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THE STATE EDUCATION DEPARTMENT
THE UNIVERSITY OF THE STATE OF NEW YORK



In the Matter of
THE NEW YORK CITY DEPARTMENT OF EDUCATION

v

THEODORE SMITH

Section 3020-a Education Law Proceeding (File)

DATE: June 15, 2007

TIME: 12:55 p.m. to 1:20 p.m.

LOCATION: New York City Department of Education
Office of Legal Services
49-51 Chambers Street, 6th Floor
New York, New York

BEFORE: HOWARD EDELMAN, ESQ.
Hearing Officer
119 Andover Road
Rockville Centre, New York 11570

1 Theodore Smith - 6-15-2007
 2
 3 FOR THE DEPARTMENT:
 4 SUSAN JALOWSKI, ESQ., Of counsel
 5 MICHAEL BEST, ESQ., General Counsel
 6 New York City Department of Education
 7 Office of Legal Services
 8 49-51 Chambers Street, 6th Floor
 9 New York, New York
 10 FOR THE RESPONDENT:
 11 Pro se
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1 Theodore Smith - 6-15-2007
 2 THE HEARING OFFICER: Good
 3 afternoon. This is a proceeding in the matter
 4 of the New York City Department of Education
 5 versus Theodore Smith. My name is Howard
 6 Edelman. I am the designated hearing officer
 7 and I will explain in a minute how I got to be
 8 designated hearing officer in this matter.
 9 I just want to note the
 10 presence for the department.
 11 MS. JALOWSKI: Susan
 12 Jalowski.
 13 THE HEARING OFFICER: Okay.
 14 And I note the presence of Mr. Smith.
 15 MR. SMITH: Theodore Smith.
 16 THE HEARING OFFICER: Okay.
 17 Let me just ask both Ms. Jalowski and Mr. Smith
 18 to explain how we got to be where we are. And
 19 then I may have some comments.
 20 Ms. Jalowski, you begin.
 21 And Mr. Smith, you can
 22 respond.
 23 MS. JALOWSKI: Okay. This
 24 case was originally assigned to Hearing Officer

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 2 Jack Tillem. The hearing -- the record had
 3 been closed and the case was scheduled for
 4 closing arguments for May 10th. And for
 5 reasons that were put on the record on that
 6 date, Jack Tillem recused himself and then so
 7 the case then had to go back in to -- to be
 8 reassigned. And as is the agreement between
 9 the Department of Education and the U.F.T., the
 10 cases are assigned on a rotating basis to the
 11 panel that's already in existence of
 12 arbitrators. And when Mr. Smith's name came up
 13 to be the next reassigned case, Mr. Edelman was
 14 the arbitrator who was the next arbitrator up
 15 to be assigned the case.
 16 THE HEARING OFFICER: Okay.
 17 Mr. Smith, do you have any comments or
 18 questions about that, sir?
 19 MR. SMITH: I'd just like to
 20 respond.
 21 THE HEARING OFFICER: Sure.
 22 MR. SMITH: My lawyer --
 23 former lawyer, David Kearney breached his
 24 fiduciary duty to me in many ways. First way

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 2 is that he --
 3 MS. JALOWSKI: I -- I
 4 don't --.
 5 MR. SMITH: -- he did not
 6 allow testimony or exhibits to be brought into
 7 the trial for the records because he said Mr.
 8 Tillem was against me from the second day of
 9 the hearing before I had a chance to testify
 10 and before I had a chance to have any of my
 11 witnesses present. He said it doesn't matter
 12 anyway, that you don't have a chance. That's by
 13 day number two or three of the hearing.
 14 THE HEARING OFFICER: Mr.
 15 Smith, if I may ask, Mr. Kearney was an
 16 attorney assigned to you by NYSUT or was a
 17 private attorney who you engaged?
 18 MR. SMITH: He was a private
 19 attorney --
 20 THE HEARING OFFICER: All
 21 right. Go ahead.
 22 MR. SMITH: -- that I
 23 engaged.
 24 THE HEARING OFFICER: Go

1 Theodore Smith - 6-15-2007
 2 ahead.
 3 MR. SMITH: And therefore,
 4 there were many instances where he was not
 5 representing me correctly and properly. And as
 6 a result of that, the arbitrator on the record
 7 changed his decision, once that he was sorry
 8 that this did not work out and hopes he can
 9 restore my faith in the arbitrational system,
 10 but then was prompted by other people to up to
 11 amend his decision.
 12 THE HEARING OFFICER: Did he
 13 render a decision -- I mean when you say
 14 amend --.
 15 MR. SMITH: He --.
 16 MR. JALOWSKI: Are you
 17 talking about in -- in -- in the re -- in the
 18 coming -- when we were -- when he was recusing
 19 himself?
 20 THE HEARING OFFICER: So
 21 initially --.
 22 MR. SMITH: Initially he
 23 was -- recused himself because he said that I
 24 sent him a letter, felt that he was tilted and

