

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

PRESENT: SOLOMON  
Justice

PART 55

MILLER, ADAM

INDEX NO.

117204/08

MOTION DATE

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

MOTION SEQ. NO.

03

MOTION CAL. NO.

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

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.

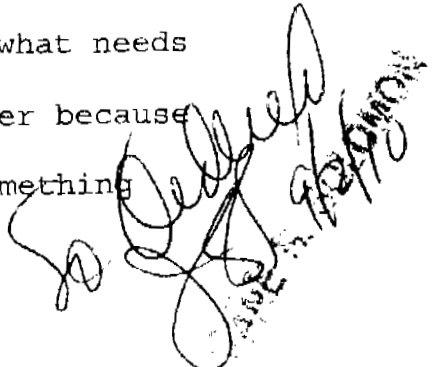
5           Aside from the fact that that's not  
6 English, perhaps it would be best if I  
7 clarified the decision and order of May 11,  
8 2010.

9           Mr. Miller's reinstatement as at  
10 ~~September~~ <sup>August</sup> 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

1  
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.

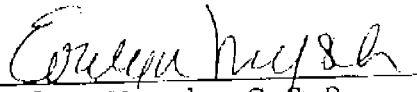
16  
17 **FILED**  
18 SEP 03 2010  
19 NEW YORK  
20 COUNTY CLERK'S OFFICE  
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Proceedings

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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