

Matter of Castro v Department of Educ. of the City of N.Y.
2017 NY Slip Op 32255(U)
October 23, 2017
Supreme Court, New York County
Docket Number: 153319/2017
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32**

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In the Matter of the Application of

CAROLINA CASTRO,

Petitioner,

-against-

**THE DEPARTMENT OF EDUCATION OF THE
CITY OF NEW YORK**

Respondent.

**For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules**

**Index No. 153319/2017
Motion Seq: 001**

**DECISION, ORDER &
JUDGMENT**

HON. ARLENE P. BLUTH

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The petition seeking *inter alia* an order directing respondent to provide a mentorship and declaring that respondent's actions were arbitrary and capricious is denied and this proceeding is dismissed.

Background

This proceeding arises out of petitioner's employment as a science teacher for respondent. In September 2016, petitioner asked her principal (Ms. O'Mara) for a letter of recommendation and a mentor in anticipation for petitioner's application to the Center for Integrated Teacher Education ("CITE") program. Respondent claims that Ms. O'Mara agreed to provide the letter of recommendation but advised petitioner that there were no available mentors. Ms. O'Mara drafted a letter of recommendation for CITE, but rescinded the letter after petitioner failed to waive her right to

view the letter. Ms. O'Mara claims she lost trust in petitioner and rejected petitioner's requests for additional letters of recommendation for another program (Leaders in Education Apprenticeship Program, "LEAP"). Respondent insists that Ms. O'Mara does not believe petitioner has leadership qualities and observes that Ms. O'Mara approved petitioner to attend a meeting in Lake Tahoe in June 2017.

Petitioner seeks two primary forms of relief: 1) a declaration that respondent's rejection of her requests made on December 15, 2016 and December 21, 2016 for a letter of recommendation and a for a mentor was arbitrary and capricious and 2) that respondent be compelled to provide petitioner with a mentor.

Petitioner argues that she has vastly superior qualifications to other teachers who have been provided with mentors and suggests that she was denied a mentor because of her race and gender. Petitioner claims that this Court should require respondent to produce discovery regarding the mentorship of these other teachers. Petitioner emphasizes that Ms. O'Mara wrote a letter of recommendation for petitioner (for the CITE program) and only withdrew the letter because petitioner did not waive her right to see the recommendation letter. Petitioner insists that she has a right to look at her own file. Petitioner acknowledges that she can obtain a letter of recommendation from someone else but insists that she must get permission from the principal to allow a mentorship (a required component of the LEAP program). Petitioner further characterizes this proceeding as a mandamus to review rather than as a mandamus to compel.

Respondent argues that Ms. O'Mara made determinations based on her professional opinion and that the rejections of petitioner's requests were neither arbitration nor capricious. Respondent also

claims that petitioner's causes of action are time-barred to the extent that they refer to determinations made prior to December 10, 2016. Respondent insists that Ms. O'Mara's decision denying petitioner's request for a letter of recommendation and a mentorship for the CITE program was made on September 23, 2016, more than four months before this proceeding was commenced. Respondent further argues that the Court cannot compel Ms. O'Mara to give petitioner a mentor or a letter of recommendation because petitioner has no legal right to either request.

The December 22, 2016 Rejection

In an article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

As an initial matter, petitioner admits that she is only challenging the failure to provide a mentor on or about December 22, 2016 and that any information provided about events prior to December 10, 2016 is only background information (NYSCEF Doc. No. 26, fn 1). Obviously, any relief requested based on determinations made prior to December 10, 2016 are time-barred because this action was filed on April 10, 2017 (*see* CPLR 217[1]).

Therefore, the Court must focus on the late December 2016 requests (made on December 15

and December 21) relating to the LEAP program (*see* NYSCEF Doc. No. 19). Ms. O’Mara submits an affidavit claiming that she told petitioner on December 22, 2016 that she would not submit a letter of recommendation for the LEAP program because she “did not view petitioner as leadership material” (NYSCEF Doc. No. 8, ¶¶ 24-25). Ms. O’Mara added that “I formed this opinion based on observing petitioner at presentations during which petitioner did not exhibit interest in the presentation material, petitioner’s minimal involvement in extracurricular activities, her lack of uncompensated afterschool tutoring unlike many other teachers, and petitioner’s failure to present on professional development programs to the faculty at large” (*id.* ¶ 26).

This affidavit establishes that the rejection of petitioner’s request for letter of recommendation and for a mentor was neither arbitrary nor capricious. Ms. O’Mara had a rational basis for her determination— she simply did not think petitioner was a good candidate for a leadership program.

Petitioner’s claims concerning discrimination are also rejected. Petitioner only offered speculation supporting the alleged discriminatory reason she was rejected and the affidavit of Ms. O’Mara demonstrates that she has worked with a diverse group of teachers and administrators, including mentoring a female of Hispanic descent for a leadership program (*see id.*). Further, Ms. O’Mara approved petitioner to attend a conference in Lake Tahoe in June 2017 and insists that she did so “because it did not concern training for a leadership position, but rather focused on empowering and motivating disabled youth” (*id.* ¶ 40). And, in any event, Ms. O’Mara provided multiple non-discriminatory reasons for her determination.

Mandamus to Compel the Mentorship

“Mandamus to compel is a judicial command to an officer or body to perform a specified

ministerial act that is required by law to be performed. It does not lie to enforce a duty that is discretionary. The availability of mandamus to compel the performance of a duty does not depend on the applicant's substantive entitlement to prevail but on the nature of the duty sought to be commanded" (*Alliance to End Chickens as Kaporos v New York City Police Dept.*, 152 AD3d 113, 117, 55 NYS3d 31 [1st Dept 2017]). "Mandamus is not available to compel an officer or body to reach a particular outcome with respect to a decision that turns on the exercise of discretion or judgment" (*id.*).

The Court rejects the portion of the petition that seeks to compel respondent to provide her with a mentor or with a recommendation letter. Although petitioner attempts to characterize this requested relief as a mandamus to review, it is, in fact, a mandamus to compel—petitioner wants this Court to order Ms. O'Mara to take a certain action. That demand is denied because this requested act was a discretionary duty. Ms. O'Mara had the *option* to approve or disapprove petitioner's request and the Court cannot order her to take a discretionary act that turns on Ms. O'Mara's judgment as a school principal.

The petition is denied in its entirety.

Summary

Clearly, Ms. O'Mara did not like that petitioner refused to waive her right to see the letter of recommendation for the CITE program in September 2016. Ms. O'Mara viewed this as a betrayal of trust and an indication that petitioner would not be a good administrator. Ms. O'Mara also concluded that petitioner was lacking in other areas necessary for similar leadership programs, such as LEAP. Ms. O'Mara provided a rational basis for her determination that petitioner did not possess the required leadership qualities. Petitioner's disagreement with that assessment does not yield a different outcome.

Ms. O'Mara's determination is one that is entrusted to a principal— to conclude, using her professional judgment, whether a teacher is a good candidate for a particular program. As the leader of a school, a principal must be afforded deference on these types of decisions as long they are neither arbitrary nor capricious (or based on an impermissible justification). And, here, Ms. O'Mara sufficiently articulates her reasons for rejecting petitioner's December 2016 requests.

This Court declines to intervene and tell Ms. O'Mara how to do her job. The Court recognizes that many of these programs can be helpful (and potentially required) as teachers attempt to gain administrative positions— but that does not mean that the Court can require a principal to write a letter of recommendation or provide a mentorship. Those are discretionary acts.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied, this proceeding is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision, Order and Judgment of the Court.

Dated: October 23, 2017
New York, New York

ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH