

Matter of Local 621 v New York City Dept. of Transp.
2020 NY Slip Op 33637(U)
March 17, 2020
Supreme Court, New York County
Docket Number: 101831/2017
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Carol Edmead
Justice

PART 35

Local 621, S.E.I.U.

INDEX NO. 101831/2017

MOTION DATE

MOTION SEQ. NO.

NYC Dept. of Transportation

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits **No(s).**

Answering Affidavits — Exhibits **No(s).**

Replying Affidavits **No(s).**

Upon the foregoing papers, it is ordered that this motion is

In accordance with the annexed Settlement Agreement, this matter has been settled by the parties and is now discontinued and withdrawn. Pursuant to the Settlement Agreement, Petitioners are owed certain attorney's fees. It is hereby

ORDERED that the issue of the amount of attorneys' fees is hereby severed and referred to a Special Referee to Hear and Determine; and it is further

ORDERED that counsel for Petitioners shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 60 days of entry to arrange a date for the reference to a Special Referee.

THIS DOCUMENT IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

MAR 19 2020

NEW YORK COUNTY
COUNTY CLERK

Dated: 3/18/2020

[Signature]
J.S.C.

HON. CAROL R. EDMOND

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

In the Matter of the Application of

LOCAL 621, S.E.I.U.; SEUPERSAUD BHARAT;
BISAMBHAR KUBAIR; and HEIDI COHEN,

in her capacity as the personal representative of the estate
of Andrew Cohen,

Petitioners,

- against -

THE NEW YORK CITY DEPARTMENT OF
TRANSPORTATION; POLLY TROTTENBERG,
personally and as Commissioner of the New York City
Department of Transportation; JAMES L. HALLMAN,
personally and as Chief Diversity/EEO Officer of the
New York City Department of Transportation; and the
CITY OF NEW YORK,

Respondents.

----- X

**SETTLEMENT
STIPULATION AND
AGREEMENT**

Index No. 101831/2017
(Edmead, J.)

FILED

MAR 19 2020

NEW YORK COUNTY
COUNTY CLERK

WHEREAS, petitioners Local 621, S.E.I.U., Seupersaud Bharat, and Bisambhar Kubair and original petitioner Andrew Cohen for whom his widow Heidi Cohen has been substituted as a party ("petitioners") commenced this hybrid proceeding/action in the Supreme Court of the State of New York, New York County pursuant to Article 78 of the New York Civil Practice Law and Rules; the Fourteenth Amendment to the United States Constitution; the Constitution and Laws of the State of New York; New York City Administrative Code § 8-502, and New York State Executive Law § 296 et seq. alleging that petitioners Bharat, Kubair and Cohen's due process rights were violated, that petitioners Bharat and Kubair were discriminated against on account of their race and/or national origin, and that petitioner Bharat was retaliated against for allegedly engaging in protected activity;

WHEREAS, in an Order and Judgment dated June 28, 2018 and entered on July 16, 2018, this Court: (I) granted Petitioners' first two causes of action; (II) dismissed petitioners' third, fourth, and fifth causes of action; and (III) dismissed all claims against respondents Polly Trottenberg and James L. Hallman in their personal capacities; and

WHEREAS, in a Decision and Order dated and entered on November 7, 2019, the Appellate Division, First Department: (I) affirmed the ruling of this Court in favor of petitioners on the first two causes of action; (II) reversed this Court's dismissal of the third and fifth causes of action and remanded those causes of action to this Court; (III) affirmed this Court's dismissal of the fourth cause of action; and (IV) affirmed this Court's dismissal of petitioners' claims against respondents Trottenberg and Hallman in their personal capacities; and

WHEREAS, respondents New York City Department of Transportation, Polly Trottenberg, James L. Hallman and the City of New York (collectively "respondents") deny the truth of petitioners' allegations and any and all liability arising out of petitioners' allegations;

WHEREAS, on December 13, 2019 respondents filed a motion before the Appellate Division, First Department seeking an order granting reargument of the Court's decision and order entered November 7, 2019, and, upon reargument, vacating the grant of partial judgment to petitioners on their due process claims and Civil Service Law §75 claims, or, alternatively, seeking leave to appeal to the Court of Appeals from the aforesaid order as it pertains to petitioners' due process/§75 claims ("respondents' December 13, 2019 Motion");

WHEREAS, on December 13, 2019 petitioners filed a motion to clarify, to reargue, or for leave to appeal to the Court of Appeals aspects of the same November 7, 2019 decision and order of the Appellate Division, First Department ("petitioners' December 13, 2019 Motion");

WHEREAS, petitioners have filed a motion before the Appellate Division seeking to vacate the statutory stay and directing respondents to comply with the July 16, 2018 order and judgment of this court (“petitioners’ motion to vacate the stay”);

WHEREAS, in conjunction with this Settlement Agreement, the parties are executing a Stipulation of Discontinuance dismissing this proceeding/action with prejudice except as indicated below;

WHEREAS, the parties now desire to resolve all issues raised in this proceeding/action without further proceedings other than as indicated below; and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. That for the considerations outlined in this Agreement, including payment of the amounts specified in Paragraph “4” and reasonable attorney’s fees and costs to be determined by the Court, Petitioners hereby agree to the withdrawal and dismissal with prejudice of all claims asserted in this proceeding/action against respondents with prejudice. A Stipulation of Discontinuance in Supreme Court in the form annexed hereto as Exhibit “A” shall be executed by all parties but will not be filed in the New York State Supreme Court, New York County, or used for any purpose until after the Court’s resolution of petitioners’ claims for reasonable attorneys’ fees and costs in this proceeding/action after which time it will be filed in the New York Supreme Court, New York County by counsel for respondents.

2. Petitioners further hereby agree to release Polly Trottenberg, James L. Hallman, the City of New York and the New York City Department of Transportation (“DOT”), its successors or assigns, and all present and former officials, employees, representatives and

agents of DOT ("Released Parties") from any and all claims, liabilities and/or causes of action which petitioners have or may have against the Released Parties based on any act, omission, event or occurrence occurring from the beginning of the world up through and including the date hereof, including, without limitation, any and all claims which were or could have been alleged by petitioners in this proceeding/action arising out of the events alleged in the petition herein, specifically inclusive of any claimed monetary damages which were or could have been claimed pursuant to petitioners' claims under Article 78 of the New York Civil Practice Law and Rules; the Fourteenth Amendment to the United States Constitution; the Constitution and Laws of the State of New York; New York City Administrative Code § 8-502, and New York State Executive Law § 296 et seq. in connection with the first, second, third and fifth causes of action, except as detailed in Paragraph "5" regarding all claims for attorneys' fees and costs incurred by petitioners in this proceeding/action and subject to Paragraphs "6" and "7" herein.

3. Petitioners further hereby agree to take such steps within seven (7) business days of the execution of this Agreement as are consistent with the then current rules of the Appellate Division, First Department to withdraw Petitioners' December 13, 2019 Motion to the extent that Motion seeks reinstatement of any claims against respondents Trottenberg and/or Hallman in their personal or individual capacities, and to provide respondents' counsel with verification of such efforts at withdrawal within two (2) business days of such filing with the Appellate Division.

4. In consideration for Paragraphs 1, 2 and 3 above, and in full satisfaction of all claims that were or could have been raised in this proceeding/action, the following payments will be made:

- (a) The City of New York will pay Petitioner Bharat forty-seven thousand dollars and no cents (\$47,000.00) made payable to: Seupersaud Bharat;
- (b) The City of New York will pay Petitioner Kubair forty thousand dollars and no cents (\$40,000.00) made payable to: Bisambhar Kubair;
- (c) The City of New York will pay Petitioner Heidi Cohen five thousand dollars and no cents (\$5,000.00) made payable to: Heidi Cohen.

These three checks will be sent to Petitioners' attorneys Gordon, Gordon & Schnapp, P.C., 30 Broad Street, 21st Floor, New York, New York 10004. Such payments shall be made in compliance with New York Civil Rules and Practice Section 5003-A.

5. The parties agree that as a result of this Settlement Agreement, Petitioners are entitled to attorney's fees and costs in connection with the third and fourth causes of action. Petitioners will make an application for reasonable attorneys' fees and costs associated with the third and fifth causes of action to the Court for resolution. The Court shall retain jurisdiction of this matter for the purpose of resolving Petitioners' fee application. In the event the Appellate Division or the Court of Appeals holds that Petitioners are entitled to attorneys' fees and costs in connection with the first and/or second causes of action, petitioners will make an application to recover such fees and costs.

6. Nothing contained herein shall be deemed a withdrawal or waiver of Petitioners' ability to make an application to recover attorneys' fees and costs in connection with the first and second causes of action and nothing contained herein shall be deemed a withdrawal or waiver of Respondents' objections and/or opposition to such an application.

7. The parties agree that nothing contained herein shall be deemed to be a withdrawal or waiver of either petitioner' or respondents' December 13, 2019 Motions currently pending before the Appellate Division, First Department under Index Number 101831/2017, except that petitioners agree to withdraw so much of their December 13, 2019 motion as seeks to reinstate respondents Trottenberg and Hallman as parties to this action/proceeding in their personal/individual capacities. In addition, nothing contained herein will be deemed a withdrawal or waiver of petitioners' motion to vacate the stay.

8. In the event Petitioners and/or Respondents are successful on any of their pending motions to the Appellate Division, and/or in the event of any remands to this Court by the Appellate Division or the Court of Appeals in this matter, nothing in this stipulation will bar a reopening of this action/proceeding to address such any issues remanded or claims granted as a result of such motions, and neither party will oppose reopening of this action/proceeding to address such issues.

9. Petitioners shall execute and deliver to respondents' attorneys all documents necessary to effect this settlement, including, without limitation, the Stipulation of Discontinuance in the form attached hereto as Exhibit "A," Releases executed by each petitioner in the form attached hereto as Exhibit "B," Affidavits Concerning Liens in the form attached hereto as Exhibit "C" executed by each petitioner, and City of New York Substitute W-9 forms executed by each petitioner attached hereto as Exhibit "D."

10. Nothing contained herein shall be deemed to be an admission by the City of New York, Polly Trottenberg, James L. Hallman, DOT or any of the present or former officials, employees, representatives and agents of DOT of the truth of any of the allegations contained in the complaint, or an admission that defendants or any of the present or former officials,

employees, representatives and agents of DOT have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York or the City of New York, or any other rules, regulations or bylaws of DOT. This Agreement shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except that this Agreement may be used by either party in connection with any subsequent action or proceeding relating to enforcement of this Agreement.

11. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or DOT.

12. Nothing contained herein is intended to or shall diminish, limit, modify or in any way affect any pension eligibility or retirement allowance to which petitioners may otherwise be entitled, or in any way change, modify, reduce, or affect any right petitioners may enjoy independent of this action/proceeding to any pension benefits, insurance, accumulated contributions annuity or other retirement benefit with the New York City Employees' Retirement System or any other New York City pension fund or welfare agreement, or to any benefits as a result of the September 11, 2001 World Trade Center incident.

13. Nothing contained herein shall be construed, implied or deemed to be a waiver of any rights that petitioners cannot otherwise waive under law.

14. The parties understand that Petitioner Bharat is currently employed in the title of Supervisor of Mechanics (Mechanical Equipment) by the City of New York at DOT. Nothing contained in this Settlement Agreement is intended to or shall be construed, implied, or deemed to increase, decrease, modify, or affect any rights Petitioner Bharat has in connection with his employment independent of this action/proceeding other than his waiver of all claims


that were or could have been raised in this action as is more fully described in Paragraph 2 above.

15. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.


Dated: New York, New York
March 17, 2020

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