

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DR. SHIMON WARONKER

DOCKET NO.: 2018-CV-0393

Plaintiff,

Hon. Denis R. Hurley, DCJ

-against-

Motion Sequence #001

HEMPSTEAD UNION FREE SCHOOL DISTRICT,
BOARD OF EDUCATION OF THE HEMPSTEAD
SCHOOL DISTRICT, DAVID B. GATES, in his
individual and official capacity, RANDY STITH, in his
individual and official capacity, LAMONT E. JOHNSON,
in his individual and official capacity, and Patricia Wright
as a necessary party in her capacity as Clerk of the
Hempstead School District

**AFFIDAVIT OF
ROBERT CIALONE
IN OPPOSITION TO THE
PLAINTIFF'S
ORDER TO SHOW CAUSE
FOR INJUNCTIVE RELIEF**

Defendants.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

ROBERT CIALONE, being duly sworn, deposes and says that the following statements of fact are true under the penalties of perjury:

1. I am the former Purchasing Agent for the Hempstead Union Free School District (hereinafter, the "HUFSD" or the "District"). I was employed in that job title for over twenty (20) years. I retired as of June 30, 2017, since I was reaching the age of sixty five (65) in August 2017. I continued working for the District through and inclusive of September 30, 2017, as a post-retirement consultant. Upon information and belief, I would still be serving the District today, as needed, if I had not been terminated for raising questions about the relationship between the District's Superintendent of Schools, Shimon Waronker (the Plaintiff herein) (hereinafter, "Plaintiff" or "Waronker" or the "Superintendent") and his organization, The New American Initiative (hereinafter, "NAI"), and for expressing concerns to him and others in management at the District about the methods employed by Waronker to enable the District to hire NAI.

2. I make the statements set forth herein upon my personal knowledge of the facts and circumstances surrounding the matters addressed herein, except as to those items designated as being stated "upon information and belief," and as to them, I believe them to be true.

3. I submit this Affidavit in support of the District's contentions that the Plaintiff's motion for Injunctive Relief should be denied, because in my experience, Waronker has retaliated against employees, such as me, for raising questions about his conduct as the Superintendent of Schools.

A. Plaintiff's Retaliation against me by Terminating my Consultancy As a Purchasing Agent for the District, after I questioned the NAI RFP Process and

4. Prior to June 30, 2017, Waronker asked me not to retire. He asked me to continue on as an employee, but I had already elected to retire.

5. While the interview process was ongoing for the selection of my successor, Dr. Gilmore, the District's Associate Superintendent for Human Resources conveyed to me District's request that I agree to continue serving the District as its Purchasing Agent, post-retirement, but as a consultant, instead of as an employee.

6. Ultimately, I agreed to stay on as a consultant for an initial period of ninety (90) days, but with the understanding that I would likely need to stay on beyond that initial period, to train my successor. Another employee in the District's business office, namely Luz Valentin, an accountant, also retired as of June 30, 2017, and was likewise asked to work for the District post-retirement, as a consultant. Upon information and belief, she was hired initially for a term of ninety (90) days as well, but then her post-retirement consultancy was extended to January 31, 2018 due to her loyalty to the Superintendent. By contrast, my consultancy was terminated on September 30, 2017 (or, allowed to expire and was not extended) because I expressed my concerns about the RFP process and the subsequent contract awarded to NAI, as directed by the Superintendent.

7. It is my belief that the questions I raised made him doubt my loyalty to him and that I was terminated as a result. After I raised my concerns about NAI, the Superintendent never responded to any of my inquiries about continuing to serve as a consultant after September 30, 2017, even though my services were needed just as much, if not more, that Luz Valentin's services were needed beyond September 30, 2017, since I knew then, and have confirmation now, that my

successor did not have the experience or the proficiency (speed in processing) to handle the huge volume of Purchasing Agent work alone, and without both my assistance and coaching.

8. Upon information and belief, the District's operations have suffered terribly in the period from September 30, 2017 through January 19, 2017, specifically in terms of not receiving goods and services on a timely basis, because a bottleneck has been created in the Purchasing Department in the District's Business Office. The bottleneck was predictable and is due to the decision by Superintendent Waronker to prematurely remove mentorship support to the new Purchasing Agent, who did not have School District experience, and who was in need of support and coaching from his predecessor. It is an inexcusable situation, and one that was 100% avoidable, since I am the predecessor, I was asked to provide that support and remain available beyond September 30, 2017, and I was available and willing to provide that support and mentoring through the June 30, 2018. But, due to Waronker's management style, which is to reward loyalty and punish independent thinking as disloyalty to him (even though it is loyalty to the institution), I was cut off from being able to serve my beloved HUFSD, for which I dedicated most of professional life to serve. The consequence of the delays in Purchasing, after I was dismissed, was that people (namely, principals, administrators, teachers, support staff and students) were unable to timely receive goods and services necessary for the District to function properly, to help students learn.

B. The questionable NAI RFP Process, Contract Award and Payment Record from the District to NAI

9. Waronker started working for the District as its Superintendent on June 2, 2017.

10. By June 27, 2017, Waronker already had an RFP issued, closed out, a contract awarded, drafted and executed, and was making a recommendation to the BOE that the Board approve his contract with the NAI for \$450,000.00 per annum. See, **Exhibit __** attached hereto, a copy of the June 27, 2017 BOE Meeting Minutes approving the NAI contract for \$450,000.00 per annum..

11. In my experience, the whole RFP process regarding NAI, was irregular and unprecedented at the District in my twenty years of work as its Purchasing Agent.

12. My concern was that the RFP process and the contract award to NAI, was directly manipulated by the Superintendent and I was suspicious that it constituted bid rigging and unlawful self-dealing by Waronker in favor of his institution, which he founded, namely NAI.

13. There were many suspicious issues, all of which I reported confidentially to Nassau BOCES, which is investigating the matter. I was called to provide information and documents to the Nassau BOCES' attorneys who are conducting that investigation, which I understand is ongoing, regarding the NAI contact and the RFP process that led to it being entered into.

14. Before that BOCES investigation commenced, I raised concerns about the NAI RFP process and contract award in the context of a meeting that was being held in the superintendent's office, with Luz Valentin, concerning the hiring of a firm for the Fixed Assets Inventory Report. During the conversation about that other matter, I made a negative comment about the means by which he had caused the District to hire the NAI. I commented that the process was not proper and that Waronker had received bad advice as to how to issue the RFP. Within a few weeks, I was terminated.

15. My concern was that the RFP process was inadequate, and points towards the desire to eliminate competition and award to one specific vendor that was the vendor of choice from the beginning. The timeline for publication was too short, the bid specifications were too narrow and were written by the Superintendent as of to describe his organization, the means of how we received the only bid submitted (from his organization) speaks of deceit and reflects the outcome of a manipulative process. His name on the letterhead of NAI, listing him as the CEO and founder of NAI, which raised questions of a manipulative process and pre-determined outcome. See, Exhibit __ attached hereto, a copy of the letterhead describing its services.

16. Further details of the RFP process' defects and inadequacies and outright manipulation, could be provided at a later date, but describing them now could jeopardize the investigations that are ongoing, and remain incomplete because, upon information and belief, Waronker has not sat down for his own interview with BOCES, and I was cautioned not to disclose the details of the confidential information I provided or the documents I disclosed to BOCES, until after that investigation was complete, and I feel duty bound to honor that directive.

17. Subsequent to the RFP process and the contract award, bills came into the District from NAI, prior even to the issuance of the Purchase Order, and checks were cut at the direction of the superintendent to pay NAI as a top priority, so that NAI was paid on the very same day as the invoice was presented, which is unheard of, and further points towards his undue interest in favor of his pet project, namely, NAI.

18. I have reviewed the invoices remitted to the District by NAI from July 1, 2017 through December 22, 2017, when NAI's services were terminated by the BOE. Shockingly,

during that timeframe, which is a period of time when the District has been short staffed and unable to process Purchase Orders and make vendor payments on a timely basis for the majority of its vendors, the record of the NAI payments continues to show that they received SAME DAY PAYMENT PROCESSING EVERY MONTH. It is abhorrent to me that this is how the Superintendent directed staff to prioritize his company, NAI, even if he claims that he has disassociated from it or feigns the claim that he has no interest in it, because the record of payment for NAI could not show favoritism more than it does. Upon information and belief, the District's Business Office suffers from account clerk staff shortages that have caused approved Purchase Orders to wait months before a check is cut, and has resulted in checks being delayed from being mailed out, but, upon information and belief, the Superintendent caused the NAI checks to be cut instantaneously and hand delivered to his assistant in the Superintendent's office so that an hour would be lost in the tendering of payment to NAI, because of his inappropriate affiliation with NAI.

19. Upon information and belief, the payment record to NAI shows manipulation and direct intervention by and/or for the Superintendent's interests in NAI, which includes an undue interest in NAI's cash flow, and thus calls into question why the District prioritized payment to NAI over every other vendor. Not even vendors who are as critical to the District's operations as its professional service providers (the attorneys, medical, nurses, etc.), transportation, food suppliers, suppliers of educational services (tutors, Special Ed providers, book suppliers, etc.) and education equipment suppliers, received such preferential treatment in payment of their invoices.

20. Worse, the payments were processed in such a quick fashion to NAI, that there is no indication that the invoices were reviewed by anyone as to the quantity or quality of the services billed, before payment was approved and tendered to NAI. There is no evidence that anyone had the time to review the invoices, let alone actually verify that any such services were actually rendered, before such payments were made to NAI, unless those invoices were approved by Waronker himself, which raises the specter of an unmitigated conflict of interest.

21. I have had an opportunity to review the Administrative Leave of Absence with Pay policy recently adopted by the District, including the confidential attachment annexed thereto, since it is a subject of this litigation for which I am submitting this affidavit. Given my experience with Waronker, it seems perfectly reasonable for the District to be concerned that he would try to influence employees under his control concerning whether to cooperate with the investigation, and

possibly apply pressure to them, and intimidate them or coerce them to try to obstruct the investigation of him.

22. I also note that after having had an opportunity to review the Administrative Leave of Absence with Pay policy, as recently adopted by the District, Waronker is expressly not suspended, and the District is merely conducting an investigation to see whether the concerns that have expressed, and the suspicions that I have reported, are validated by the facts as may be uncovered by the pending investigation of the NAI contract and RFP process.

C. My Concern of retaliation by Waronker

23. As stated numerous times above, I was the HUFSD Purchasing Agent for 20 years and provided post-retirement consulting services after I retired on June 30, 2017. I am concerned that if Waronker is ultimately allowed to return to work after the investigation of him is concluded (if it should turn out that the facts do not support disciplinary action against him), then he might return to active employment at the District with an increased desire to deliver retribution against me because I reported concerns against him.

24. Specifically, he constantly claims that he is trying to root out corruption in the District, and might make a baseless claim against me or the District's Business Office staff, to punish me or anyone else that may cooperate with the investigation of him.

25. I submit this Affidavit despite concerns that he could assert bogus claims against me later, or launch phony and baseless claims against employees that I left behind in the District's Business Office when I retired, and try to make them suffer adverse employment actions, in retaliation for me reporting on him, and them possibly needing to be interviewed in the investigation of him, and offer statements against him. Nonetheless, I am submitting this Affidavit, because it is the right thing to do.

26. What appears to be wrongful behavior, when I discover it, is something that I cannot sit silently and watch, without speaking up.

27. I am asking the Court to take notice of the fact that I am at great risk of retaliation, and ask for protection from paying any consequence for participating in this case by submitting this affidavit.

28. For the reasons set forth in this Affidavit, this Court should deny the Plaintiff's application for Injunctive relief in this proceeding.

Robert Cialone

Robert Cialone

Subscribed and sworn to before
me on this 22nd day of January 2017

Nicole Murray
Notary Public

