SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present:
Hon. Thomas Feinman
Justice

VINCENT P. TARANTO,

Petitioner,

- against -

CITY OF GLEN COVE,

Defendant.

TRIAL/IAS PART 5
NASSAU COUNTY

INDEX NO. 607419/19

X X X

MOTION SUBMISSION
DATE: 9/9/19

MOTION SEQUENCE
NO. 1

The following papers read on this motion:

Notice of Petition and Affidavits	X
Order to Show Cause	X
Affirmation in Opposition	X
Memorandum of Law in Opposition	X
Reply Affirmation	X
Reply Memorandum of Law	X

Relief Requested

The petitioner moves for a judgment, pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), annulling and reversing the Resolution by respondent City of Glen Cove (hereinafter the "City"), which terminated petitioner's health, dental, and vision insurance benefits. The respondent submits a memorandum of law in opposition. The petitioner submits a reply memorandum of law.

Background

On December 13, 2011, the City approved Resolution 6E, by which the City suspended health benefits for positions including the petitioner's position of City Attorney. As City Attorney, petitioner actually assisted in drafting Resolution 6E. At or around the time that Resolution 6E was approved, petitioner arranged a plan to constructively retire for insurance purposes while continuing to work in his position as City Attorney, and deferring his retirement for pension purposes. Petitioner claims that he had various discussions with both City and New York State employees regarding the

effect Resolution 6E would have on petitioner's benefits specifically, and that he received assurances from these individuals that petitioner would be entitled to such benefits notwithstanding Resolution 6E. Petitioner submitted a health insurance transaction form, dated December 31, 2011, reflecting his retirement status. Petitioner thereafter received said benefits throughout the remainder of his time working as City Attorney and following his retirement in 2014.

In or about February 2019, the City conducted an audit to investigate the eligibility of the City's retirees. This audit report determined that petitioner was among a group of individuals ineligible to receive post-retirement health insurance. Specifically regarding petitioner, the audit states in its findings that petitioner retired in 2014, "after the suspension of the City Attorney's health insurance. Therefore, the restrictions listed within the resolution [Resolution 6E] were not followed."

On April 8, 2019, the City sent petitioner a letter informing him that a review of his file had determined that he was ineligible to continue to receive health insurance benefits, citing Resolution 6E.

On May 28, 2019, the City approved of Resolution 6B. Resolution 6B states that the City is responsible for providing and determining eligibility of retirees and receipt of benefits within the New York State Health Insurance Program (NYSHIP). Resolution 6B further states that, pursuant to the recommendations of the recent audit report, the City had determined that six former employees, including the petitioner, were awarded health, vision, and dental insurance benefits in error. As a result of this determination, Resolution 6B terminated all health, vision, and dental insurance provided to these former employees, including petitioner, effective June 1, 2019. The petitioner alleges that Resolution 6B is arbitrary, capricious, and an abuse of discretion due to injustice.

Applicable Law

The instant proceeding challenges the determination of the City. The determination of the City, a governmental entity, is reviewed under the "arbitrary and capricious" standard of CPLR § 7803(3) (see *Matter of Sasso v. Osgood*, 86 N.Y.2d 374). In applying this standard, a determination will not be disturbed unless the record shows that the agency's action was "arbitrary, unreasonable, irrational or indicative of bad faith" (*Matter of Cowan v. Kern*, 41 N.Y.2d 591). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222).

To establish promissory estoppel, a party must prove a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise (see *Matter of Weaver v. Town of N. Castle*, 153 A.D.3d 531). As a general rule, estoppel may not be invoked against a governmental body to prevent it from performing its statutory duty or from rectifying an administrative error (*Agress v. Clarkstown Cent. Sch. Dist.*, 69 A.D.3d 769, citing *Matter of 333 E. 89 Realty v. New York City Water Bd.*, 272 A.D.2d 549). An exception to the general rule is "where a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice" (*Agress, supra*, quoting *Bender v. New York City Health & Hosps. Corp.*, 38 N.Y.2d 662). However, a governmental entity may not be estopped from applying the law to a particular individual based on erroneous information given (see *Holdman v. Office of Ct. Admin.*, 118 A.D.3d 447).

Civil Service Regulation 73.2(a)(3)(iv) establishes minimum eligibility requirements for insurance benefits, noting that an employer "may elect not to provide continuance of coverage for any employee hired on or after April 1, 1977." With regard to insurance benefits, regulations which merely provide eligibility requirements do not grant a vested right (see *Matter of Kelly v. Incorporated Vil. of Asharoken*, 2010 NY Slip Op 30588). In addition, a municipal resolution is generally a unilateral action that is temporary in nature and, thus, does not create any vested contractual rights (Id., see also *Iasillo v. Pilla*, 120 A.D.3d 1192; see also *Handy v. County of Schoharie*, 244 A.D.2d 842).

Discussion

In support of his petition and Order to Show Cause, the petitioner argues that "the City should be estopped from going back on initial, albeit erroneous, information and advice" upon which petitioner relied, and that the instant circumstances constitute a rare exception to the rule regarding promissory estoppel against a governmental body. Petitioner provides the Resolutions at issue and a document from the NYS Local Retirement System demonstrating that petitioner had accumulated 5.33 years of "credited service" time, which he asserts vested him for insurance purposes. Petitioner additionally provides a newspaper article which quoted the mayor of the City as saying those employees receiving health care benefits "were advised by the city that they were entitled to these benefits." Petitioner further notes that it was the intent of all involved that he would "constructively retire" and retain insurance benefits, as evidenced by the fact that he was approved for and received said benefits up until the approval of Resolution 6B.

Here, petitioner failed to demonstrate that the City's decision to approve of Resolution 6B was arbitrary, capricious, or an abuse of discretion (see *Matter of Sasso, supra*). As acknowledged by the petitioner, whether the City abused its discretion in approving of Resolution 6B is not at issue here.

Instead, petitioner points to "incorrect information and advice" given by the City, upon which petitioner allegedly relied. However, petitioner does not specify the nature of the incorrect information and advice given. Further, petitioner did, in fact, receive the benefits he was promised for a period spanning several years. The substance of petitioner's plan to constructively retire came to fruition in that petitioner continued to receive benefits after formally retiring in 2014 as promised.

In light of the foregoing, petitioner's sole argument, which is not even specifically alleged, could only be that he is entitled to promissory estoppel due to vague assurances from unspecified individuals that he would receive lifetime benefits and that the City would never pass another resolution affecting said lifetime benefits. Petitioner provides only unsubstantiated claims regarding discussions allegedly held with City and NYSHIP individuals and an unsworn quote from a newspaper article to support this position.

Further, petitioner makes no allegation that he would have acted differently if not for the alleged assurances. By way of contrast, in *Holdman, supra*, a retired judge who was denied coverage claimed that he would not have resigned when he did if not for erroneous advice from New York State employees that he was vested in NYSHIP. Here, petitioner offers no similar allegation or explanation of how he may have changed his position to his detriment due to reliance upon any promise or assurance made by the respondent (see *Agress, supra*). As mentioned earlier, unlike in *Holdman, supra,* the petitioner here received the retirement benefits as promised after he elected to retire. Yet even the circumstances of *Holdman* were insufficient to invoke promissory estoppel

against a governmental body based upon reliance on incorrect information.

In sum, petitioner is asking this Court to determine that he was assured lifetime benefits by the City, and that he would not have retired, possibly ever, but for his reliance upon these assurances. Based on the foregoing, there was no clear and unambiguous promise, nor was there reasonable and foreseeable reliance or any injury sustained in reliance on such a promise (see *Matter of Weaver, supra*).

Further, contrary to the petitioner's contentions, it is within the absolute discretion of the City to terminate post-retirement health insurance benefits, and the City can even rescind coverage in circumstances where retired employees have legitimate claims (see *Matter of Kelly v. Incorporated Vil. Of Asharoken*, 2010 NY Slip Op 30588; see also *Handy v. County of Schoharie*, 244 A.D.2d 842). While petitioner claims to have relied on the advice of employees of various governmental agencies in believing that he would remain covered notwithstanding any future resolutions, petitioner fails to substantiate his allegations and does not offer any authority to support his claims of undeniable, vested rights to lifetime insurance. As such, the facts herein do not constitute an unusual circumstance to fall under the exception to the general rule on estoppel (see *Holdman, supra*; see also *Matter of Kelly, supra*; see also *Matter of Kapell v. Inc. Vil. Of Greenport*, 63 A.D.3d 940).

Conclusion

In light of the foregoing, it is hereby

ORDERED that the instant petition is denied, and therefore petitioner's benefits, which have been extended pending the outcome of this petition, shall be deemed terminated as of the date of this order, and it is further

ORDERED that the instant action is dismissed.

ENTER:

J.S.C. HON. THOMAS FEINMAN

Dated: November 12, 2019

ORIGINAL

ENTERED
NOV 14 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE