Matter of Irving v South Huntington Water Dist.
2020 NY Slip Op 33094(U)
September 22, 2020
Supreme Court, Suffolk County
Docket Number: 03515/2019
Judge: Robert F. Quinlan

SHORT FORM ORDER

INDEX No.: 03515/2019

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 27 - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT F. QUINLAN
Justice of the Supreme Court

MOTION DATE: 07/31/2019
SUBMIT DATE: 08/22/2019
MOT CONF HELD: 02/04/20
Mot. Seq.: #001-MotD
CASEDISP

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In the Matter of the Application of

JULIET IRVING,

For a Judgment pursuant to Article 78 CPLR,

Petitioner,

- against -

SOUTH HUNTINGTON WATER DISTRICT,

Respondent.

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The following papers numbered 1 - 69 having been read on this proceeding pursuant to Article 78:

	Papers Numbered
Notice of Petition, Petition, with Exhibits	1 - 11
Affirmation of Counsel	12-13
Memorandum of Law	14-19
Verified Answer	20-23
Rapczyk Affidavit, with Exhibits	24-47
Affirmation in Opposition, with Exhibits	48-53
Memorandum of Law in Further Support	54-62
Affirmation in Further Support, with Ex	63-67
Affidavit of Petitioner	68-69

Petitioner commenced this proceeding on July 2, 2019 by the filing of a Notice of Petition and Verified Petition against respondent for an order declaring respondent's decision to terminate

petitioner's health insurance benefits arbitrary and capricious and/or contrary to law; enjoining respondent from terminating petitioner's health insurance benefits and coverage unless a "qualifying event" occurs under applicable law; enjoining respondent from terminating petitioner's health insurance benefits and coverage pending disposition of this proceeding; and for reasonable attorneys' fees and costs.

By her petition Juliet Irving ("Irving" and/or "petitioner") avers that from 1994 to 2005 she lived together with Robert Sands ("Sands"), who at the time was an employee of the South Huntington Water District ("the District" and or "respondent"), having been hired by the District in 1985. Though not married, Irving and Sands considered themselves life partners and domestic partners. As part of his benefits package provided by the District, Sands received health insurance coverage through the New York State Health Insurance Program ("NYSHIP"), administered by the New York Civil Service Commission. Starting in or about 1997 Sands added Irving to his health insurance policy, designating Irving on the plan as a domestic partner, a designation which Irving maintained for the next nine years. Irving avers that she was added to Sands' plan because the District participated in the domestic partner program offered by NYSHIP. In 2004 Sands developed lung cancer but remained employed by the District, ultimately succumbing to the disease in 2005. Upon Sands' death, Irving's coverage under the District's health insurance policy converted from a domestic partner's benefit to a survivor's benefit. Since that time Irving's health insurance coverage has continued and she has relied on her continued coverage. Then, by letter dated April 10, 2019, Irving was told the District "has determined not to extend further medical insurance benefits" and that her coverage would terminate June 30, 2019. Petitioner annexes two exhibits to her petition: Exhibit "1" a screenshot of a NYSHIP webpage identifying Irving as an "enrollee" in the plan as of May 10, 2019; and Exhibit "2" the April 10, 2019 letter.

STANDARD OF REVIEW

Pursuant to CPLR § 7803 the issue before this court is whether the action taken by the District to terminate petitioner's medical insurance benefits had a rational basis and thus was not arbitrary and capricious (*see Matter of Wooley v New York State Dept of Correctional Servs.*, 15 NY3d 275 [2010]). If the action taken is without foundation in fact or not justified it is arbitrary and capricious (*see Pell v Bd. of Educ.*, 34 NY2d 222 [1974]; *Matter of Peckham v Calogero*, 12 NY3d 424 [2009]; *Matter of Wooley v N.Y. State Dep't of Corr. Servs.*, 15 NY3d at 280 [2010]; *Ward v City of Long Beach*, 20 NY3d 1042 [2013]). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis" (*see Manning ex rel. Suffolk County Ct. Employees Ass'n v New York State-Unified Ct. Sys.*, 153 AD3d 623 [2d Dept 2017]; *see also Perry v Brennan*, 153 AD3d 522 [2d Dept 2017], lv to appeal denied sub nom. *Perry v Patricia A. Brennan Qualified Personal Residence Tr.*, 31 NY3d 902 [2018][the sole question before the court under Article 78's arbitrary and capricious standard is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion]).

The District filed an answer to the petition and opposes the relief requested in this

proceeding. Notably by its answer the District admits providing Irving with health insurance coverage but denies Sands had the authority to add petitioner to his coverage in 1997, and argues while NYSHIP offers an option for participating agencies such as the District to extend health insurance coverage to the domestic partner of an employee, there is no evidence that the District enacted a resolution that established a domestic partner policy, or adopted a domestic partner option for the provision of health insurance benefits, or authorized the extension of health insurance benefits to Irving. Further the District argues that the provision of medical insurance benefits to Irving was a "mistake" that should not have occurred and which continued for years without the appropriate authorization of the Board of Commissioners of the South Huntington Water District ("the Board").

Here rather than provide a certified transcript of the record of the proceedings under consideration as required by the CPLR (*see D'Souza v Bd. of Appeals of Town of Hempstead*, 173 AD3d 738 [2d Dept 2019]; CPLR 7804[d]) the District submits the affirmation of counsel and the affidavit of District Manager Diane Rapczyk ("Rapczyk"). Further, a review of the documents annexed to the Rapczyk affidavit reveals that other than two letters sent by Rapczyk to Irving in 2019[1] (Exhibits "A" and "B" to her affidavit), Rapczyk does not provide any records maintained in the regular course of business of the District.

1996 Election to Provide Domestic Partner Benefits

Annexed to the Rapczyk affidavit is a copy of a form on the letterhead of the New York State Department of Civil Service Employee Benefits Division (Exhibit "C"), which states:

> The South Huntington Water District, as a Participating Employer in the New York State Health Insurance Program, does hereby notify the Employee Benefits Division (EBD) that it has elected to extend eligibility for coverage to the Domestic Partners of its employees, vestees and retirees effective June 1, 1996[.] We agree to use the eligibility criteria and enrollment forms provided by the EBD. (hereinafter "the 1996 Form")

The 1996 form is signed by "William P. Connery, Chairman" on behalf of the District, and dated July 19, 1996.

As noted above though Rapczyk avers she is "responsible for the maintenance of the books and records of the District, inclusive of resolutions of the Board of Commissioners, minutes of meetings, maintenance of personnel files . . ." she does not aver that the 1996 Form was a record maintained by the District, rather Rapczyk avers that the "statement" was provided to her by the

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[1] Attached are the April 10, 2019 letter from Rapczyk to Irving informing Irving of the termination of her health insurance coverage effective June 30, 2019 and a June 26, 2019 letter extending Irving's health insurance coverage to September 30, 2019. The court notes respondent has agreed to continue providing health insurance coverage and benefits to petitioner pending the court's determination of this Article 78 proceeding.

Division of Employee Benefits, and concedes that it "indicates the South Huntington Water District elected to extend coverage to the domestic partners of employees."

2008 NYSHIP Self Audit

Next Rapczyk annexes a fax (Exhibit "D"), dated January 16, 2008, with a cover page addressed "from" Diane Rapczyk to Civil Service forwarding a copy of a Self-Audit questionnaire prepared by the District, and signed by Anthony Kropp, CEO of the District (the "2008 Self Audit"). The 8 page Self Audit consists of 32 questions addressing various aspects of NYSHIP coverage provided by the District, and includes the following question:

7.3 Does your agency cover domestic partners?

For all employees or retirees?

To which the District answered "Yes" to both questions.

Although the 2008 Self Audit includes a cover page indicating it was sent by Rapczyk to Civil Service, Rapczyk once again fails to offer any independent recollection of the form, nor does she state that it was part of her records, or the records maintained by the District. But once again she concedes that the 2008 audit "indicat[es] that the South Huntington Water District does provide benefits to the domestic partners of an employee of the district."

REQUEST FOR CHANGE OF COVERAGE

Finally, the last document annexed to the Rapczyk affidavit appears to be a form from the Long Island Public Service Employees Local 342 Insurance Trust, entitled "Request for Change of Coverage." On the form, in the space for "Employer Name" is handwritten "South Huntington Water District" and it is signed by "Employee" Robert Sands, and dated April 12, 1997. The form further indicates that "Juliet Irving" is to be added to Robert Sands' coverage and on the form the "Relationship" between Sands and Irving is identified as "Domestic Partner."

Rapczyk, the employee "responsible for the maintenance of the books and records of the District" including "maintenance of personnel files" does not provide a description of this form in her affidavit, nor does she even refer to the form, which although not a record of respondent clearly identifies petitioner as the domestic partner of Robert Sands, and appears to add petitioner as an additional insured on the policy provided by the District to its then employee, Robert Sands, in 1997.

Despite respondents submission of these documents, which clearly indicate the South Huntington Water District provides benefits to the domestic partners of employees of the district, the District argues that the health insurance benefits provided to petitioner were a "mistake" because Rapczyk's review of the books and records of the District did not uncover a resolution of the Board of Commissioners authorizing the District to provide those benefits.

In support of this argument the District refers the court to the "New York State Department of Civil Service Manual for Participating Agencies." Respondent's counsel provides a "link" to the manual and annexes certain "relevant" pages, to wit Section 2.5 entitled "Domestic Partner Provision" and Section 2.2 "Dependent Eligibility Requirements." Rapczyk then summarizes those parts of the manual that address the requirements for extending health insurance coverage to the domestic partner of an employee, recites the required forms that must be submitted, and avers "it appears that a resolution would have needed to have been adopted." Notwithstanding the fact that the copy of Section 2.5 submitted in opposition is dated June 1, 2007 and the link to the online version indicates that particular provision was updated February 1, 2008, and no proof has been submitted to establish that either version was in effect in 1997, at the time petitioner was added to Sands' benefits as his domestic partner, it is clear that in both versions of Section 2.5, and contrary to respondent's argument, a resolution was not the only document accepted by Civil Service for an agency to confirm it provides domestic partner benefits. Instead the "Domestic Partner Provision" states that for a participating agency such as the District to elect domestic partner coverage, they were required to "[s]end a copy of the official resolution ***or other written confirmation of the decision to offer Domestic Partner coverage to the Employee Benefits Division with an effective date***." (Emphasis supplied.)

Here the District does not even attempt to offer a rational basis for its determination to rescind petitioner's health insurance benefits. Its sole argument is that providing petitioner with domestic partner benefits was a "mistake." As noted respondent offers no explanation for the 1996 Form which respondent concedes is written confirmation to Civil Service of the District's decision to offer Domestic Partner Coverage in 1996. Nor does the District explain its response to the 2008 Self Audit by which it reported to Civil Service that the District was providing domestic partner benefits. Respondent's sole argument is because it could not find a resolution of the Board of Commissioners in the records of the District authorizing the District to provide health insurance benefits to the domestic partners of its employees so therefore the benefits petitioner received were a "mistake."

In further support petitioner submits her affidavit and the affirmation of counsel. Annexed to petitioner's counsel's affidavit is Page 1 of the minutes of the April 9, 2019 meeting of the District Board of Commissioners.[2] Petitioner's counsel explains that prior to commencing this proceeding his office filed a Freedom of Information request with Civil Service for any documents concerning the District's decision to terminate petitioner's health insurance coverage. On July 12, 2019 - 10 days after this proceeding was commenced - Civil Service responded to the FOIL request, thus petitioner submits these documents in reply. As the minutes of the April 9, 2019 meeting of the District's Board of Commissioners directly address the issue before the court, and these minutes were not provided to the court by the District although they are presumed to be records maintained by the District in the regular course of business and relevant to their determination, and respondent has raised no objection to the submission, the minutes are considered. The minutes contain the

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[2]Exhibit 3 to petitioner's counsel's August 6, 2019 affirmation, and petitioner's submission by letter dated August 21, 2019, have not been considered by the court.

following statement:

> After an internal audit regarding the provision of health insurance coverage to the employees of the District, the Board of Commissioners resolved to qualify when coverage to the domestic partner of an employee should be provided. In recognition that New York State now recognizes universal marital status[3], and that the collective bargaining agreement with the District's employees provides for the extension of health insurance benefits to the spouse of a qualified employee, the Board is of the opinion that the provision of health insurance benefits to the domestic partner of an employee of the district is no longer warranted. The Commissioners thereafter resolved to maintain the existing provision of coverage to the domestic partner of Peter "Doe" until the biological child of their union attains the age of 26 years, or as otherwise defined by the District's health insurance provided. To ensure compliance, the district requires that Peter "Doe" provide, on an annual basis, proof of continued financial and domestic partner status. Benefits for former employee Robert Sands domestic partner, Ms. Juliet Irving, shall cease effective July 1, 2019.

Thus contrary to the District's position that domestic partner benefits were a "mistake" the April 9, 2019 minutes of its Board of Commissioners reveal that rather than terminating coverage to the domestic partners of all employees, the District made a determination to terminate petitioner's health insurance but continued coverage for the domestic partner of another employee. No explanation was given for this inconsistency.

Here the record before the court is replete with evidence that the District knew, or should have known, that it elected to provide health insurance coverage to the domestic partners of its employees, and petitioner in particular. While the District might have been unable to uncover any evidence that the Board of Commissioners enacted a resolution to establish a domestic partner policy or authorized the extension of benefits to petitioner, the evidence before the court establishes that the District gave notice to Civil Service of it's election to extend insurance coverage to domestic partners of its employees, vestees and retirees effective June 1, 1996, and the District later confirmed that coverage by submission of the 2008 Self Audit. Finally the minutes of the April 4, 2019 meeting of the Board of Commissioners of the District, which terminated petitioner's domestic partner health insurance benefits but continued the domestic partner benefits of another District

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[3]The court presumes this to be a reference to the June 26, 2015 decision of the United States Supreme Court which held that the Constitution guarantees a right to same-sex marriage and thereby requiring all fifty states to perform and recognize the marriages of same-sex couples (*Obergefell v Hodges*, 135 S.Ct. 2584 [2015]). No explanation was provided as to what relation, if any, the recognition of same-sex marriage has to domestic partner benefits.

employee, contradicts respondent's argument that the District did not have a domestic partner policy. The District established this policy in 1996 in accordance with Civil Service, and provided the benefit to petitioner since 1997. Accordingly the District's unilateral decision to terminate petitioner's health insurance benefits was arbitrary and capricious.

Finally, though petitioner does not specifically argue estoppel, respondent's counsel argues in opposition that "principals of estoppel do not apply to a municipality" however this sweeping pronouncement is not supported by law. Generally the doctrine of estoppel is not available against a municipal defendant with regard to the exercise of its governmental functions or its correction of an administrative error (*see Matter of Daleview Nursing Home v Axelrod*, 62 NY2d 30 [1984]; *Palm v. Tuckahoe Union Free Sch. Dist.*, 95 AD3d 1087 [2d Dept 2012]; *Agress v Clarkstown Cent. School Dist.*, 69 AD3d 769 [2d Dept 2010]; *Conquest Cleaning Corp. v New York City School Constr. Auth.*, 279 AD2d 546 [2d Dept 2001]). However, an exception to the general rule applies in "exceptional circumstances" involving the "wrongful or negligent conduct" of a governmental subdivision, or its "misleading nonfeasance," which "induces a party relying thereon to change his position to his detriment" resulting in "manifest injustice" (*see Landmark Colony at Oyster Bay v Board of Supervisors of County of Nassau*, 113 AD2d 741 [2d Dept 1985]; *Bender v New York City Health & Hosps. Corp.*, 38 NY2d 662, 668 [1976]; *Agress v Clarkstown Cent. School Dist.*, 69 AD3d at 771). Here respondent's unilateral act of canceling petitioner's domestic partner health benefit, after providing her that benefit for more than twenty years, would lead to just such a manifest injustice, and respondent's argument that the provision of domestic partner health insurance benefits to petitioner was a "mistake" is without sound basis in reason as it disregards the facts. Although respondent was unable to produce a resolution authorizing the benefit in question, respondent provided a copy of its 1996 notification to Civil Service of its election to provide domestic partner benefits, and the 2008 self audit, and concedes those documents "indicate" the District elected to extend coverage to the domestic partners of its employees. This court finds that to allow respondent to benefit at this juncture by arguing because it could find no evidence in 2019 that a resolution was passed by the board authorizing domestic partner benefits in 1996, that petitioner's benefits are a "mistake," is inequitable and would result in manifest injustice to petitioner.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted to the extent that repondent South Huntington Water District's decision to terminate petitioner Juliet Irving's health insurance benefits by the letter of April 10, 2019 is arbitrary and capricious and contrary to law, and respondent is enjoined from terminating petitioner's health care benefits and coverage upon the basis set forth in the letter of April 10, 2019; and it is further

ORDERED that the balance of the relief requested is denied.

Dated: September 22, 2020

Hon. Robert F. Quinlan, J.S.C.