

Drantch v Gatling

2012 NY Slip Op 30594(U)

March 7, 2012

Supreme Court, New York County

Docket Number: 103072/2009

Judge: Saliann Scarpulla

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

PRESENT. Saliann Scarpulla
Justice

PART 19

Index Number : 103072/2009
DRANTCH, BRUCE M.
vs.
GATLING, PATRICIA L., AS COMMISSIONER
SEQUENCE NUMBER : # 001
REARGUMENT / RECONSIDERATION

INDEX NO. 103072-09

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 Article 78 proceeding
denied and dismissed as

~~decided~~ per the memorandum decision dated March 7, 2012
which disposes of motion sequence(s) no. 001 of

Index No. 113275/07

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: 3/7/2012

Saliann Scarpulla
SALIANN SCARPULLA
J.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: CIVIL TERM: PART 19

----- X
BRUCE M. DRANTCH,

Petitioner,

- against-

Index No.: 103072/09
Submission Date: 12/14/11

PATRICIA L. GATLING, AS COMMISSIONER OF
THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS AND THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS, NEW YORK
CITY DEPARTMENT OF EDUCATION,
CHANCELLOR, CLAUDE MONEREAU,

**DECISION, ORDER
AND JUDGMENT**

Respondents.

----- X
For Petitioner:
Leffler, Marcus & McCaffrey, LLC
20 Madison Avenue, Suite 1901
New York, NY 10016

For Department of Education Respondents:
Michael A. Cardozo, Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

For CCHR Respondents:
Cliff Mulqueen, Esq.
40 Rector Street
New York, NY 10006

UNFILED JUDGMENT
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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

HON. SALIANN SCARPULLA, J.:

In these two related Article 78 proceedings¹, petitioner Bruce M. Drantch
("Drantch") seeks, *inter alia*, reversal of the New York City Department of Education's
decision on June 1, 2007 to terminate his employment as assistant principal, and reversal

¹ The Court agreed to resolve this Article 78 proceeding together with the Article 78 proceeding under Index No. 113275/07, *Drantch v. NYC Dept. of Education, Dennis Walcott as successor in interest to Joel I. Klein, Chancellor; and Claude Monereau, Michele Lloyd-Bey, Community Superintendent District 27Q.*

of the City of New York Commission on Human Rights' August 25, 2008 decision to dismiss Drantch's complaint and February 3, 2009 affirmance of that decision.

On October 12, 1999, Drantch, a 54 year old Caucasian Jewish male, was hired by the Department of Education ("DOE") as a per-diem substitute teacher at Jr. High School 217 R.A. Van Wyck Jr. High School. He later became a full time teacher and on August 31, 2006, Drantch was hired by DOE and Principal Claude Monereau ("Monereau") as a probationary assistant principal at Brian Piccolo Middle School 53Q ("MS 53").

Monereau had recommended him for the position. Drantch claims that within a month after he was hired as assistant principal, Monereau initiated a pattern of discrimination against him on the basis of his age, race, creed and gender.

According to Drantch, the harassment escalated in October 2006 when he observed an African-American student initiate an altercation with a Hispanic student. Drantch claims that Monereau directed him to provide a statement that the Hispanic student initiated the altercation but Drantch refused to do so. Monereau then issued disciplinary memoranda for alleged poor work performance and directed Drantch to unfairly discipline teachers who were Caucasian or Jewish and around his age or face discipline himself. In November 2006, Drantch complained to his union representative that he was being discriminated against by Monereau. According to Monereau, within the first two months of Drantch's employment at MS 53, several teachers wrote letters to Monereau expressing concern about Drantch's behavior.

In December 2006, Drantch attended a hearing with DOE's Office of Special Investigations as a result of charges of intimidation of a teacher by blackmail and an instance of corporal punishment. According to Drantch, the charges were all brought at Monereau's behest. In March 2007, the Office of Special Investigations found the charges were substantiated and referred the matter to Monereau for further action.

Drantch was then given an unsatisfactory rating by Monereau due to (1) the Office of Special Investigation's finding that allegations of misconduct and corporal punishment were substantiated; (2) a November 22, 2006 letter in which Monereau notified Drantch of his poor work performance, including failure to turn in weekly assistant principal reports, failure to conduct sufficient written formal classroom observation reports and failure to conduct post-observation conferences with the teachers he observed; and (3) a February 27, 2007 letter concerning an incident of Drantch blowing a whistle loudly in students' ears.

On May 1, 2007, Monereau wrote Drantch a letter indicating that he was considering dismissal of Drantch's probationary services as assistant principal, and gave Drantch several weeks to submit a rebuttal. Drantch submitted a rebuttal on May 22, 2007. Drantch's employment as probationary assistant principal was terminated effective June 2, 2007.

On September 26, 2007, Drantch filed a complaint with the City of New York Commission on Human Rights ("Commission") charging the DOE and Monereau with

unlawful discriminatory practices in violation of Administrative Code Sections 8-107(1)(a) and 8-107(7).

On August 25, 2008, the Commission found no probable cause to believe that DOE and Monereau engaged in unlawful discriminatory practices and dismissed Drantch's complaint. The Commission found, *inter alia*, that Drantch's complaint was weakened by his failure to rebut the theory that "the same person who hired [him] with knowledge of his characteristics would, within a reasonably brief period of time, take adverse action based upon those same characteristics that previously did not matter." It further found that Drantch undermined his own credibility given that he stated in his Complaint that Monereau directed him to carry out discipline against other Caucasian, Jewish teachers around his own age, yet in his rebuttal, he defended his willful decisions to discipline others as appropriate. The Commission concluded that "the filing of formal charges against [Drantch] was a non-discriminatory decision, supported by an independent, neutral investigative body, OSI."

Drantch then filed a request for review with the Commission and submitted a list of confidential witnesses. DOE and Drantch both submitted additional comments. The Commission affirmed the decision on February 3, 2009. Drantch claims that he was not permitted to participate in any of the Commission's proceedings and therefore, he was denied substantive and procedural due process.

Drantch now commences these Article 78 proceedings alleging that the actions taken by respondents were in violation of Section 8-107 of the Administrative Code of the City of New York and 42 U.S.C.S. 2000(e). He is seeking (1) production of the Commission's complete record of the investigation; (2) reversal of its August 25, 2008 decision and February 3, 2009 affirmance; (3) reversal of the dismissal of his complaint; (4) reversal of his unsatisfactory rating and his termination as assistant principal; and (5) reassignment at another school as assistant principal. He seeks, in the alternative, to reopen the Office of Special Investigations' proceedings so that he could participate therein or to remit the proceeding back to the Commission to take further testimony from his witnesses.

Drantch maintains, *inter alia*, that (1) the documents upon which the DOE justified Drantch's discontinuance were the product of a pattern and practice by Monereau to coerce people into creating false and inaccurate documents against Monereau's targets; (2) the Commission did not adequately investigate his claims; (3) his actions did not constitute corporal punishment; and (4) he was not given any opportunity to participate in the Office of Special Investigation's process.

DOE answers and opposes the petition, arguing that Drantch's claims are time barred, the DOE's actions were not arbitrary and capricious, and its determination to terminate Drantch's employment as probationary assistant principal was made in good faith and rationally based upon legitimate non-discriminatory reasons.

The Commission answers and opposes the petition, alleging that (1) there is no evidence to support Drantch's theory of discrimination; (2) the Commission conducted a full and fair investigation and Drantch had full opportunity to participate in the process; and (3) Drantch did not provide witness statements until after the Commission reached its determination and, in any event, the witness statements reveal that they offer little facts and are only filled with opinion and conjecture.

Discussion

The Board of Education has the right to terminate the employment of a probationary teacher at any time and for any reason, unless the teacher establishes that the termination was for a constitutionally impermissible purpose, violative of a statute, or done in bad faith. *Frasier v. Board of Education*, 71 N.Y.2d 763 (1988). It is petitioner's burden to demonstrate, by competent proof, that a substantial issue of bad faith exists, or that the termination was for an improper or impermissible reason, and mere speculation, or bald, conclusory allegations are insufficient to shoulder this burden. *Matter of Che Lin Tsao v. Kelly*, 28 A.D.3d 320 (1st Dept. 2006). Here, the record establishes that there was a clear rational basis for Drantch's termination. Several teachers expressed concern about Drantch's behavior. The Office of Special Investigations found that charges brought against Drantch for intimidation of a teacher by blackmail and an instance of corporal punishment were substantiated. Drantch was permitted to participate in the hearing for those charges. Monereau gave Drantch an unsatisfactory rating based on the Office of

Special Investigation's finding, his pattern of poor work performance, and another reported instance of corporal punishment. Drantch was afforded the opportunity to rebut his rating. Ultimately, Monereau determined that Drantch's position as a probationary assistant principal should be terminated. Drantch's claims of bad faith, bias and discrimination are speculative and insufficient to establish that the DOE improperly terminated his employment. *Matter of Murnane v. Department of Educ. of the City of New York*, 82 A.D.3d 576 (1st Dept. 2011).

The Court further finds that the Commission's determination that there was no probable cause to believe that Drantch was discriminated against had a rational basis and was not arbitrary and capricious. *David v. New York City Commn. on Human Rights*, 57 A.D.3d 406 (1st Dept. 2008). As long as the investigation is sufficient and the claimant afforded a full opportunity to present his claims, it is within the Commission's discretion to decide the method or methods to be employed in investigating a claim. *See McFarland v. New York State Div. of Human Rights*, 241 A.D.2d 108 (1st Dept. 1998). The record establishes that the Commission conducted a sufficient investigation and Drantch had a full and fair opportunity to present his case. *Matter of Block v Gatling*, 84 A.D.3d 445 (1st Dept. 2011). Drantch appealed the Commission's initial finding, and was given a further opportunity to present evidence and to submit additional comments. Based on the evidence presented, the Court finds that the Commission's affirmance of its initial decision had a rational basis and was not arbitrary and capricious.

In accordance with the foregoing, it is hereby

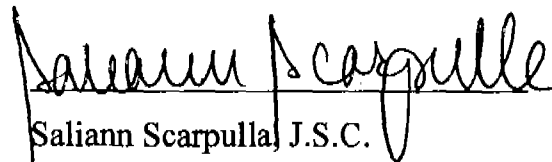
ORDERED and ADJUDGED that the petition of Bruce M. Drantch filed under Index No. 113275/07 is denied and the proceeding is dismissed; and it is further

ORDERED and ADJUDGED that the petition of Bruce M. Drantch filed under Index No. 103072/09 is denied and the proceeding is dismissed.

This constitutes the decision, order and judgment of the Court.

Dated: New York, New York
March 7, 2012

ENTER:


Saliann Scarpulla, J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, a representative must appear in person at the Judgment Clerk's Desk (Room 141B).