

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

----- x  
JAMAL UDDIN

PLAINTIFF(S)

Index No. 8240/05

-against-

OFFICE OF COLLECTIVE BARGAINING, NYC/  
OFFICE OF LABOR RELATIONS, NYC/ADMIN-  
STRATION FOR CHILDREN'S SERVICES,  
SOCIAL SERVICES EMPLOYEES UNION (LOCAL  
371) AND DISTRICT COUNCIL 37

DEFENDANTS

----- x

Upon the foregoing papers, petitioner Jamal Uddin moves the court to compel arbitration in the matter of disciplinary charges brought against him at the Office of the New York City Administration for Children's Services (ACS), where he had worked. He also seeks compensatory and punitive damages against respondents New York City Office of Collective Bargaining (OCB); New York City Office of Labor Relations (OLR); ACS Social Service Employees Union - Local 371 (Local 371); and District Council 37 (DC37), as well as the award of his court costs. Finally, petitioner seeks an order to "expunge all [documents related to his case]" from the agency's file.

Petitioner's request to compel arbitration is now moot, as the arbitration was decided in his favor on May 22, 2005. For reasons discussed below, petitioner's other pleas for relief are denied.

#### Factual Background

Petitioner was employed by ACS for thirteen and a half (13 1/2) years. On June 20, 1997, disciplinary charges were brought against him a work which he alleges were motivated by his supervisors' discriminatory animus towards him. The charges against him were all sustained by the agency. The penalty imposed was a 10 day suspension without pay and a permanent bar from protective/diagnostic assignments within the agency. At a later date, ACS became a separate agency from the New York City Human Resources Administration (HRA). In the subsequent reorganization of agency employees, petitioner was not retained at his position with ACS. He is currently employed by the HRA as a caseworker, though not in the same capacity as when he had been working for

ACS.

Following the grievance procedure set forth in Article VI of the Social Services and Related Titles Collective Bargaining Agreement, petitioner appealed the decision, and in April of 1998, the penalty was affirmed by the agency. Petitioner's union, the Local 371 then commenced an arbitration action on his behalf in December of 1999. Following an initial hearing on January 16, 2001, there were several adjournments for various reasons in significant delays.

Petitioner, acting independently of the Local 371, also commenced an action in federal district court against ACS in 1999. A jury found that he had been subjected to adverse employment actions in violation of Title VII of the Civil Rights Act of 1964, and awarded him compensatory damages in the amount of \$60,000 on August 14, 2001.

Petitioner commenced the present action pro se on March 18, 2005. On May 22, 2005, the arbitrator entered a decision in petitioner's favor, ordering that the charges against him be dismissed and that he be reimbursed for his 10, day suspension.

#### Discussion

Petitioner alleges that the delay in his proceeding has harmed him, depriving him of career opportunities, income, and "self-satisfaction." Since, at this time, petitioner's arbitration process has been completed, his petition to compel arbitration is moot.

As to his other claims, while it is true that his arbitration proceeding took an unusually long time to go forward, from January of 2001 to May of 2005, there is no persuasive evidence of bad faith by any of the respondents. Upon examining the correspondence between petitioner and respondents, the court concludes that the delay was a product of unforeseeable circumstances that were not attributable to deliberate actions on the part of any of the respondents. Petitioner thus fails to state a cause of action upon which relief can be granted, under CPLR 3211(A)(7). "[T]he test for us is not whether the complaint states a cause of action but whether the pleader has, in fact, a cause of action." *Scarlett Letters, Inc. v. Compugraphic Corp.* (61 A.D.2d 930 [N.Y. 1st Dept. 1978])

Respondents have agreed to reimburse petitioner for his 10 day suspension and to lift the bar against him, which is what he had initially sought in his arbitration proceeding. As to the costs requested, this court finds that respondents are not liable for petitioner's costs due to the fact that he has not established a cognizable cause of action.

Petitioner's request for an order to " expunge all [documents related to his case]" from the ACS file appears for the first time in the most recent version of his petition, submitted on June 12, 2005. The court thus finds that petitioner has not yet exhausted his administrative remedies in connection with his request for expunction.

Conclusion

Accordingly, petitioner's request for damages, costs and an order to expunge documents from the ACS file is denied. This shall constitute the decision and order of the court.

---

LARRY D. MARTIN