Joyce v De Blasio
2021 NY Slip Op 31850(U)
June 1, 2021
Supreme Court, New York County
Docket Number: 161291/2020
Judge: Laurence L. Love

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE L. LOVE** **PART** **IAS MOTION 63M**

Justice

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LIDRA JOYCE, AS MOTHER AND ON BEHALF OF HER INFANT CHILD, B.J., JUDITH STERLING, AS MOTHER AND ON BEHALF OF HER INFANT CHILD, C.R., HAIM COEHN, AS FATHER AND ON BEHALF OF HIS INFANT CHILD, S.C.,

Petitioners,

- v -

BILL DE BLASIO, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK, RICHARD CARRANZA, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, THE CITY OF NEW YORK

Respondents.

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INDEX NO. 161291/2020

MOTION DATE 04/15/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, Petitioner's motion seeking an Order vacating the Decision and Order of this Court dated April 1, 2021 is as follows:

Petitioner commenced the instant action by filing its Verified Petition on December 18, 2020 and filing its Verified Petition on December 28, 2020 seeking an Order pursuant to the Hecht-Calandra Act of 1971, mandating that the Specialized High School Admissions Test (SHSAT) be administered within 30 days. Said Petition was served upon Respondents on January 5, 2021. The Court notes that as the instant Petition was noticed to be heard on January 12, 2021, the Petition would be subject to dismissal pursuant to CPLR § 7804(c).

Petitioners, parents of three New York City students eligible to take the SHSAT in the 2020-2021 academic year for admission to the specialized high schools for the 2021-2022

academic year allege that New York City Mayor Bill de Blasio and former Department of Education Chancellor Richard Carranza are illegally seeking to use the Covid-19 Pandemic to avoid administering the SHSAT based upon their prior public comments opposing its use as the sole criteria for admission to the specialized high schools and their prior attempts to repeal the Hecht-Calandra Act of 1971. The Court notes that said allegations are based entirely upon speculation and that other than advocating for a change in the law, there are no allegations that any of the Respondents violated any of the relevant laws relating to the administration of the SHSAT.

For students in 8th Grade, who attend public schools operated by the DOE, the SHSAT was administered on January 27, 2021 and February 10, 2021. For students who attend private schools, charter schools, are home-schooled or are in the 9th grade in public schools operated by DOE, the test was administered on January 30, 2021, February 6, 2021 and February 28, 2021. Based upon same, Respondents cross-moved pursuant to CPLR 3211(a)(2) to dismiss this action as moot.

In an Order dated April 1, 2021, this Court granted Respondent's cross-motion to dismiss. Petitioners now move to vacate said Order pursuant to CPLR §5015(a)(1) and (3) and seek to impose sanctions against the Respondents pursuant to 22 NYCRR §130-1.1. For the following reasons, Petitioners' motion is utterly meritless, consisting of nothing but goalpost moving attempting to avoid a finding of mootness.

As discussed in *Matter of American Reliable Ins. Co. v. Delmonte*, 189 A.D.3d 663 (1st Dep't 2020) regarding CPLR §5015(a)(1), "A party seeking to vacate an order entered upon default must demonstrate both a reasonable excuse for the default and a potentially meritorious claim or defense…" Petitioners allege that because the parties were mutually discussing stipulations of settlement, which would resolve the instant action, Petitioners did not submit opposition to Respondents' cross-motion, constituting law office failure. Petitioners further contend that "the

very fact that Respondents acquiesced to a portion of the relief requested by Petitioners, namely, giving the SHSAT before the Petition was even heard, speaks eloquently to the merits of the Petition. However.., the Court's reading of the Petition, actually giving the test was not the totality of the relief requested." The Court could not disagree more with such a view. The fact that the SHSAT was given before the instant Petition was heard serves only to highlight that Respondents complied with the Hecht-Calandra act as required and has no bearing on the merits of the instant petition.

Petitioners further contend that "While the test was in fact given, full administration of the test pursuant to the Act must be assured" and as such the Petition is not moot. Specifically, Petitioners argue that "the Act mandates not only that the test be given, but that the test be graded and that the admission to the specialized schools be based solely upon the score on said examination (necessitating that the scores be determined). Simply allowing students to sit for the examination without fulfilling these other mandates of the Act would render the examinations, and the Act itself, meaningless. These other components have not yet been fulfilled, which was the basis of the stipulation being negotiated between the Parties. Without a suitable order from this Court, there is no assurance that they ever will be." The Court notes that Petitioners' interpretation of the word "administered" is disingenuous to say the least as petitioner is well aware that by that defination, it would have been impossible to administer the SHSAT within the thirty day period demanded in the Petition.

Further, as correctly highlighter by Respondents, as the Third Department held in vacating an injunction similar to the one requested here in *Matter of Willkie v. Del. Cty. Bd. of Elections*, 55 A.D.3d 1088, 1091-92 (3rd Dep't 2008):

> While Supreme Court has the discretion to fashion permanent injunctive relief under appropriate circumstances (see

> e.g. *Matter of Hebel v West*, 25 AD3d 172, 177-178, 803 NYS2d 242 [2005], lv denied 7 NY3d 706, 868 NE2d 662, 837 NYS2d 1 [2006]), this injunction, at best, compels respondent to follow the law; "[i]t is, in other words, 'little more than a direction to do right in the future'" (*Gimbel Bros. Inc. v Brook Shopping Ctrs.*, 118 AD2d 532, 536, 499 NYS2d 435 [1986], quoting *Earl v Brewer*, 248 App Div 314, 315, 289 NYS 150 [1936], affd 273 NY 669, 8 NE2d 339 [1937]). As respondent is already obligated to follow the law and there is nothing in the record to suggest that it will not do so, "the extraordinary relief of an injunction is unnecessary and inappropriate" (*Van Laak v Malone*, 92 AD2d 964, 966, 460 NYS2d 654 [1983]; see also *Matter of Town of Dickinson v County of Broome*, 183 AD2d 1013, 1015, 583 NYS2d 637 [1992]).

As Petitioners' motion is utterly without merit, the portion of Petitioners' motion seeking to impose sanctions against the Respondents pursuant to 22 NYCRR §130-1.1 is similarly without merit.

Petitioners' motion is DENIED in its entirety.

6/1/2021
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE