



MATTER FELIX SHIFFMAN v. MANHATTAN EYE

314 N.Y.S.2d 823 (1970) | Cited 0 times | New York Supreme Court | October 22, 1970

Petitioner physician, an associate attending surgeon, would compel the respondent hospital to restore him to a staff position terminated by respondent. On February 6, 1968, petitioner was notified that the executive committee of the respondent hospital had decided not to recommend the petitioner's appointment to the board of directors, following the decision adopted by the hospital's joint conference committee, pursuant to the hospital by-laws, and an appearance by the petitioner and his counsel before a special judicial committee. Petitioner delayed the bringing on of this proceeding until on or about October 8, 1968, on a petition and complaint verified on September 28, 1968, or more than four months after the determination to be reviewed. Thus, ab initio, the proceeding is time barred pursuant to CPLR 217. (Matter of Alliano v. Adams, 2 A.D.2d 532, affd. 3 N.Y.2d 801; Matter of Foy v. Brennan, 285 App. Div. 669, 673; 24 Carmody-Wait, New York Practice, [2d ed.], § 145:241; 1 Weinstein-Korn-Miller, N. Y. Civ. Prac., par. 217.01; vol. 8, par. 7804.02.) However, even if we did not preclude the petitioner's consideration on this narrow ground, we would dismiss because petitioner has already been fully accorded every punctilio prescribed by the hospital by-laws. Not only have they been scrupulously observed, petitioner was acceded an additional special committee, before which petitioner and his attorney appeared. Since petitioner had no vested rights in his successive annual appointments, all being subject to annual evaluation, and since he had no contractual relationship with respondent barring the board's termination of his status, in the absence of fraud or bad faith, the plaintiff has not been ill-used legally. Accordingly, we decline to depart from the well-established rule that the courts will not oversee the exclusion of physicians from private hospital staffs, leaving such actions to the boards of directors of the respective hospitals, in accordance with the latter's by-laws. (See Leider v. Beth Israel Hosp. Assn., 33 Misc. 2d 3, affd. 13 A.D.2d 746, affd. 11 N.Y.2d 205; 27 N. Y. Jur., Hospitals and Asylums, § 11.)

