SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02TR**

Justice

----------X

WAEL MANSOUR,

Petitioner,

- v -

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, DAVID C. BANKS, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Respondent.

----------X

INDEX NO. 159156/2022

MOTION DATE 03/15/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - MONEY.

Petitioner Wael Mansour ("Petitioner") brings this proceeding pursuant to Article 78 of the CPLR seeking an order and judgment declaring the Board of Education of the City of New York ("Board") and David C. Banks, Chancellor (collectively "Respondents") engaged in conduct that was arbitrary, capricious, an abuse of discretion, affected by error of law, and violated a duty enjoined upon Respondents by law when they failed to provide Petitioner with thirty days written notice prior to his termination as a probationary teacher. Petitioner further moves for a judgment directing Respondents to pay Petitioner all salary, benefits, and other emoluments of employment that Petitioner would have received had Respondents not purportedly unlawfully terminated him on June 27, 2022. Respondents oppose the Petition.

The following recitation of facts is set forth in the Verified Petition unless otherwise stated (NYSCEF Doc. 1). Petitioner received a probationary appointment on September 4, 2018, and he was employed by Respondent through the 2021-2022 school year. He taught at Baruch

College High School in Manhattan. On May 27, 2022, Vivian Orlen, Superintendent of Manhattan High Schools, sent Petitioner a letter which stated, "This is to inform you that on June 27, 2022, I will review and consider whether your services as a probationer be discontinued as of the close of business June 27, 2022" (NYSCEF Doc. 20). The letter provided that Petitioner could submit a written response no later than seven days before the consideration and final determination date. Petitioner submitted a letter on or about June 20, 2022. On June 27, 2022, Petitioner received a second letter which stated: "This is to inform you that after reviewing your written response dated June 20, 2022, I reaffirm you [sic] Discontinuance of Probationary Service close of business [sic] June 27, 2022" (NYSCEF Doc. 21). Petitioner remained on payroll until August 31, 2022 in accordance with the collective bargaining agreement between UFT and the Board (NYSCEF Docs. 24 and 31).

Petitioner contends that Respondents violated the Education Law by failing to provide at least 30 days' notice prior to his termination. Although he acknowledges that a letter was sent on May 27, 2022, he claims this letter only served to inform him that there would be a review as to whether to discontinue his probationary status. He asserts that he submitted a letter response because he believed that there was a possibility that his employment might be continued. It is his position that the June 27, 2022 letter was the actual notice of his termination and that since it was the same day that his services were discontinued he was not given the required 30 day notice. This is the sole basis for the Petition, Petitioner does not contest the basis for the termination of his probationary status.

Respondents contend that the May 27, 2022 letter was the notice letter discontinuing Petitioner's probation. In an affidavit submitted by Lawrence Becker, a Consultant for the Board of Education, he states that Respondents have a well-established policy for over 20 years

regarding the discontinuance of probationary teachers (NYSCEF Doc. 12). This process includes the use of two letters. The first provides the notice of discontinuance, states that it will be effective in thirty days, and gives the reason for the decision and an opportunity to provide a written response. The second letter provides confirmation of the final decision.

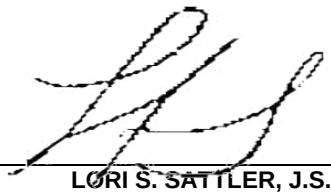
Respondent attaches two exhibits entitled "The Appeals Process" which was initially created between 2000 and 2002 under Chancellor Harold Levy and then updated under Chancellor Joel Klein (NYSCEF Docs. 14 and 15). Both manuals attach as an exhibit the form letters that were provided to Petitioner in this action. Mr. Becker points to an email from James Schlacter, Member Representative for the United Federation of Teachers ("UFT") Grievance/Arbitration Department, dated November 10, 2022 where UFT references "The Appeals Process" booklet and indicates that it may be relied upon in arbitrations (NYSCEF Doc. 17), Respondents contend that Petitioner's claim is barred due to the doctrine of laches because UFT has inexcusably delayed challenging the two discontinuance letters for more than twenty years. In the alternative, Respondents seek a finding that Petitioner is not entitled to any back pay because he received his full teacher's salary.

Under Education Law § 3019-A, a written notice of at least thirty days must be provided where a school authority or board desire to terminate the services of a teacher during their probationary period. The purpose of this provision is to allow teachers whose services are to be discontinued a period of time to seek other employment (*Matter of Vetter v Board of Educ., Ravena-Coeymans-Selkirk Centr. School Dist.*, 14 NY3d 729, 731 [2010], citing *Matter of Zunic v Nyquist*, 48 AD2d 378, 380 [3d Dept 1975] ["The primary impact of section 3019-a upon a school district is to provide a teacher with 30 days of paid salary which is nothing more than transitional aid to the teacher."]). In the event of non-compliance, teachers are entitled to "one

day's pay for each day the notice was late" (*id.*, citing *Matter of Tucker v Board of Educ., Community School Dist. No. 10*, 82 NY2d 274, 278 [1993]).

In this matter, the Court need not address whether the May 27 letter constituted sufficient written notice pursuant to Education Law § 3019-A because even if Petitioner first received notice of his termination on June 27, the purpose of the statute has been fulfilled. In addition to receiving notice as of May 27 of his prospective termination, Petitioner had two months from June 27 to find employment prior to the start of the following school year, and he received pay for two months following June 27. The holdings in *Vetter* and *Tucker*, which required payment where a portion of the notice period fell during summer months where the teacher would not have otherwise been paid, do not require an additional thirty days of pay under the circumstances here, where Petitioner was paid summer pay for sixty days after he concedes he received notice of termination. The Court further finds that the termination of Petitioner was not arbitrary or capricious or affected by an error of law. In light of this determination, the Court need not consider Respondents' remaining arguments. Accordingly, it is hereby:

ADJUDGED that the application is denied, and the petition is dismissed, with costs and disbursements to respondent.



5/22/2023
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE