Monaco v New York Univ.
2020 NY Slip Op 33860(U)
November 12, 2020
Supreme Court, New York County
Docket Number: 100738/2014
Judge: Francis A. Kahn III

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III **PART** IAS MOTION 32

Justice

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DR. MARIE MONACO, DR. HERBERT SAMUELS

Plaintiff,

- v -

NEW YORK UNIVERSITY, NEW YORK UNIVERSITY SCHOOL OF MEDICINE,

Defendant.

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INDEX NO. 100738/2014

MOTION DATE

MOTION SEQ. NO. 008 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 265, 266, 269, 270, 271, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

The following e-filed documents, listed by NYSCEF document number (Motion 009) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 267, 272, 273, 274, 275, 276, 277, 278, 279, 280, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents the motions are determined as follows:

Petitioners Dr. Marie Monaco ("Dr. Monaco") and Dr. Herbert Samuels ("Dr. Samuels") commenced a hybrid plenary action and article 78 petition against their employer, respondents New York University ("NYU") and New York University School of Medicine ("NYU SOM") (collectively, respondents) alleging, among other things, that by implementing a salary reduction policy, respondents violated their own internal policies and breached petitioners' employment contracts. In motion sequence 008, respondents move, pursuant to CPLR 3212, for an order granting summary judgment dismissing the petition. In motion sequence 009, petitioners move, pursuant to CPLR 3212, for an order granting summary judgment on Dr. Samuels' claim that the salary reductions imposed violate his 2001 Contract. They are also seeking partial summary judgment holding that the relevant provisions in NYU's Faculty Handbook ("Handbook") are

contractually binding and that the salary reductions imposed on them violate Title IV of the Handbook. Motion sequence numbers 008 and 009 are hereby consolidated for disposition. For the reasons set forth below, respondents' motion is granted in its entirety and petitioners' motion is denied in its entirety.

BACKGROUND AND FACTUAL ALLEGATIONS

At all relevant times, petitioners have been, and still are, tenured faculty members employed by NYU in the SOM. Dr. Monaco was hired in 1980 as a tenure-track Assistant Professor in NYU SOM's department of physiology and biophysics. In 1987, Dr. Monaco was promoted to Associate Professor with tenure, the position she still holds today. Dr. Samuels commenced his employment with NYU SOM in 1970 as a tenure-track Associate Professor in the Department of Medicine. Since 1977, Dr. Samuels has been employed as a full-time Professor with tenure. He "was awarded the Kimmelman Chair in 2001, an endowed chair that he still holds today." NYSCEF Doc. No. 11, Petition, ¶ 8.

In 2009, NYU SOM adopted a new Policy on Performance Expectations for Research Faculty ("REF Policy"), effective 2010, applicable to "all full-time faculty in the basic science departments, and to faculty in the clinical departments who are paid to do research." NYSCEF Doc. No. 123, REF Policy at 1. Pursuant to the REF Policy, in relevant part, research faculty must secure 60 percent of their salary from extramural funding. Faculty received annual letters advising them of their expected required extramural funding. There are also set guidelines for calculating this amount. *Id.* at 10. Research faculty, unless otherwise notified, who do not secure at least 20 percent in extramural funding, would start receiving salary reductions effective January 2010. Pursuant to Schedule D, Guidelines for Salary Adjustments, depending on the type of faculty member, the maximum salary reduction possible is either 20% of the total salary or 20% of the portion of the salary that is allocated to research. The REF Policy also includes the "Guidelines for Determining Eligibility for Merit Salary Increases." Faculty were informed that they could grieve salary disputes through the Faculty Grievance Procedures.

In 2012, NYU SOM adopted a "Base Salary Proposal," effective September 2013, reflecting the "concern related to salary reductions for research faculty that could result from the implementation of the [REF Policy]." NYSCEF Doc. No. 124, SOM Base Salary Proposal at 1. Guidelines were set forth establishing the minimum annual salary that a qualifying tenured NYU SOM Associate Professor or Professor could be paid.

Pursuant to a letter dated April 1, 2014, Dr. Samuels was notified that, pursuant to the REF Policy, he was "expected to provide from extramural funding at least 60% of the portion of [his] salary that is allocated to research." NYSCEF Doc. No. 137, at 1. However, his "salary support on extramural funding for the 2012-2013 academic year did not meet the performance expectations set forth by the School." *Id.* The letter further advised Dr. Samuels that his annual salary of $287,652 would be reduced by $11,286, effective September 1, 2014.

Dr. Monaco received a similar letter advising her that her salary support on extramural

funding did not meet the performance expectations. She was informed that, pursuant to the REF Policy, "her salary of $167,646 would be reduced by $6,035 effective September 1, 2014." Petition, ¶ 46.

Procedural History

After receiving the salary reduction notifications, petitioners filed the instant hybrid/plenary action in July 2014, alleging the following causes of action: failure to comply with NYU's policies and procedures, application of the REF Policy in a manner that is arbitrary and capricious, breach of contract and promissory estoppel. Petitioners sought damages, including lost wages, and alleged that the reduction of their salaries pursuant to the REF Policy constituted "a material breach of Petitioners' contractual rights, including their guarantees of academic freedom and economic security." Petition, ¶ 91. The petition requested for the court to, among other things, issue a writ of mandamus vacating and nullifying the REF Policy and award damages, including lost wages and benefits.

Respondents cross-moved to dismiss the petition and the claim for damages. By decision and order dated May 20, 2015, Justice Alexander W. Hunter, Jr., of this court, denied the petition and dismissed the proceeding (*see Matter of Monaco v New York Univ.*, 48 Misc.3d 1210[A], 2015 NY Slip Op 51025(U) [Sup Ct., NY County 2015]).

Petitioners appealed the plenary causes of action grounded in breach of contract and promissory estoppel. On appeal, the Appellate Division, First Department, reversed, and the plenary claims were reinstated. The Court held that, for purposes of the motion to dismiss, petitioners "sufficiently alleged that the policies contained in respondent's Handbook, which form part of the essential employment understandings between a member of the Faculty and the University have the force of contract." (*Matter of Monaco v New York Univ.*, 145 AD3d 567, 568 [1st Dept 2016][internal quotation marks and citation omitted]). The Court further held that, for pleading purposes, petitioners sufficiently alleged that they had a mutual understanding with NYU SOM that their salaries would not be reduced and that they "reasonably relied on oral representations . . . that their salaries would not be involuntarily reduced." (*Id.*)

The Instant Action

Both parties brought summary judgment motions. Prior to discussing the parties' motions, in addition to what was set forth above, relevant components of the record are as follows:

Handbook

The Handbook is a "guide to the Faculty and is designed to present general information about New York University, and some of the more important University policies and practices as they apply to the Faculty of the University." NYSCEF Doc. No. 191, Handbook at iii. It states that the "policies outlined in the Faculty Handbook as in effect from time to time form part of the

essential employment understandings between a member of the Faculty and the University." *Id.*

Underneath the heading Academic Freedom and Tenure, the Handbook contains a "Title I: Statement in Regard to Academic Freedom and Tenure (Tenure Statement)." *Id.* at 23. Academic tenure is subsequently defined as "a means to certain ends, specifically: (1) freedom of teaching and research; and (2) a sufficient degree of economic security to make the profession of teaching attractive to men and women of ability." *Id.* at 23. The Handbook further sets forth that "[a]cademic freedom is essential to the free search for truth," and "[f]reedom in research is fundamental to the advancement of truth." *Id.* at 23. The Board of Trustees "authorized" the Tenure Statement and "reserves the right to amend this statement at its discretion . . . ." *Id.* at 23.

Title IV, "General Disciplinary Regulations Applicable to Both Tenured and Non-Tenured Faculty Members," sets forth the disciplinary procedures "applicable where a question arises concerning an alleged violation by any member of the faculty of a rule or regulation of the University, with the exception of the proceedings brought by the appropriate official to terminate the services of a faculty member with tenure." Handbook at 40. Penalties for violating the rules and regulation of the University include, but are not limited to, the following: "a) Reprimand b) Censure C) Removal of privileges d) Suspension e) Dismissal." *Id.* at 41.

REF Policy

Steven Abramson ("Abramson"), NYU SOM's Senior Vice-President and Vice Dean for Education, Faculty, and Academic Affairs, provided a background on the development of the REF Policy. He explained that, in 2007, the Academic Excellence Committee (AEC), made up twelve NYU SOM faculty and four external experts, was appointed to develop "proposals to enable the SOM to become one of the top 20 medical schools in the United States." NYSCEF Doc. No. 149, Abramson aff, ¶ 21. Among other things, the AEC "examined faculty performance standards at peer medical schools and identified the metrics those schools used to evaluate and reward faculty performance." *Id.*, ¶ 22. The AEC concluded that "external research funding was an appropriate criterion for evaluating the performance of research faculty." *Id.*, ¶ 24. For example, the "amount of [National Institutes of Health] funding a medical school receives is directly tied to its prestige, its ability to attract excellent faculty scientists and clinical faculty . . . . [and] also helps those hospitals that are affiliated with medical schools . . . ." *Id.*, ¶ 23. After the AEC recommended the REF Policy in 2007, NYU SOM's "leadership consulted extensively with the faculty, department chairs, and the SOM Faculty Council regarding the proposed performance standards and their implementation." *Id.*, ¶ 26. For instance, after the Faculty Council criticized some aspects of the proposed REF policy, changes were made. Although the initial AEC recommendations were implemented in 2008, the "timeline . . . was slowed down. There would be no salary reductions for 2009 . . . ." *Id.*, ¶ 29.

Abramson explained how between 2007 and 2009, the Faculty Council "continued to resist the implementation of performance standards and salary reductions, asserting that tenure does not permit a reduction in salary." *Id.*, ¶ 34. President John Sexton, NYU's President, wrote to NYU SOM's Faculty Council and stated that "[w]e also regret your letter's repeated and inaccurate conflation of the concepts of tenure and salary. Tenure does not guarantee a particular

salary, nor does it prohibit a reduction in salary if a faculty member is not meeting expectations." NYSCEF Doc. No. 182 at 2.

NYU SOM also developed a "voluntary exit program for faculty who preferred resignation to compliance with the performance standards." Abramson aff, ¶ 32. Abramson stated that 27 faculty members decided to resign and accept the severance benefit, and that 38 additional faculty members "have either retired or signed agreements to do so over the next one to three years." *Id.*

Ultimately, in March 2009, every department chair, including Dr. Samuels, who was a department chair at that time, "signed a letter . . . expressing unanimous support for the performance standards." *Id.*, ¶ 35. The letter noted, among other things, that "it is in the clear best interests of our academic community that we move forward together, confident that performance standards will serve to benefit our already outstanding faculty." NYSCEF Doc. No. 180 at 1.

Pursuant to another letter dated December 1, 2009, the department chairs and institute directors wrote another letter to the NYU SOM faculty reaffirming support for the implementation of the AEC I performance standards. The letter stated that "it becomes essential that all faculty members be evaluated based on the same performance standards. To do otherwise, namely to 'grandfather' faculty tenured prior to 2000, would be neither fair nor equitable . . . ." NYSCEF Doc. No. 184 at 1. The letter noted that "there is a small minority of faculty who want to prevent, through litigation, the implementation of the AEC I recommendations, which include salary adjustments." *Id.* However, "[w]e believe that any attempt to litigate . . . would not only be divisive for our faculty, but would also have significant negative consequences for the Medical Center and its aspirations . . . ." *Id.* The letter concluded by urging faculty to move forward and work together as a "unified faculty." *Id.* Dr. Samuels also signed this endorsement letter.

After being approved by the Provost in 2009, the Salary Adjustment Program was implemented in 2010, based on the annual review of faculty from 2009. A "School of Medicine Base Salary Proposal (base salary proposal)" was also implemented in 2012, using the "[Association of American Medical Colleges] survey data ... to set the base salaries for tenured research faculty members." Abramson aff, ¶ 45. *See* NYSCEF Doc. No. 124. In 2013, NYU SOM's administration, without identifying the specific employee, advised the Faculty Council about faculty members at risk of a salary reduction. Nonetheless the Faculty Council "voted to approve and to support the performance standards and potential salary reductions." Abramson aff, ¶ 38.

