

**Matter of Halasy v Department of Education of City  
of New York**

2004 NY Slip Op 30303(U)

April 5, 2004

Supreme Court, Kings County

Docket Number: 21691/03

Judge: Lawrence S. Knipel

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At an IAS Term, Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5<sup>th</sup> day of April, 2004

P R E S E N T:

HON. LAWRENCE S. KNIPEL,  
Justice.

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In the Matter of the Application of  
ROBERT HALASY,

Index No. 21691/03

Petitioner,

For a Judgment Pursuant to Article 75  
of the Civil Procedure Law and Rules

- against -

DEPARTMENT OF EDUCATION OF THE CITY  
OF NEW YORK, BROOKLYN HIGH SCHOOL  
DISTRICT No. 73,

Respondent.

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The following papers number 1 to 4 read on this motion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 1 - 2 _____
Opposing Affidavits (Affirmations) _____	_____ 3 _____
Reply Affidavits (Affirmations) _____	_____ 4 _____
_____ Affidavits (Affirmations) _____	_____ _____
Other Papers ( <u>memo. of law</u> ) _____	_____ 5 _____

Upon the foregoing papers, petitioner Robert Halasy seeks a judgment, pursuant to CPLR 7511 and Education Law § 3020-a, vacating or modifying the decision of the Hearing Officer dated May 20, 2003, which found that the misconduct allegations against petitioner had been substantiated and ordered that his employment be terminated. Respondents

Department of Education of the City of New York, Brooklyn High School District No. 73 (the DOE) cross-move for an order dismissing the petition as time-barred or, in the alternative, confirming that award.

Petitioner is a former tenured New York City public school teacher assigned to teach physical education at George Wingate High School in Brooklyn. On March 12, 2003, the DOE filed charges against petitioner in accordance with Education Law § 3020-a (1) containing five specifications. The first four specifications involved specific allegations of inappropriate behavior toward a female student identified as “Student A”. The last specification stated that, on a specific date, petitioner pinned “Student B” against a wall and used his elbow to choke the student.

A hearing on the charges was held on April 7, 8 and 9, 2003, and, on May 20, 2003, the hearing officer rendered his written decision and award finding that the first four charges against petitioner had been substantiated and that the appropriate punishment was dismissal of petitioner from his teaching position.<sup>1</sup>

The petitioner now brings this petition for a judgment vacating the arbitrator’s award pursuant to CPLR 7511(a) , or, in the alternative, modifying the punishment on the ground that dismissal is inappropriate. The DOE cross-moves for an order dismissing the petition as time-barred or, in the alternative, confirming the award.

At the outset, the DOE argues that the petition must be dismissed as time barred.

Education Law § 3020-a(5), provides:

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<sup>1</sup> The hearing officer stated that, in light of his finding that the first four charges mandated dismissal, he was not ruling on the appropriate punishment for the fifth specification, noting that the petitioner had acknowledged that he had had a “temporary lapse of judgment” when he used corporal punishment against Student B.

Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seven thousand five hundred eleven of the civil practice law and rules.

In arguing that the petition is untimely, the DOE states that the decision was received by the State Education Department on May 22, 2003 and, thus, allowing five days for mailing, petitioner had ten days from May 27<sup>th</sup> to bring the petition. Thus, the DOE's analysis continues, the petition had to be filed by June 6, 2003, and its filing on June 12<sup>th</sup> was untimely.

The court declines to dismiss the petition as untimely. While the challenged decision is stamped "Received May 22, 2003", there is no indication that such stamp was imprinted by the DOE. Nor is there any evidence of the date that the decision was mailed to petitioner by the DOE or when it was thereafter received by petitioner. While the court could order a hearing to resolve this issue, it declines to do so in light of its disposition of the petition on the merits.

Education Law § 3020-a(5) provides that the court's review of a disciplinary hearing must be limited to the grounds set forth in CPLR 7511. Since petitioner participated in the proceeding before the hearing officer, vacatur of the decision must be premised upon the

following grounds set forth in CPLR 7511(b)(1):

(i) corruption, fraud or misconduct in procuring the award; or

- (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or
- (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or
- (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

Because of the strong public policy favoring arbitration, a court will not substitute its judgment for that of the arbitrator; rather, an arbitrator's award will not be vacated "unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation of his power" (*Peckerman v D&D Assocs.*, 165 AD2d 289, 295, citing *Matter of Silverman v Benmor Coats*, 61 NY2d 299, 308). When the arbitration is mandated by law, as in this case, the scope of judicial review is somewhat enhanced; the award must have evidentiary support and cannot be arbitrary and capricious (*see generally, Alexander, Practice Commentaries, McKinney's Cons Laws of NY*, Book 7B, CPLR C7511:5, at 778-782, citing *MVAIC v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223). Further, petitioner may not be terminated in bad faith, or in violation of a constitutional or statutory provision or decisional law (*see James v Board of Educ.*, 37 NY2d 891).

Petitioner fails to establish any basis upon which the hearing officer's determination that the DOE had established his misconduct should be vacated. The hearing officer's reasoned decision followed a three day hearing at which the student victim testified.<sup>2</sup> In his

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<sup>2</sup> While the hearing officer fully sets forth petitioner's arguments, it is not clear whether petitioner testified at the hearing or whether those arguments were put forth by his attorney.

decision, the hearing officer summarized each of the charges made against petitioner and the evidence presented, and then fully explained the determination that he reached. Specifically, the hearing officer recounted that during the 2001-2002 school year, petitioner had been assigned to teach a body conditioning class and that Student A, referred to in the decision as “CM”, was a student in that class. At the hearing, CM testified that petitioner had made her uncomfortable by repeatedly telling her that she was beautiful, and by making remarks that he “liked her” and wanted to take pictures of her in a “G-string.” CM testified that petitioner had kissed her on at least one occasion and had also told her that he wanted to be alone with her and take her away to an island. Finally, CM testified that she had tried to take care of the situation herself by advising petitioner that she was uncomfortable with his behavior. According to CM, petitioner had apologized and left her alone for a few months, but when petitioner began to renew his inappropriate behavior towards her, she reported petitioner’s actions to her mother.

The hearing officer stated in his decision that petitioner had denied all of the charges involving CM alleged by the DOE and claimed that he had treated her like any other student – in a kind and respectful manner. Petitioner argued that CM’s testimony should not be credited by the hearing officer because it was at times inconsistent and had not been corroborated.

The hearing officer’s decision to credit CM’s testimony and thus to conclude that the DOE proved the specifications against petitioner clearly finds a rational basis in the record. Specifically, the hearing officer stated that he had carefully evaluated CM’s testimony and found her account of what occurred to be believable. Notably, it is the hearing officer who

observed CM's demeanor at the hearing and is in the best position to assess her credibility. The hearing officer noted that, "[d]espite extensive and probing cross examination, her recall did not materially waver." Additionally, the hearing officer stated, CM's testimony was materially consistent with her prior written and oral statements to investigators. The hearing officer further found that CM's lack of any motive to falsely accuse petitioner of improper conduct added to her credibility. In short, the hearing officer rendered a reasoned decision which is supported by the evidence and the petitioner has not provided any basis for disturbing the hearing officer's determination that the DOE had substantiated the specifications against petitioner.

As to the issue of punishment, the hearing officer found that petitioner "transcended the permissible bounds of a student-teacher relationship" in his behavior toward CM. Further, the hearing officer noted that the fact that petitioner continued to sexually harass CM after she asked him to stop supports a conclusion that he would repeat his misconduct were he to return to service. The court finds that the petitioner has provided no basis to disturb the hearing officer's determination that the appropriate punishment for petitioner's actions is dismissal from his teacher's position.

In sum, the petitioner has failed to provide any grounds for vacating the award under CPLR 7511 nor has he demonstrated that the determination was arbitrary and capricious, irrational or unsupported by the record (*see MVAIC v Aetna Cas. & Sur. Co.*, 89 NY2d 214; *Matter of Elmore v Plainview-Old Bethpage Central School Dist.*, 299 AD2d 545; *Matter of Board of Educ. of the Great Neck Union Free School Dist. v Brandman*, 286 AD2d 735;

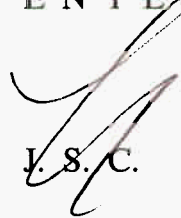
*Matter of Board of Educ. of the Westhampton Beach Union Free School Dist. v Ziparo*, 275 AD2d 411). Thus, the court finds no basis to upset the award.

The court has considered petitioner's remaining contentions and finds them to be without merit.

Accordingly, petitioner's application is denied and his petition is dismissed. The DOE's cross motion is granted only to the extent that it seeks to confirm the award.

The foregoing constitutes the decision, order and judgment of this court.

E N T E R,

A handwritten signature in black ink, appearing to be 'J.S.C.', is written over the typed text 'J. S. C.'.

J. S. C.