

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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PHILIP NOBILE

Plaintiff,

**AFFIDAVIT IN SUPPORT
OF MOTION FOR
T E M P O R A R Y
RESTRAINING ORDER**

-against-

Index No. *150914/17*

**BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK;
CARMEN FARINA, in her official capacity as
Chancellor of the CITY SCHOOL DISTRICT OF THE CITY
OF NEW YORK; and, KAREN SCOTT, in her official
capacity as Superintendent, District 14 of the CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,**

Defendants.

-----X
STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

PHILIP NOBILE, having been duly sworn, states the following under the penalties of perjury:

1. I am a tenured teacher employed by the Board of Education of the City School District of the City of New York ("Board"). I have filed this action to challenge the unlawful conduct taken against me by the Defendants in (1) refusing to accept my rescission of my consent to a stipulation of settlement ("Stipulation") of a § 3020-a

proceeding, a rescission submitted to Defendants before the Stipulation was fully-executed by the Defendants, and in (2) continuing to refuse to provide me a disciplinary hearing pursuant to Section 3020-a of the Education Law.

2. I ask this court for declaratory and injunctive relief to prevent the Defendants from implementing the Stipulation, thus imposing an involuntary termination upon me, effective close of business, January 31, 2017, and thereby depriving me of my right to due process of law in a § 3020-a proceeding.

3. I have been a teacher employed by the Board of Education of the City School District of the City of New York ("the Board") since 2000.

4. I was first appointed by the Board to a position as a per diem substitute teacher in December 2000. I served as a per diem substitute from 2000 to 2001.

5. In September 2001, the Board appointed me to teach high school at HS519, the Cobble Hill School of American Studies ("CHSAS"). I was granted tenure by the Board in 2004, while teaching high school history at the CHSAS.

6. In or about June 2007, I was assigned to Defendant Board's Reassignment Center. I remained employed by the Board at the Reassignment Center until in or about January 2011.

7. In or about January 2011, I was assigned by the Board to the Absent Teacher Reserve ("ATR"). From June 2011 through in or about March 2016, the Board assigned me to serve in substitute teacher positions.

8. In or about April 21, 2016, the Board served me with charges, pursuant to Section 3020-a of the Education Law ("the Charges"). The Charges were filed by District

14 of the Board and were signed by the District Superintendent, Karen Watts, a defendant in this action.

9. I was represented by the Offices of Richard E. Casagrande, General Counsel, New York State United Teachers ("NYSUT") in the § 3020-a proceeding (the Proceeding"). A pre-hearing conference in the Proceeding was scheduled for October 7, 2016, before a hearing officer.

10. At the pre-hearing conference, October 7, 2016, my NYSUT Counsel, Christopher Callagy, argued in support of a motion to dismiss the Charges in the Proceeding. The Board's counsel argued against the motion. After argument on the motion, the parties reviewed with the hearing officer the bill of particulars which NYSUT counsel had served upon counsel for the Defendants.

11. During a break in the Proceeding, Attorney Callagy, and the attorney for the Board, Jordana Shenkman, Esq., discussed possible settlement proposals.

12. Despite my strong belief that the Charges had no merit, I agreed to enter into a Post-Charge Stipulation of Settlement ("Stipulation") which permitted me to continue working as a teacher with the Board, assigned to the ATR pool, until close of business, January 31, 2017. The Stipulation included a retirement letter ("Letter"), dated October 7, 2016, which is effective close of business, January 31, 2017. The Letter was made part of the Stipulation, as Exhibit "A, "

13. Prior to my signing either the Stipulation or the Letter, I asked Ms. Shenkman, the attorney for the Board and District 14, when the Stipulation and Letter would be effective. In response to my question, Ms. Shenkman stated to me, in the

presence of my attorney, Christopher Callagy, that the Stipulation would not be effective until it was fully-executed or signed by all the parties to the Stipulation: myself, my NYSUT Counsel, Christopher Callagy, Ms. Shenkman, signing as Counsel for the Board, and by Defendant Karen Watts, the Superintendent of District 14, signing on behalf of the educational district which filed the § 3020-a proceeding. This statement was made in the presence of the hearing officer.

14. Relying upon the representations of the Board's counsel that the Stipulation would not be effective until signed by all the parties, I signed the Stipulation and Letter, Friday, October 7, 2016. My attorney also signed that day, as did Ms. Shenkman. Neither District Superintendent Watts, nor anyone acting on her behalf, signed the Stipulation at the conference.

15. Over that weekend, I regretted having signed the Stipulation and Letter, which would mean giving up my right to a § 3020-a hearing, a hearing in which I could clear my name and in which I could continue my efforts to expose improprieties in the student grading system which had been used by the administration at the CHSAS. Consequently, I decided to forego the comfort of retirement and to accept the risk of an adverse hearing decision.

16. Monday, October 10, 2016, was a holiday for Defendants, Columbus Day. NYSUT Counsel's office was also closed. On Tuesday morning, October 11, 2016, the first business day after I signed the Stipulation, I called my NYSUT counsel, Mr. Callagy, and told him I was withdrawing my acceptance of the Stipulation. I was rescinding my resignation and retirement Letter. I wanted to continue fighting the

Charges in the § 3020-a hearing.

17. On October 11, 2016, my NYSUT attorney, Mr. Callagy, spoke with Ms. Shenkman who had represented Defendants at the hearing. NYSUT Counsel advised Defendants' counsel of my decision to rescind my acceptance of the Stipulation and to rescind my resignation Letter which I had only signed the prior Friday.

18. My attorney was advised by the Board's counsel that, as of October 11, 2016, Defendant Watts, the District Superintendent, a party to the Proceeding, had not yet signed the Stipulation.

19. On October 11, 2016, at 4:05 p.m., Attorney Callagy transmitted an e-mail to the Board's counsel stating that I had rescinded my acceptance of the Stipulation and was rescinding my retirement letter:

Philip Nobile hereby rescinds his retirement/resignation. Please prepare to go to hearing.

20. As of the date that my counsel sent the aforesaid e-mail to Defendants' counsel, October 11, 2016, the Stipulation had not been fully-executed. Counsel for the Board advised my attorney that she would get back to him with the Board's position on my rescinding the Settlement and my rescinding my resignation. She would also get back to us on our request to continue with the § 3020-a hearing.

21. I later learned from my attorney that it was not until October 13, 2016, two days *after* I had rescinded the Stipulation and requested that my § 3020-a hearing continue, that Defendant Watts, District Superintendent, District 14, a party to the Stipulation, signed the Stipulation.

22. It was not until late December, 2016, after my attorneys at NYSUT had made numerous inquiries as to when my case would be restored to the docket of 3020-a hearings so that the hearing could be commenced, that I learned that the Board Defendants had determined not to accept my rescission of the Stipulation and intended to terminate my employment effective close of business, January 31, 2017. The Defendants refused to place my case on the § 3020-a calendar.

23. On January 20, 2017, I served a Verified Notice of Claim upon the Defendants, demanding that the Defendants accept my rescission of the Stipulation and the withdrawal of my retirement Letter. I demanded that my § 3020-a case be restored to Defendants' § 3020-a hearing calendar.

24. To date, Defendants have refused to provide the requested relief.

25. If Defendants are permitted to enforce the rescinded Stipulation they will terminate my employment effective close of business, January 31, 2017. I will lose my salary. Not only will I face financial hardship I will lose my right to have a § 3020-a hearing and will lose my right to a hearing secured by due process of law.

Philip Nobile

PHILIP NOBILE

Sworn to before me this 27th day of January, 2017

Leonard A. Shrier

Notary Public

LEONARD A. SHRIER
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02SH6197047
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES ~~NOVEMBER 24, 2012~~
January 10, 2018