

Matter of Ono v The Long Island College Hospital

2003 NY Slip Op 30145(U)

September 30, 2003

Supreme Court, New York County

Docket Number:

Judge: Marilyn Shafer

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

PRESENT: HON. MARILYN SHAFER PART 36
Justice

In the Matter of the Application of INDEX NO. IO4587103
YASUHISA ONO, M.D.,

Petitioner, MOTION DATE _____

-against- MOTION SEQ. NO. 001

MOTION CAL. NO. _____

THE LONG ISLAND COLLEGE HOSPITAL, affiliate of,
and STATE UNIVERSITY OF NEW YORK HEALTH
SCIENCE CENTER AT BROOKLYN,

Respondents,

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

The following papers, numbered 1 to 7, were read on this petition under Article 78 of the
Civil Practice Law and Rules:

	<u>PAPERS NUMBERED</u>
Notice of Petition—Exhibits— Memorandum of Law	1, 2
Verified Answer - Exhibits - Memorandum of Law	3, 4
Affirmation in Opposition— Affidavit	5, 6
Memorandum of Law in Reply	7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this petition is denied.

Background

Petitioner was a resident physician in the Anesthesiology Program at respondent The
Long Island College Hospital (“LICH”) . LICH is a teaching hospital which serves as a training
site for certain resident physicians for post-graduate education/employment in order that resident

physicians can become board certified in the medical specialty of their choice. Respondent State University of New York Health Science Center at Brooklyn (“Downstate”) is a sponsoring institution providing graduate medical education to residents in a variety of medical specialties. Residents rotate among participating institutions and hospitals affiliated with Downstate, and receive salaries as staff members of those hospitals. It is undisputed that residents are held to the same standards of professional conduct that govern other doctors and dentists. Petitioner’s employment at LICH was governed by a House Staff Agreement running from July 1, 2001 to June 30, 2002. Petitioner’s employment was further governed by the rules of Downstate’s Resident Handbook. According to Downstate’s procedures for investigating and determining claims of professional misconduct, once a resident’s professional competence or behavior is called into question as potentially endangering patients or disrupting the educational process, the resident may be suspended immediately pending investigation. The suspension notice must be in writing indicating the reasons for suspension and informing the resident of his/her right to appeal. Should the resident wish to appeal, the resident must notify the Associate Dean for Graduate Medical Education in writing with the reasons for the appeal. Once an appeal notification is received, the Chair of the Graduate Medical Education Committee (“GMEC”) appoints an Ad Hoc Committee consisting of a member of the GMEC, one faculty member, and a resident, none of whom can be members of the appealing resident’s department. It is within the Ad Hoc Committee’s discretion as to whether an oral hearing is necessary. After the Ad Hoc Committee completes its investigation, it presents its findings and recommendation at a GMEC meeting. The GMEC’s decision is final and not subject to further review with Downstate or the State University of New York.

On December 4, 2001, petitioner was arrested and charged with several crimes, including rape, assault, attempted rape, and sexual abuse. On December 6, 2001, the Anesthesiology Program Director suspended petitioner pending the outcome of the investigation. Petitioner then notified the GMEC in writing that he wished to appeal. LICH also suspended petitioner pending the outcome of the investigation. By letter dated February 4, 2002, petitioner was notified of the makeup of the Ad Hoc Committee appointed to review his case and his right to seek replacement of any member. Petitioner did not exercise that right.

