

**SHORT FORM ORDER**

## SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Supreme Court Justice

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In the Matter of the Application of  
OMAR ULFFE,

TRIAL/IAS PART 30  
NASSAU COUNTY

Petitioner,

Index No.: 606927/2024  
Motion Seq. Nos.: 01, 02  
Motion Dates: 06/07/2024  
06/07/2024

for Judgment pursuant to Art. 78, CPLR,

- against -

**XXX**

HEMPSTEAD UNION FREE SCHOOL DISTRICT,

Respondent.  
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The following papers have been read on these applications:

	Papers Numbered
Notice of Verified Petition (Seq. No. 01), Verified Petition and Exhibits	<u>1</u>
Notice of Motion (Seq. No. 02), Affirmation and Exhibit,	
Memorandum of Law	<u>2</u>
Affidavit in Opposition to Motion (Seq. No.02) and Memorandum of Law	<u>3</u>
Affidavit in Reply to Motion (Seq. No.02) and Memorandum of Law	<u>4</u>

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Petitioner moves (Seq. No. 01), pursuant to CPLR Article 78, for a judgment and declaration against respondent for monetary and equitable relief including, but not limited to, a declaration that the actions taken against petitioner were arbitrary and capricious; for an order reinstating petitioner to the position of a tenured teacher retroactively; for a judgment for all past salary lost and benefits lost retroactively, and other damages such as reasonable attorney's fees, plus costs and disbursements.

Respondent opposes the application (Seq. No. 01) and moves (Seq. No. 02), pursuant to CPLR §§ 3211(a)(1) and/or 3211(a)(7), for an order dismissing petitioner's Verified Petition. Petitioner opposes the motion (Seq. No. 02).

On November 8, 2019, petitioner was appointed as a high school math teacher for respondent, to be effective on December 2, 2019. Thereafter, petitioner was placed on a four-year probationary period. *See* Petitioner's Verified Petition (Seq. No. 01) Exhibit A. On October 27, 2023, petitioner, by letter ("October 27<sup>th</sup> letter"), was advised by respondent that the Superintendent of Schools ("Superintendent") would recommend to the Board of Education ("the Board"), at its meeting on December 21, 2023, that petitioner would not be granted tenure and that his probationary appointment as an elementary bilingual teacher<sup>1</sup> would be terminated effective January 20, 2024. *See* Petitioner's Verified Petition (Seq. No. 01) Exhibit B. Subsequently, on November 27, 2023, petitioner, by letter ("November 27<sup>th</sup> letter"), was advised by respondent that he was placed on an administrative leave of absence with pay to be effective November 30, 2023. The letter provided, in pertinent part, that "considering that your tenure date is December 1, 2023, we cannot permit you to work beyond this date to avoid granting tenure by estoppel." *See* Petitioner's Verified Petition (Seq. No. 01) Exhibit C. On December 20, 2023, the Board held a meeting and voted, pursuant to the recommendation of

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<sup>1</sup> Respondent avers that the October 27<sup>th</sup> letter contained the wrong tenure title due to a typographical error. However, respondent avers that the error did not modify respondent's decision to terminate petitioner as the statute does not require a school board to identify the employee's specific tenure area.

the Superintendent, to terminate petitioner's probationary appointment and to not grant petitioner tenure. Petitioner's last pay period ended on January 20, 2024.

Petitioner alleges that he has obtained tenure by estoppel since he was employed by respondent after his probationary period expired. Petitioner alleges that respondent's determination to terminate his probationary period and not grant him tenure was arbitrary and capricious, and, further, that respondent acted in bad faith. Respondent, in opposition, moves (Seq. No. 02) for an order, pursuant to CPLR §§ 3211(a)(7) and 3211(a)(1), dismissing petitioner's Verified Petition on the ground that, amongst other things, petitioner did not obtain tenure by estoppel because he did not perform any work for respondent after his tenure date.

"In a proceeding such as this, which challenges a determination made by an administrative agency as to the proper interpretation of statutes and regulations, the court's function is to ascertain, upon the proof before the agency, whether its determination had a rational basis in the record or, conversely, was arbitrary and capricious or affected by an error of law. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts." *Matter of Sternberg v. New York State Off. for People with Dev. Disabilities*, 204 A.D.3d 680, 165 N.Y.S.3d 680 (2d Dept. 2022). "In applying the arbitrary and capricious standard [under CPLR 7803(3)], a court inquires whether the determination under review had a rational basis. Under this standard, a determination should not be disturbed unless the record shows that the agency's action was arbitrary, unreasonable, irrational or indicative of bad faith." *Lucas v. Board of Educ. of the E. Ramapo Cent. Sch. Dist.*, 188 A.D.3d 1065, 136 N.Y.S.3d 369 (2d Dept. 2020).

Furthermore, “the Education Law specifically distinguishes between probationary teachers and tenured teachers. Pursuant to Education Law § 3012(1)(a), teachers in certain school districts must serve a probationary period of three years. At the expiration of the probationary term, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory. The employment of probationary teachers can be terminated at any time during the probationary period, without any reason and without a hearing. By contrast, tenured teachers hold their positions during good behavior and competent service, and are subject to dismissal only after formal disciplinary proceedings. A teacher who is not to be recommended for tenure must be so notified in writing no later than 60 days before the expiration of his or her probationary period.” *Matter of Brown v. Board of Educ. of Mahopac Cent. Sch. Dist.*, 129 A.D.3d 1067, 13 N.Y.S.3d 131 (2d Dept. 2015). “Tenure by estoppel results when a school board accepts the continued services of a teacher or administrator, but fails to take the action required by law to either grant or deny tenure prior to the expiration of the teacher’s probationary term. A teacher who has acquired tenure by estoppel, but is nonetheless improperly terminated, is entitled to reinstatement, retroactive to the last date of employment, back pay, and all accrued benefits.” *Id.*

Respondent avers that, when petitioner was placed on administrative leave with pay and respondent barred petitioner from working, respondent took all the necessary and proper steps to prevent petitioner from receiving tenure by estoppel. Respondent avers that it did not act arbitrarily and capriciously, nor did it violate any laws. Respondent cites to the November 27<sup>th</sup> letter placing petitioner on administrative leave as documentary evidence

warranting dismissal pursuant to CPLR § 3211(a)(1). Moreover, respondent avers that it complied with New York Education Law § 3031 by giving petitioner at least a thirty (30) day notice of his termination in the October 27<sup>th</sup> letter, and, further, that petitioner failed to request the reasons upon which the Superintendent recommended to end his probationary period. Based on the foregoing, respondent avers that petitioner has failed to meet his burden, and, therefore, his Verified Petition should be dismissed.

Petitioner avers that he obtained tenure by estoppel since he had been continuously employed by respondent for more than four (4) years of his probationary period. Petitioner avers that, even though he was on administrative leave, he was accruing service time. Petitioner avers that he was not notified that the Board meeting was changed and was not given the opportunity to participate. Furthermore, petitioner avers that the October 27<sup>th</sup> letter advised him that he was discontinued in another position, which was never corrected by respondent and is fundamentally flawed. Petitioner avers that he was not advised of his termination until January 20, 2024, when he received his last paycheck. Overall, petitioner avers that respondent's actions were arbitrary, capricious and done in bad faith.

Here, affording petitioner the benefit of every possible inference, and deeming the allegations of the Verified Petition to be true, the Court finds that petitioner has met his burden and has established that he acquired tenure by estoppel. Furthermore, petitioner has established that respondent's decision to end his probationary period and deny him tenure was arbitrary and capricious. *See Matter of Brown v. Board of Educ. of Mahopac Cent. Sch. Dist., supra* at 1067. Contrary to respondent's contentions, the November 27<sup>th</sup> letter was, within itself, arbitrary and capricious, and there was no basis to place petitioner

on administrative leave. Moreover, respondent's decision to place petitioner on administrative leave to circumvent him from obtaining tenure by estoppel contradicts the legislature intent of New York Education Law §§ 3012 and 3031. Nevertheless, respondent cannot seek dismissal pursuant to CPLR § 3211(a)(1) by submitting a letter. *See Rodolico v. Rubin & Licatersi, P.C.*, 114 A.D.3d 923, 981 N.Y.S.2d 144 (2d Dept. 2014).

Accordingly, based upon the above, petitioner's application (Seq. No. 01), pursuant to CPLR Article 78, for a judgment and declaration against respondent for monetary and equitable relief including, but not limited to, a declaration that the actions taken against petitioner were arbitrary and capricious; for an order reinstating petitioner to the position of a tenured teacher retroactively; for a judgment for all past salary lost and benefits lost retroactively, and other damages such a reasonable attorney's fees, plus costs and disbursements, is hereby **GRANTED**.

Respondent's motion (Seq. No. 02), pursuant to CPLR §§ 3211(a)(1) and/or 3211(a)(7), for an order dismissing petitioner's Verified Petition, is hereby **DENIED**. And it is further

**ORDERED** that respondent's decision to end petitioner's probationary period and deny petitioner tenure is hereby declared arbitrary and capricious. And it is further

**ORDERED** that petitioner is hereby reinstated to the position of a tenured teacher as of January 20, 2024. And it is further

**ORDERED** that petitioner shall submit a judgment on notice to respondent within ten (10) days of this Decision and Order for an award of petitioner's salary and benefits from January 20, 2024 to present and, any other damages such as attorney's fees, costs and disbursements.

All requests for relief not addressed herein are **DENIED**.

This constitutes the Decision and Order of this Court.

**ENTER:**

  
**DENISE L. SHER, J.S.C.**

**XXX**

Dated: Mineola, New York  
October 1, 2024

**ENTERED**

**Oct 03 2024**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**