In 2014, six faculty members, including petitioners, were notified that their salaries would be reduced for failing to obtain the required extramural funding. Other faculty members "assumed additional clinical, administrative or educational responsibilities, which reduced the proportion of their salary allocated to research and thus avoided salary reductions." *Id.*, ¶ 59. Other faculty members did not incur reductions because, among other reasons, they were junior faculty, their salaries were below the base salaries specified for their rank, or they were granted a

"safe harbor [pursuant to the REF Policy Guidelines]." *Id.*, ¶ 60.

Abramson maintains that the salary reductions are not a form of discipline. According to the Handbook, discipline is imposed when a faculty member violates a rule or regulation of the University. Here, however, petitioners "were not charged with violating a rule or regulation; they were evaluated as having failed to meet an objective performance requirement that they obtain a minimum of 20 percent of the portion of their salary allocated to research from external funds." *Id.*, ¶ 65.

Dr. Monaco

Dr. Monaco states that "[a]s a member of the research faculty at the SOM a substantial portion of time is devoted to scientific research." NYSCEF Doc. No. 108, Monaco aff, ¶ 6. During her career at NYU SOM, she has "authored and published fifty-nine articles based on my research in peer reviewed journals." *Id.* Prior to 1960, there was disclaimer language in the Handbook indicating that it did not create a contract between NYU and its faculty. However, the Handbook was amended to remove that language. As a result, Dr. Monaco states that the provisions in the Handbook are binding on NYU SOM. The Handbook also contains terms and condition of employment for faculty, including due process for termination, teaching assignments and responsibilities for faculty, among other things.

Dr. Monaco has continued to receive salary reductions every year since the implementation of the REF Policy. She claims "[a]fter applying 9% prejudgment interest to my total losses in salary and pension contributions, for the period of September 1, 2014 to May 31, 2020, my damages total $211,595." *Id.*, ¶ 34.

Abramson indicated that Dr. Monaco's annual appointment letters "do not specify a salary level or amount, nor do they state that her salary cannot be redacted. Her tenure status has not changed . . . ." NYSCEF Doc. No. 149, Abramson aff, ¶ 47. Beginning in 2009, Dr. Monaco, along with other similar faculty members, was notified of the "required external funding for the proportion of her salary devoted to research." *Id.*, ¶ 49. However, "Dr. Monaco did not file a grievance concerning her salary reduction, as is provided for in the Faculty Handbook." *Id.*, ¶ 52.

Dr. Samuels

Dr. Samuels is still employed by NYU SOM as a tenured full professor. He states that, as a research faculty, a substantial amount of his time is spent doing scientific research. During the years at NYU SOM he has been "awarded two endowed Chairs and have served in numerous high level administrative positions . . . . [he has] published 146 articles on [his] research . . . ." NYSCEF Doc. No. 128, Samuels aff, ¶ 7.

Abramson stated that the appointment letters Samuels received "do not specify a salary level or amount, nor do they state that his salary cannot be reduced. Dr. Samuels' tenure status has not changed . . . ." Abramson aff, ¶ 5.

2001 Contract

Pursuant to a letter dated June 19, 2001, Samuels was named Chairman of NYU SOM's Department of Pharmacology (2001 Contract). The letter informed Samuels that he will occupy the "Kimmelman Chair," during his time in this position. If he chooses to step down from this post and "continue to serve as a faculty member, an Endowed Chair for you to occupy will be identified." NYCSEF Doc. 175, June 19, 2011 letter at 1.

The letter stated, in pertinent part:

> "compensation package and future annual increases are subject to approval by the NYU Board of Trustees compensation committee in accordance with the prevailing SOM guidelines. . . . If, in the future, you should step down as Chair of Pharmacology but remain on the faculty, your salary will be equivalent to your current salary ($235,226) excluding $10,000 for your role as Director or Endocrinology, adjusted for cost of living expenses during the time you were Chairman. Your benefits will be equivalent to those of a tenured Professor of Pharmacology or tenured Professor of Medicine which are applicable at that time."

Id. at 2.

Under the section "Research Programs," the letter noted that the NYU SOM "will provide interim support for Dr. Fred Stanley for the next two years. At the end of two years, Dr. Stanley must have at least 50% or more of his salary supported by grant funds." *Id.* at 3.

With respect to this letter, Samuels states that he requested several changes to the initial draft of the June 19, 2001 letter. In relevant part, Samuels maintains that he "requested and the SOM agreed to include language that provided that I would be guaranteed my tenured faculty salary if I stepped down as chair." Samuels aff, ¶ 11. At that time, NYU SOM did not have a policy requiring "research faculty to obtain external grants that covered any specific amount of their salary. However, as of that time the SOM did enter into agreements with individual faculty members about the amount of their salary that had to be funded by external grants." *Id.*, ¶ 12.

Samuels states that, in 2012, when the Chair of Pharmacology position was eliminated, he was offered the position of Vice Chair of education. He was offered a new agreement which included language incorporating the REF Policy. The new proposed agreement also stated that it superseded any prior employment understandings. Samuels did not accept the new position.

According to Abramson, the "decision to refuse the vice chair position meant that his time and salary was now devoted 100 percent to research, and for the first time, he was expected to meet the AEC external funding expectations for a faculty member with a salary of $287,652." Abramson aff, ¶ 55. After receiving the salary reduction in 2014, Samuels received a salary of $276,366, "which is still $129,366 more than the base salary of a full professor." *Id.*, ¶ 56. Samuels "did not file a grievance concerning his salary reduction, as is provided for the Faculty Handbook." *Id.*, ¶ 58.