On August 28, 2002, the Ad Hoc Committee requested investigative documents and information from the Manhattan District Attorney's Office. The Ad Hoc Committee reviewed various documents obtained from the Manhattan District Attorney's Office, including a transcript of telephone conversations between petitioner and his ex-girlfriend, Yukiko Suzuki, petitioner's admission to several incidences of sexual misconduct and a forensic toxicology report showing that a syringe, taken from petitioner by Ms. Suzuki, contained residue of midazolam, a controlled substance used as a pediatric sedative at LICH. In the interim, Ms. Suzuki returned to Japan and petitioner's case was dismissed by a criminal court judge for insufficiency of evidence on October 24, 2002. The Ad Hoc Committee considered petitioner's unauthorized possession of a controlled substance, outside hospital premises, sufficient to warrant dismissal of petitioner from the residency program. The Ad Hoc Committee further considered petitioner's admissions to sexual misconduct. As a result, the Ad Hoc Committee recommended to the GMEC that petitioner be dismissed from the residency program, a recommendation which GMEC adopted. On November 23, 2002, petitioner was notified that he was dismissed from the residency program.

Petitioner now brings this petition to annul the determination of the GMEC dismissing him from its residency training program in anesthesiology. Petitioner contends that respondents' decision to dismiss him was arbitrary and capricious because his termination violated Downstate's rules and the New York State laws. Petitioner alleges that his termination violates the employment contract that he signed with LICH because the contract specifically states that he could not be terminated if he had been charged with a crime. Additionally, the contract provides that petitioner could only be terminated for cause. Petitioner alleges that he was never afforded an oral hearing during the appeal process. Petitioner further contends that he was terminated without cause because he was not convicted of a crime and the charges against him were dismissed. Moreover, petitioner alleges that the documents obtained from the Manhattan District Attorney's Office should have never been considered by the Ad Hoc Committee because the record was sealed upon the dismissal of the charges.

In opposition, Downstate maintains that its determination to dismiss petitioner was not arbitrary and capricious because petitioner was dismissed based upon his possession of a controlled substance outside hospital premises and his admission to moral turpitude, and not because of the criminal charges that were ultimately dismissed. Downstate further maintains that it substantially followed its rules and regulations, and therefore, the court's review of its decision is limited to determining whether the decision was arbitrary and capricious and whether the penalty shocks the conscience of the court in light of the interest in protecting the public from medical misconduct. Downstate further asserts that the investigative materials from the Manhattan District Attorneys were considered by the Ad Hoc Committee prior to the dismissal of petitioner's criminal case and were, thus, properly provided to and considered by Downstate.

LICH also opposes this petition claiming that it was Downstate, not LICH, that made the decisions at issue and that LICH was not the party that terminated petitioner's academic training contract. LICH further claims that it cannot be held vicariously liable for the employment decisions of Downstate when LICH had no authority over the Downstate's employment practices including hiring and firing of employees. LICH alleges that it merely provided the site for the training and funded the salaries of the residents in the anesthesiology residency program. LICH asserts that judicial deference should be given to the determination to dismiss petitioner because academic decisions are not subject to judicial review and the determination at issue is based upon Downstate's decision to suspend and terminate a medical resident from its academic residency program.

Discussion

"It is well settled that judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious, or lacks a rational basis" (*In re Application of Chelrae Estates, Inc. v State Division of Housing and Community Renewal, Office of Rent Administration*, 225 AD2d 387,389 [1st Dept. 1996]). Considering the evidence and arguments raised before the agency when the administrative determination was rendered, "[t]he function of the court . . . is to determine . . . whether the determination had a rational basis in the record" (*In re Application of HLV Associates v Aponte*, 223 AD2d 362, 363 [1st Dept. 1996] citing *Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756,757 [1st Dept. 1982]). In *Pell v Board of Education of Union Free School District*, the Court of Appeals defined arbitrary and capricious action as "action without sound basis in reason and generally taken without regard to the facts" (*Pell v Board of Education*

of Union Free School District, 34 NY2d 222, 231 [1974]). A determination is “arbitrary and capricious” if the administrative action taken based on such determination is untenable as a matter of law (Siegel, *New York Practice*, §561 at 927 [3d ed]).

This Court finds that there was a sound basis in the record for Downstate’s determination to dismiss petitioner from the residency training program. With the matter at bar, it is clear that Downstate followed its own rules in affording petitioner written notice stating the reasons for his suspension, a right to appeal, and a right to object to any member of the proposed Ad Hoc Committee. While petitioner claims that he was denied an oral hearing before the Ad Hoc Committee, the Graduate Medical Education Handbook plainly states that the granting of an oral hearing is within the discretion of the Ad Hoc Committee. Here, the Ad Hoc Committee did not deem an oral hearing appropriate.

It is also clear from the record that Downstate’s decision was not based upon the criminal charges brought against petitioner because those charges were ultimately dismissed. According to Downstate’s Resident Handbook, the fact that petitioner possessed a controlled substance outside the hospital, in and of itself, was sufficient to warrant petitioner’s dismissal from the residency training program. Moreover, petitioner’s argument that Downstate should have never considered the documents and information provided by the Manhattan District Attorney’s Office because his case was eventually dismissed and sealed is unavailing. The Ad Hoc Committee considered the investigative materials from the Manhattan District Attorney’s Office before the dismissal of petitioner’s case. The investigative materials were requested from the Manhattan District Attorney’s Office on August 28, 2002. On or about September 17, 2002, the requested information was provided to Downstate’s legal counsel. On or about October 7, 2002, that

information was provided to the Ad Hoc Committee for consideration of petitioner's appeal. Petitioner's criminal case was not dismissed until October 24, 2002. At the time the investigative materials were requested by and provided to the Ad Hoc Committee, petitioner's criminal case was still pending and thus, the Ad Hoc Committee's consideration of such materials was proper. Furthermore, it was "permissible [for the Ad Hoc Committee] to consider the independent evidence of the conduct leading to the criminal charges against [petitioner]" (*Matter of Skyline Inn Corp., v New York State Liquor Authority*, 44 NY2d 695, 696 [1978]).

It is established that if a hospital's determination was taken in good faith based on the facts as reasonably perceived by the hospital administrators, and that the grounds were reasonably related to the institutional concerns, then the court must uphold the hospital's determination (*Rockland Physician Association, P.C. v Grodin*, 616 FSupp 958 [SDNY 1985]). "Thus, the judgment of professional educators is subject to judicial scrutiny to the extent that appropriate inquiry may be made to determine whether they abided by their own rules and whether they have acted in good faith or their action was arbitrary or irrational" (*Gertler v Goodgold*, 107 AD2d 481, 486 [1st Dept 1985]). In light of Downstate's duty to protect the public, it cannot be held that petitioner's dismissal from its residency training program is so disproportionate to the offense as to be shocking to one's sense of fairness (*Matter of Pell v Board of Education of Union Free School District*, 34 NY2d at 233).

With respect to LICH's liability, it is uncontroverted that LICH did not control the anesthesiology program at LICH, and did not oversee the residents' activities, appointments, suspensions or dismissals. Additionally, it is undisputed that Downstate trained and enrolled the residents in the program. A review of record reveals that Downstate, not LICH, had control over

the grievance procedures and policies. LICH's affiliation with Downstate was merely to provide a place to hold the residency training program and to fund the salaries of the residents.

Accordingly, it cannot be held vicariously liable for Downstate's decision (*Foster v New York*, 157 AD2d 516 [1st Dept 1990]).

Conclusion

This Court finds that Downstate's determination was not arbitrary and capricious and was rationally supported by the record. Where said decision is rationally based on the record, courts are not permitted to substitute their judgment for that of the administrative agency (*In re Application of Royal Realty Co. v. New York State Division of Housing and Community Renewal*, 161 AD2d 404,405 [1st Dept. 1990] citing *Fresh Meadows Associates v. New York City Conciliation and Appeals Board*, 88 Misc.2d 1003 [Sup Ct, New York County 1976]).

ADJUDGED that the petition is denied with respect to all respondents and the proceeding is dismissed.

This constitutes the decision and judgment of this Court.

Dated: 9/30/03

MARILYN GRAFER
J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION