

**Thornton v New York City Dept./Bd. of Educ.**

2013 NY Slip Op 33546(U)

November 8, 2013

Sup Ct, New York County

Docket Number: 100743/13

Judge: Carol E. Huff

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SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

CAROL E. HUFF

Index Number : 100743/2013

THORNTON, EDWARD

vs

NYC DEPARTMENT OF EDUCATION

Sequence Number : 001

ARTICLE 78

PART 32

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that [REDACTED]

This Article 78 petition is denied for the reasons set forth in this Court's order dated November, 8, 2013, which denied petitioner's motion for a preliminary injunction.

Accordingly, it is

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

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: JAN 06 2014

[Signature] J.S.C. CAROL E. HUFF

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

PRESENT: CAROL E. HUFF  
*Justice*

PART 32

Thornton, Edward

INDEX NO. 100743/13

MOTION DATE \_\_\_\_\_

- v -

NYC Dept. of Education

MOTION SEQ. NO. 04

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for Enjoin to hold it

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

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this ~~\_\_\_\_\_~~

**motion is decided in accordance with accompanying memorandum decision**

**FILED**  
NOV 12 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: NOV 08 2013

CAROL E. HUFF

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: PART 32

-----X

EDWARD THORNTON and : Index No. 100743/13  
THORNTON'S CLASSIC STUDIOS, INC.,

Petitioners, :

- against - :

NEW YORK CITY DEPARTMENT/BOARD OF :  
EDUCATION, CITY OF NEW YORK, DAVID ROSS :  
individually and as an officer of the New York City :  
Department/Board of Education and the City of New York, :  
JAY G. MILLER, individually and as an officer of the :  
New York City Department/Board of Education and the :  
City of New York, CITY OF NEW YORK MAYOR'S :  
OFFICE OF CONTRACT SERVICES, and :  
ANDREA S. GLICK, as an officer of the City of New York: :  
Mayor's Office of Contract Services and the City of New :  
York, :

Respondents. :

-----X

**FILED**

NOV 12 2013

**NEW YORK  
COUNTY CLERKS OFFICE**

CAROL E. HUFF, J.:

Petitioners in this Article 78 proceeding bring this motion (sequence # 004) seeking a temporary restraining order and preliminary injunction: compelling respondent New York City Department/Board of Education ("DOE") to reactivate petitioners in the Financial Accounting and Management System ("FAMIS"); prohibiting DOE from telling school administrators, staff, students' parents etc. that petitioners were deactivated in FAMIS, or otherwise disparaging petitioners; compelling DOE to rescind a letter from the DOE general counsel dated October 28, 2013; prohibiting respondents from cancelling scheduled photography sessions; and prohibiting DOE from listing petitioners in the Vendor Information Exchange System "caution" database.

Petitioner Thornton's Classic Studios, Inc., is a photography studio specializing in school yearbook photographs and portraits. It is undisputed that a Thornton's photographer pleaded guilty to a charge arising from allegations that he inappropriately touched a student during a photography session in 2007. Petitioners did not inform DOE of their employee's misconduct, and he continued to work as a school photographer until DOE learned of the conviction in 2012. DOE thereupon took actions to remove Thornton's from its list of approved school photographers and to warn schools against using it, and petitioners seek to enjoin those actions.

Because the facts and relief sought by the petitioners in this application duplicate those in the Article 78 petition, which has been fully submitted, the Court can determine the motion for preliminary injunctive relief here (and, accordingly, petitioners' application for a temporary restraining order is denied).

To be entitled to a preliminary injunction petitioners are "required to make 'a clear showing of likelihood of ultimate success on the merits, that the movant will suffer irreparable injury unless the relief sought is granted and that the balancing of the equities lies in favor of the movant.'" J.O.M. Corp. v Department of Health of the State of New York, 173 AD2d 153, 154 (1<sup>st</sup> Dept 1994), quoting Faberge International, Inc. v. DiPino, 109 AD2d 235, 240 (1<sup>st</sup> Dept 1985).

Petitioners have failed to satisfy all of these elements. They have not shown that it is likely that the Article 78 petition will be granted and DOE will be compelled to forego warning against Thornton's presence in the schools. See Mirand v City of New York, 84 NY2d 44, 49 (1994) ("Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate

supervision.”). As for the equities, petitioners do not dispute that for years they failed to inform DOE of their employee’s misconduct toward a child while he continued to work with children.

Accordingly, it is

ORDERED that the motion for a preliminary injunction is denied.

Dated: NOV 08 2013

  
**CAROL E. HUFF**  
J.S.C.

**FILED**  
NOV 12 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

UNFILED JUDGMENT

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