

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

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PHILIP NOBILE

Plaintiff,

**AFFIDAVIT IN SUPPORT
OF MOTION FOR
T E M P O R A R Y
RESTRAINING ORDER**

-against-

Index No. *150914/2017*

**BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK;
CARMEN FARINA, in her official capacity as
Chancellor of the CITY SCHOOL DISTRICT OF THE CITY
OF NEW YORK; and, KAREN SCOTT, in her official
capacity as Superintendent, District 14 of the CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,**

Defendants.

-----X
STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

CHRISTOPHER CALLAGY, having been duly sworn, states the following under the penalties of perjury:

1. I am of counsel to Richard E, Casagrande, Esq. General Counsel to New York State United Teachers ("NYSUT"). NYSUT represents Plaintiff Philip Nobile, the Plaintiff herein, in the § 3020-a proceeding filed by Defendants Board of Education of the City School District of the City of New York ("Board"), its Chancellor, Carmen Farina,

and Karen Watts, Superintendent of District 14 of the City School District of the City of New York against the Plaintiff ("the § 3020-a proceeding"). As such, I am fully familiar with the facts and circumstances set forth herein.

2. I submit this affidavit in support of the order to show cause herein seeking a temporary restraining order and preliminary injunction enjoining Defendants from: (1) refusing to accept Mr. Nobile's rescission of his consent to a stipulation of settlement ("Stipulation") of the § 3020-a proceeding, a rescission submitted to Defendants before the Stipulation was fully-executed; and (2) refusing to provide Mr. Nobile his right to have a disciplinary hearing pursuant to § 3020-a of the Education Law.

3. In or about April 21, 2016, Defendants served charges (the "Charges"), pursuant to Section 3020-a of the Education Law, upon Mr. Nobile. The Charges were filed by District 14 of Defendant Board and were signed by the District Superintendent, Defendant herein, Karen Watts. See a copy of the Charges annexed hereto as Exhibit A.

4. I represented Mr. Nobile as his NYSUT counsel at the pre-hearing conference in Mr. Nobile's § 3020-a proceeding ("the Proceeding"). The conference was held October 7, 2016, before a hearing officer.

5. At the pre-hearing conference, October 7, 2016, I argued in support of a motion to dismiss the Charges in the Proceeding. Defendant Board's counsel, Jordana Shenkman, Esq., argued against the motion. After argument on the motion, counsel reviewed with the hearing officer the bill of particulars which NYSUT had served upon counsel for Defendants.

6. During a break in the § 3020-a Proceeding, Defendants' counsel and I discussed possible settlement proposals.

7. Despite Mr. Nobile's strong belief that the Charges had no merit, Mr. Nobile agreed to enter into a Post-Charge Stipulation of Settlement ("Stipulation") which permitted him to continue working at Defendant Board, assigned to the ATR pool, until close of business, January 31, 2017. A written retirement letter ("Letter"), dated October 7, 2016, and effective close of business, January 31, 2017, was made part of the Stipulation, as Exhibit "A." See a copy of Stipulation and Letter annexed hereto as Exhibit B.

8. Prior to Mr. Nobile signing either the Stipulation or the Letter, Mr. Nobile asked Attorney Shenkman, Defendants' counsel, as to when the Stipulation and Letter would be effective. In response to Mr. Nobile's inquiry, Ms. Shenkman expressly stated to Mr. Nobile that the Stipulation would not be effective until it was fully-executed by all the parties to the Stipulation: Plaintiff, myself, Counsel Shenkman, and by Karen Watts, Superintendent of District 14, the party which filed the 3020-a proceeding. I was present and heard Mr. Nobile's question and Ms. Shenkman's response. The Hearing Officer was also present.

9. After getting Ms. Shenkman's assurances that the Stipulation would not be effective until signed by all the parties, Plaintiff signed the Stipulation and Letter, Friday, October 7, 2016. Defendant Watts, a signatory to the Stipulation, had not signed the Stipulation.

10. I next spoke to Mr. Nobile on Tuesday, October 11, 2016, the first business day after he signed the Stipulation. Monday was Columbus Day, NYSUT offices were closed. Mr. Nobile called me and told me that he regretted having signed the Stipulation and Letter, thereby giving up his right to a § 3020-a hearing. He informed me he wanted to go through the hearing process so that he could clear his name and continue his efforts to expose improprieties in the student grading system used by the administration at the CHSAS. Plaintiff told me he wanted to forgo the comfort of retirement even if it meant risking an adverse hearing decision.

11. After speaking with Mr Nobile and receiving his instruction to rescind his acceptance of the Stipulation and resignation Letter, on October 11, 2016, I spoke with Ms. Shenkman. I told Counsel Shenkman that Mr. Nobile had decided to rescind his acceptance of the Stipulation and to rescind his resignation Letter, dated October 7, 2016.

12. In our telephone conversation, Counsel Shenkman told me that, as of that date, October 11, 2016, Defendant Watts, the District Superintendent, a party to the Proceeding, had not yet signed the Stipulation.

13. On October 11, 2016, at 4:05 p.m., I transmitted the following e-mail ("the E-mail") to Counsel Shenkman:

**Philip Nobile hereby rescinds his
retirement/resignation. Please prepare to go to hearing.**

See copy of the E-mail annexed hereto as Exhibit C.

14. Upon the Board's receipt of the E-mail, Counsel Shenkman told me she would get back to me with the Board's position on Mr. Nobile's decision to rescind the Settlement, rescind his resignation and continue with the § 3020-a hearing.

15. From October 13, 2016 until December 1, 2016, I made numerous inquiries of Counsel Shenkman as to when Plaintiff's case would be restored to Defendants' docket of 3020-a hearings so that the hearing could be commenced. Counsel Shenkman told me that the Board had not made a final decision.

16. Because of the Board's delay in advising NYSUT Counsel as to the Board's position with regard to Mr. Nobile's rescission of the Stipulation and his resignation Letter, on December 6, 2016, NYSUT Counsel transmitted an e-mail to Karen Antoine, Counsel to the Board, again inquiring as to whether Defendant Board "will consent to restoring the Nobile case to the calendar to be heard" See copy of the e-mail annexed hereto as Exhibit D.

17. On December 7, 2016, at 5:34 p.m., Defendants' Counsel, Karen Antoine, replied, via e-mail, to NYSUT Counsel:

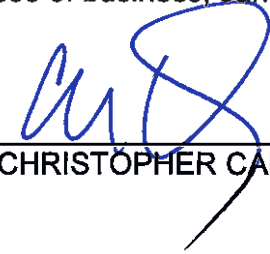
Thank you for your patience ... The Department of Education will not consent to restoring the Nobile matter to the trial calendar.

See copy of the e-mail annexed hereto as Exhibit E.

18. Defendants did not provide NYSUT Counsel with a copy of the fully-executed Stipulation until January 5, 2017. See copy of the e-mail transmitting a copy of the Stipulation annexed as Exhibit F. Defendant Watts did not sign the Stipulation

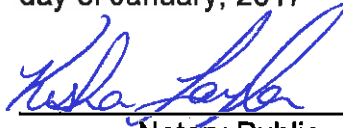
until October 13, 2016, two days *after* Plaintiff had rescinded his Letter and requested that his § 3020-a hearing continue. (See Exhibit B, annexed).

19. To date Defendants have failed to acknowledge that Mr. Nobile had exercised his right to rescind his consent to the Stipulation, and, upon information and belief, intend to terminate Plaintiff's employment, close of business, January 31, 2017.



CHRISTOPHER CALLAGY

Sworn to before me this 27th
day of January, 2017



Notary Public

KISHA TAYLOR
NOTARY PUBLIC, State of New York
No. 01TA6202946
Qualified in Kings County
Commission Expires 03/23/2017