

<b>Martino v Board of Educ. of the City Sch. Dist. of the City of N.Y.</b>
2022 NY Slip Op 33372(U)
October 6, 2022
Supreme Court, New York County
Docket Number: Index No. 156614/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MICHELLE MARTINO,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, COMMUNITY SCHOOL DISTRICT 22 OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, UNITED FEDERATION OF TEACHERS

Respondent.

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INDEX NO. 156614/2022

MOTION DATE 09/30/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for ARTICLE 78.

The cross-motion to dismiss the petition, which sought to annul a determination denying petitioner a medical exemption and reasonable accommodation to the COVID-19 vaccine mandate, is granted as petitioner failed to exhaust her administrative remedies.

Background

Petitioner is a licensed and tenured teacher. She started working as a part time teacher in 1999 and became full time in 2012. Petitioner alleges she received tenure in 2015. After the vaccine mandate was promulgated by the New York City Commissioner of Health and Mental Hygiene, petitioner's union (respondent United Federation of Teachers) and the remaining respondents ("City Respondents") engaged in an arbitration about how to implement the vaccine mandate. The subsequent arbitration award set up a process by which teachers could apply for

medical exemptions. That process required a teacher whose request for an exemption was denied to file an appeal.

Petitioner contends that she submitted a timely request for a medical exemption on October 7, 2021. Her request was denied in January 2022 (NYSCEF Doc. No. 7). The denial stated that “This is to advise you that your request for a Medical Exemption to the COVID-19 Vaccine Mandate has been denied for the following reason(s): a. Denial Reason: Medical condition not valid reason to defer or delay vaccination (e.g. not within 90 days after receiving antibody treatment, and not in treatment for conditions outlined in CDC considerations that would temporarily interfere with the ability to respond a” (*id.*). The sentence simply ends—it is not a complete sentence. And petitioner points out the exemption referenced is this denial (a temporary exemption) was not the one she requested.

On April 14, 2022, petitioner received another email from the City Respondents stating that “It has come to our attention that there was an error in the email below regarding your application for a medical exemption to the COVID-19 Vaccine Mandate. The Denial Reason should read as follows: Denial Reason: Contraindication is not for all three vaccine types. We apologize for the error” (NYSCEF Doc. No. 9). Petitioner contends that she subsequently received what she refers to as a “forced resignation email” (NYSCEF Doc. No. 10).

The City Respondents move to dismiss on the ground that petitioner failed to exhaust her administrative remedies. They point out that petitioner does not contend she ever filed an appeal of this determination or grieved her resignation. They also note that the time to request an appeal has passed (the arbitration award provided one school day to file an appeal).

In opposition, petitioner stresses that the initial determination was sent in error by the City Respondents and that the April 2022 determination did not give instructions about how to

appeal the denial. She insists that the initial denial focused on an exemption for which petitioner did not even apply. Petitioner claims she was told she could not appeal because the first denial was sent in January 2022.

In reply to its cross-motion, the City Respondents maintains that because petitioner is trying to impose the obligations that arose from the arbitration award between UFT and the City Respondents, she must also abide by the medical exemption procedures. They insist it is undisputed that petitioner did not appeal the denial of her medical exemption request. Respondents argue that petitioner's assertion that some individual told her she could not appeal the denial is not a basis to permit her to avoid the fact that she did not exhaust administrative remedies.

### **Discussion**

“It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law. This doctrine furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency, preventing premature judicial interference with the administrators' efforts to develop, even by some trial and error, a coordinated, consistent and legally enforceable scheme of regulation and affording the agency the opportunity, in advance of possible judicial review, to prepare a record reflective of its expertise and judgment” (*Watergate II Apartments v Buffalo Sewer Auth.*, 46 NY2d 52, 57, 412 NYS2d 821 [1978] [internal citations omitted]).

Here, there is no question that petitioner failed to exhaust her administrative remedies. While she is certainly correct that the January 2022 determination was incoherent, she admits she

received the April 2022 denial of her medical exemption request and that she never filed an administrative appeal of that determination.

Petitioner's explanation for not filing the appeal is unavailing and self-serving. She contends that she "was informed that she was not able to appeal due to the timing of when Respondent sent the first incorrect denial in January 2022. After informing Petitioner that she was precluded from filing an appeal due to its own administrative error, Respondent [sic] now asserts that Ms. Martino is also precluded from having a meaningful opportunity to be heard" (NYSCEF Doc. No. 31 at 6). This "excuse" does not identify who told petitioner this information or provide any supporting documentation whatsoever to support this claim. She does not assert, for instance, that she filed an appeal and received another determination that her appeal was not timely filed. The Court cannot modify the process for seeking a medical exemption based on petitioner's vague claim, which was only raised by petitioner's attorney in a memo of law.

The fact is that the arbitration award set up a process by which a teacher could seek a medical exemption (NYSCEF Doc. No. 4). That process included a requirement that a teacher whose exemption request is denied must seek an appeal (*id.* at 10). And petitioner did not do that here. This is not a situation in which petitioner, who may have been understandably confused by the initial January 2022 denial, waited before filing an appeal. Instead, the City Respondents sent a modified determination denying her request in April 2022 and petitioner did not seek an appeal. That she seeks to cast blame on the City Respondents for not giving her additional instructions about when to appeal is irrelevant because she never filed an appeal at all. Moreover, the arbitration award is very clear about the appeal process.

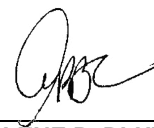
Because the Court finds that petitioner did not exhaust her administrative remedies, it need not delve into the myriad of other issues raised by the parties.

Accordingly, it is hereby

ORDERED that the cross-motion to dismiss is granted, this proceeding is dismissed and the Clerk is directed to enter judgment in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

10/6/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE