

Singerman v New York City Council

2015 NY Slip Op 32968(U)

December 9, 2015

Supreme Court, New York County

Docket Number: 116925/2009

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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JOYCE SINGERMAN,

Petitioner,

Index No. 116925/2009

-against-

Interim Decision and Order

THE NEW YORK CITY COUNCIL,

Respondent.

-----X
JOAN B. LOBIS, J.S.C.:

Currently, in this article 78 proceeding, petitioner moves to add New York City Employee Retirement System ("NYCERS") as a party and amend the July 24, 2104 order and judgment accordingly, and to compel compliance with a prior order and judgment in the respects specified below. The petition alleges that petitioner's employer, respondent The New York City Council, improperly denied her cost-of-living adjustments, jury duty pay, annual and sick leave accruals, and holiday pay. In May 2014, the Court issued a decision in this proceeding which to a large extent granted the petition and directed the parties to settle judgment. On July 24, 2014, the Court signed the proposed order, which awarded:

A total of \$20,504.66, comprised of:

- 1) Wages and salary totaling \$5,800.00
- 2) Wages and salary totaling \$8,238.02
- 3) Seven days of jury service totaling \$4,210.83
- 4) Annual leave and sick time totaling \$1,654.26

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DEC 17 2015
NEW YORK
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- 5) uncredited July 4 holiday pay totaling \$601.55

The order directed that these payments would be made through the City's payroll system, "with appropriate taxes and pension contributions to NYCERS withheld and remitted.

In addition, the Court awarded \$10,294.53, consisting of:

- 1) Interest on the \$20,504.66 totaling \$6,272.11
- 2) Interest on the annual and sick leave totaling \$760.73
- 3) Interest on four days of jury service totaling \$1,099.99
- 4) Interest on an additional three days of jury service totaling \$818.77
- 5) Interest on the uncredited holiday totaling \$272.92
- 6) Costs and disbursements totaling \$1070.00.

Respondent was directed to "transmit such information to NYCERS as is necessary for Petitioner's retirement date to be adjusted" by adding credit for the previously uncredited ten days described above.

To comply with the order, respondent issued four checks to petitioner. Two checks, issued November 5, 2014 and December 8, 2014, were for \$7,342.11 and \$2,952.41 respectively. Respondent states that the total of these checks is \$10,294.53¹, the total due in interests, costs, and disbursements. The second two checks, for unpaid wages and salary, were for \$11,270.33 and

¹ The total actually is \$10,294.52.

\$444.22 and were issued on November 21, 2014. According to respondent, the first of these checks constituted petitioner's earnings of \$20,019.97 minus deductions and withholdings and the second check constituted petitioner's earnings of \$494.08 minus deductions and withholdings.

Respondent did not comply with the portion of the order that directed it to tell NYCERS to adjust petitioner's retirement date. As the reason, it stated that respondent and NYCERS are separate legal entities and it has no authority to direct NYCERS to adjust petitioner's retirement date. For that relief, it stated, petitioner should have included NYCERS as a respondent.

Petitioner rejected all four checks and, after failing to resolve her disputes with respondent, she commenced this proceeding. As for the \$7,342.11 and \$2,952.41 checks for interests, costs, and disbursements, she states that respondent taxed \$1,070.00 in costs and disbursements, and this amount should not have been included in the 1099 form. Therefore, she states, respondent should issue two checks for \$9,224.52, subject to taxes and accompanied by a 1099 form, and a check for \$1,070.00 which should not be subject to taxes. In addition, she claims, the November 21, 2014 salary payments did not include deductions of \$1,076.49 and \$538.25 (totaling \$1614.74), representing her pension deductions, and as a result NYCERS cannot make retroactive changes to her pension. In addition, she alleges, she was taxed on this money improperly. Thus, respondent should substitute one check for wages minus statutory withholdings and pensions and a W-2 form for the 2015 calendar year, and the \$1614.74 should be remitted to NYCERS. Further, petitioner states that when the Court rejected the parties' stipulation to add NYCERS to the proceeding, noting that a motion was necessary, respondent volunteered to make the motion but did not do so. Accordingly, her motion seeks to add NYCERS as a respondent for

the sole purpose of effectuating this judgment. In addition, although she does not seek sanctions in her notice of motion, in the supporting papers petitioner states she is entitled to sanctions because respondent's intractability necessitated this motion.

Respondent does not oppose the portion of the motion that seeks to add NYCERS as a respondent. Indeed, it states, NYCERS is necessary if petitioner is to obtain full compliance with the order. It implicitly notes that it was not obliged to make the motion to add NYCERS as a party to petitioner's proceeding, and additionally points out petitioner's lengthy delay in moving for this relief.

Respondent opposes the remainder of the motion. It argues that the checks are appropriate and that petitioner should accept them. The checks for interest, costs, and disbursements, it states, total \$10,294.53, the exact amount the Court's order specifically provided. In addition, its treatment of the wages was proper, it states. Petitioner's argument that respondent should have deducted \$1614.74 from petitioner's check and remitted to NYCERS has no merit, respondent claims, because respondent cannot make payments to a nonparty. It claims that petitioner's conduct in rejecting the checks is unreasonable and she should be ordered to accept them. It points out that it cannot change petitioner's retirement date as only NYCERS can grant such relief. It suggests that as an alternative to adding NYCERS to this litigation, petitioner – who has figured out precisely how and to whom she believes the funds should be paid, she may be able to take the checks as respondent issued them and work out a resolution to her retirement concerns directly with NYCERS. As for sanctions in the form of attorney's fees, it argues that article 78

does not provide for an award of such fees and that, even if they are awardable, respondent's conduct has in no way been noncompliant or sanctionable.

In her reply, petitioner again suggests that respondent should have added NYCERS as a party and that respondent, rather than petitioner, is responsible for any resulting delay. She claims respondent presents no justification for its refusal to issue checks covering interest, costs, and disbursements in the amounts she has demanded. Neither her interest income nor her costs and disbursements should be taxed, she alleges. Respondents, she notes, have always remitted her pension fund contributions to NYCERS, and she does not see why respondent lacks the capacity to do so now. She states that respondent has not rescinded the 2014 tax statements, further complicating her ability to complete her taxes. She reiterates that respondent's conduct is sanctionable, and states that she seeks attorney's fees as a sanction, not under article 78. She emphasizes that respondent's failure to correct the alleged errors in payment is sanctionable, as it has had ample time to reissue the checks.

It is clear that most if not all of the problems petitioner has with respondent's payments relate to the fact that respondent cannot afford all of the relief petitioner seeks unless NYCERS is made a party to this proceeding. Moreover, both parties agree that NYCERS should be added to the case for the sole purpose of effectuating the Court's order. Further, it appears that, once NYCERS is in the case, petitioner's complaints may be able to be resolved without further Court involvement. As for the application for sanctions, the Court does not find that sanctions are appropriate, as respondent attempted to comply with the order. Also, it was petitioner's

responsibility and not respondent's to move to add a party to the petition. Therefore, without addressing the additional arguments the parties have set forth, it is

ORDERED that the motion is granted to the limited extent of granting petitioner leave to amend the petition to add NYCERS as a party; and it is further

ORDERED that a supplemental petition which adds NYCERS as a party shall be served, in accordance with the Civil Practice Law and Rules, upon the new party in this action within 60 days after the date of entry of this order; and it is further

ORDERED that the petition shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
JOYCE SINGERMAN,

Petitioner,

Index No. 116925/2009

-against-

**THE NEW YORK CITY COUNCIL and
THE NEW YORK CITY EMPLOYEES
RETIREMENT SYSTEM,**

Respondents.

-----X

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 119), who are directed to mark the court's records to reflect the additional parties; and it is further

ORDERED that the parties shall appear in Part 6, 60 Centre Street room 690 at 9:30 a.m. on March 8, 2016, to discuss any remaining issues or to withdraw the remainder of this motion. If the motion is resolved prior to the motion date, the parties may notify the Court via conference call and cancel the conference.

Dated: Dec. 9, 2015

ENTER:

JB

Joan B. Lobis, J.S.C.

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