e) must be vacated, as the recent amendment to the law temporarily suspends the enforcement of that provision.

The requested relief is granted, injunctive relief is vacated, and this action is dismissed. While CSEA and Sheedy correctly argue that the temporary suspension of the notice provision does not relieve the State of its duty to comply with the notice provision when the suspension ends, injunctive relief is not required for that purpose. As the State must necessarily agree, the State must comply with its own laws.

Moreover, plaintiff's argument ignores the import of this Court's 2001 decision. By finding at that time that plaintiffs had failed to prove at a hearing that the State had implemented significant service reductions without notice, the Court effectively denied plaintiff's request for a permanent injunction and related declaratory relief and concluded the case. That action terminated the preliminary injunction and ended the case. Therefore, to the extent that relief was not specifically stated in the 2001 decision, the State is entitled to have that relief granted now. Again, however, neither this decision, nor the 2001 decision, is meant to relieve the State of its duty to comply with the notice provisions in Mental Hygiene Law §7.17 when those provisions become effective again.

Accordingly, it is hereby

ORDERED that the defendants' motion for an order vacating the preliminary injunction issued in 1996 is granted and the action is dismissed without costs, disbursements, or attorney's fees in accordance with the terms of this decision.

Dated: July 8, 2011
JUL 08 2011



J.S.C.
ALICE SCHLESINGER

FILED

JUL 11 2011

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