

**Matter of Brown v Board of Educ. of the Mahopac
Cent. Sch. Dist.**

2013 NY Slip Op 31387(U)

June 27, 2013

Sup Ct, Putnam County

Docket Number: 523-2011

Judge: Lewis Jay Lubell

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

Conf. 8/26/13 @ 9:30 A.M.

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

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

-----X

In the Matter of the Application of
MAURA ANN BROWN,

Petitioner,

-against -

BOARD OF EDUCATION OF THE MAHOPAC
CENTRAL SCHOOL DISTRICT and THOMAS
MANKO, SUPERINTENDENT,

Respondents.

-----X

LUBELL, J.

DECISION/ORDER

Index No. 523-2011

Sequence No. 4
Motion Date: 4/15/13

The following papers were considered in connection with this motion by petitioner for an Order: (i) striking and dismissing as a matter of law the Affidavit of Respondent Thomas Manko, Superintendent of Schools for the Respondent Mahopac Central School District, sworn to on November 28, 2012; (ii) pursuant to CPLR 2221 and the express terms of the Court's October 2012 Order, granting renewal and reapplication of so much of petitioner's prior motion, dated August 7, 2012, and, thereupon, (iii) granting petitioner (a) summary determination on her claim for tenure by estoppel; (b) a declaration and judgment that petitioner acquired tenure by estoppel prior to the respondents' termination of her employment on January 21, 2011; (c) reinstatement of petitioner to her position as tenured Chemistry teacher with the Mahopac Central School District, effective as of January 21, 2011, together with an award of back-pay, reimbursement of all employment benefits, including but not limited to medical, retirement and pension contributions, and other compensatory damages, in the amount to be determined at a damages hearing before this Court pursuant to CPLR 410 and 780(h); and (d) setting a date for such a hearing before this Court for the limited purpose of fixing such damages and monetary relief; (iv) additionally, adjudging and holding that, since the respondent Board of Education is required by law to review and take formal action with respect to the Superintendent's recommendation to terminate probationary teachers generally, the Board's failure

to so act with respect to petitioner rendered the termination of petitioner on January 21, 2011, arbitrary, capricious, null and void and without effect as a matter of law pursuant to Education Law 3012 and 3031; and thus directing petitioner's reinstatement to her position as a tenured Chemistry teacher with the Mahopac Central School District, effective as of January 21, 2011, together with an award of back-pay and other compensatory damages, in an amount to be determined at a damages hearing before this Court; (v) awarding petitioner the costs and expenses of this motion and the prior motion of August 7, 2012, including all reasonable attorneys' fees so incurred; and (vi) granting such other and further relief as this Court may deem just and proper.

PAPERS

NUMBERED

NOTICE OF MOTION/AFFIRMATION/EXHIBITS A-4	1
AFFIRMATION IN OPPOSITION/EXHIBIT 1-2	2
REPLY AFFIRMATION	3

The procedural history, facts, contentions and various ruling of the Court in this CPLR Article 78 proceeding in which petitioner seeks, among other things, reinstatement to her teaching position with the respondent school district, back pay and compensatory damages are thoroughly set forth in this Court's prior Decisions and Orders.

The Court is now (again) asked to rule on the propriety of respondents' recalculation of petitioner's Education Law §3012(3) probationary period end date as directed and guided by the Court in its Decisions & Orders of March 19, 2012, and October 25, 2012.

Now, upon review and consideration of this Court's earlier rulings, determinations and directive as are fully and clearly set forth in its prior Decisions & Orders and the resulting November 28, 2012, administrative recalculation as is set forth in the Affidavit of Respondent Thomas Manko, Superintendent of Schools for the Respondent Mahopac Central School District, sworn to on November 28, 2012 (the "Administrative Recalculation"), the Court finds that the Administrative Recalculation of petitioner's Education Law §3012(3) probationary period end date was undertaken in a manner and reaches a result that is legally insupportable and is contrary to the legal conclusions reached and directives clearly enunciated by this Court in its March and October 2012 Decisions & Orders directing remand for purposes of recalculation.

Since the Administrative Recalculation results in a probation end date which coincides with her termination date, January 21, 2011, petitioner needs just one additional date of service time to prevail on her tenure by estoppel argument, which she has easily

established.

Among other things, the Administrative Recalculation does not properly account for this Court's unequivocal determination that "respondents are bound by the originally established and thereafter repeatedly reasserted June 30, 2010 probationary period end-date . . . from [which] . . . any properly attributed extension of the probationary period must be calculated" (Decision & Order of March 19, 2012). Nor is it in accord with this Court's application and interpretation of Maras v. Bd. of Educ. of City School Dist. of City of Schenectady (275 AD2d 551, 552 [3d Dept., 2000]).

More specifically, notwithstanding the unambiguity of the Court's March 2012 and October 2012 rulings that it is June 30, 2010 from which to calculate petitioner's probationary end date, respondents, nonetheless, effectively ignore the June 30th date in favor of September 2, 2010. Upon properly accounting for the sixty-four day period from June 30th to September 2, 2010, petitioner's recalculated probationary end-date falls well before her termination date, i.e., the date needed by petitioner to prevail on her tenure by estoppel argument.

In addition, however, the Administrative Recalculation employs a "workday-for-workday" methodology which is in contravention of this Court's interpretation of the methodology used in Maras v. Bd. of Educ. of City School Dist. of City of Schenectady, supra, wherein the Court ruled as follows:

Clearly, it was error for respondents to extend petitioner's probationary period beyond September 12, 1998 - "the period of time petitioner was absent from school in excess of her contractually allotted sick days. While respondents possess the authority to exclude from the computation of petitioner's three-year probationary period any noncontractual absences [citations omitted], they have no authority to exclude those absences provided for by contract, i.e., petitioner's 20 days of sick leave, five days of personal time and five days of medical leave that fell on school-wide vacation days. Indeed, Education Law §2509(7) expressly prohibits extension of an employee's probationary period by adding thereto contractually bargained for sick or personal leave days or school-wide vacation days.

(Maras v Bd. of Educ. of City School Dist. of City of Schenectady, supra at 552).

In sum, the Court in Maras, supra, permitted an extension of petitioner's originally scheduled September 1, 1998, probationary period by the actual number of workdays her medical leave exceeded her paid contractual leave time, excluding any medical leave which otherwise fell on school-wide breaks or vacation days (for a total of eleven days) and which, in any event, extended petitioner's probationary period by a corresponding number of *consecutive calendar days*, not "workdays" as respondents would have it; thus arriving at a new probation period end date of September 12, 1998.

Therefore, upon this Court's rejection of either or both of these two methods of calculation and without regard to any other argument advanced by petitioner, the Court finds that petitioner completed her three year period of Education Law §3012(3) probation well before her January 21, 2011, termination date.¹

As such, the Court grants petitioner's motion to strike and dismiss the Administrative Recalculation as is reflected in the Affidavit of Respondent Thomas Manko sworn to on November 28, 2012.

Correspondingly, the Court grants petitioner's CPLR 2221 application.²

Now, upon consideration of the papers currently before the Court, those previously before the Court and the determinations rendered thereon, as well as the unrefuted and indisputable evidence in the record now fully before it, and the legal conclusions herein reached, it is hereby

ORDERED, that, petitioner's application for summary determination in her favor on her claim for tenure by estoppel is hereby granted; and, it is further

ORDERED, ADJUDGED, and DECLARED, that petitioner acquired

¹ In accord with this Court's prior admonition, it has not entertained any effort by respondents to reargue the Court's earlier rulings and or applications of law. Within the context of the Court's prior rulings, the Administrative Recalculation was meant to be ministerial in nature. Any attempt by respondents to turn it into an opportunity for reargument is and has been rejected.

² This application was expressly anticipated and permitted in this Court's October 2012 Decision & Order denying petitioner summary determination on her claim for tenure by estoppel "without prejudice to reapplication upon the administrative recalculation so directed".

tenure by estoppel prior to respondents' termination of her employment on January 21, 2011; and, it is further

ORDERED, ADJUDGED, and DECLARED, that petitioner be and is hereby reinstated to the position of Chemistry teacher with the Mahopac Central School District, tenured, effective as of January 21, 2011, together with an award of back-pay, reimbursement of all employment benefits, including but not limited to medical, retirement and pension contributions, and other compensatory damages to which she may be entitled and in an amount to be determined at a damages hearing before this Court pursuant to CPLR 410 and 780(h); and, it is further

ORDERED, that, to any further extent, the petition is deemed moot.

The parties are directed to appear before the Court at 9:30 A.M. on August 26, 2013, for the limited purpose of setting a date for the fixing of such damages and monetary relief.

The foregoing constitutes the Opinion, Decision, Order & Judgment of the Court.

Dated: Carmel, New York
June 27, 2013

S/

HON. LEWIS J. LUBELL, J.S.C.

Edward H. McCarthy, Esq.
Law Offices of Ingerman Smith, LLP
Counsel to Respondents
150 Motor Parkway - Suite 400
Hauppauge, New York 11788

Susan E. Galvao, Esq.
Bleakley Platt & Schmidt, LLP
1 North Lexington Avenue
White Plains, New York 10601

and

Stephen J. Brown, Esq.
Veneruso, Curto, Schwartz & Curto, LLP
The Hudson Valley Bank Bldg.
35 East Grassy Sprain Road - Suite 400
Yonkers, New York 10710

Co-Counsel for Petitioner