

Matter of Yu-Clarson v City of Glen Cove
2020 NY Slip Op 30594(U)
February 10, 2020
Supreme Court, Nassau County
Docket Number: 902/2019
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 17
Present: Hon. Sharon M.J. Gianelli, J.S.C.

_____ X		
In the matter of the Application of SANDRA YU-CLARSON,	Petitioner,	Index No. 902/2019
-against-		Mot Seq. No. 002 and 003
		Decision & Order
CITY OF GLEN COVE and TIMOTHY TENKE, Mayor,	Respondents.	XXX
_____ X		

- Papers submitted on this motion:
- Mot. Seq. No. 002 _____
 - Petitioner's Order to Show Cause and Affirmation in Support _____ X
 - Mot. Seq. No. 003 _____
 - Respondent's Notice of Cross-Motion and Affidavit in support _____ X
 - Respondent's Affirmation in Support and in Opposition _____ X
 - Respondent's Memo of Law in Support and in Opposition _____ X
 - Petitioners Affirmation in Opposition _____ X
 - Respondent's Affirmation in Reply _____ X

Petitioner brings this "hybrid" proceeding, with an Order to Show Cause requesting several Orders allowing Petitioner to carry out her duties as Controller for the City of Glen Cove, which were granted by this Court on September 6, 2019, pending the determination of the underlying motion.

Petitioner requests an Order, enjoining the Respondent, Mayor Timothy Tenke, his agents, servants and employees from denying and/or preventing the Petitioner from entering, using and occupying the Finance Department offices located at Glen Cove City Hall and from preventing and/or interfering with said Petitioner's performance of her powers, duties and responsibilities as Controller for the City of Glen Cove; and pursuant

to CPLR § 7805, staying said Respondent, his agents, servants and employees from enforcing his unilateral determination to try to terminate Petitioner from her duly appointed public office as Controller for the City of Glen Cove in violation of lawful procedure.

Petitioner also seeks to enjoin Respondents from terminating Petitioner as Controller for the City of Glen Cove and for an Order enjoining Respondents from denying Petitioner the payment of her salary and benefits as Controller for the City of Glen Cove.

Respondents bring a Cross-Motion seeking the dismissal of the underlying Petition.

Background

On January 1, 2017, Petitioner was appointed Controller for the City of Glen Cove by then Mayor Reginald Spinello. On January 1, 2018, Petitioner was reappointed by Respondent, Mayor Timothy Tenke. On January 1, 2019, Respondent, Mayor Tenke, did not reappoint Petitioner as Controller for the City of Glen Cove. No other appointment for the position of Controller was made at that time. Petitioner continued the performance of her duties as a holdover employee according to the Glen Cove Charter Article II, § C2-9(A-K).

The Glen Cove Charter provides that an Officer shall continue the discharge of the duties of his office, until his successor shall be chosen and qualified.

On or about July 16, 2019, Petitioner presented formal written findings regarding certain withholdings that should have been deducted from Respondent, Mayor Tenke's paycheck, but were not.

Disagreements arose between Petitioner and Respondent as to the investigation and handling of this issue.

On August 17, 2019, Petitioner received a termination for cause letter from Respondents. The facts of this case are not disputed by either side. Petitioner was then barred from her office and unable to continue her duties as Controller for the City of Glen Cove.

Both sides agree that the Mayor is permitted to appoint a new Controller to replace Petitioner.

Since the submission of the underlying Petition, Respondent, Mayor Tenke was re-elected as Mayor of the City of Glen Cove. He appointed Michael Piccirillo, who took the position of Controller of the City of Glen Cove as of January 1, 2020.

The appointment of a new Controller for the City of Glen Cove renders the underlying Petition moot.

Accordingly,

it is

ORDERED, that Petitioners application for an Order, enjoining Respondents, his agents, servants and employees from denying and/or preventing Petitioner from entering, using and occupying the Finance Department offices located at Glen Cove City Hall and from preventing and/or interfering with said Petitioner's performance of her powers, duties and responsibilities as Controller for the City of Glen Cove; and pursuant to CPLR § 7805, staying said Respondent, his agents, servants an employees from enforcing his unilateral determination to try to terminate Petitioner from her duly appointed public office as Controller for the City of Glen Cove is Denied; and


it is

ORDERED, that Respondents' Cross-Motion seeking the dismissal of the Petition is Granted.

All applications not specifically addressed herein are denied.

The forgoing constitutes the decision and order of the Court.

DATED: Mineola, New York
February 10, 2020


Sharon M. J. Gianelli
Justice of the Supreme Court

ENTERED

FEB 13 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE