

**Civil Serv. Empls. Assn., Inc. v New York State Off.
for People with Dev. Disabilities**

2015 NY Slip Op 30547(U)

April 7, 2015

Supreme Court, Suffolk County

Docket Number: 019118-2014

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

COPY

INDEX NO. 019118-2014
INDEX NO. 029015-2013

This Decision and Order Consolidates Index No. 019118-2014 with Index No. 029015-2013, with all filings to be held under the earlier Index Number; motions 001 and 002 under the later Index Number are renumbered as motions 002 and 003 under the earlier Index Number.

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 12 - SUFFOLK COUNTY

PRESENT:

Hon. John H. Rouse
Acting Supreme Court Justice

MOTION DATE: 10/30/14
ADJ. DATE: 04/01/15
Mot. Seq. 002-MD

MOTION DATE: 10/30/14
ADJ. DATE: 04/01/15
Mot. Seq. 003-MD

CDISPSJ

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL
1000, AFSCME, AFL-CIO, SUFFOLK COUNTY LOCAL 430,
LONG ISLAND DEVELOPMENTAL CENTER and KARLINE
BROWN-HENDRICKS,

Petitioners

For an Order and Judgment Pursuant to Article 75 of the CPLR

DECISION & ORDER

-against-

THE NEW YORK STAT OFFICE FOR PEOPLE WITH
DEVELOPMENTAL DISABILITIES and LONG ISLAND
DEVELOPMENTAL DISABILITIES SERVICE OFFICE,

Defendants

TO:

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Upon the reading and filing of the following papers in this matter: (1) Notice of Petition dated September 22, 2014, the Petition as verified by Peter Marriott and Karline Brown-Hendricks on September 24, 2014 and September 26, 2014, respectively and Exhibits A-D attached thereto; (2) Notice of Motion to Dismiss by Respondent dated October 14, 2014, the Affirmation in Support by Patricia M. Hingerton, Esq., dated October 14, 2014 and Exhibits 1 & 2, as well as Exhibits A & B attached thereto; (3) The Affirmation in Opposition to Respondent's Motion to dismiss by Anthony P. Giustino, Esq. dated November 13, 2014; and (4) Reply Affirmation in Further Support of Motion to Dismiss by Patricia M. Hingerton, Esq., dated November 18, 2014; it is:

ORDERED that this special proceeding is hereby consolidated with the prior special proceeding that has the exact same caption and was brought under Suffolk County Index Number 029015-2013; and all records shall be maintained under Suffolk County Index Number 029015-2013; and it is further

ORDERED that the Clerk of the Court shall renumber the second Petition that had been filed under Index Number 019118-2014 now as Motion #002, under Index Number 029015-2013; and similarly the Respondent's motion to dismiss that had been filed under Index Number 019118-2014 will also be renumbered as Motion #003 under Index Number 029015-2013; and it is further

ORDERED that the renumbered motion (Seq. #003) by Respondent for dismissal of the second petition pursuant to CPLR § 3211 is in all respects denied; and it is further

ORDERED that the renumbered motion (Seq. #002) by the Petitioner which seeks enforce an award in arbitration is denied; and it is further

ORDERED that Petitioner shall submit to the Court a proposed judgment in conformity with the requirements of 22 NYCRR § 202.48, on notice to the Respondent, for the sum certain being the dollar value of one-half of the pay the Petitioner would have been paid in accordance with the Collective Bargaining Agreement had she not been suspended from work for the period from May 31, 2011 through January 3, 2013 and the Petitioner shall have interest on this sum

beginning on January 4, 2013 at the statutory rate as provided by *CPLR § 5004* together with fees, costs and disbursements; and it is further

ORDERED that the Respondent shall submit a proposed counter judgment, if any, in accordance with *22 NYCRR § 202.48*.

DECISION

Petition I

The Petitioner, Karline Brown-Hendricks, was the subject of disciplinary action and in accordance with a collective bargaining agreement the matter was submitted to arbitration. An award in arbitration dated October 30, 2012 was made. The Petitioner herein commenced an Article 75 proceeding on October 29, 2013 seeking confirmation of the award in arbitration. (Index No. 029015/2013). (Hereinafter "Petition I"). The Respondent did not oppose confirmation of the arbitration award. Respondent did, however, object to "enforcement."

Hon. Jerry Garguilo issued an Order confirming the award, but denying all other requested relief. The Respondent served upon the Petitioner a copy of this Order with notice of entry on August 29, 2014.

Petition II

The Petitioner commenced this second proceeding by filing a Notice of Petition and Petition on September 29, 2014, (Hereinafter "Petition II"), with service of process made on October 3, 2014. Petitioner now seeks to "Enforce Arbitration Award." This proceeding should have been brought as a motion under the original index number 029015-2013. *See CPLR § 7502 (a)(iii), as enacted after the Court's decision in Solkav Solartechnik, G.m.b.H. v. Besicorp Group Inc., 91 N.Y.2d 482 (1998)*. This petition will be consolidated with the prior proceeding so that all records are kept together.

The Petitioner was reinstated to her position of employment on January 5, 2013. *See Verified Petition as par. 14*. Petitioner contends that because the award provided that she was to receive half pay for the period she was suspended, and that she was to be reinstated "immediately." Petitioner argues the Respondent must pay her for half of the pay she would have accrued from May 31, 2011 until the date of the decision in arbitration, October 30, 2012, and by implication that she should be paid the full salary she would have received from October 31, 2012 until she was, in fact, reinstated on January 4, 2013. The Petitioner also seeks reimbursement health insurance she contends she would have had during the period of her suspension from work.

The Respondent has filed a motion pursuant to *CPLR § 3211(a)(2) &(5)* which provides:

“(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

2. the court has no jurisdiction of the subject matter of the cause of action;...

5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds;”

The Respondent contends that an “enforcement” action may only be brought in the Court of Claims, and that the Petitioner’s request for relief is barred by doctrine of collateral estoppel by virtue of the Court’s previous denial of the Petitioner’s request for enforcement. Upon the prior petition there had been no judgment to enforce until after confirmation of the award in arbitration. CPLR § 7514. Enforcement in the original proceeding was not justiciable by this Court because it was premature prior to there being any judgment to enforce. Moreover, the current Petition, as argued, is not for enforcement but is in the nature of re-argument. Accordingly the Respondent’s motion to dismiss is denied.

The Petitioner has captioned the special proceeding as one in which enforcement is sought, however, based upon the arguments presented it appears to be more a motion to reargue the prior decision and order of the court with this petition / motion having been served on October 3, 2014, more than thirty days after entry of the previous order of the court.

The Petitioner is demanding relief that was plainly not granted in the award in arbitration. The award in arbitration provided that the Petitioner should be paid half pay for the period of her suspension which began on May 31, 2011 and continued through January 3, 2013.

The award in arbitration did not provide any enhanced payment if reinstatement was not instantaneous with the issuance of the award. It is true that the immediate reinstatement awarded by the arbitrator dated October 30, 2012 did not occur for a period of two months, however, the Petitioner did not seek confirmation and equitable enforcement of this aspect of the award in arbitration. Instead, the Petitioner was reinstated and ten months later the Petitioner sought to confirm the award in arbitration. The Court confirmed the award. Accordingly, the motion now made that this Court modify the plain language of the arbitration award to provide for full pay from the period of October 31, 2012 through January 3, 2013 is in all respects denied.

Similarly, the Petitioner requests this Court to modify the award in arbitration to include remuneration for NYSHIP (health care) benefits that had been suspended during the period from May 31, 2011 through January 3, 2013; the award in arbitration did not provide for such an award and the court has not authority to provide for such a modification. Accordingly, the Petition, which is in effect a motion to reargue is denied as untimely and without merit.

However, if the dollar value of the award in arbitration providing for half pay for the period from May 31, 2011 through January 3, 2013 under the terms of the collective bargaining agreement remains in genuine controversy, this Court is without authority to address this. Upon proper motion by either party, the Court will, if appropriate, remand the issue to the arbitrator for a specific determination of the dollar value of the award. *See Matter of Board of Education of Amityville Union Free School District*, 62 AD3d 992 (2nd Dept., 2009)

Conversely, if the award is subject to a simple calculation that is not reasonably in dispute, then Petitioner should submit a proposed judgment on notice identifying the specific dollar value awarded by the arbitrator. *Civil Serv. Emples. Ass'n v. County of Nassau*, 305 A.D.2d 498 (2nd Dept. 2003). The Petitioner is entitled to interest on this amount at the statutory rate beginning on January 4, 2013. *Dermigny v Harper*, 2015 NY Slip Op 02722, ___AD3d___ (2nd Dept. April 1, 2015).

With respect to some future enforcement of the judgment to be filed, the Court is hopeful that the State of New York is never in default of such an obligation, but the Court will address that issue, including subject matter jurisdiction should it be presented.

The foregoing shall constitute the decision and order of the court.

Dated: April 7, 2015



JOHN H. ROUSE, Acting J.S.C.

FINAL DISPOSITION