1 Theodore Smith - 6-15-2007
 2 bias against me, but he said in -- in to the
 3 record that he was sorry that things didn't
 4 work out, that he put a lot of time into this
 5 case almost thirteen hearings, and at the
 6 thirteenth hearing day, which was a conference
 7 between various attorneys and my attorney,
 8 trying to get -- and -- and actually did get
 9 Mr. Tillem to amend his decision.
 10 MS. JALOWSKI: If wasn't a
 11 decision. It was just putting on the record --
 12 MR. SMITH: And a lot of
 13 off-the-record was discussed and --.
 14 MS. JALOWSKI: -- the reason
 15 for the recusing, which is really is no
 16 relevance on the --
 17 MR. SMITH: A lot of hearing
 18 officers --.
 19 THE HEARING OFFICER: Please
 20 only one at a time folks; the court reporter
 21 can't -- finish up and Mr. Smith, then you go
 22 ahead.
 23 MS. JALOWSKI: Okay. The
 24 fact of the matter is the -- the reason why Mr.

1 Theodore Smith - 6-15-2007
 2 Tillem recused himself has no relevance on why
 3 we're here today. That fact that he has
 4 recused himself and now the case has been --
 5 been assigned to -- to Mr. Edelman.
 6 THE HEARING OFFICER: Okay.
 7 Do you have any requests or applications today,
 8 Mr. Smith?
 9 MR. SMITH: Yes, I have one.
 10 Can I possibly have an adjournment today, sir,
 11 because I was just notified that there was
 12 hearing today, three days ago.
 13 THE HEARING OFFICER: Right.
 14 MR. SMITH: And I need time
 15 to be able to interview attorneys -- one of
 16 which I have to interview next Thursday --
 17 THE HEARING OFFICER: Okay.
 18 MR. SMITH: -- that's the
 19 soonest I could an appointment with my
 20 attorney.
 21 THE HEARING OFFICER: I'm
 22 going to ask you a question and I'm going to
 23 give you the opportunity to change the answer
 24 after you get an attorney. Okay?

1 Theodore Smith - 6-15-2007
 2 Is it my understanding
 3 that -- you know, that's for the both of you, I
 4 should be clear, that the record is closed in
 5 the sense that you put on your case and your
 6 case was also put on? Is that accurate?
 7 MS. JALOWSKI: That is
 8 correct. This case was scheduled for closing
 9 arguments.
 10 MR. SMITH: It was put on the
 11 record it was set for closing arguments and --
 12 and again, there was a second directive my
 13 testimony where again, I went a second time,
 14 but Mr. Tillem did not allow certain things in
 15 that I wanted to have in the first time around
 16 because my lawyer, once again, said that it
 17 didn't matter anyway because the arbitrator was
 18 going to rule against me anyway, so it didn't
 19 make a difference. And that's why, during the
 20 last conference, that there were certain
 21 conversations made which I didn't hear off the
 22 record, on the record, off the record where
 23 things were exchanged that I had no idea what
 24 was said.

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 2 THE HEARING OFFICER: Okay.
 3 Let me make two observations. First, let me
 4 assure Mr. Smith that this proceeding there is
 5 going to be nothing off the record. Whatever
 6 occurs is going to be on the record in this
 7 proceeding before me. I am going to grant your
 8 application to have an attorney -- to secure an
 9 attorney, rather. What we're going to do now
 10 is I'm going to have everybody look at their
 11 calendars. I'm going to give you sufficient
 12 time to get one, but as you know, I have an
 13 obligation to schedule closing arguments in
 14 this case. Okay?
 15 And I want to know, Mr.
 16 Smith, do you have copies of the exhibits and
 17 the transcripts of record in this case?
 18 MR. SMITH: No; but Mr.
 19 Kearney has a great deal of that.
 20 THE HEARING OFFICER: All
 21 right. What I want you to do, if you would,
 22 sir, is contact Mr. Kearney as soon as you can.
 23 MR. SMITH: Uh-huh.
 24 THE HEARING OFFICER: Make

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1 Theodore Smith - 6-15-2007
 2 right. Also I will need to secure all copies
 3 of the exhibits and the transcripts.
 4 Dana, off for just a minute.
 5 (Off the record)
 6 THE HEARING OFFICER: With
 7 your permission Mr. Smith, I will contact Mr.
 8 Tillem solely for the purpose of having him
 9 provide me all the transcripts and documents.
 10 Is that satisfactory to you,
 11 sir?
 12 MR. SMITH: I don't know how
 13 to respond to that. Since I don't have counsel
 14 here, may I not respond to that at this time or
 15 not?
 16 THE HEARING OFFICER: You may
 17 not. The problem is I have to get everything.
 18 Okay? I have to get them. If -- if -- I'm
 19 willing to assure you that if -- if you want me
 20 to do it this way, and you can check with your
 21 Counsel, I will simply send a letter and I'll
 22 send a copy to your new counsel -- I want you
 23 to contact both Ms. Jalowski and me as soon as
 24 get him or her. I'll simply send a letter to

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 2 sure he provides you a copy of all the exhibits
 3 and the transcripts. If for any reason he does
 4 not, or whatever -- I don't want to comment on
 5 him. I don't know, but if for any reasons he
 6 does not, please have your new attorney call
 7 Ms. Jalowski as soon as possible to make
 8 sure --
 9 MR. SMITH: Uh-huh.
 10 THE HEARING OFFICER: -- that
 11 your new attorney has in his possession all the
 12 documents that were introduced into evidence in
 13 this case. Okay?
 14 MR. SMITH: Okay.
 15 MS. JALOWSKI: And I would
 16 ask Mr. Smith, when he does hire an attorney
 17 just to contact --
 18 THE HEARING OFFICER: Yeah,
 19 that would be true, contact Ms. Jalowski as
 20 soon as possible.
 21 MS. JALOWSKI: -- contact me
 22 or contact me with the information.
 23 MR. SMITH: Okay.
 24 THE HEARING OFFICER: That's

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 2 Mr. Tillem with a copy to your new Counsel and
 3 Ms. Jalowski simply asking Mr. Tillem to please
 4 forward to me all the documents. Obviously, I
 5 have to have a record before me. I think you
 6 understand that sir.
 7 You have to say yes.
 8 MR. SMITH: Yes.
 9 THE HEARING OFFICER: That's
 10 fine. She -- she can't hear your head nod;
 11 that's fine. Okay.
 12 All right. But again, if --
 13 if -- if there's any question about that, have
 14 your new attorney contact me and we'll have a
 15 conference call with Ms. Jalowski and your new
 16 attorney and you have a right to be present on
 17 the conference call, as well. Okay?
 18 MR. SMITH: Yes.
 19 THE HEARING OFFICER: Thank
 20 you. Okay. All right. What I want to do have
 21 everybody take their calendars out please.
 22 MS. JALOWSKI: We're talking
 23 about July; right?
 24 THE HEARING OFFICER: I

4 (Pages 1078 to 1081)

1 Theodore Smith - 6-15-2007
 2 presume, certainly not June --
 3 MR. SMITH: Yeah.
 4 MR. JALOWSKI: Yeah, so --
 5 THE HEARING OFFICER: --
 6 because you need an opportunity to get --.
 7 We're still on the record,
 8 Dana.
 9 THE REPORTER: Okay.
 10 MS. JALOWSKI: I'm -- the
 11 only days I'm not available are the -- I think
 12 it's the 6th, 12th, and 17th.
 13 THE HEARING OFFICER: Okay.
 14 Let me see what I have. Now as we said this is
 15 for --
 16 MS. JALOWSKI: I mean 12th
 17 and 19th; I'm sorry.
 18 THE HEARING OFFICER: -- your
 19 closing arguments.
 20 Let me just see what I have.
 21 I'm available for closing arguments on the
 22 afternoon of July 23rd. That would give you,
 23 Mr. Smith, thirty days to secure an attorney,
 24 have him or her review the record --

1 Theodore Smith - 6-15-2007
 2 MR. SMITH: Okay.
 3 THE HEARING OFFICER: -- so
 4 July 23rd --
 5 MR. SMITH: Uh-huh.
 6 THE HEARING OFFICER: --
 7 at -- hold on -- at three p.m. by -- most
 8 likely by conference call and we'll provide
 9 your attorney with a conference call number to
 10 call in. Okay?
 11 And again, you have the right
 12 to present with your attorney or you have the
 13 right to call in separately; whatever you
 14 prefer.
 15 MR. SMITH: Okay.
 16 THE HEARING OFFICER: Okay?
 17 MR. SMITH: Thank you.
 18 THE HEARING OFFICER:
 19 Surely -- I'm still here, Dana.
 20 THE REPORTER: Okay.
 21 THE HEARING OFFICER: Okay.
 22 We have scheduled closing arguments at three
 23 p.m. via telephone on July 23rd.
 24 Again, Mr. Smith, please, the

1 Theodore Smith - 6-15-2007
 2 most important thing is as soon as you secure
 3 your new attorney, please have him call Ms.
 4 Jalowski and we'll arrange for a conference
 5 call. Okay?
 6 Yes, sir?
 7 MR. SMITH: I have one more
 8 big concern.
 9 THE HEARING OFFICER: Sure.
 10 MR. SMITH: You mentioned the
 11 closing arguments, sir.
 12 THE HEARING OFFICER: Yeah.
 13 MR. SMITH: Without counsel
 14 here, I don't know what to say, but --.
 15 THE HEARING OFFICER: Say
 16 what you want. And if you want to retract
 17 anything, you can do that.
 18 MR. SMITH: I -- I would like
 19 to object to closing arguments in that I feel
 20 that I've been prejudiced and I would like a
 21 new hearing from the beginning.
 22 THE HEARING OFFICER: All
 23 right. I have to make a ruling on that,
 24 obviously.

1 Theodore Smith - 6-15-2007
 2 MR. SMITH: Okay.
 3 MS. JALOWSKI: May I --?
 4 THE HEARING OFFICER: You may
 5 be heard on it as well.
 6 MS. JALOWSKI: May I suggest
 7 something that maybe at this point, let Mr.
 8 Smith hire -- hire counsel and then we could
 9 have a conference call addressing this -- this
 10 issue. The attorney can make the -- the
 11 argument.
 12 THE HEARING OFFICER: Is
 13 that -- that satisfactory, sir?
 14 MR. SMITH: Yes.
 15 THE HEARING OFFICER: Okay.
 16 Fine; so we -- we still have this -- the July
 17 23rd scheduled date. If ultimately after the
 18 conversation Ms. Jalowski and your new attorney
 19 are granted a new hearing, we use July 23rd to
 20 have hearing and if I don't, we'll simply have
 21 the closing arguments. Okay?
 22 MR. SMITH: Okay.
 23 THE HEARING OFFICER: Fine.
 24 MS. JALOWSKI: So we'll

1 Theodore Smith - 6-15-2007
 2 have -- the conference call will be for -- for
 3 his attorney to make the motion --
 4 THE HEARING OFFICER: Well --
 5 well no -- no -- yeah, the conference which
 6 will proceed July 23rd by a substantial --
 7 MS. JALOWSKI: Yes.
 8 THE HEARING OFFICER: --
 9 period of time will be to determine whether we
 10 reopen the matter or whether we -- we go ahead
 11 with closing arguments on July 23rd.
 12 Is there anything else that
 13 you wish to raise, Ms. Smith -- Mr. Smith;
 14 sorry?
 15 MR. SMITH: No, sir.
 16 THE HEARING OFFICER: Is
 17 there anything else you wish to raise Ms.
 18 Jalowski?
 19 MS. JALOWSKI: No.
 20 THE HEARING OFFICER: Okay.
 21 Dana we are concluded. As of this moment we
 22 have July 23rd at three p.m. scheduled via
 23 conference call. That may be -- excuse me --
 24 that may change in terms of a full blown

1 Theodore Smith - 6-15-2007
 2 hearing in which case it wouldn't be a
 3 conference call. We -- we'd all be here.
 4 THE REPORTER: Okay.
 5 THE HEARING OFFICER: But I
 6 will let you know, but at least put it in for
 7 this hearing in some fashion on July 23rd at
 8 three and if you could -- leave it at that.
 9 Okay, Dana?
 10 (The hearing adjourned.)
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1 Theodore Smith - 6-15-2007
 2 STATE OF NEW YORK
 3 I, Dana Jock, do hereby certify that the
 4 foregoing was reported by me, in the cause, at
 5 the time and place, and in the presence of
 6 counsel, as stated in the caption hereto, at
 7 Page 1069 hereof; that the foregoing
 8 typewritten transcription, consisting of pages
 9 number 1069 through 1087, inclusive, was
 10 prepared under my supervision and is a true
 11 record of all proceedings had at the hearing.
 12 IN WITNESS WHEREOF, I have
 13 hereunto subscribed my name, this the 29th day
 14 of June, 2005.
 15 _____
 16 Dana Jock, Reporter
 17
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1 Theodore Smith - 6-15-2007
 2 E R R A T A S H E E T
 3 Case: Theodore Smith
 4 Date: June 15, 2007
 5 CORRECTIONS:
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