

**Matter of Mount Vernon City School Dist. v New
York State Educ. Dept.**

2013 NY Slip Op 30014(U)

January 9, 2013

Supreme Court, Albany County

Docket Number: 5156-12

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

MOUNT VERNON CITY SCHOOL DISTRICT
and BOARD OF EDUCATION OF THE MOUNT
VERNON CITY SCHOOL DISTRICT

Petitioners/Plaintiffs,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION and ORDER
INDEX NO. 5156-12
RJI NO. 01-12-ST3969

-against-

NEW YORK STATE EDUCATION DEPARTMENT;
JOHN B. KING, JR., in his capacity as Commissioner of
the NEW YORK STATE EDUCATION DEPARTMENT;
THE REGENTS OF THE UNIVERSITY OF THE STATE
OF NEW YORK; and AMANI PUBLIC CHARTER SCHOOL;

Respondents/Defendants.

Supreme Court Albany County All Purpose Term, January 4, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioners/Plaintiffs (hereinafter “Petitioners”) commenced this action/proceeding to challenge, for the third time, the Board of Regents of the State of New York’s (hereinafter “Regents”) grant of a charter to Amani Public Charter School (hereinafter “Amani”). Respondents¹ answered and set forth numerous objections in point of law seeking dismissal. Because Petitioners failed to demonstrate that the Regents improperly granted Amani’s charter, or their entitlement to a money judgment, the complaint/petition is dismissed.

This action/proceeding has a long history in this Court. On December 14, 2010, the Regents initially granted Amani a charter, pursuant to the Charter Schools Act of 1998 (Education Law § 2850 et. seq.), authorizing it to begin operating a charter school for the 2011-2012 school year. While Amani began operating in September 2011, Petitioners challenged its charter. Such challenge resulted in this Court’s Decision and Order, dated October 11, 2011 (hereinafter “Decision I”), in which Amani’s charter was vacated and the matter was remanded to the Regents for further action. Seven days later, upon Amani’s addendum to their charter application, the Regents approved Amani’s charter *nunc pro tunc* to December 14, 2010.

Again, Petitioners challenged such *nunc pro tunc* charter grant. This Court, by Decision

¹ While issue was joined by New York State Education Department (hereinafter “NYSED”), John B. King, Jr., as commissioner, and the Regents’ combined answer, Amani wholly joined their submission by its attorney’s letter.

and Order dated March 28, 2012 (hereinafter “Decision II”), vacated the charter, prohibited future disbursements to Amani in the absence of it obtaining a valid charter and remanded the matter back to the Regents. Despite such holding, Decision II rejected Petitioners’ challenge to the Regents’ *nunc pro tunc* determination and their claim to recoup monies paid to Amani.

Upon remand, at its May 21, 2012 meeting the Regents again granted Amani’s charter *nunc pro tunc* to December 14, 2010. This action/proceeding challenges such determination, with allegations that Amani’s charter was granted after improper notice was given (Education Law §2857[1]) and on a deficient fiscal and programmatic impact statement (Education Law §2851[2][q]). Petitioners, however, failed to sufficiently establish their entitlement to relief on either basis.

Considering first the notice issue, Education Law §2857(1) states, in pertinent part, that the Regents shall provide notice to Petitioners for “each significant stage of the chartering process.” Such statute requires “appropriate notification to the school district in which the charter school is located... at least forty-five days prior to initial approval of the charter application by the charter entity.” (*Id.*)

On this record, Petitioners failed to establish an Education Law §2857(1) defect. Assuming, as alleged by Petitioners, that the Regents’ May 21, 2012 charter grant constitutes an “initial approval,” Respondents demonstrated proper notice. Respondents submitted the affidavits of two NYSED employees. Both confirm that NYSED sent Petitioners an e-mail on April 6, 2012, which stated that the Regents would be considering Amani’s supplemental application for action at “its May 21-22, 2012 meeting.” Respondents also submitted the April 6, 2012 e-mail with its attached notice. Because the Regents’ May 21, 2012 charter approval

occurred forty five days after their April 6, 2012 notice, they demonstrated their compliance with Education Law §2857(1). While Petitioners' do not deny receiving such e-mail, they opine that such notice was inappropriate because it was sent at "5:06 p.m. on April 6, 2012... after the end of the business day." Such time restriction is mandated by neither statute nor case law, and is wholly unavailing.

Nor have Petitioners made any showing that they were denied an opportunity to comment on Amani's application. Rather, the record amply demonstrates that Petitioners were given notice of, and an opportunity to be heard, either in writing or at a hearing.

Petitioners similarly failed to demonstrate a deficiency in Amani's supplemental fiscal and programmatic impact analysis. Education Law §2851(2)(q) required Amani's charter application to "include:... an assessment of the projected programmatic and fiscal impact of [its] school on other public and nonpublic schools in the area." To comply with such requirement, on April 6, 2012, Amani submitted an addendum to its prior application (hereinafter "Addendum"). The Addendum first projected a "relatively small fiscal impact." Using enrollment projections, with cost and budget estimates, the Addendum sufficiently provided a five year projection of Amani's financial impact on Petitioners. It was not rendered invalid by its absence of an Education Law §2023-a "[l]imitations upon school district tax levies" assessment, as Education Law §2851(2)(q) requires no such analysis. The Addendum similarly adequately projected Amani's impact on Petitioners' programming. Such analysis acknowledged Petitioners' programmatic concerns, minimized those issues and discussed the impact it actually had in its first year of operation. It also noted the potentially positive impact its model could have on Petitioners, although it proffered no plan to apply its model. The Addendum did note, however,

that Petitioners had already implemented one of its programs (Saturday Academies). Contrary to Petitioners' contention, the Addendum was not so similar to the programmatic and fiscal impact analysis this Court previously rejected as to render Amani's charter grant arbitrary and capricious. Rather, taken as a whole the Addendum "contain[ed] sufficient information to have permitted the Board of Regents to undertake an intelligent evaluation of [Amani's] projected programmatic and fiscal impact" on Petitioners. (Bd. of Educ. of Riverhead Cent. School Dist. v Bd. of Regents of Univ. of State of New York, 301 AD2d 919, 920 [3d Dept 2003]).

Due to the foregoing, Petitioners failed to demonstrate their entitlement to vacatur of Amani's charter and their first cause of action is dismissed.

Additionally, as this Court previously held in Decision II, "the Regents' 'nunc pro tunc' determination was not arbitrary and capricious. It was wholly equitable." Such prior analysis and holding is equally applicable here, and requires, in conjunction with the above, dismissal of Petitioners second² and third³ causes of action.

Accordingly, the petition is dismissed in its entirety.

This Decision and Order is being returned to the attorneys for the Regents. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute

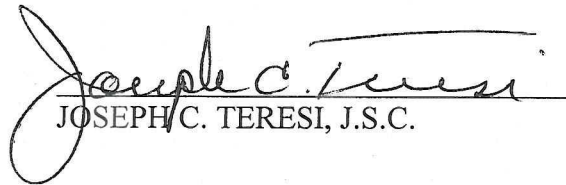
² Petitioners' second cause of action seeks an order vacating the Regents May 21, 2011 "nunc pro tunc" determination.

³ Petitioners' third cause of action seeks a judgment in the amount of charter school tuition payments Amani has received.

entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: January 9, 2013
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, September 13, 2012; Summons, dated September 13, 2012; Verified Petition/Verified Complaint, dated September 13, 2012; Affirmation of David Kwee, dated September 13, 2012; Affidavit of Elias Gootzeit, dated September 13, 2012; Affidavit of Timothy Costello, dated September 13, 2012, with attached Exhibits A-E.
2. Answer, dated December 4, 2012, with attached Exhibits 1-41; Affidavit of Sara Bachofer, dated December 7, 2012; Affidavit of Vickie Smith, dated December 6, 2012.
3. Affirmation of David Kwee, dated January 2, 2013.
4. Letter of Cara Edwards, dated December 7, 2012.