

Brannon v City of New York

2011 NY Slip Op 32442(U)

September 9, 2011

Sup Ct, NY County

Docket Number: 103272/11

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.

PART 52

Index Number : 103272/2011
BRANNON, RALPH
VS.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
PREL INJUNCTION/TEMP REST ORDER

INDEX NO. 103272/11
MOTION DATE _____
MOTION SEQ. NO. 02
MOTION CAL. NO. _____

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

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SEP 13 2011
NEW YORK
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is decided in accordance with the annexed decision.

Dated: 9/9/11

CYNTHIA S. KERN J.S.C.
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 REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----x

RALPH BRANNON,

Plaintiff,

Index No. 103272/11

-against-

DECISION/ORDER

THE CITY OF NEW YORK, THE DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
OF THE CITY OF NEW YORK and THE OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS,

Defendants.

-----x

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2,3</u>
Affirmations in Opposition to the Cross-Motion.....	<u> </u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

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Plaintiff commenced the instant action with an accompanying notice of motion seeking a preliminary injunction enjoining defendants from proceeding with the disciplinary proceedings against him and for a declaratory judgment requesting that this court “[d]eclare that the term “APPEAR” as used in Chapter 68 § 2604(b)(7) and defined in §2601 sub. 4 of the City Charter Conflicts of Interest Law, means communication for compensation.” Defendants move to dismiss plaintiff’s application because plaintiff fails to state a cause of action against defendants for either injunctive or declaratory relief. For the reasons set forth below, plaintiff’s motion for a

preliminary injunction and declaratory relief is denied and defendants' motion to dismiss plaintiff's application is granted.

The relevant facts are as follows. Plaintiff is currently employed as an attorney with defendant the Department of Housing Preservation and Development ("HPD"). On or about August 26, 2010, plaintiff was served with a Statement of Charges by HPD. Charge 1 was for "[r]epresentation of clients in legal proceedings against the interests of the City of New York, and use of Departmental facilities and equipment in [Plaintiff's] private activities, in violation of Chapter 68 of the New York City Charter (the "Conflicts of Interest Law"), Commissioner Order 2009-1, and Department Code of Conduct Rules 17 and 18." Specification A was that "[f]rom at least January 28, 2010, through May 2010, [Plaintiff] represented one Maria Martir in an Article 78 proceeding against NYC Housing Authority. Specification B was that "[f]rom at least January 28, 2010, through May 2010, [Plaintiff] used departmental facilities and equipment, inclusive of telephones and fax machines, in [Plaintiff's] legal practice."

Charge 2 was for "[r]efusal to follow a directive issued by the NYC Department of Investigation and HPD's Disciplinary Unit in violation of Mayor's Executive Order 16 and HPD Code of Conduct Rule 9." Specification A was that on "June 15, 2010, [Plaintiff was] scheduled to attend an interview at the Department of Investigation [DOI] which [Plaintiff] did not attend. Instead on June 18, [Plaintiff] informed DOI that [Plaintiff] did not intend to schedule any meetings with them." Specification B was that "[o]n July 19, 2010, DOI directed [Plaintiff] to appear in their office on July 23, 2010. [Plaintiff] failed to report and informed DOI that [Plaintiff] did not intend to make an appearance." Specification C was that "[o]n August 5, 2010, HPD's Disciplinary Unit directed [Plaintiff] to appear in their office on August 11, 2010.

[Plaintiff] failed to report and instead informed [his] supervisor that [he was] sick and went home.”

A disciplinary hearing pursuant to New York Civil Service Law §75 on the aforementioned charges proffered against plaintiff was originally scheduled for January 2011, but the hearing was adjourned until March 2011. On or about March 17, 2011, plaintiff commenced the instant action, *pro se*, seeking a preliminary injunction enjoining defendants from proceeding with the disciplinary hearing against plaintiff and a declaratory judgment. On or about March 18, 2011, this court declined to sign plaintiff’s proposed Order to Show Cause indicating that there was “no legal basis for this relief to stay proceedings.” Thereafter, the disciplinary hearing on the aforementioned charges was adjourned again until June 9, 2011.

Subsequently, on or about May 16, 2011, with respect to the same charges and the same pending disciplinary hearing, plaintiff commenced the instant action with an accompanying Notice of Motion seeking a “preliminary injunction enjoining...defendants from proceeding with the disciplinary [hearing] against plaintiff” and for declaratory relief requesting that this court “[d]eclare that the term “APPEAR” as used in Chapter 68 § 2604(b)(7) and defined in §2601 sub. 4 of the City Charter Conflicts of Interest Law, means communication for compensation.” Plaintiff requests this relief as he argues that the Conflicts of Interest Board superseded the above statute’s intent in expanding the meaning of the term “APPEAR” as defined in §2602 sub. 4 by interpreting it as including uncompensated services, as plaintiff asserts he was not compensated for any services for which he is being held accountable.

Plaintiff’s motion for a preliminary injunction must be denied. As a general rule, injunctive relief cannot be obtained to prohibit continuing disciplinary proceedings against


government employees as “a court of equity will not enjoin the prosecution of an action or proceeding on grounds which may be asserted as a defense in the action or in the proceeding.” *McGillicuddy v. Monaghan*, 280 A.D. 144, 145 (1st Dept 1952). The First Department has explained that “[t]here is available to plaintiffs a complete and adequate remedy at law in the form of an Article 78 proceeding as provided in the Civil Practice Act, in which plaintiffs can obtain a full review of any determination reached in the disciplinary proceeding sought to be enjoined.” *Id.* In the present case, plaintiff is not entitled to injunctive relief prohibiting the disciplinary proceedings from going forward as he will have the opportunity to challenge the disciplinary hearings in an Article 78 proceeding after a final administrative determination has been made.

Moreover, plaintiff’s motion for a declaratory judgment must also be denied. Plaintiff has had the opportunity to challenge the interpretation of the word “APPEAR” as used by the Conflicts of Interest Board during his disciplinary hearing. The court will review this administrative interpretation in an Article 78 proceeding after a decision has been made by an Administrative Law Judge.

Accordingly, plaintiff’s motion for a preliminary injunction and a declaratory judgment is denied. Defendants’ motion to dismiss plaintiff’s action is therefore granted. This constitutes the decision, order and judgment of the court.

Dated: 9/9/11

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