

**Matter of Aiken v City of New York**

2010 NY Slip Op 32006(U)

July 23, 2010

Supreme Court, New York County

Docket Number: 105145/10

Judge: Cynthia S. Kern

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: CYNTHIA S. KERN  
J.S.C.  
Justice

PART 52

Index Number : 105145/2010  
AIKEN, GENEVA  
VS.  
CITY OF NEW YORK  
SEQUENCE NUMBER : 001  
VACATE OR MODIFY AWARD

INDEX NO. 105145/10  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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

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

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the annexed decision.*

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1418).

Dated: 7/23/10

CYNTHIA S. KERN J.S.C.  
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: Part 52

-----X  
In the Matter of the Application of

GENEVA AIKEN,

Petitioner,

Index No. 105145/10

**JUDGMENT/ORDER**

-against-

CITY OF NEW YORK; NEW YORK CITY  
DEPARTMENT OF EDUCATION; JOEL I.  
KLEIN, CHANCELLOR of NEW YORK CITY  
DEPARTMENT OF EDUCATION,

Respondents,

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and copies of only the original served based thereon. To  
appear in person at the Judgment Clerk's Desk (Room  
141B).

To Vacate a Decision of a Hearing Officer Pursuant to  
Education Law Section 3020-a and CPLR Section  
7511.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Notice of Cross Motion and Answering Affidavits.....	_____
Affirmations in Opposition to the Cross-Motion.....	_____
Replying Affidavits.....	_____
Exhibits.....	_____

In this Article 75 proceeding, petitioner Geneva Aiken ("petitioner") seeks to vacate the  
Opinion and Award of Hearing Officer James M. Darby, Esq. ("Hearing Officer Darby"), dated  
April 5, 2010 issued pursuant to Education Law § 3020-a. The New York City Department of

Education (the "DOE") cross-moves to dismiss the petition and to confirm the arbitration award. This court denies the petitioner's request and grants the DOE's cross-motion for the reasons set forth below.

The relevant facts are as follows. Petitioner was formerly employed by the DOE as a tenured payroll secretary. Petitioner commenced employment in 1999 and received tenure in 2002. In the summer of 2007, petitioner applied for summer per session secretarial work and her application was accepted. On July 2, 2007, petitioner began her per session assignment at the Dr. Susan S. McKinney Secondary School of the Arts, JHS 265 in Brooklyn. Petitioner's duties included entering per session hours worked by teachers and petitioner into the electronic payroll database system, referred to as the TBNK system. The number of hours entered into the TBNK system is based on the number of hours reflected on each employee's bi-weekly time card and accompanying handwritten time report. The time report is approved by the employee's supervisor, who signs his or her name on the report.

During the summer of 2007, it was brought to the attention of Paula Holmes, the Principal at JHS 265, that the school was running low on the budgeted funds for the summer per session program. The resulting investigation revealed that petitioner had inputted unauthorized and unworked hours into TBNK for herself. Consequently, on August 15, 2007, petitioner was removed from her position at JHS 265 and assigned to the Reassignment Center. After petitioner's removal, the DOE's Special Commissioner of Investigation ("SCI") conducted an investigation of petitioner's alleged misconduct. On January 29, 2008, SCI substantiated that "petitioner falsified her per session time reports and made false entries into the DOE payroll

system for the 2007 summer session.” As a result, the DOE filed charges under Education Law § 3020-a against petitioner.

In April 2008, Hearing Office Darby was assigned to arbitrate the § 3020-a charges filed against petitioner. Pre-hearing conferences were held on March 20 and April 21 of 2009 and hearings was held over ten separate dates between April and August of 2009, during which time the parties were afforded a full opportunity to present testimony, exhibits and arguments in support of their respective positions. On April 5, 2010, Hearing Officer Darby rendered his Opinion and Award terminating the petitioner from her position at the DOE. Hearing Officer Darby based his penalty on his finding, after fully considering all of the evidence and arguments presented, that petitioner falsified her time records. On April 19, 2010, petitioner, proceeding *pro se* commenced the instant petition seeking to vacate Hearing Officer Darby’s Award.

“Education Law § 3020-a(5) provides that judicial review of a hearing officer’s findings must be conducted pursuant to CPLR 7511. Under such review an award may only be vacated on a showing of ‘misconduct, bias, excess of power or procedural defects.’” *Lackow v. Dept. of Education of the City of New York*, 51 A.D.3d 563, 567 (1<sup>st</sup> Dept 2008); *See The City School Dist. of the City of New York v. McGraham*, 2010 WL 2731911 at \*4 (July 13, 2010, N.Y.App. Div. 1<sup>st</sup> Dept.). However, where arbitration is mandated by law, as here, “judicial scrutiny is stricter than that for a determination rendered where the parties have submitted to voluntary arbitration. The determination must be in accord with due process and supported by adequate evidence, and must also be rational and satisfy the arbitrary and capricious standards of CPLR Article 78. The party challenging an arbitration determination has the burden of showing its invalidity.” *Lackow*, 51 A.D.3d at 567-568 (internal citations omitted). In the instant action,

petitioner has failed to provide any evidence demonstrating misconduct, bias, excess of power, or procedural defects. Moreover, Hearing Officer Darby's decision was rational and supported by adequate evidence.

Accordingly, this court denies petitioner's request for relief under Article 75 of the C.P.L.R. and dismisses the proceeding in its entirety. The DOE's cross-motion to dismiss the petition and confirm the arbitration award is granted. This constitutes the decision, order and judgment of the court.

Dated: 7/23/10

Enter: CK  
J.S.C.

**CYNTHIA S. KERN**  
J.S.C.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1278).