

Stephen Mandl, Petitioner, against Board of Education of the City School District of the City of New York, PUBLIC SCHOOLS ATHLETIC LEAGUE, and CATHLEEN P. BLACK, in her official capacity as CHANCELLOR of the CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, Respondents.

104036/2011

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

2011 NY Slip Op 50923U; 2011 N.Y. Misc. LEXIS 2462

May 18, 2011, Decided

**NOTICE:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

**PRIOR HISTORY:** [Mandel v. Board of Educ., 2011 N.Y. Misc. LEXIS 2498 \(N.Y. Sup. Ct., May 18, 2011\)](#)

**CORE TERMS:** grievance, suspension, reputational, league's, baseball team, administrative remedies, coach, irreparable injury, recruitment, referee's, administrative law, administrative determination, judicial review, agency action, exhaustion, varsity, exhaust, futile, coaching, teacher, exhaustion doctrine, process rights, initial hearing, administrative process, disciplinary, reputation, recruited, scheduled, intervene, finality

**COUNSEL:** [<sup>\*\*1</sup>] For Plaintiff: Milo Silberstein, Esq., of Dealy & Silberstein, LLP, New York, New York.

For Defendant: Daniel Chiu, Esq. of the Office of the Corporation Counsel of the City of New York, New York, New York.

**JUDGES:** Hon. Shlomo S. Hagler, J.S.C.

**OPINION BY:** Shlomo S. Hagler

## **OPINION**

Shlomo S. Hagler, J.

Petitioner Stephen Mandl ("petitioner" or "Mandl") moves for an order pursuant to [CPLR § 2221](#), rearguing this Court's decision of April 6, 2011 ("Prior Order"), denying the request in petitioner's Order to Show Cause for a Temporary Restraining Order ("TRO") seeking his immediate reinstatement as coach of the George Washington High School varsity baseball team. Respondents oppose the motion.

### **Facts**

Mandl is a New York City public high school physical education teacher and the renowned varsity baseball coach at George Washington High School ("George Washington"). He has been the coach at George Washington for 27 years, compiling a stellar record of more than 900 wins to about 100 losses, including 26 division titles and two New York City championships. The George Washington varsity baseball team is ranked as one of the best high school teams in the country and is highly regarded in the local community.

On May 13, 2010, a [\*\*2] complaint by Herbert H. Lehman High School ("Lehman") was lodged with Public Schools Athletic League ("PSAL") against Mandl alleging a violation of the PSAL's rules and regulations that prohibit the recruitment of students to transfer schools for athletic purposes. The complaint related to the transfer of a student who had previously enrolled at Lehman and subsequently enrolled in George Washington. The complaint alleged that Mandl orchestrated [\*\*2] the transfer of the student from Lehman to play for the George Washington baseball team in violation of recruitment policies. The PSAL assigned Stephen Nathanson to investigate the allegations. Mr. Nathanson issued a four-page written memorandum dated January 31, 2011, finding that Mandl actively recruited the student to transfer from Lehman to George Washington in violation of PSAL recruitment policies and recommended a one (1) year coaching suspension. On February 15, 2011, respondents suspended Mandl from coaching for one (1) year based upon the above findings.

On March 2, 2011, a representative of the United Federation of Teachers ("UFT") filed a "Step 1" grievance on Mandl's behalf requesting that his suspension be lifted pursuant to the [\*\*3] applicable sections of Collective Bargaining Agreement ("CBA") covering teachers. Respondents neither conducted a hearing nor rendered a decision within five days of receiving the grievance. Mandl was compelled to pursue his grievance with the "Step 2" grievance process pursuant to the CBA. On March 15, 2011, the "Step 2" grievance conference was held and the respondents remanded the matter for an initial formal hearing. On March 23, 2011, the initial formal hearing was conducted and respondents advised petitioner that they would render a decision shortly.

About two weeks later, on April 4, 2011, when respondents had not yet rendered its decision, Mandl moved by Order to Show Cause for a TRO to lift the suspension and restore him to his coaching duties. On April 6, 2011, this Court denied Mandl's request for a TRO and scheduled a hearing on May 6, 2011 on the remaining issues of the Order to Show Cause. On May 5th, one day before the Order to Show Cause return date, the respondents rendered a decision upholding Mandl's suspension. Mandl sought a Step 2 review of the first grievance hearing.

### ***Exhaustion of Administrative Remedies***

[Article 78 of the Civil Practice Law and Rules](#) ("CPLR") codifies [\*\*4] the traditional doctrine of administrative law which required "finality" and "exhaustion" before seeking judicial review of an administrative determination. "Finality" has been defined as the completeness of the administrative determination which is ripe for judicial review. [Walton v New York State Dept. of Correctional Servs.](#), 8 NY3d 186, 863 N.E.2d 1001, 831 N.Y.S.2d 749 (2007). The exhaustion doctrine bars the petitioner from obtaining judicial review unless he or she exhausts all administrative remedies prior to commencing the [Article 78](#) proceeding. *Id.* However, there are limited exceptions to this general rule such as when: (1) the agency action is unconstitutional, (2) the agency action is wholly beyond its grant of power, (3) an exhaustion of remedies would be futile, or (4) the agency action would cause irreparable injury. [Watergate II Apts. v Buffalo Sewer Auth.](#), 46 NY2d 52, 385 N.E.2d 560, 412 N.Y.S.2d 821 (1978).

In this case, this Court was constrained to deny the petitioner's TRO request because Mandl failed to exhaust his administrative remedies and he did not meet any of the exceptions enumerated above. In support of his TRO request, Mandl only argued reputational harm which "clouds the good reputation Petitioner has built for himself [\*\*5] over three (3) decades. . . [and he] fears that the negative repercussions of this stain on his reputation will cause severe harm to his career." Verified Petition at P 103. This type of alleged reputational harm does not meet the fourth exception of irreparable injury. See [Martinez 2001 v New York City Campaign Fin. Bd.](#), 36 AD3d 544, 829 N.Y.S.2d 55 (1st Dept 2007).

On this instant motion, petitioner seeks to distinguish the *Martinez 2001* case because it only held that "potential" rather than actual reputational harm does not constitute irreparable injury, and it would be futile to await a complete administrative determination because the respondents violated [\*3] Articles 15, 20, 21 and 22 of the CBA. Moreover, petitioner argues that [Matter of Davis v Northern NY Sports Officials' Council, 18 Misc 3d 1129\[A\], 856 N.Y.S.2d 497, 2008 NY Slip Op 50235\[U\]](#) (Sup Ct., St. Lawrence County 2008), is more on point than *Martinez 2001*. In *Davis*, a referee sought to compel a league to enforce the league's own Constitution and By-Laws which provided its members an opportunity to present her case to the Professional Committee for deliberation **prior** to the imposition of any disciplinary action. The referee was not given such a hearing and was merely offered an [\*6] "e-mail conference" to consider her appeal. The league's Constitution did not provide for e-mail conferences, but mandated that an appeal be addressed at the next scheduled Executive Board Meeting which never occurred. Due to the clear and gross non-compliance with the league's own Constitution and By-Laws, the trial court denied the league's cross-motion to dismiss for the referee's failure to exhaust her administrative remedies and granted a TRO of the suspension pending a further order.

Petitioner failed to satisfy any of the four exceptions to the exhaustion doctrine. While it is apparent that respondents did not initially fully comply with the grievance procedure outlined in the CBA, petitioner was ultimately given his due process rights to a Step 1 grievance hearing on March 23, 2011. On May 5, 2011, the respondents rendered a decision upholding the petitioner's suspension. Petitioner sought review of that determination in the Step 2 grievance process which is currently pending. Unlike *Davis*, where the trial court noted the clear trampling of the referee's due process rights where she never received any formal initial hearing or appeal, Mandl has been afforded, albeit belatedly, [\*7] both a right to an initial hearing and is availing himself of the appeal process as outlined by the CBA. Therefore, it can not be said that resorting to an administrative remedy would be futile. In fact, it would ensure compliance with the CBA and satisfy the procedural due process rights that embody the traditional doctrine of administrative law and which has been codified in [Article 78 of the CPLR](#).

The reputational harm that Mandl alleges would also not meet the fourth exception of irreparable injury. PSAL conducted an investigation into the complaint that Mandl recruited a student to transfer from Lehman to induce him to play for the George Washington baseball team in violation of recruitment policies. While the charges may result in reputational harm to petitioner, respondents have a duty and right to enforce the rules and regulations governing the conduct of its members. In *Martinez 2001*, the Appellate Division recognized the potential harm that "[e]very individual who is subject of a disciplinary or other administrative proceeding necessarily faces the possibility of reputational harm, at least temporarily, if the charges are sustained." *Id. at 551*. Yet, "sound and accepted principles [\*8] of administrative law" dictate that petitioner must complete the administrative process before the courts will intervene to provide the relief requested that he did not violate PSAL rules and overturn the suspension because it was arbitrary and capricious. <sup>1</sup> *Id.*

- - - - - Footnotes - - - - -

<sup>1</sup> While the Court is mindful that the George Washington students and baseball team members that filled the courtroom on May 6, 2011 want their coach to return for the playoffs, there is a lesson to be learned that judges must also follow the "rules of the game." It is important to understand that the rules governing the game is even more important than winning the championship. The rules that this Court must follow dictate that Mandl must complete the administrative process even if it means that he will miss the playoffs. It would set a bad precedent for this Court to intervene and not permit the governing agency to discipline its members in the face of the serious allegations. Of course, Coach Mandl must be given the opportunity to clear his name which is currently progressing through the administrative grievance process and can eventually be reviewed by the courts. If the students take this lesson to heart, they will be the [\*9] true winners.

- - - - - End Footnotes - - - - -

**[\*4] Conclusion**

Accordingly, the motion is denied as petitioner has failed to establish that this Court "overlooked or misapprehended the relevant facts or misapplied any controlling principle of law." [Foley v Roche, 68 AD2d 558, 567, 418 N.Y.S.2d 588 \(1st Dept 1979\)](#).

The foregoing constitutes the decision and order of this Court. Courtesy copies of this decision and order have been sent to counsel for the parties.

Dated: New York, New York

May 18, 2011

Hon. Shlomo S. Hagler, J.S.C.