

Villar v Board of Trustees of City Univ. of N.Y.

2011 NY Slip Op 30872(U)

April 8, 2011

Supreme Court, New York County

Docket Number: 116337/10

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 15

VILLAR, FRANCISCA, ET AL.

INDEX NO.

116337/10

MOTION DATE

- v -
BOARD OF TRUSTEES OF THE CITY
UNIVERSITY OF N.Y., ET AL.

MOTION SEQ. NO.

001/002

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 ...

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits _____

3, 4

Replying Affidavits _____

5

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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: 4/8/11

HON. EILEEN A. RAKOWER

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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
FRANCISCA VILLAR, DWIGHT PETERS, CHRISTIAN
PERUYERO, ROBYN TANG, LAMONT OYEWALE
BADRU, and ANTHONY HANG,

Index No.
116337/10

Petitioners,

**DECISION
and ORDER**

-against-

Mot. Seq.
001 & 002

BOARD OF TRUSTEES OF THE CITY UNIVERSITY
OF NEW YORK,, MATTHEW GOLDSTEIN, as
Chancellor of the City University of New York, and
BENNO SCHMIDT, PHILLIP ALFONSO BERRY,
VALARIE LANCASTER-BEAL, WELLINGTON
Z. CHEN, RITA DIMARTINO, FREIDA D. FOSTER,
JOSEPH J. LHOTA, HUGO M. MORALES, PETER S.
PANTALEO, KATHLEEN M. PESILE, CAROL A.
SUTTON, JEFFREY S. WIESENFELD, and JUDAH
GRIBETZ, as members of the Board of Trustees of the
City University of New York,

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appear in person at the Judgment Clerk's Desk (Room
141B).

HON. EILEEN A. RAKOWER:

Petitioners are students at several colleges operated by the City University of New York ("CUNY"). They bring this Article 78 proceeding to challenge two resolutions that were passed by the CUNY Board of Trustees ("the Board") on November 22, 2010:

Resolution 3.D specifies the budget request that CUNY will present to the New York State Legislature for the 2011-2012 fiscal year. The request seeks a total of \$2.760 billion, and specifies how the funds requested would be allocated. Most pertinent to the instant Petition, resolution 3.D envisions "a 2% increase to all tuition rates to fund programmatic needs."

Resolution 3.E⁷ “authorizes the Chancellor of CUNY to increase tuition rates for the 2011-12 fiscal year up to an additional 3% based on information concerning the fiscal condition and budgetary problems of the State and City of New York and their likely effect on operating aid to the University and the quality of education the University can provide to its students”

Petitioners seek an order declaring these resolutions null and void; and enjoining Respondents from taking any action to increase tuition pursuant to either resolution. Petitioners claim that the resolutions run afoul of NY Education Law §6206(7)(a), which provides, in pertinent part,

The board of trustees shall ... have the power to determine in its discretion whether tuition shall be charged and to regulate tuition charges, and other instructional and non-instructional fees and other fees and charges at the educational units of the city university. The trustees shall review any proposed community college tuition increase and the justification for such increase. The justification provided by the community college for such increase shall include a detailed analysis of ongoing operating costs, capital, debt service expenditures, and all revenues... **The trustees shall not adopt changes in tuition charges prior to the enactment of the annual budget.** (emphasis added)

Petitioners further rely on the case of *Faculty v. Murphy*, 149 A.D.2d 315, 316 [1st Dept. 1989] in support of the proposition that the Board’s authority to fix tuition cannot be delegated to the Chancellor. In *Murphy*, the First Department held that, where Education Law §6206 conferred exclusive authority to grant or deny tenure to the Board of Trustees, it was impermissible for the Chancellor to deny tenure by refusing to forward applications which had been referred to the Board of Trustees.

Respondents cross-move to dismiss the action on the grounds that Petitioners lack standing because they have not suffered an injury-in-fact; and that this matter is not yet ripe for adjudication. First, CUNY claims that Petitioners misapprehend Resolution 3:D as a resolution to increase tuition. To the contrary, CUNY states that the resolution is merely a budget proposal submitted to the Governor’s Division of Budget that “takes into account the recent history of State

operating aid appropriations, and the best information it can obtain about what the Governor is likely to propose and what the Legislature is likely to do.” In other words, CUNY’s request will contain a proposed tuition increase when it appears that it will be necessary to increase revenue in the face of budget cuts. However, CUNY states that the Legislature can, and at times does in fact increase operating aid beyond CUNY’s expectations, thereby obviating the need for the anticipated tuition increase.

Based upon the foregoing, CUNY argues that Resolution 3:D does not run afoul of Education Law §6206(7)(a), since no tuition increase is effected by the adoption of a resolution to propose a budget that anticipates the necessity of a tuition increase to compensate for a decrease in funding from the State.

With respect to Resolution 3:E, CUNY argues that the Petitioners lack standing because the Chancellor has taken no action pursuant to 3:E; nor is any action imminent, particularly given the foregoing discussion of whether an additional tuition increase will be necessary.

It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency’s determination but must decide if the agency’s decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency’s determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency’s determination “arbitrary and capricious” if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Here, the court finds that Resolution 3.D does not run afoul of the Education Law, nor is it otherwise arbitrary, capricious, or an abuse of the Board’s discretion. 3.D does not enact an increase in student tuition. Rather, the resolution determines the shape and manner of the budget request that CUNY will make to the State Legislature. As established by the parties’ written submissions, as well at oral argument held on the record on March 1, 2011, the budget request decided on by

the Board pursuant to Resolution 3.D was the product of the reasoned judgment of the Board based upon its experience, expertise, and discussions with relevant officials with the Governor's Director of Budget. Resolution 3.D does not effect a tuition increase, but rather sets forth a budget plan that, in the Board's judgment, both serves the University, and has a realistic possibility of being incorporated into the Governor's executive budget and ultimately passed by the Legislature. Moreover, while Petitioners believe that the Board has failed to forcefully advocate for more state funding (an assertion that respondents vigorously dispute) it is not the place of the court to inquire whether or not the Board's business methods are the most effective means by which to serve the University.

With respect to Resolution 3.E, the court finds that Petitioners' challenge is not ripe for review. "Where the harm sought to be enjoined is contingent upon events which may not come to pass, the claim to enjoin the purported hazard is nonjusticiable as wholly speculative and abstract" (*Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v Cuomo*, 64 N.Y.2d 233, 240 [1984]). Resolution 3.E will be implicated only in the event that the Legislature provides a CUNY budget which calls for a tuition increase that is higher than 2%, but no greater than 5%. Accordingly, since the prospect of Petitioners being harmed by any action taken pursuant to 3.E is purely speculative at this point, the matter is nonjusticiable.

Wherefore, it is hereby

ADJUDGED that the Petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: April 8, 2011


EILEEN A. RAKOWER, J.S.C.

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