Samuels indicates that, pursuant to the REF Policy, his salary has been reduced annually since 2014. As of 2020, he is now earning $179,630 per year, "an annual reduction of $105,522 from the tenured faculty salary guaranteed in my 2001 contract." Samuels aff, ¶ 26. He indicates that from September 1, 2014 until May 31, 2020 he has "suffered a cumulative salary loss of $317,319" not including prejudgment interest. *Id.* Samuels further states that, as a result of reducing his salary, the contributions from NYU to his pension have been reduced.

Samuels states that, as a tenured faculty member, he can only be terminated pursuant to the reasons set forth in the Faculty Handbook. Further, "[a]t no time before or after the salary reductions has the SOM afforded me the due process required by the Handbook prior to the imposition of discipline." *Id.*, ¶ 27.

Abramson states that Samuels, along with the other full-time basic science faculty, was notified of the performance expectations. Samuels was the prior Chair of the Pharmacology Department. However, after a NYU SOM "reorganization, that department was closed, as was a second department." *Id.*, ¶ 54. Samuels was offered the position of Vice Chair of a new department, but he "declined to accept a change of responsibilities that would have reduced the amount of REF that he was required to obtain." *Id.*

Respondents' Motion for Summary Judgment

Given the record after the completion of discovery, including the documentary evidence and affidavits, respondents argue that they should be granted summary judgment dismissing the remaining claims because there are no employment contracts between petitioners and respondents prohibiting salary reductions. To start, respondents argue that, to be enforceable, a contract must contain all material terms. Here, however, the Handbook cannot be enforceable as a contract because it does not contain any prohibitions on reducing the salary for tenured faculty. Furthermore, even assuming there are contractual obligations set forth in the Handbook, as there is no language prohibiting salary reductions, the court should not "import such unstated conditions into the contract." NYSCEF Doc. No. 146, Respondents' memorandum of law at 17 (internal quotation marks and citation omitted). In sum, regarding the Handbook, respondents allege that the Tenure Statement is not a salary guarantee. Respondents further allege that neither the appointment letters, nor the June 19, 2001 letter to Samuels, prohibit salary reductions.

Respondents further argue that the term economic security, as set forth in the Tenure Statement, is too vague and indefinite to be enforced as a contractual probation on salary reductions. According to respondents, because the term economic security is not defined the Handbook, it would be impermissible for the court to supply the meaning for the term. In the alternative, respondents maintain that the breach of contract claim fails because was never a meeting of the minds between petitioners and respondents that the Tenure Statement prohibited salary reductions.

Among other things, respondents argue that any alleged oral promises guaranteeing petitioners that their salaries would never be reduced are insufficient to establish a contract.

Furthermore, oral promises to guarantee a lifetime employment benefit are unenforceable under the State of Frauds.

Petitioners' Opposition

According to petitioners, because the term economic security is ambiguous, the court must consider extrinsic evidence of the parties' intent. Here, a reasonable factfinder could purportedly conclude that economic security is a term of art understood to prohibit the reductions in salaries for tenured faculty members. In support of their contentions, they provide the report of Professor Matthew Finkin (Finkin), an "expert witness in matters of tenure and academic freedom." NYSCEF Doc. No. 282, Finkin report at 6. Finkin provides the background on the Handbook language, noting that the "Statement of Policy in Regard to Academic Freedom and Tenure" is directly taken from the "1940 Statement of Principles on Academic Freedom and Tenure," which the American Association of University Professors (AAUP) drafted jointly with the Association of American Colleges (AAC). *Id.* at 7. "[The Statement] is currently endorsed by well over two hundred educational organizations and disciplinary societies and has been adopted by reference or in text by countless universities and colleges as governing policy." *Id.* (citation omitted).

According to Finkin, "[t]here is such a common understanding: the economic security that tenure guarantees is that the tenured faculty member will not have his or her salary reduced involuntarily except for financial exigency or as a sanction, imposed after a hearing, for serious misconduct that does not warrant dismissal." *Id.* at 19.

Petitioners oppose the contention that the "Handbook is not a binding contract because it is missing material terms." NYSCEF Doc. No. 324, petitioners' memorandum of law in opposition at 32. First, as set forth above, they claim that the term economic security is a term of art and is understood within the academic community to mean that the faculty member is assured that their salary is secure and not subject to a reduction. "The faculty and the administration at NYU had long understood that tenured salaries could not be reduced except where there was a financial exigency or after a disciplinary proceeding." *Id.* at 12. As a result, petitioners claim that the contract contains all the material terms, despite not expressly stating that a tenured faculty member's salary cannot be reduced.

Petitioners further believe there was a meeting of the minds that the parties intended to prohibit respondents from reducing the salaries of tenured faculty members. They allege that the term economic security is not indefinite. Through the years, respondents understood their obligations to tenured faculty prior to the REF Policy. For instance, respondents "pay tenured faculty 1.6 times their salary to resign from the tenured position," because they realize that "tenure carries salary guarantees that must be bought back from the university." *Id.* at 26.

Monaco also testified that in 1991, when she lost grant funding from the VA, she asked Dr. David Scotch (Scotch), NYU SOM's former Vice Dean for Faculty Affairs, for "NYU to pick up my salary." NYSCEF Doc. No. 156, Monaco tr at 194. Scotch "asked me if I was tenured or not, and I said, Yes. And he said, okay." *Id.* When she lost her grant again in 2005,

she emailed her department chair the following, in relevant part: "As tenured faculty member assume that NYU will pick up my salary as has been done in the past." NYSCEF Doc. No. 298 at 1.

Samuels testified that he, too, had conversations throughout the years regarding the guarantee of tenure salaries. For example, in the mid-1970's while discussing the implications of the city's fiscal crisis on salaries of tenured faculty members, Samuels stated to Scotch, "[t]his is really a crisis, what are you going to do?" Scotch allegedly responded, "Well, they have tenure, we have to support them." NYSCEF Doc. No. 157, Samuels tr at 86. According to petitioners, on the basis of custom and usage, respondents are required to pay petitioners at least as much as they had earned prior to the REF Policy, as they had been doing for decades.

Petitioners also argue that questions of fact remain as to whether respondents imposed involuntary salary reductions on faculty prior to the REF Policy. While respondents have provided lists of other faculty members who experienced salary reductions prior to the implementation of the REF Policy, the records do not establish that the reductions were involuntary. Petitioners further claim that the records do not establish that the salary reductions took place. For example, while "Work Cards" may show a decrease in salary, a faculty member may have also received compensation provided through grants or clinical practices, which would not be listed on the Work Card.

Regarding discipline, petitioners allege that salary reductions are considered discipline, regardless of whether they are included in Title IV. Further, respondents were required to comply with Title IV prior to reducing petitioners' salaries. According to petitioners, it is irrelevant whether petitioners should, or should not have, filed a grievance if they disagreed with the salary reductions.

With respect to the promissory estoppel claim, petitioners argue that courts are not precluded from applying the doctrine of promissory estoppel in the employment context.

Petitioners' Motion for Summary Judgment

As set forth below, petitioners argue they are entitled to summary judgment on the three aspects of their breach of contract claims; namely, that the salary reductions breached Samuels' 2001 Contract, the provisions of the Handbook at issue are contractually binding and that the salary reductions are a form of discipline that were not imposed pursuant to the procedures set forth in the Faculty Handbook.[1]

[1] Petitioners do not address the other claims in their motion. They state, in relevant part, "[a]lthough other claims have been asserted in the complaint, the grant of summary judgment to Petitioners on the issues raised herein would fully resolve this case." Petitioners' memorandum of law at 1.

Samuels' 2001 Contract

According to petitioners, pursuant to the language set forth above in the 2001 Contract, Samuels is guaranteed a specific amount of salary if he steps down as Chair and remains on the faculty. In 2012, Samuels did step down as Chair and returned to his full-time tenured position. Under the 2001 Contract, his salary was $285,152, where it remained between 2012 and 2014. However, commencing on September 1, 2014, NYU SOM reduced his salary pursuant to the REF Policy, and has continued to do so every year. According to petitioners, the choice of the word "remain," versus the word "return," unambiguously indicates that Samuels was entitled to the set salary specified in the 2001 Contract. They argue, "while the benefits . . . were undefined and conditional, the salary to which he was entitled was predetermined and fixed." NYSCEF Doc. No. 107, petitioners' memorandum of law at 17. They further claim that an omission in a contract does not constitute an ambiguity. At the time the contract was written, there was no language with respect to salary and requirements for external funding. This is contrary to the language included in the 2001 contract regarding Stanley's requirements to "have at least 50% or more of his salary supported by grant funds."

Petitioners further argue that, even if the 2001 Contract is found to be ambiguous, the external evidence indicates that respondents breached the 2001 Contract by reducing his salary. For instance, Samuels insisted on having the exact salary amount included in the 2001 Contract, rather than just stating that he was entitled to the current tenured salary. As another example, when Samuels was offered, but did not accept, the Vice Chair position, this new contract had stated that it would replace and supersede all other agreements, unlike the permanent security in the 2001 Contract.

Petitioners are also seeking partial summary judgment holding that the relevant provisions of the Faculty Handbook are contractually binding. They are requesting that the court determine, as a matter of law, that the relevant provisions have the force of contract.

Lastly, petitioners believe that the salary reductions constitute discipline, according to that term's plain meaning. It is irrelevant that the REF Policy has not been included under the disciplinary section. While respondents may be allowed to impose discipline on petitioners for failing to comply with the REF Policy, they may only do so pursuant to the disciplinary procedures set forth in the Handbook.[2]

Respondents' Opposition

Among other arguments, respondents maintain that petitioners did not plead a claim for the breach of the 2001 Contract in the petition. Respondents argue that, even if the court were to consider this claim, the 2001 Contract is clear and does not prohibit salary reductions. According to respondents, the language states that if Samuels steps down as Chair, his salary at that point should be at $235,226. It did not create an obligation for respondents to continue to

[2] For example, the disciplinary procedures indicate that tenured faculty members are entitled to a hearing and an appeal as part of the disciplinary process.

pay him that salary indefinitely. They add that if the parties had intended for this to happen, they could have explicitly written so. Respondents note that Samuels did not actually step down, as his position was eliminated. Furthermore, the word choice of remain versus return is irrelevant, as Samuels always remained on the faculty, even when he was Chair. Also, this phrase is to be read in conjunction with stepping down from the Chair position but remaining on the faculty, as opposed to stepping down from the Chair and retiring.

Respondents believe that the language is unambiguous and should be enforced according to its terms, which do not include a prohibition on future salary reductions. However, even the extrinsic evidence cited by petitioner does not support petitioners' interpretation of the 2001 Contract. For example, any changes made to the initial draft of the 2001 Contract are irrelevant because the REF Policy did not exist at the time the letter was drafted. "Thus, no one drafting the 2001 Letter could have envisioned whether Samuels would or would not be subject to that policy." NYSCEF Doc. No. 272, respondents' memorandum of law in opposition at 10-11. In addition, the terms for a new proposed position in the 2012 letter are not connected in any way to what was stated in the 2001 Contract.

According to respondents, the court should deny petitioners' request for partial summary judgment for a declaration that the Handbook's terms are binding because, among other things, a disposition on this issue will be fragmented and will not resolve the ultimate breach of contract claim.

DISCUSSION

I. Summary Judgment

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon proffer of evidence establishing a prima facie case by the movant, "the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact." (*People v Grasso,* 50 AD3d 535, 545 [1st Dept 2008][internal quotation marks and citation omitted]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility." (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

The elements of a breach of contract claim are: (1) the existence of a valid contract (2) performance of the contract by the injured party; (3) breach by the other party; and (4) resulting damages. (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [1st Dept 2007]).

As noted above, the First Department held, for purposes of the motion to dismiss, petitioners "sufficiently alleged that the policies contained in respondent's Faculty Handbook,

which form part of the essential employment understandings between a member of the Faculty and the University have the force of contract." (*Matter of Monaco v New York Univ.*, 145 AD3d at 568 [internal quotation marks and citation omitted]). Here, however, in opposition to respondents' motion, petitioners have failed to raise a triable issue of fact that the language pertaining to economic security and academic freedom created a contract, let alone one prohibiting salary reductions. (*see Tenzer, Greenblatt, Fallon & Kaplan v Capri Jewelry*, 128 AD2d 467, 469 [1st Dept 1987][While a motion to dismiss "addresses merely the sufficiency of the pleadings," a motion for summary judgment "searches the record and looks to the sufficiency of the underlying evidence"]).

"New York cases make clear, however, that work place policies - including those that govern a university's relationship with its faculty - can create binding contracts." (*Joshi v Trustees of Columbia Univ.*, 2018 WL 2417846, *5, 2018 US Dist LEXIS 89280, *13 [SD NY, May 29, 2018, No. 17-CV-4112 [JGK]]). However, the Handbook, like any other contract, "should be read as a whole, and every part will be interpreted with reference to the whole." (*Global Reins. Corp. of Am. v Century Indem. Co.*, 30 NY3d 508, 518 [2017][internal quotation marks and citations omitted]).

To start, the Handbook is composed of various forms of content, including, among other things, introductions, a history of the school, how the school is organized, and faculty policies. The table of contents and the Handbook itself make clear what sections constitute preambles or introductions, and what sections are workplace policies.[3] Courts have found that "a recital paragraph in a document is not determinative of the rights and obligations of parties to the agreement . . . ." (*Andersen v Weinroth*, 48 AD3d 121, 133 [1st Dept 2007]). Here, the Tenure Statement, the portion relied on by petitioners as having created a contract, is merely a general preamble to the description of tenure and the related policies.

Even assuming that the Tenure Statement was not merely "introductory" and created contractual obligations, the terms are not defined in the Handbook and there is no language in the Tenure Statement prohibiting respondents from implementing the salary reduction portion of the REF Policy. (*Id.* at 132). As set forth below, "[t]he issue before us is one of simple contract interpretation." (*Marin v Constitution Realty, LLC*, 128 AD3d 505, 507 [1st Dept 2015]). It is well settled that "[t]he best evidence of the parties' intent is what they say in their writing. When parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." (*Id.* [internal quotation marks and citations omitted]).

Here, petitioners allege that various terms, such as academic freedom, tenure and

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[3] For example, the foreword states that the Handbook is a "guide to the Faculty and is designed to present general information about New York University, and some of the more important University policies and practices as they apply to the Faculty of the University." Handbook at iii. Further, the "policies outlined in the Faculty Handbook as in effect from time to time form part of the essential employment understandings between a member of the Faculty and the University." *Id.*

economic security, prohibit NYU SOM from implementing the REF Policy. However, there is no language in the Handbook prohibiting the implementation of the REF Policy or one prohibiting salary reductions to tenured members of the faculty. Therefore, "the plain and unambiguous language of the [Tenure Statement] is prima facie proof of [respondents'] entitlement to summary judgment." (*Tompkins Fin. Corp. v John M. Floyd & Assocs., Inc.*, 144 AD3d 1252, 1255 [3d Dept 2016]).

Similarly, petitioners provide various definitions for economic security guaranteed by tenure, including being ensured that "whatever salary member the faculty member found acceptable in order to continue working for NYU is secure and not subject to diminution." Petitioners' memorandum of law at 31. Nonetheless, the Handbook does not define the terms in the Tenure Statement, nor is there an express provision limiting the salary reductions for tenured faculty. On the other hand, the Handbook indicates that individual schools may institute their own policies, and NYU SOM did so.[4] Accordingly, the court will not "rewrite the terms of [Tenure Statement] under the guise of interpretation." (*FCI Group, Inc. v City of New York*, 54 AD3d 171, 177 [1st Dept 2008][internal quotations marks and citations omitted]).

The court notes that many of the parties' arguments are irrelevant to the limited issue of whether respondents breached petitioners' contractual rights provided for in the Handbook, specifically by the language included in Tenure Statement, when they reduced petitioners' salaries pursuant to the guidelines set forth in the REF Policy. (*see e.g. FCRC Modular, LLC v Skanska Modular LLC*, 159 AD3d 413, 414 [1st Dept 2018]["To the extent appellants rely on the contracts' negotiation history, parol evidence is unnecessary where, as here, the contract terms are unambiguous"]).

For instance, according to petitioners, respondents failed to establish that there were any involuntary salary reductions prior to the REF Policy. Among other things, Monaco also claims that in 1991 she was assured that her salary would be funded after losing grant money. Nonetheless, in this situation, no extrinsic evidence, including the expert testimony, is necessary, as the language is not ambiguous. (*see e.g. Good Hill Master Fund L.P. v Deutsche Bank AG*, 146 AD3d 632, 637 [1st Dept 2017][internal quotation marks and citation omitted]["expert witnesses should not be called to offer opinion as to the legal obligations of parties under a contract; that is an issue to be determined by the trial court"]).

"Even if parties intend to be bound by a contract, it is unenforceable if there is no meeting of the minds, i.e., if the parties understand the contract's material term's differently." (*Gessin Elec. Contrs., Inc. v 95 Wall Assoc., LLC*, 74 AD3d 516, 518 [1st Dept 2010]). As set forth below, even if the Tenure Statement can be considered ambiguous, petitioners still fail to

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[4] Under Important Additional Information, the Handbook states that "[t]he separate schools and colleges will supplement this text with information on local procedures and day-to-day operations. Some schools have written statements on faculty appointment policies and procedures . . . supplementing policies outlined in this Faculty Handbook. It is important to become familiar with these policies and procedures." Handbook at iii.

raise a triable issue of fact that there was a meeting of the minds. The Handbook has been using the same language in the academic statement section since 1948. Respondents submitted affidavits from several faculty members who believed that, prior to the implementation of the REF Policy, there was no prohibition of salary reductions. For example, respondents submitted the affidavit of Scotch, who retired in 2000 after working at the NYU SOM for approximately thirty years. Scotch stated that "I did not, and do not, believe the SOM is prohibited from reducing the salaries of tenured faculty. In fact, the SOM reduced the salaries of multiple faculty members during the time I was there, including the salaries of tenured faculty." NYSCEF Doc. No. 193, Scotch aff, ¶ 6.

In opposition, through an expert and their own testimony, petitioners provide their own definitions for "economic security," and submit their understanding of what tenure, in general, means in connection with salary guarantees. They argue that the term economic security is a term of art that respondents, "as sophisticated parties and members of the academic community, understood (or should have understood) the meaning of the term." Petitioners' memorandum of law at 32. Here, however, the evidence submitted by the petitioners fails raise a triable issue as to whether there was a meeting of the minds sufficient to give rise to enforceable contract preventing salary reductions for tenured faculty. (*see e.g. John Anthony Rubino & Co., CPA, P.C. v Swartz*, 84 AD3d 599, 599 [1st Dept 2011]["The court also properly determined that there was no contract because there was no meeting of the minds with respect to a material term of the contract, namely plaintiff's compensation"]).

For example, petitioners claim that, on the basis of custom and usage, the "contract requires Respondents to continue paying Petitioners at least as much as they had previously earned, which Respondents had done for many decades." Petitioners' memorandum of law at 32. They also claim that they are entitled to certain rights through having academic freedom. However, petitioners' evidence is insufficient to raise a triable issue of fact as to whether respondents agreed to continue paying tenured faculty members at the highest rate of pay they received. Accordingly, the court will not consider this alternative interpretation of what is stated in the Handbook. (*see e.g. Vesta Capital Mgt. LLC v Chatterjee Group*, 78 AD3d 411, 411 [1st Dept 2010][internal quotation marks and citation omitted) ("Mere assertion by one that contract language means something to him, where it is otherwise clear, unequivocal and understandable when read in connection with the whole contract, is not in and of itself enough to raise a triable issue of fact"]).

2001 Contract

At the outset, among other reasons, respondents request dismissal of this claim because it was not referenced in the petition. (*see e.g. Ostrov v Rozbruch*, 91 AD3d 147, 154 [1st Dept 2012][internal quotation marks and citations omitted]["A court should not consider the merits of a new theory of recovery, raised for the first time in opposition to a motion for summary judgment, that was not pleaded in the complaint"]).

However, under certain circumstances, a plaintiff may be permitted "to successfully

oppose a motion for summary judgment by relying on an unpleaded cause of action which is supported by the plaintiff's submissions . . . ." (*Bennett v State Farm Fire & Cas. Co.*, 181 AD3d 779, 782 [2d Dept 2020][internal quotation marks and citations omitted]). Here, the petition stated that "[r]espondents are contractually obligated to abide by the terms of Petitioners' employment contracts which consist of the Handbook, appointment letters, promotion letters and numerous other communications . . . ." Petition, ¶ 90. While the 2001 Contract is not mentioned, the record indicates that the parties extensively addressed its merits in affidavits and depositions. Furthermore, in their motion for summary judgment, respondents acknowledge Samuels' claim that the letter he received in 2001 created a contract prohibiting salary reduction. *See* respondents' memorandum of law at 4. Accordingly, the court will address this portion of petitioners' breach of contract claim.

According to petitioners, the choice of the word "remain," versus the word "return," unambiguously indicates that Samuels was entitled to the set salary specified in the 2001 Contract as long as he remained a faculty member. Nonetheless, in this situation, this court declines to adopt plaintiff's interpretation that, based on the language in the 2001 contract, NYU SOM was required to pay Dr. Samuels the salary set forth in the 2001 Contract for as long as he remained on the faculty. It is well settled that "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plaining meaning of its terms." (*Quadrant Structured Prods. Co., Ltd. v Vertin*, 23 NY3d 549, 559-560 [2014][internal quotation marks and citations omitted]). The plain language refers to protecting the set amount of salary upon leaving the Chair position, not an indefinite and unrestricted salary guarantee. The record indicates that a faculty member always retains their status as a faculty member, even when they accept an additional position such as a Chair. As a result, when the Chair position was eliminated, Samuels chose to remain a faculty member, rather than retire. There would be no reason to state that Samuels would be returning to the faculty after he stepped down from the Chair position.

Regardless of the word choice, respondents did not breach any part of the 2001 Contract by implementing salary reductions pursuant to the REF Policy. There is no language in the letter guaranteeing Samuels a certain salary for the duration of his employment, regardless of any other circumstances. When Samuels' position as Chair was eliminated and he declined to accept the position of Vice Chair, he received the salary pursuant to the terms of the 2001 Contract. Two years later, as with all similar faculty members, this starting point for his salary was also subject to a certain amount of fluctuation pursuant to the REF Policy.

According to Samuels, the parties did not intend for him to have an extramural funding requirement because none of the REF Policy language appears in the 2001 Contract or any other agreement he received while at NYU SOM. However, "[a] contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties." (*Matter of Lipper Holdings, LLC v Trident Holdings, LLC*, 1 AD3d 170, 171 [1st Dept 2003][internal citations omitted]). It is undisputed that the REF Policy was not implemented in 2001, so it could not be referenced in the 2001 Contract. Samuels was familiar with this timeline; in 2009, Samuels himself signed two letters endorsing the

implementation of the new performance standards. Similarly, it would be understandable that the 2012 proposed contract for vice chair may have different terms than those in the 2001 Contract. It was a new employment contract and was written after the REF Policy had been implemented.[5]

"Where internal inconsistencies in a contract point to an ambiguity, extrinsic evidence is admissible to determine the parties' intent." (*Gessin Elec. Contrs., Inc. v 95 Wall Assoc., LLC,* 74 AD3d at 518). Petitioners further argue that, even if the language is ambiguous, "the only conclusion that can be drawn from the extrinsic evidence is that the NYU SOM is prohibited from reducing [Dr. Samuels'] salary." Petitioners' memorandum of law at 19. The subject language is not ambiguous. Nonetheless, the extrinsic evidence only supports the position that the letter did not intend to exclude Samuels from any type of salary reductions. For instance, the REF Policy states that is applicable to all full-time faculty in the basic science departments and to faculty in the clinical departments who are paid to do research. Pursuant to the REF Policy, even "[f]aculty whose pre-existing agreements state a lower extramural funding requirement will be held to the performance expectations outlined in this policy." REF Policy at 3. There is also a "Safe Harbor" provision to protect certain faculty.[6] There is no language excluding Dr. Samuels from any scope of the REF Policy.

Disciplinary Procedures

Under the breach of contract claim, petitioners allege that, by reducing their salaries prior to following the procedures set forth in Handbook pursuant to "Title IV: General Disciplinary Regulations," respondents have disciplined petitioners without cause and in violation of their employment contracts. They also claim that the Board of Trustees should have approved the REF Policy because it affected their tenure rights.[7]

"The rules of construction of contracts require a court to adopt an interpretation which gives meaning to every provision of a contract or, in the negative, no provision of a contract should be left without force and effect." (*Black Bull Contr., LLC v Indian Harbor Ins. Co.,* 135 AD3d 401, 406 [1st Dept 2016][internal quotation marks and citations omitted]). In the instant situation, petitioners fail to raise a triable issue of fact that they were disciplined when their salaries were reduced in accordance with the REF Policy. The record indicates that petitioners did not violate a rule when they failed to meet expectations set forth in the REF Policy, nor were they penalized in any of the ways listed under Title IV. They were also informed that salary

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[5] In addition, the employment terms for Stanley, as referenced in the 2001 Contract, are also irrelevant. Stanley was a non-tenured faculty member provided with interim support at NYU SOM.

[6] "A faculty member who has met the REF for each of the prior three years, and who continues actively to pursue extramural funding, will be protected from reduction in salary for two years." REF Policy at 5.

[7]

reductions pursuant to REF Policy can be grieved pursuant to the Faculty Grievances section of the Handbook, not pursuant to the disciplinary procedures as listed under Title IV. Moreover, the REF Policy did not only focus on salary reductions, but also included guidelines for merit-based salary increases.

In addition, petitioners have failed to raise a triable issue of fact that the implementation of salary reductions pursuant to the REF Policy would first have to be approved by the Board of Trustees because it modified a faculty member's tenure status or rights. The record indicates that the salary implications of the REF Policy were addressed separately in the NYU SOM base salary proposal, which attempted to reconcile the salary reductions of tenured faculty members who failed to meet their extramural funding requirements. Faculty members were advised that salary reductions would not fall below the base salary unless the faculty member failed to fulfill academic requirements. There is no mention of modification to tenure status. Faculty members were also informed that they could pursue grievances pursuant to the section A2 of the Faculty Grievances section, which is differentiated from section A1, which addresses grievances related to tenure.[8]

In their motion for summary judgment, petitioners are requesting that the court determine, as a matter of law, that the relevant provisions have the force of contract. While the court agrees that the Handbook has the force of contract, in this situation, there is no contractual provision in the Handbook preventing NYU SOM from implementing a policy that results in salary reductions for failure to secure extramural funding.

In essence, petitioners are dissatisfied with the REF Policy and are trying to prevent its implementation by bringing a breach of contract claim. However, the challenge to the REF Policy pursuant to an article 78 proceeding has been denied. (*see Matter of Monaco v New York Univ.*, 48 Misc.3d 1210[A], 2015 NY Slip Op 51025(U) [Sup Ct., NY County 2015]). Moreover, courts have found that, "[w]hile tenure is a concept of some elasticity and, no doubt, the source of many rights, it cannot be the wellspring of every conceivable academic amenity and privilege. Nor can the university's academic and administrative prerogatives be impliedly limited by custom, or by a strained theory of contractual construction." (*Gertler v Goodgold*, 107 AD2d 481, 484-485 [1st Dept 1985], *affd* 66 NY2d 946 [1985]).[9]

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[8] "Faculty grievances are classified into two main types: 1. Those connected with appointment, reappointment, promotion, or tenure. 2. Those concerned with other matters, such as duties, salaries, perquisites [sic], and working conditions." Handbook at 57.

[9] For example, in *Gertler v Goodgold*, a tenured faculty member alleged that the NYU SOM, among other defendants, breached his "contractual right to the amenities of tenure,", when it failed to provide him with "adequate research facilities, as well as other benefits commensurate with [his] position." *Id.* at 484. The Court dismissed the claim, holding, in relevant part, that "[t]he university has never expressly, by contract or otherwise, obligated itself to provide the amenities plaintiff claims, and thus has not relinquished its authority to make its own academic judgments and to administer and allocate its resources. The benefits which plaintiff seeks are undoubtedly perquisites of faculty life, but they are not contract entitlements."

Accordingly, in light of above, respondents are granted summary judgment dismissing the breach of contract claim in its entirety and petitioners' motion for partial summary judgment is denied in its entirety.

Promissory Estoppel

"[I]n order to state a viable cause of action for promissory estoppel, the following elements must be established: (1) an oral promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance." (*New York City Health & Hosps. Corp. v St. Barnabas Hosp.*, 10 AD3d 489, 491 [1st Dept 2004][citation omitted]). According to petitioners, respondents orally assured them of a salary guarantee. However, in opposition to respondents' motion, petitioners' submissions, which were vague and took place prior to the implementation of the REF Policy, fail to raise a triable issue of fact that respondents made a clear and unambiguous oral promise to pay petitioners a finite salary guarantee for the duration of their employment. Accordingly, respondents are granted summary judgment dismissing the fourth cause of action alleging promissory estoppel.

CONCLUSION, ORDER AND JUDGMENT

Accordingly, it is hereby

ORDERED that respondents' motion for summary judgment (motion sequence 008) is granted in its entirety and the remainder of the petition is dismissed with costs and disbursements to respondents as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further;

ORDERED that petitioners' motion for partial summary judgment (motion sequence 009) is denied in its entirety.

ORDERED that the Clerk is directed to enter judgment accordingly.

11/12/2020
DATE

FRANCIS A. KAHN III, A.J.S.C.
HON. FRANCIS A. KAHN III
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
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APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
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