

Matter of Blythe v New York City Bd./Dept. of Educ.
2010 NY Slip Op 32592(U)
September 20, 2010
Sup Ct, NY County
Docket Number: 107371/10
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

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

PART 52

Index Number : 107371/2010
BLYTHE, KATHRYN
VS.
NEW YORK CITY BOARD
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. 107371/10
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 attached 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 141B).

Dated: 9/20

CK
CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/JUDG. SETTLE ORDER /JUDG.

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

CYNTHIA S. KERN

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

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

KATHRYN BLYTHE,

Petitioner,

Index No. 107371/10

JUDGMENT/ORDER

For a Judgment Pursuant to Article 75 of the C.P.L.R.

-against-

THE NEW YORK CITY BOARD/
DEPARTMENT OF EDUCATION,

Respondent.

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 141B).

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.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

In this Article 75 proceeding, petitioner Kathryn Blythe ("petitioner") seeks to vacate the Opinion and Award of Hearing Officer Arthur Riegel Esq. ("Hearing Officer Riegel") dated May 11, 2010 issued pursuant to Education Law § 3020-a. The New York City Department of Education (the "DOE") cross-moves to dismiss the petition. This court denies the petitioner's request and grants the DOE's cross-motion for the reasons set forth below.

The underlying facts are as follows. Petitioner is a tenured teacher employed by the DOE. She has been teaching at P.S. 147 in District 14 in Brooklyn since 1985. According to respondent, a number of issues arose concerning petitioner's job performance during the 2005-2006 and 2006-2007 school years. During the 2005-2006 school year, petitioner was absent a total of 18 times during the year. During that same school year, petitioner was reprimanded for leaving her students in the hallway unattended, leaving her classroom unsupervised, refusing to return to her classroom when directed to do so by the Principal of P.S. 147 Rafaela Espinal-Pacheco and failing to produce a lesson plan when requested by Principal Espinal-Pacheco. In February of the 2006-2007 school year, petitioner was reprimanded for yelling at her students, threatening to choke another teacher in front of petitioner's students and for grabbing one of her students by her shoulder and collar causing lacerations to the student's shoulder and neck. The DOE's accusation of corporal punishment by petitioner was investigated by the DOE's Office of Special Investigations ("OSI"). At the conclusion of the investigation, OSI found that petitioner violated Chancellor's Regulation A-420 prohibiting corporal punishment of students.

As a result of the foregoing, on March 30, 2007, the DOE preferred charges against petitioner pursuant to Education Law § 3020-a. Hearing Officer Riegel was assigned to arbitrate the § 3020-a charges filed against petitioner. Pre-hearing conferences were held on July 21 and October 22 of 2009 and hearings were held over seven separate dates between October and November 2009 during which time the parties were afforded a full opportunity to present witnesses, testimony, exhibits and arguments in support of their respective positions. On May 11, 2010, Hearing Officer Riegel rendered his Opinion and Award suspending the petitioner without pay from her position at the DOE until the end of the 2010-2011 school year. Hearing

Officer Riegel based his penalty on his finding, after fully considering all of the evidence and arguments presented, that petitioner was excessively absent, had left her students unsupervised in the hallway and in the classroom and had violated Chancellor's regulation A-420 against corporal punishment. Hearing Officer Riegel dismissed all other charges. On June 4, 2010, petitioner proceeding *pro se* commenced the instant petition seeking to vacate Hearing Officer Riegel's award on the basis that he committed misconduct, bias and fraud.

"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 (1st 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. 1st 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 Riegel's decision was rational and supported by adequate evidence. Additionally, petitioner's argument that her due process rights were violated because the school board did not vote on the charges against her is without merit as "Education Law § 2590-f(1)(c) (L 1996, ch 720, § 5), part of

