

Khass v New York Presbyt. Brooklyn Methodist Hosp.

2020 NY Slip Op 30541(U)

February 13, 2020

Supreme Court, Kings County

Docket Number: 516861/2019

Judge: Kathy J. King

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At an IAS Term, Part 64 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of February, 2020.

PRESENT:

HON. KATHY J. KING,

Justice.

-----X
WALID KHASS, MD.

Plaintiff,

- against -

NEW YORK PRESBYTERIAN BROOKLYN METHODIST HOSPITAL, DOCTOR PRAMOND NARULA, MD, DOCTOR BRANDE BROWN, MD, SAINT GEORGE'S UNIVERSITY SCHOOL OF MEDICINE, DOCTOR RICAHRD LIEBOWITZ, MD, DOCTOR STEPHEN WEITZMAN, MD,

Defendants.
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DECISION/ORDER

Index No.
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The following papers numbered 1 to 4 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	1-2
Opposing Affidavits (Affirmations) _____	3,4
Reply Affidavits (Affirmations) _____	_____

Plaintiff Walid Khass, MD (Dr. Khass) moves by Order to Show Cause seeking an Order:
1) that Defendant New York Presbyterian Brooklyn Methodist Hospital (the Hospital), Pramod Narula, MD, and Brande Brown, MD, (the Hospital Defendants) specifically perform their contractual obligation by admitting plaintiff to the Pediatric Residency Program; 2) directing Saint

George's University Limited¹ (the University) to remove plaintiff's leave of absence status from his medical student performance evaluation, remove plaintiff's present ranking of "Good" and restore plaintiff's academic record to his original ranking of "Very Strong". The Hospital, the Hospital Defendants, and the University oppose the application.

BACKGROUND

Plaintiff Walid Khass seeks appointment as a first-year medical resident in the Hospital's Pediatric Residency Program (the Program). Every year, on or about July 1, ten (10) medical residents join the Program by participating in the Main Residency Match (the Match) of the National Resident Matching Program (NRMP). Applicants for the Match specify their respective preferences for positions at teaching hospitals through the Match's online registration, ranking and results system. After an application and interview process with a hospital's residency program, applicants and programs are notified of the matches from the NRMP. Under the terms of the Match Participation Agreement, once a program and an applicant match, only the NRMP may waive the commitment.

Both the Hospital and Dr. Khass participated in the Match for 2019, and executed their respective Match Participation Agreements. On or about March 15, 2019, Plaintiff was matched to the Program for a residency position commencing July 1, 2019. He had been included on the Program's final certified rank order list based on an October 16, 2018 interview with the Program, and review of his Electronic Residency Service Application, which included a Medical Student Performance Evaluation ranking of "Very Strong." Waivers to a match may be requested by a program or applicant based on the following: (1) NRMP determines that honoring the results of

¹ Defendant in its opposition papers states that the name of the University as it appears in the caption is incorrect and should be correctly name is Saint George's University Limited.

the match would cause serious and extreme hardship; (2) the applicant wishes to change specialties; (3) the applicant is ineligible for training. Waivers can be granted only by NRMP, which investigates each request in accordance with NRMP's Violations Policy. The final decision to grant a waiver is in the sole discretion of NRMP and is not subject to arbitration.

On April 19, 2019, the Program requested a waiver of its match commitment to Dr. Khass due to "applicant ineligibility." On May 30, 2019, the waiver request was denied by NRMP because the Program failed to show that Dr. Khass is ineligible to start the program, or to demonstrate that it will suffer an unanticipated serious and extreme hardship if its waiver request is denied. On June 6, 2019, the Program requested reconsideration of the waiver decision, and on July 1, 2019 the decision to deny the waiver was upheld by NRMP. Despite NRMP's denial of the Program's waiver request, on July 9, 2019, the Program informed the NRMP that it would not accept Dr. Khass into training. Thereafter, plaintiff commenced the underlying proceeding seeking, inter alia, money damages against the Hospital for breach of the Match agreement and money damages against the University for its failure to immediately restore plaintiff's original academic ranking and record to its pre-February 2019 status.

Plaintiff now moves by Order to Show Cause for an order directing the Hospital to specifically perform the Match agreement, and directing defendant University to restore his academic ranking and record to its pre-February 2019 status.

In opposition, the Hospital argues that between 2012 and 2017, Dr. Khass made a significant number of anti-Semitic, anti-gay, and/or racially insensitive social media posts, some of which condoned and/or encourage violence which rendered Dr. Khass ineligible to train at the Hospital. Moreover, the Hospital asserts that these posts would cause serious and extreme hardship on the Program because it would interfere with the Program's ability to serve a patient

population consisting of a large number of Orthodox Jews and would render it unable to conduct a respectful, inclusive work environment. Further, the Hospital asserts that it would not have matched with Dr. Khass had it been aware of his disciplinary history at the University which included a leave of absence through the rank order list deadline, suspension after the Match occurred, and retroactive application of the suspension so that he could graduate on time.

Further, the University, in opposition, contends that the court should not substitute its own opinion in the administrative decision of an educational institution absent a finding that the decision was arbitrary and capricious.

THE INSTANT MOTION

Here, a review of the moving papers indicate that a preliminary injunction is an inappropriate remedy since a preliminary injunction seeks to safeguard rights asserted by plaintiff in an ongoing action, not to determine the ultimate rights of the parties. In *Bachman v Harrington*, 184 NY 458, 464 [2nd Dep't 1906], the Court of Appeals held that the court could not grant an injunction to a suspended member of a voluntary association in order to compel his reinstatement as a member in good standing. The court reasoned that the reinstatement of plaintiff's membership would not be an appropriate remedy because it would award plaintiff the ultimate relief sought in its final judgment. Applying the case law to the instant motion, the Court finds that the requested relief to compel the Hospital to specifically perform its contractual obligation, is the ultimate relief sought in Dr. Khass's complaint. Therefore, a preliminary injunction is not the proper remedy.

While the Court finds that the form of the instant motion is improper, the motion shall not be denied in accordance with CPLR 103(c), which provides that:

"If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the

“If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice-versa, upon such terms as may be just...”

Given the facts in the case at bar, the Court finds that the appropriate remedy for Dr. Khass is to compel the Hospital to act by way of mandamus. Applying CPLR 103(c) to the case at bar, the Court directs that the application for relief be converted to a mandamus proceeding pursuant to CPLR 7801, since jurisdiction has been obtained (*See Bachman v Harrington*, 184 NY 458, 463 [2nd Dep’t 1906]). The remedy of mandamus is a judicial command to an officer or body to perform a specified act that is required by law to be performed and is applicable to a private corporation (*See CPLR 7801 and 7802*). To succeed in a mandamus proceeding, plaintiff must show a clear legal right to the relief sought and “the right to performance must be so clear as not to admit of reasonable doubt or controversy” (*Ass’n of Surrogate & Supreme Court Reporters Within City of New York v Bartlett*, 40 NY2d 571 [1976] [internal citations omitted]). Notably, the case law has held that a petitioner may invoke mandamus if the rights sought to be compelled have become legally “vested” due to an official acceptance of the petitioner's performance of her contractual obligations (*See also Municipal Consultants & Publishers, Inc. v. Town of Ramapo*, 1979, 47 N.Y.2d 144, 417 N.Y.S.2d 218, 390 N.E.2d 1143 [mandamus to compel is proper to enforce ministerial act of executing agreement]).

Here, plaintiff has established a legal right to have the Pediatric Residency Program honor the Match since it is undisputed that: 1) the Hospital and Dr. Khass participated in the 2019 Residency Match; 2) both parties executed their respective Match Participation Agreements; 3) once the Program and Dr. Khass matched, only the NRMP could waive the commitment; and, 4)

request for reconsideration was also denied by letter dated 7/1/2019. Significantly, the moving papers establish that notwithstanding the NRMB's respective denials, the Hospital did not accept Dr. Khass into the Program in direct contravention of the terms set forth in the Match Participation Agreement, and between July 9 and August 15, the Hospital filled the residency position that was the subject of the 2019 Match.

It should be noted that the sanctions set forth for violation of a Match Participation Agreement do not appear to provide a remedy for an individual such as Dr. Khass who is in the untenable position of being denied medical training from the Hospital. Such training is a prerequisite for Dr. Khass to become a licensed medical doctor. Contrary to the Hospital's contentions, Dr. Khass was under no obligation to pursue residency positions at other programs prior to the disposition of the Hospital waiver request. Indeed, in its April 19, 2019 waiver request, the Hospital stated that it needed a waiver before it could seek another candidate.

Accordingly, the Court grants the movant's application, now converted to mandamus, to compel the hospital to comply with the Match and allow Dr. Khass to begin his residency.

As to defendant, Saint George's University Limited², the Court agrees with the University, in opposition, that the "case law reflects the policy that the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment." In reviewing the actions of an educational institution, a court should only consider whether the school substantially followed its internal rules, acted in an arbitrary or capricious manner or whether the penalty is shocking or disproportionate (*See In The Matter of Christopher T. VanHouten v Mount St. Mary Hospital, et al.*, 137 AD3d 1293, 1295). Here, the change in Dr. Khass's medical school evaluation

² By order dated April 23, 2019, Dr. Khass discontinued an action which had been previously commenced against the University bearing Index No. 505749/19.

was based on findings that he violated University policies, and there was no showing that the University acted in an 'arbitrary or capricious" manner.

Based on the foregoing, it is hereby,

ORDERED, that pursuant to CPLR 103 (c) that the requested relief herein is deemed a petition for mandamus pursuant to CPLR 7801; and it is further,

ORDERED, that the application for mandamus is hereby granted in favor of petitioner, Walid Khass, to the extent indicated in this decision; and it is further,

ORDERED, that petitioner is to settle a judgment on notice within twenty (20) days of the date of this order; and it is further

ORDERED, that movant's application, in all other respects, is denied in its entirety.

This constitutes the Decision/Order of the Court.

E N T E R,

Kathy J. King

HON. KATHY J. KING
J. S. C.

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