

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

-----X
PHILIP NOBILE

Plaintiff,

COMPLAINT

-against-

Index No.

**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

Plaintiff, by his attorneys, the Law Offices of Leonard A. Shrier, by Leonard A. Shrier, Esq., alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff, a tenured teacher employed by Defendant Board of Education of the City School District of the City of New York ("Board"), its Chancellor, Carmen Farina, and Karen Scott, Superintendent of District 14 of the City School District of the City of New York, (collectively "Defendants") challenges the unlawful conduct taken against him by the Defendants in: (1) refusing to accept Plaintiff's rescission of his consent to a stipulation of settlement ("Stipulation") of a § 3020-a proceeding, a rescission submitted to Defendants before the Stipulation was fully-executed by the Defendants; and (2) in

refusing to provide Plaintiff his right to have a disciplinary hearing pursuant to Section 3020-a of the Education Law.

2. Plaintiff seeks declaratory and injunctive relief to prevent the Defendants from implementing the Stipulation, thus imposing an involuntary retirement upon the Plaintiff, effective close of business January 31, 2017, and thereby depriving Plaintiff of his right to due process of law in a § 3020-a proceeding.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to CPLR § 301. Pursuant to Article 6, § 7 of the New York State Constitution, the Supreme Court of the State of New York is a court of general jurisdiction.

4. Venue is proper in New York County as Defendants are located here. Many of the acts complained of were committed in the County of New York.

PARTIES

5. Plaintiff is a tenured teacher employed by the Defendants. At all times relevant he has resided in Kings County, New York.

6. Defendant Board is a school board organized under and existing pursuant to the Education Law of the State of New York and, for all relevant purposes, serves as the government or public employer of all persons appointed to teach within the New York City Public Schools. The Board commonly does business under the name New York City Department of Education ("DOE").

7. Defendant CARMEN FARINA is the Board's Chancellor.

8. Defendant KAREN SCOTT is Superintendent of the Board's District 14.

STATEMENT OF FACTS

9. Plaintiff was first appointed by Defendant Board to a position as a per diem substitute teacher in December, 2000. Plaintiff served as a per diem substitute from 2000 to 2001.

10. In September 2001, Defendant Board appointed Plaintiff to teach at HS519, the Cobble Hill School of American Studies ("CHSAS"). Plaintiff was granted tenure by Defendant Board in 2004, while teaching high school history at the CHSAS.

11. In or about June 2007, Plaintiff was assigned to Defendant Board's Reassignment Center. He remained employed by Defendant Board at the Reassignment Center until in or about January 2011.

12. In or about January 2011, Plaintiff was assigned, as a tenured teacher, to the Absent Teacher Reserve ("ATR"). From June 2011 through in or about March 2016, Defendant Board assigned Plaintiff to substitute teacher positions throughout District 14 of Defendant Board.

14. In or about April 21, 2016, Defendant Board served charges, pursuant to Section 3020-a of the Education Law, upon Plaintiff ("the Charges"). The Charges were filed by District 14 of Defendant Board and were signed by the District Superintendent, Defendant herein, Karen Watts.

15. A pre-hearing conference in the § 3020-a proceeding ("the Proceeding") was scheduled for October 7, 2016, before a hearing officer. Plaintiff was represented by an attorney of counsel to Richard E. Casagrande, General Counsel, New York State

United Teachers ("NYSUT") (attorneys for NYSUT will be referred to collectively as "NYSUT Counsel").

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

17. During a break in the Proceeding, the parties discussed settlement proposals.

18. Despite Plaintiff's strong belief that the Charges had no merit, Plaintiff 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, "

19. Prior to Plaintiff signing either the Stipulation or the Letter, Plaintiff inquired of Defendants' counsel as to when the Stipulation and Letter would be effective. In response to Plaintiff's inquiry, Defendants' counsel expressly stated to Plaintiff, in the presence of NYSUT Counsel and the Hearing Officer, that the Stipulation would not be effective until it was fully-executed by all the parties to the Stipulation: Plaintiff, NYSUT Counsel, Counsel for Defendant Board, and by Defendant Karen Scott, the Superintendent of District 14, the party which filed the 3020-a proceeding.

20. In reliance upon the representations of Defendant Board's counsel that the Stipulation would not be effective until signed by all the parties, Plaintiff signed the Stipulation and Letter, Friday, October 7, 2016.

21. Over that weekend, Plaintiff regretted having signed the Stipulation and Letter, thereby giving up his right to a § 3020-a hearing, a hearing in which he could clear his name and in which he could continue his efforts to expose improprieties in the student grading system used by the administration at the CHSAS. Plaintiff decided to forego the comfort of retirement and to accept the risk of an adverse hearing decision.

22. Monday, October 10, 2016, was a holiday for Defendants, Columbus Day. NYSUT Counsel's office was also closed. On Tuesday morning, October 11, 2016, the first business day after he signed the Stipulation, Plaintiff spoke with his NYSUT Counsel to advise his counsel that he was rescinding his resignation and retirement Letter. Plaintiff had opted to go through the § 3020-1 hearing process.

23. On October 11, 2016, NYSUT Counsel spoke with Defendants' counsel who had represented Defendants at the hearing. NYSUT Counsel advised Defendants' counsel of Plaintiff's decision to rescind his acceptance of the Stipulation and to rescind his resignation Letter which Plaintiff had signed the prior Friday.

24. Defendants' counsel advised NYSUT Counsel that, as of October 11, 2016, Defendant Scott, the District Superintendent, a party to the Proceeding, had not yet signed the Stipulation.

25. On October 11, 2016, at 4:05 p.m., NYSUT Counsel, transmitted the following e-mail ("the E-mail") to Defendants' counsel:

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

26. As of the time that NYSUT Counsel sent the aforesaid E-mail to Defendants' counsel, October 11, 2016, the Stipulation had not yet been fully-executed. Defendants' counsel advised NYSUT Counsel that she would get back to him with Defendants' position on Plaintiff's decision to rescind the Settlement, rescind his resignation and continue with the § 3020-a hearing.

27. On October 13, 2016, two days *after* Plaintiff had rescinded his Letter and requested that his § 3020-a hearing continue, Defendant Watts, District Superintendent, District 14, a party to the Stipulation, signed the Stipulation.

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

29. On or about, December 6, 2016, NYSUT Counsel transmitted an e-mail to Defendant's counsel again inquiring as to whether Defendant Board "will consent to restoring the Nobile case to the calendar to be heard"

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

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

31. Defendants did not provide NYSUT Counsel with a copy of the fully-executed Stipulation until January 5, 2017.

32. Defendants' refusal to accept Plaintiff's rescission of the Stipulation and resignation Letter was made in bad faith, was arbitrary and capricious, was in violation of lawful rules and procedures, constituted gross error of law, denied Plaintiff his right to due process, and was an abuse of discretion.

33. On January 20, 2017, Plaintiff served a Verified Notice of Claim upon the Defendants. Plaintiff demanded that Defendants accept his rescission of the Stipulation and the rescission and withdrawal of his retirement Letter and restore Plaintiff's 3020-a case to Defendants' § 3020-a hearing calendar.

34. To date, Defendants have refused to provide the requested relief.

35. Plaintiff's now-rescinded retirement Letter, Exhibit "A" to the Stipulation, was to be effective close of business, January 31, 2017.

36. Plaintiff has no adequate remedy at law.

AS AND FOR A FIRST CAUSE OF ACTION

37. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "36" above as if set forth in full herein.

38. Plaintiff, through his NYSUT Counsel, advised Defendants, in writing, on October 11, 2016, two days before the Stipulation was fully-executed, of his rescission of the Stipulation and his withdrawal of his Letter of resignation.

39. Defendants' counsel had expressly stated prior to Plaintiff signing the Stipulation and Resignation Letter that the terms of the Stipulation would not be effective until the Stipulation was fully-executed. Defendant Scott, a District Superintendent of Defendant Board, and a party and signatory to the Stipulation, was not at the hearing at the time of Plaintiff's signing the Stipulation.

40. Defendant Scott signed the Stipulation October 13, 2016, two days after Defendants' counsel received written notice of Plaintiff's rescission of the Stipulation and withdrawal of his resignation.

41. To date Defendants have failed to acknowledge that Plaintiff 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, in violation of Plaintiff's rights.

42. Plaintiff seeks an order on his first cause of action declaring that Defendants have acted in violation of Plaintiff's contractual rights to rescind his acceptance of the Stipulation and ordering that Defendants cease from implementing the Stipulation and Letter, thus causing Plaintiff irreparable harm.

AS AND FOR A SECOND CAUSE OF ACTION

43. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "42" above as if set forth in full herein.

44. The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States sets forth in relevant part: "No State shall ... deprive any person of

life, liberty, or property, without due process of law" This guaranty is also set forth in Article 1, Section 6 of the New York State Constitution.

45. To ensure the constitutional right to due process of law for tenured teachers, § 3020-a of the Education Law states, in relevant part:

All charges against a person enjoying the benefits of tenure ... shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. ... Except ... no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

Thus, a tenured teacher has a protected property interest in his or her position and right to retain it subject to being discharged for cause in accordance with the procedures set forth in § 3020-a.

46. Defendants served Plaintiff with the Charges in his § 3020-a proceeding on or about April 21, 2016.

47. At the pre-hearing conference in the Proceeding, October 7, 2016, Plaintiff was offered a settlement wherein he would be able to continue working at the Defendant Board through January 31, 2017, close of business, at which time his retirement would be effective.

48. Plaintiff signed the Stipulation and attached Letter of resignation, October 7, 2016, only after being told by Defendant's counsel that the Stipulation would not be effective until it was signed by all the parties.

49. On Tuesday, October 11, 2016, the first business day after Plaintiff signed the Stipulation, his NYSUT Counsel, on instructions from Plaintiff, advised Defendants' counsel, in writing, that Plaintiff was rescinding the Stipulation and his Letter of Resignation.

50. As of the date of Plaintiff's rescission of the Stipulation, October 11, 2016, the Stipulation was not executed by all the parties. Neither Defendant Scott nor any of her designees from District 14 had signed the document.

51. From October 11, through December 1, 2016, despite numerous inquiries from NYSUT Counsel as to whether Defendants would restore Plaintiff's 3020-a hearing to the trial calendar, NYSUT counsel was advised that Defendants had not made a final decision.

52. On December 7, 2016, Defendants' Counsel sent an email to NYSUT Counsel, thanking NYSUT Counsel for its patience, but advising that the DOE "will not consent to restoring the Nobile matter to the trial calendar."

53. On January 20, 2017, Plaintiff served a Notice of Claim upon Defendants. To date, Defendants continue to refuse to restore Plaintiff's § 3020-a case to the trial calendar.

54. Plaintiff seeks an order on his second cause of action declaring that Defendants have violated Plaintiff's right to due process of law and his rights to a hearing pursuant to § 3020-a of the Education Law in refusing to restore Plaintiff's hearing to the 3020-a hearing calendar. Plaintiff further seeks an order directing Defendants to restore Plaintiff's case to the hearing calendar.

WHEREFORE, Plaintiff respectfully prays for an order and judgment from this court.

A. Declaring that Plaintiff's rescission and withdrawal of the Stipulation and resignation Letter, effective January 31, 2017 was valid and binding on Defendants;

B. Declaring that Defendants' actions in refusing to accept Plaintiff's rescission and withdrawal of his resignation Letter violated Plaintiff's rights under the Stipulation;

C. Enjoining Defendants from continuing to treat Plaintiff's entering into the Stipulation and Plaintiff's Letter of resignation as irrevocable;

D. Enjoining Defendants from terminating Plaintiff's employment pursuant to the Stipulation and Plaintiff's Letter of resignation;

E. Declaring that Defendants, in refusing to restore Plaintiff's § 3020-a hearing to Defendant's trial calendar, have violated Plaintiff's right to a hearing under § 3020-a of the Education Law and have violated Plaintiff's right to due process of law;

E. Enjoining Defendants from continuing to refuse to restore Plaintiff's § 3020-a hearing to Defendant's trial calendar;

F. Directing Defendants to restore Plaintiff's 3020-a hearing to Defendants' trial calendar;

G. Awarding Plaintiff attorneys' fees, together with the costs and disbursements of this action; and

H. Awarding such other and further relief as to this Court seems just.

Dated: New York, New York

January 27, 2017

Respectfully submitted,

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By:



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