

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

PRESENT: SOLOMON
Justice

PART 55

MILLER, ADAM

INDEX NO. 117204/08

N.Y.C. DEPT. OF EDUCATION,
ET AL.

MOTION DATE _____

MOTION SEQ. NO. 03

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
_____	_____
_____	_____
_____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is granted

pursuant to the decision on

the record spoken on 8-26-10,

the transcript of which is

filed herewith + so ordered

by me today.

FILED

SEP 03 2010

NEW YORK

COUNTY CLERK'S OFFICE

Dated: 9/2/10

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF NEW YORK : CIVIL PART 55

4 -----X

5 In The Matter of the Application of
6 ADAM MILLER

Petitioner,

7 - against

8 NEW YORK CITY DEPARTMENT OF EDUCATION,
9 JOEL I. KLEIN, as Chancellor of the NEW YORK CITY
10 DEPARTMENT OF EDUCATION, PRINCIPAL OF NEST+m
11 SCHOOL OF THE NEW YORK CITY
12 DEPARTMENT OF EDUCATION,

Respondent.

13 Index Number 117204/08
14 August 26, 2010

15 60 Centre Street
16 New York, New York 10007

B E F O R E :

17 THE HONORABLE JANE SOLOMON,
18 Justice.

19 A P P E A R A N C E S :

20 Messrs. Glass Krakower LLP
21 Attorneys for Petitioner
22 11 Penn Plaza
23 New York, New York 10001
24 By: Bryan D. Glass, Esq.

25 Assistant Corporation Counsel
26 Attorneys for Respondents
100 Church Street, Room 2-318
New York, New York 10007
By: Abra S. Mason, Asst. Corp. Counsel

Evelyn Mysch, C.S.R., R.P.R

FILED
SEP 03 2010
NEW YORK
COUNTY CLERK'S OFFICE

1 Proceedings

2 • * *

3 (A recess was taken.)

4 (After the recess the
5 following occurred:)6 THE COURT: I have discussed an
7 amicable resolution which apparently can't be
8 accomplished while I sit with the lawyers any
9 further today, so this is the way I have
10 determined to leave things.11 I am going to issue a decision on
12 this order to show cause. There are three
13 requests for relief.14 The first is to order the Respondents
15 to, effective September 8, 2010, namely the
16 beginning of the 2010 through '11 school year,
17 reinstate Petitioner to his tenured teaching
18 position as a high school English teacher at
19 NEST+m, which is the last position in the
20 school he occupied before he was wrongfully
21 terminated.22 As to that first request for relief,
23 I'm satisfied from the narrative I engaged with
24 you earlier that the petition was seeking that
25 relief which would flow from vacatur or
26 rescission of the resignation letter the

Proceedings

1
2 Petitioner tendered to Miss Livanis on her
3 representation that she would do things which
4 in the end she did not do, so if I'm going to
5 reinstate him to the status quo ante, ~~that~~
6 ~~tender~~ which is what relief I granted, the
7 Respondent must reinstate him to his tenured
8 teaching position as a high school English
9 teacher at NEST+m.

10 The decretal paragraph directed that
11 he be reinstated retroactive or effective as at
12 August 28, 2008 and I would think that both
13 parties being represented before me as I speak
14 this decision, that the reinstatement should be
15 effective September 8 -- I'm sorry -- that the
16 reinstatement needs to be *nunc pro tunc*
17 August 28, 2008 and it should be implemented
18 within ten days of service of a copy of the
19 order hereon with notice of entry, failing
20 which, the Respondent would be exposed to the
21 consequences of failing to honor a direction of
22 the Court.

23 Now, the second request for relief is
24 ordering Respondent to restore Petitioner to
25 his salary, health insurance and all other
26 benefits and emoluments of employment effective

Evelyn Mysch, C.S.R., R.P.R.

JS
JANE S. SOLOMON


Proceedings

1
2 five days after execution of the date of this
3 order or to otherwise be held in contempt
4 pursuant.

5 Aside from the fact that that's not
6 English, perhaps it would be best if I
7 clarified the decision and order of May 11,
8 2010.

9 Mr. Miller's reinstatement as at
10 ~~September~~ ^{August} 28, 2008 shall be at the salary,
11 health insurance and other pension or other
12 benefits which normally flow from the status he
13 enjoyed and to which I have caused him or
14 directed that he be reinstated and the timeline
15 in respect of that reinstatement which I just
16 set forth applies to the second portion of this
17 order to show cause.

18 The dollar value of what was unpaid
19 remains before the Referee, who, unfortunately
20 was unable to give you his time today and
21 nothing else having been presented to me for
22 decision, I decline to step into the middle of
23 the dispute over the dollar value of what needs
24 to be calculated and paid to Mr. Miller because
25 it doesn't flow automatically from something
26 called a reinstatement.


JANE S. SOLOMON

Evelyn Mysch, C.S.R., R.P.R.

Proceedings

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2 The foregoing is the decision and
3 order of the court.

4 It needs to be obtained from Evelyn
5 in short order. I will so order it and send it
6 and the gray sheet down to the county clerk
7 together. I think that's the right way to do
8 it. And I thank you very much and wish you good
9 luck .

10 MR. GLASS: Your Honor, you just
11 mentioned September 28 as the date; I think you
12 intended September 8th. I just want to make
13 sure --

14 THE COURT: Once I see it, I will do
15 my best.

16
17 **FILED**
18 SEP 03 2010
19 NEW YORK
20 COUNTY CLERK'S OFFICE
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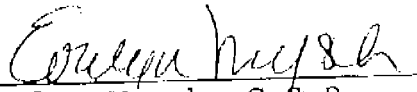
Evelyn Mysch, C.S.R., R.P.R.

Proceedings

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C E R T I F I C A T E

I, Evelyn Mysch, C.S.R., an
official court reporter of the State of
New York, do hereby certify that the
foregoing is a true and accurate
transcript of my stenographic notes.



Evelyn Mysch, C.S.R.
Official Court Reporter