



STATE OF NEW YORK
SUPREME COURT CHAMBERS
ULSTER COUNTY COURT HOUSE
KINGSTON, N.Y.

12401

VINCENT G. BRADLEY
JUSTICE

February 27, 2003

Dr. Bonnie Linden
Ms. Corinne Boni
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Albany, New York 12224-0341

Re: Boni, et al. v. Mills, et al.
Albany County Special Term
RJI# 01-02-ST3065
Return date: 11/15/02

To the parties:

This letter represents the decision, order and judgment of the Court in the above-referenced pro se Article 78 proceeding. In a joint petition, Ms. Boni challenges a determination made by respondent Mills dated December 17, 2001, and Ms. Linden challenges the responses of respondent Hewlett-Woodmere School District and respondent Hewlett-Woodmere Educational Foundation to the "FOIL" requests which Ms. Linden sent to both of these respondents.

In opposition to the relief which Ms. Boni seeks, Commissioner Mills moves to dismiss the petition on the grounds that it fails to state a cause of action (CPLR § 3211(a)(7)) and on the grounds that the petitioners failed to join Richard Braverman, the president of the District's school board, as a necessary party respondent.

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(CPLR § 1001(a)). The other respondents (hereinafter referred to collectively as the "Hewlett-Woodmere respondents"), assert the same grounds for dismissal in their answer. In opposition, the petitioners have jointly crossed-moved for an order permitting them to join Mr. Braverman as a respondent.

After reviewing the parties' submissions, the Court concludes that the petitioners' cross-motion for joinder must be denied and that both petitions must be dismissed. As to the Boni proceeding against respondent Mills, CPLR § 1001(a) provides that:

Persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants.

In interpreting CPLR §1001(a), the courts of this state have consistently held that where an individual could lose his or her position if the Court grants the petitioner's request for relief, that individual is clearly a necessary party to the proceeding. (see, e.g. Matter of Ernst v. New York State Exec. Dept. Div. of Parole, 246 AD2d 738, 746; Matter of Mount Pleasant Cottage School Union Free School Dist. v. Sobol, 163 AD2d 715, 716, affd., 78 NY2d 935)). Therefore, because a decision of this Court granting the petition would, in effect, require the dismissal of Mr. Braverman from the school board, Mr. Braverman is a necessary party; but because the petitioners failed to join him as a party within the applicable four-month limitations period (CPLR § 217), the petition must be dismissed as untimely. (see, e.g. Matter of Baker v. Town of Roxbury, et al., 220 AD2d 961). In so deciding, the Court finds that the petitioners' failure to join cannot be excused under the

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"united in interest" exception (see, e.g. Matter of Sandor v. Nyquist, 45 AD2d 122) since respondent Mills is clearly not a party who is necessarily allied with or a representative of Mr. Braverman's interests in this proceeding.

Moreover, even if the petitioners had properly joined Mr. Braverman, the petition fails to state a cause of action against Commissioner Mills. It is well established that wholly conclusory allegations will not satisfy a petitioner's burden of proof in an Article 78 proceeding. (see, Matter of Schulz v. McCall, 632 NYS2d 884). An examination of the petition's allegations against Commissioner Mills shows that they state only that petitioner Boni has exhausted her administrative remedies and that she is entitled to judgment reversing the December 18, 2001 determination. Such a "bare bones" claim is, in this Court's opinion, clearly insufficient to sustain an Article 78 petition, even when taking into consideration the fact of the petitioners' *pro se* status.

In reaching this conclusion, the Court observes that the petitioners, in their joint affidavit submitted in support of their cross-motion to join Mr. Braverman, have, in an attempt to remedy the conclusory nature of their petition, made more specific their objections to Commissioner Mills' determination. The Court finds, however, that the petitioners have failed to show that the challenged determination was arbitrary and capricious and/or contrary to law.

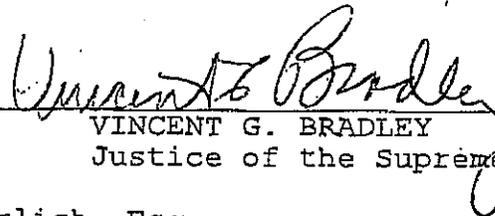
Turning to Dr. Linden's request for relief regarding the District's responses to her FOIL requests, based on the factual allegations contained in Dr. Uhlich's affidavit annexed to the Hewlett-Woodmere respondents' answer, and based on the legal

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reasoning and conclusions set forth in pages 6 to 9 of their memorandum of law, the Court finds that the petition must be dismissed. As the respondents point out, Dr. Linden has failed to specifically allege any FOIL violation which occurred when the District decided to provide her with copies of the District Treasurer's monthly reports in lieu of the considerably more voluminous monthly bank statements which she had sought.

This decision, order and judgment is without costs to the petitioners.

ENTER.


VINCENT G. BRADLEY
Justice of the Supreme Court

VGB/mm

cc: Jerome Ehrlich, Esq.

Papers considered: Notice of petition dated 4/5/02, petition verified 4/5/02 and annexed exhibits "A1" to "A91"; Hewlett-Woodmere answer verified 11/7/02 and annexed exhibit 1; Mills notice of motion dated 10/24/02, Viglucci affirmation dated 10/24/02 and memorandum of law dated 10/24/02; Linden/Boni notice of cross-motion dated 11/22/02, Linden/Boni supporting affidavit dated 11/22/02, annexed exhibits "A1" to "A10" and memorandum of law dated 11/22/02.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
In the Matter of the Application of
CORINNE BONI and BONNEE LINDEN,

Petitioners,

Index No.
6433/02

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

November 15, 2002

-against-

To be assigned

RICHARD MILLS, as Commissioner of the New
York State Education Department, THE HEWLETT-
WOODMERE SCHOOL DISTRICT, THE BOARD OF
EDUCATION OF THE HEWLETT-WOODMERE
SCHOOL DISTRICT, CHARLES FOWLER, as
Superintendent of Schools, THE HEWLETT-WOODMERE
EDUCATIONAL FOUNDATION, PAUL STROHMENGER,
as President.

**VERIFIED
ANSWER**

Respondents.

-----X
Reespondents, THE HEWLETT WOODMERE UNION FREE SCHOOL DISTRICT,
sued herein as "The Hewlett-Woodmere School District" (hereafter "School District"), THE
BOARD OF EDUCATION OF THE HEWLETT-WOODMERE UNION FREE SCHOOL
DISTRICT, sued herein as "The Board of Education of the Hewlett-Woodmere School District"
(hereafter "Board") and CHARLES FOWLER, as Superintendent of Schools (hereafter, Dr.
Charles Fowler, or in the alternative, "the Superintendent"), by their attorneys, EHRlich,
FRAZER & FELDMAN, for their Verified Answer to the Petition herein, respectfully:

1. Deny knowledge or information sufficient to form a belief with respect to the truth
of the allegations contained in Paragraphs "1" and "2" of the Petition.

2. Deny the allegations contained in Paragraph "3" of the Petition and respectfully refer the Court to the Decision of the Commissioner of Education in *Appeal of Boni*, 41 Ed. Dept. Rep. ___ (Dec. No. 14,666, Dec. 17, 2001), annexed to the Petition at Pages A2 through A7, with respect to said decisions content and legal interpretation.

3. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraph "4" of the Petition, except affirmatively alleges that the documents annexed as pages A8 through A80 of the Petition do not set forth the complete record before the Commissioner in *Appeal of Boni, supra*, to the extent that they do not include the Respondents' Verified Answer (annexed hereto as Exhibit "1") and Respondents' Memorandum of Law (annexed hereto as Exhibit "2").

4. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraph "5" of the Petition.

5. Deny the allegations contained in Paragraph "6" of the Petition and respectfully refer the Court to the typewritten letter of Dr. Myrna Uhlich, Records Access Officer, to Dr. Bonnee Linden, dated February 27, 2002, annexed to the Petition as Page A82, with respect to its content and legal interpretation.

6. Deny the allegations contained in Paragraph "7" of the Petition and respectfully refer the Court to the handwritten message, purportedly addressed to "Dr. Fowler", set forth on page A82 annexed to the Petition, with respect to its content and legal interpretation.

7. Denies the allegations contained in Paragraph "8" of the Petition as well as the alleged relevance of Page A83 thereof. (See, Exhibit "D" to Exhibit "3" hereof.) hereof, Affidavit of Dr. Myrna Uhlich, sworn to November 6, 2002, at ¶¶

8. Deny the allegations contained in Paragraph "9" of the Petition and respectfully refer the Court to Dr. Fowler's letter of March 22, 2002 addressed to the Petitioner and annexed the Petition, as Pages A84-A85, with respect to its content and legal interpretation.

9. Deny the allegations contained in Paragraph "10" of the Petition and respectfully refer to the Court to Petitioner-Linden's March 25, 2002 memorandum to Dr. Fowler, annexed to the Petition as Page A86 with respect to its content and legal interpretation.

10. Deny the allegations contained in Paragraph "11" of the Petition, and affirmatively allege that on March 25, 2002, the Respondent's Records Access Officer notified Petitioner-Linden that "the equivalent of the information contained in the bank statements that you have requested under FOIL #28" would be available for her inspection in the form of the Treasurer's Monthly report on April 22, 2002. (See, Petition, p. A-87).

11. Deny knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs "12", "13", "14", "15" and "16" of the Petition.

**AS AND FOR A FIRST OBJECTION
IN POINT OF LAW:**

12. Petitioner Boni appeals from the determination of Respondent Mills (hereafter "the Commissioner") dated December 17, 2001, which denied her request for relief which included, *inter alia*, the removal the Board's President, Mr. Richard Braverman, and the reprimand and fine of the Board.

13. Upon information and belief, Petitioner has failed to join Mr. Braverman as a party to this proceeding.

14. Upon information and belief, should the Commissioner reverse his decision in *Appeal of Boni*, so as to order Mr. Braverman's removal, Mr. Braverman would be adversely

affected.

15. The Court should not proceed in the absence of Richard Braverman, who should be a party.

16. Therefore, the Petition should be dismissed.

**AS AND FOR A SECOND OBJECTION
IN POINT OF LAW:**

17. Upon information and belief, Petitioner Boni has failed to allege any error in the Commissioner's determination in *Appeal of Boni, supra*.

18. The Record of said appeal, as set forth at Pages A2 through A77 of the Petition, and in Exhibits "1" and "2" hereof, demonstrate that there was warrant in the Record and a reasonable basis in law for the Commissioner's determination.

19. Upon information and belief, Petitioner Boni has failed to state a cause of action warranting reversal of the Commissioner's decision in *Appeal of Boni, supra*.

20. Therefore, the Petition should be dismissed.

**AS AND FOR A THIRD OBJECTION
IN POINT OF LAW:**

21. Upon information and belief, on or about February 6, 2002, Petitioner-Linden submitted her Freedom of Information Application No. 28 to the District's Records Access Officer, Dr. Myrna Uhlich, requesting that the District's Bank Statements for the years, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2002 and 2002 be produced for examination. (See, Petition, p. A81; Exhibit "E" to Exhibit "3" hereof).

22. As appears from Dr. Uhlich affidavit (Exhibit "3" hereof), bank statements dated

prior to the 1995-1996 school year were no longer in existence. With respect to the accounts requested for the remaining years, she determined the request to be lacking in specificity, since the District maintained between 16 and 18 account. (Exhibit "3" hereof, ¶13.)

23. Petitioner appealed to the Superintendent of Schools, who concurred in Dr. Uhlich's determination.

24. However, The Superintendent determined to provide Petitioner with the District Treasurer's Report for the years at issue, which contained the equivalent information as that set forth in the bank accounts.

25. The Treasurer's Report provided a detailed monthly analysis of each of the District's bank accounts, showing, *inter alia*, the account's:

- a. Beginning balance
- b. Total cash receipts
- c. Total cash disbursements
- d. ending balance
- e. Total outstanding checks
- f. Total deposits in transit
- g. Bank adjustments
- h. Bank balance
- i. Sources of receipts:
 - i. Tax anticipation notes
 - ii. Real property taxes
 - iii. NY State Aid
 - iv. Interest
 - v. Transfers
 - vi. Matured investments
 - vii. Miscellaneous.

(See, Exhibit "3" hereof, ¶18, and Exhibits "H" and "J" to Exhibit "3" hereof.)

26. Upon information and belief, a comparison of the District's Banks Statements (See, Exhibit "I" to Exhibit "3" hereof) and that in its Treasurer's Reports (See Exhibits "H" and "J" to Exhibit "3" hereof), shows the information contained therein to be virtually equivalent.

27. The only significant difference between the Statements and the Report is that the Statements may (or may not) itemize specific receipts or disbursements. They do not, however, identify the source of the receipt or the recipient of the disbursements.
28. The Superintendent's determination to provide the Petitioner with the Treasurer's Reports instead of the Bank Statements, had the following consequences:
- a. The District provided the Petitioner with 295 of the Reports, as opposed to approximately 2,880 pages of bank statements. (See, Exhibit "3" hereof, ¶¶22, *et seq.*)
 - b. The material provided included virtually the equivalent information.
 - c. The District did not have to devote the time of needed employees to gather the documents, when the Treasurer's reports were readily available in a file drawer.
 - d. The District did not have to assign a needed employee to make redactions, and photocopies, where necessary of 72 months of statements. (See redactions of the Telephone Banking Access Code" number on the Fleet Bank Statements; e.g. Exhibit "I", pp.1, 6, 19, 21, 26, 27, 34, 37, 38, 41.)
 - e. The District did not have to assign an employee to be present while the bank statements were examined by Petitioner, in order to maintain their security.
29. The District's response to Petitioner's request was an efficient use of public resources, while still being responsive to Petitioner's request.
30. The District's response to Petitioner's request was consistent with its obligation to perform its statutory duties efficiently and economically.
31. The District's response was neither arbitrary nor capricious, but grounded in reason.

32. Upon information and belief, prior to the commencement of the proceeding, Petitioner-Linden failed or refused to inspect the Treasurer's Reports which had been assembled for that purpose.

33. Petitioner-Linden has failed to specify a single item of "information" which she claims she was denied, as a result of the Superintendent's determination.

34. Petitioner-Linden has failed to show that the Superintendent's determination was irrational, arbitrary, capricious or an abuse of discretion.

WHEREFORE, Respondents respectfully request that the Petition be dismissed in all respects.

November 7, 2002

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