

<b>Flomenbaum v Weill Cornell Med. Coll.</b>
2019 NY Slip Op 31660(U)
June 3, 2019
Supreme Court, New York County
Docket Number: 653240/2018
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. GERALD LBOVITS PART IAS MOTION 7EFM**

*Justice*

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NEAL FLOMENBAUM,

Plaintiff,

- v -

WEILL CORNELL MEDICAL COLLEGE, WEILL CORNELL  
MEDICINE, CORNELL UNIVERSITY, AUGUSTINE M.K. CHOI,  
M.D., DEAN OF WEILL CORNELL MEDICAL COLLEGE, NEW  
YORK-PRESBYTERIAN HOSPITAL, and STEVEN J. CORWIN,  
M.D., PRESIDENT AND CHIEF EXECUTIVE OFFICER OF NEW  
YORK-PRESBYTERIAN HOSPITAL,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89

were read on this motion to/for

PRELIMINARY INJUNCTION

*Beldock Levine & Hoffman LLP* (Keith Michael Szczepanski, Luna Droubi, and Cynthia Rollings) for plaintiff Neal Flomenbaum, M.D.

*Office of University Counsel of Cornell University* (Sheryl A. Orwel) and *Venable LLP* (Brian Joseph Clark and Benjamin Stockman), for defendants Weill Cornell Medical College, Weill Cornell Medicine, Cornell University, and Augustine M.K. Choi, M.D.

*Epstein Becker & Green, P.C.* (John H. Pope and James Stuart Frank), for defendants New York-Presbyterian Hospital and Steven J. Corwin, M.D.

Gerald Lebovits, J.:

Plaintiff, Neal Flomenbaum, M.D., moves for a preliminary injunction ordering defendants Weill Cornell Medical College, Weill Cornell Medicine, and Cornell University (collectively "WCMC") to reinstate him through June 30, 2019, to his prior position and title as Professor of Clinical Medicine at WCMC. The underlying complaint alleges that WCMC and its Dean, Augustine M.K. Choi, M.D., as well as New York-Presbyterian Hospital ("NYP") and its President and Chief Executive Officer, Steven J. Corwin, M.D., wrongly fired Dr. Flomenbaum.

In 1996, Dr. Flomenbaum began working at WCMC as an academic faculty staff member under the title of Professor of Clinical Medicine in the Department of Medicine and as a medical

staff member under the title of Chief of the Division of Emergency Medicine.<sup>1</sup> In a January 20, 2016, letter, former WCMC Dean Laurie Glimcher, M.D., informed Dr. Flomenbaum that his “appointment and employment as Professor of Clinical Medicine at WCMC would end on June 30, 2018.”

About five months later, Dean Choi, in a June 29, 2016 letter, informed Dr. Flomenbaum that his NYP position as Chief of Emergency Services, as well as his medical staff appointment and clinical privileges, would “continue through June 30, 2018.” The June 29, 2016, letter also indicated that Dr. Flomenbaum’s faculty appointment at WCMC is “renewable annually,” though Dean Glimcher’s January 20, 2016, letter had informed Dr. Flomenbaum that his WCMC appointment would end on June 30, 2018. Dean Choi’s June 29, 2016, letter also stated that it “supersedes and replaces” the January 20, 2016 letter.

On June 8, 2017, Dean Choi gave Dr. Flomenbaum a letter to clarify to him that his WCMC employment would conclude on June 30, 2018; the letter stated that Dr. Flomenbaum’s “appointment [would] automatically end on June 30, 2018.”<sup>2</sup>

## DISCUSSION

For Dr. Flomenbaum to secure preliminary-injunctive relief, he must establish by clear and convincing evidence that (1) he has a likelihood of success on the merits; (2) he will suffer irreparable harm if an injunction is not granted; and (3) the equities lean in his favor. (*See Gilliland v. Acquafredda Enters., LLC*, 92 AD3d 19, 24 [1st Dept 2011]; *CC Vending, Inc. v Berkeley Educ. Servs. of N.Y., Inc.*, 74 AD3d 559, 560 [1st Dept 2010].) Granting a preliminary injunction if the movant has failed to satisfy each element of the three-part test is an abuse of discretion. (*Doe v. Axelrod*, 73 NY2d 748, 750 [1988].)

### A. Likelihood of Success on the Merits

WCMC argues that Dean Glimcher’s January 20, 2016, letter, informing Dr. Flomenbaum that his “appointment and employment as Professor of Clinical Medicine at Weill Cornell will end on June 30, 2018” gave Dr. Flomenbaum almost two and a half years’ notice before his faculty appointment would end. The timing of this notice exceeds the minimum 12 months’ the WCMC Academic Staff Handbook requires.

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<sup>1</sup> Plaintiff also was employed by NYP, an entity separate from WCMC that is not party to the present motion.

<sup>2</sup> Although this letter was dated June 8, 2017, it was never sent to Dr. Flomenbaum. It was communicated to Dr. Flomenbaum, only later, at a July 12, 2017, meeting.

Dr. Flomenbaum maintains, however, that the June 29, 2016 letter stating that faculty appointments are “renewable annually” and stating that it “supersedes and replaces” the January 20, 2016 letter, rescinded WCMC’s January 20, 2016, letter. Dr. Flomenbaum argues that he was not given the required 12 months’ notice in advance of his termination.

Each side’s argument might have merit. The WCMC Academic Staff Handbook confers contractual rights. (*See Matter of Monaco v New York Univ.*, 145 AD3d 199, 208 [1st Dept 2012].) Thus, WCMC argues that it did not breach the handbook’s provisions because Dean Glimcher’s January 20, 2016 letter constituted two and a half years’ advance notice of Dr. Flomenbaum’s termination, satisfying the handbook’s 12 months’ advance-notice requirement. Dean Glimcher’s January 20, 2016, letter plainly provides more than twelve months advance notice of termination of Dr. Flomenbaum’s WCMC appointment.

On the other hand, it is true that Dean Choi’s June 29, 2016, letter states that it “supersedes and replaces” the January 20 letter, and that Dr. Flomenbaum’s WCMC faculty appointment is “renewable annually.”

At this stage of the action, though, the court lacks sufficient information to assess whether the June 29 letter was intended to withdraw the June 30, 2018, termination date given in the January 20 letter. As a result, the merits do not weigh heavily in favor of granting a preliminary injunction.

#### **B. Irreparable Harm**

Dr. Flomenbaum claims that the loss of his academic faculty title and appointment constitutes irreparable harm that money damages cannot redress. Damages compensable monetarily and capable of calculation are not irreparable. (*SportsChannel Am. Assoc. v Nat’l Hockey League*, 186 AD2d 417, 418 [1st Dept 1992].)

Dr. Flomenbaum identifies non-monetary forms of harm that he will allegedly suffer absent a preliminary injunction. These harms include (1) diminution of professional and academic reputation; (2) suffering of his medical practice; (3) increased difficulty in finding new employment in emergency medicine; (4) increased difficulty finding new employment at another New York City academic medical center; (5) embarrassment; and (6) inconvenience.

Even assuming that these alleged harms will occur, though, it appears that money damages likely can remediate these harms. Dr. Flomenbaum also has not clearly demonstrated the significance (monetary or otherwise) of having his academic title reinstated. Furthermore, Dr. Flomenbaum seeks to require WCMC to retain him only for a single year, rather than

indefinitely. Thus, the potential harm to Dr. Flomenbaum if an injunction is denied would be time-limited in any event.

The court is not persuaded that plaintiff's lack of appointment and title for a single year will cause him irreparable harm supporting the grant of a preliminary injunction.

**C. Balance of the Equities**

In considering requests for preliminary injunctive relief, the court must weigh the potential harm that granting relief may inflict on each party. Only if this balance weighs in plaintiff's favor will it be appropriate to grant a preliminary injunction. (*See Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 NY3d 839, 840 [2005].)

Dr. Flomenbaum asserts that the injuries he will sustain absent an injunction are more burdensome than the harm to which WCMC will be subject with a preliminary injunction, because continuation of his title and appointment represents "everything [he] has worked for during [his] entire academic career" and provides his "best and last chance . . . to obtain new employment in the field of medicine."

WCMC argues that reinstating Dr. Flomenbaum to his previous appointment and title will impose a substantial burden on WCMC: as an academic institution, WCMC has a significant interest in managing its workforce and academic personnel decisions. Additionally, WCMC contends that Dr. Flomenbaum "performed all of his work for NYP," that he had no "teaching, research, or clinical duties" at WCMC, and thus that granting Dr. Flomenbaum relief would require the impossible obligation of reinstating him to a "non-existent position."

This court concludes that granting Dr. Flomenbaum a purely paper reinstatement would have little value and would substantially burden WCMC, and therefore that the balance of the equities weighs against Dr. Flomenbaum.

Accordingly, it is

ORDERED that plaintiff's motion for preliminary injunction is denied.

6/3/2019  
DATE

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GERALD LEBOVITS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE