

**Ghita v Department of Educ. of the City of N. Y.**

2008 NY Slip Op 30706(U)

March 7, 2008

Supreme Court, New York County

Docket Number: 0110481/2007

Judge: Kibbie F. Payne

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

PRESENT: KIBBIE F. PAYNE  
*Justice*

PART 4

MIRCEA GHITA,

Petitioner,

- against -

DEPARTMENT OF EDUCATION OF THE CITY OF  
NEW YORK

Respondent.

INDEX NO. 110481/07

MOTION DATE 12/06/07

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_


PAPERS NUMBERED


Cross-Motion:  Yes  No

The application is denied and the petition dismissed. The cross-motion is granted.

**UNFILED JUDGMENT**  
This judgment from the County Clerk and notice of entry must be filed with the County Clerk and notice of entry must be filed with the County Clerk. To obtain entry, counsel and interested parties must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: March 7, 2008

  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 4

In the Matter of the Application of  
MIRCEA GHITA,

Index No. 110481/07

Petitioner,

Motion Seq. 001

For an Order Pursuant to Article  
75 of the CPLR,

- against -

Judgment and Decision

DEPARTMENT OF EDUCATION OF THE  
CITY OF NEW YORK,

Respondent.

KIBBIE F. PAYNE, J.:

Mircea Ghita petitions this court, pursuant to CPLR 7511 to modify or vacate the arbitration award an arbitration award issued in, The Matter of The Disciplinary Charges Proffered by The New York City, Department against Mircea Ghita, Respondent Case #6,017 on July 16, 2007. Petitioner contends that the arbitrator exceeded his authority under Section 3020-a of the New York Education Law, that the award is in violation of public policy, and that the substance of the award terminating petitioner's employment violates New York State Law.

Respondent opposes this motion and cross-moves for an order pursuant to CPLR 3211(a)(7) to dismiss the petition on the ground that it fails to state a cause of action, and upon denial of petitioner's motion to vacate or modify seeks an order, pursuant to CPLR 7511(e,) confirming the award.

Petitioner was a tenured mathematics teacher employed for eight year by the New York City school system. On February 13, 2006, while in the teacher's lab at Humanities High School, petitioner downloaded a file of pornographic material from his AOL email account and openly viewed such pornographic material from a school computer. Two school aides observed petitioner viewing the pornographic material and one of the aides with his cell phone took several photographs of petitioner at the computer. The technological school aide, with a software program called "NetOp", recorded the computer activities on that date. Following this incident respondent agency commenced an investigation. A confidential investigator from the Department's Office of Special Investigations interviewed petitioner and the two school aides. The respondent confiscated the hard drive of the computer used by the petitioner for a forensic analysis. This analysis revealed that three pornographic Power Point slide show presentations were downloaded the morning of February 13, 2006. Following the investigation into the allegations, the matter proceeded to an administrative disciplinary hearing pursuant to Education Law 3020-a.

The respondent charged petitioner with downloading and viewing pornographic material and using a school computer to download the pornography from petitioner's online account. At the hearing two witnesses were called by respondent to testify

and petitioner testified in his own behalf. The hearing officer rendered a decision finding petitioner guilty of all charges warranting "an exacting penalty" of termination.

CPLR 7501 authorizes the arbitration of any controversy and by statutory mandate the court is prohibited from considering "whether the claim with respect to which arbitration is sought is tenable, or other pass upon the merits of the dispute."

Petitioner argues the arbitrator exceeded his authority under Education Law § 3020-a, and the award terminating petitioner's employment is a violation of public policy and New York State Law. An appeal of a disciplinary hearing is limited to grounds set forth in CPLR 7511 (Education Law § 3020-a[5]).

Petitioner admits his guilt of the charges and argues that the termination of his teaching career is excessive in view of his unblemished record. In this proceedings, petitioner seeks a modification of the penalty of dismissal from service citing Matter of Pell v Board of Education, 34 NY2d 222 [1974].

Additionally, petitioner proffers the more appropriate punishment in the form of suspension and counseling (Education Law § 3020-a[4])

Respondent, on the other hand, asserts the hearing officer did not exceed his authority under Education Law § 3020-a, and that the terminate of service penalty is not in violation of public policy.

Petitioner failed to cite any statute or caselaw to support his proposition that the imposition of dismissal was in excess of the hearing officer's authority. Education Law § 3020-a(4) expressly provides: "In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or **dismissal**. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions. " Consequently, the hearing officer had the authority to dismiss the petitioner (see Matter of Pell v Board of Education, 34 NY2d 222, 231) and the penalty imposed was not excessive and/or unconscionable or an abuse of discretion (see Matter of Waldren v Town of Islip, 6 NY2d 735, 736-737).

With respect to the claims that the agency's decision to issue a termination of employment is a public policy violation, petitioner has failed to present any of the necessary prerequisites that would permit this court to intervene in this arbitration determination. Courts favor a policy of supporting arbitration and will only intervene in exceptional circumstances (see Matter of Sprinzen[Nomberg], 46 NY2d 623, 629 [1979]). In

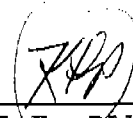
determining whether an arbitration award violates public policy the court must be able to examine the award on its face without engaging in extended factfinding [sic] or legal analysis and conclude that public policy precludes its enforcement (see Matter of United Federation of Teachers v Board of Ed, 1 NY2d 72,80[2003]). Here, petitioner was afforded the traditional rights of due process and the determination of dismissal was supported by the evidence. Based upon the foregoing reasons, this court will not intervene to vacate and modify the arbitration award. Accordingly, it is hereby

ADJUDGED that the petition is denied and the cross-motion is granted; and it is further

ADJUDGED that the arbitration award issued in The Matter of The Disciplinary Charges Proffered by The New York City, Department against Mircea Ghita, Respondent, Case #6,017, July 17, 2007 is, in all respects, confirmed.

The foregoing constitutes the decision and judgment of the court.

DATED: March 7, 2008

  
 \_\_\_\_\_  
 KIBBIE F. PAYNE  
 J.S.C.

**UNFILED JUDGMENT**  
 This judgment has been filed with the County Clerk and notice of entry has been published hereon. To obtain entry, each party or its representative must appear in person at the Judgment Clerk's Desk (Room 141E).