

**Matter of Cabonargi v City Univ. of N.Y.**

2011 NY Slip Op 30981(U)

April 12, 2011

Supreme Court, New York County

Docket Number: 108454/2010

Judge: Anil C. Singh

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

PRESENT: ANIL C. SINGH  
Justice

PART 61

Index Number : 108454/2010  
CABONARGI, STEPHANIE DOMENICI  
vs.  
CITY UNIVERSITY OF NEW YORK  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

n this ~~motion to~~ for Article 78 petition

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

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

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

PAPERS NUMBERED

1  
2, 3  
4, 5

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this ~~motion~~

*petition is decided in accordance with the  
annexed decision and order.*

**FILED**

APR 15 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: April 12, 2011

*ACS*

HON. ANIL C. SINGH J.S.C.

SUPREME COURT JUSTICE  
 NON-FINAL DISPOSITION

Check one:  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 61

-----X

In the Matter of the Application of  
STEPHANIE DOMENICI CABONARGI,

Petitioner,

DECISION AND  
ORDER

For an Order and Judgment Pursuant to Article 78 of  
the Civil Practice Law and Rules Annulling, Vacating,  
and Setting Aside the Termination of her Matriculation  
from the Ph.D. Program in the Psychology Subprogram  
of Environmental Psychology at the Graduate Center of  
the City University of New York

Index No.  
108454/10

-against-

THE CITY UNIVERSITY OF NEW YORK; THE  
GRADUATE CENTER OF THE CITY OF NEW  
YORK; LOUISE LENNIHAN, as Associate Provost  
and Dean of Humanities and Social Sciences of The  
Graduate Center of the City University of New York;  
MAUREEN O’CONNOR, as Executive Officer for  
Doctoral Programs in Psychology of The Graduate  
Center of The City University of New York; and  
ROGER HART, as Environmental Psychology  
Subprogram Head of the Graduate Center of The City  
University of New York,

**FILED**

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NEW YORK  
COUNTY CLERK’S OFFICE

Respondents.

-----X

HON. ANIL C. SINGH, J.:

Petitioner Stephanie Domenici Cabonargi commenced this Article 78  
proceeding seeking to annul the decision by respondent City University of New York  
(“CUNY”) to dismiss Ms. Cabonargi from the doctoral program in environmental

psychology without possibility of reinstatement after eight years of instruction.

Respondent opposes the petition.

From September 2002 until March 1, 2010, Ms. Cabonargi was enrolled as a matriculated student. She was pursuing a Ph.D. in the subprogram of environmental psychology, which is part of CUNY's doctoral program in psychology. To earn a Ph.D., Ms. Cabonargi understood that she was required to: 1) complete 60 hours of approved course work; 2) pass a first examination; 3) complete an approved field research paper; 4) pass a second doctoral examination; and 5) write a dissertation.

During her second year in the program (Fall 2003 and Spring 2004), petitioner was enrolled in the Second Year Research Seminar - Environmental Psychology. The course is preparatory to researching and writing the field research paper ("second-year paper"), which students are expected to complete within two years after completing the course work.

Respondent warned petitioner on multiple occasions after taking the second-year research seminar in the 2003-2004 academic year that she had not fulfilled the field research paper requirement. Ms. Cabonargi was allowed to register for several semesters. She was reminded, however, that she needed to complete the paper.

The Registrar's Office notified Ms. Cabonargi in correspondence dated April 23, 2007, that a "stop" had been placed on her Fall 2007 registration. The correspondence bears the notation, "Satisfactory Progress: No 2<sup>nd</sup> Exam."

In a letter dated June 25, 2007, faculty member David Chapin wrote to petitioner:

We are somewhat disappointed that you have not finished your second year paper yet. We know you are working on it and that you have been distracted with other issues like work and University politics. We are also aware that you have put considerable effort into completing the statistics requirement. We urge you to try to move forward on your second year paper by the end of the summer so you can move on to the dissertation proposal and writing stages.

(Verified Answer, exhibit M).

Respondent Roger Hart, Chairperson of the Ph.D Program in Environmental Psychology, sent Ms. Cabonargi a "guidance report" dated July 3, 2008. He wrote:

Whereas the program recognizes your significant contribution to the University during your years as head of the Doctoral Student Council, your academic work has suffered. You have not communicated with your advisor and you are making little or no progress within the program, especially your inability to write your second year paper. As per the Satisfactory Progress report recently filed by the program, you are not allowed to register further for graduate study.

(Verified Answer, exhibit M).

Professor Hart informed Ms. Cabonargi by email dated September 1, 2008, that she must "have an acceptable draft paper by the start of the Spring Semester if we are to allow you to register for that semester."

Ms. Carbonargi responded:

Although somewhat ambiguous, your letter seems to indicate that my matriculation is being terminated since it offers no recourse or remedy. It does not mention my options, nor does it mention our conversation

regarding the progress of the project. Rather, you chose to focus on my “*inability*,” without ever referencing any of the former mentioned. Therefore I see no other option at this time than to appeal to the executive committee’s decision and to register pending resolution.... So please read this letter as a formal appeal.

(Verified Answer, exhibit M) (*italics in original*).

A Satisfactory Progress Review Form dated October 23, 2008, states, “The student is not considered to be making satisfactory progress toward the degree.” Roger Hart wrote on the form, “The student will be reviewed in the new year before registering for Spring 2009. At that time she needs to have completed a full draft of her 2<sup>nd</sup> year paper to an acceptable level” (Verified Answer, exhibit M).

In February 2009, Ms. Cabonargi submitted a “progress report” to Professor Hart on her project entitled “Creating Co-Constructivist Spaces for Learning.” In response, Professor Hart sent the following email to Ms. Cabonargi on February 6, 2009:

I received your brief summary for your Second Year Paper and shared it with the faculty. You were informed on September 1<sup>st</sup>, 2008, of the following:

I understand that you need to be able to register this semester to be able to conduct your Second Year paper research at Queensborough Community College. We will allow you to register for this semester for we would like to see you complete this basic requirement. However, because your paper is now so overdue we must insist that you have an acceptable draft paper by the start of the Spring Semester if we are to allow you to register for that semester.

The faculty regrets to inform you that your summary report does not qualify as satisfactory progress and so we cannot allow you to register this semester.

Although you are being dropped from the program at this time you have the right to appeal (see the Student Handbook) and you have the right to register during the appeals process.

(Verified Answer, exhibit M).

Petitioner filed an appeal with the Psychology Council on February 10, 2009. She appeared before the council on May 15, 2009, where she submitted a written statement, presented her case, and responded to questions. Her written statement acknowledged that she had not completed the second-year paper.

By letter dated May 18, 2009, Maureen O'Connor, Executive Officer of Doctoral Programs in Psychology, notified petitioner that the Psychology Council had rejected her appeal, and advised her of her right to appeal the council's decision to the Office of the Provost.

Upon receiving the notification, Ms. Cabonargi appealed to Office of the Provost. Ms. Cabonargi submitted a copy of a conference paper she had written entitled Co-constructivist Learning Environments: The Community College Learning Center.

The Student Appeals Committee met on January 29, 2010. The committee reviewed the written record and met with Ms. Cabonargi and Ms. O'Connor. In a memorandum dated February 8, 2010, the committee stated:

It is the recommendation of the Student Appeals Committee that Ms. Domenici-Cabonargi's appeal of her dismissal from the Environmental Psychology subprogram be denied. Her dismissal from the program was based on her failure, over a period of nearly seven years, to complete the required second-year research paper. We discussed the procedures in Environmental Psychology with Prof. William Kornblum. We are persuaded that the student was treated fairly, consistent with subprogram requirements and practices. She was given adequate notice of her academic deficiencies, and a reasonable opportunity to remedy them.

(Verified Answer, exhibit O).

By letter dated February 22, 2010, Louise Lennihan, CUNY's Associate Provost and Dean for Humanities and the Social Sciences, informed Ms. Cabonargi that she accepted the recommendation of the committee to deny petitioner's appeal (Verified Answer, exhibit P).

CUNY terminated Ms. Cabonargi's matriculation on March 1, 2010.

Petitioner commenced the instant Article 78 proceeding on June 25, 2010.

#### Discussion

Because a determination concerning a student's academic qualifications rests "in most cases upon the subjective professional judgment of trained educators, the courts have quite properly exercised the utmost restraint in applying traditional legal rules to disputes within the academic community" (Matter of Olsson v. Board of Higher Educ. of City of N.Y., 49 N.Y.2d 408, 413 [1980]). Nevertheless, the decisions of educators in matters involving academic standards are not entirely immune from judicial scrutiny. Courts have the authority to review whether an

institution acted in good faith or its action was arbitrary or irrational (Flomenbaum v. New York Univ., 71 A.D.3d 80 [1<sup>st</sup> Dept. 2009]; Matter of Patti Ann H. v. New York Med. Coll., 88 A.D.2d 296 [2d Dept. 1982]; Sage v. CUNY Law School, 208 A.D.2d 751 [2d Dept. 1994]).

Petitioner contends that a paper she submitted in the Spring 2004 entitled “Feelings of Connectedness and The Physical Environment” had been accepted in fulfillment of the required Field Research paper. Although she believed that the Field Research Paper requirement had been satisfied several years earlier, petitioner subsequent to being advised in July 2008 that she would not be permitted to register for the upcoming semester submitted a further research paper entitled “Multi Cultural Learning Environments,” which she had presented at the Northeast Conference for the Teaching of Psychology. According to petitioner, the paper was rejected by Professor Chapin because the topic had not been pre-approved by him. Ms. Cabonargi states that she completed a third paper entitled “Co-Constructivist Learning Environments” in the late Spring of 2009.

Respondent exhibits a sworn affidavit of Louise Lennihan, the Associate Provost and Dean, dated September 1, 2010. Regarding the paper that petitioner claimed she submitted in the seminar in Spring 2004, Ms. Lennihan states that “there is no record of any such paper having been submitted, no record of any correspondence or other paperwork that would be generated in the process of selecting

a topic or discussing drafts, or any other evidence that any such paper was accepted” in fulfillment of the field research paper requirement.

According to Lennihan, the Appeals Committee also considered the paper which Ms. Cabonargi said she had presented at a conference (Lennihan Affidavit, p. 5, para 15). Lennihan states that the document did not satisfy the second-year paper requirement because it had not been submitted previously to the course instructor or anyone else in the program for approval, as required by the Environmental Psychology Doctoral Subprogram (Id.).

The Court finds that respondents acted well within their discretion in determining that the papers petitioner claimed she submitted in the Spring 2004 seminar and at a conference failed to satisfy the second-year paper requirement. However, we believe petitioner should be given an opportunity to be heard with regard to a paper petitioner first emailed to Professor Glick on December 15, 2010.

Petitioner states in a sworn affidavit that Dean Lennihan’s contention – that the document submitted to the Appeals Committee, “Co-constructivist Learning Environments: The Community College Learning Center,” had not been submitted to the course instructor or anyone else in the program for approval, as required by the Environmental Psychology Doctoral Subprogram,” - is misplaced. Ms. Cabonargi contends that the paper given to the Appeals Committee was based upon data obtained through original field research under the guidance of Professor Glick, who had

become her advisor after completing his term as the Psychology Department's Executive Officer. At the time of her recommended termination by the Doctoral Subprogram in February 2009, the field research which had been initiated the previous September was being concluded and was, in fact, concluded the following month. Thereafter in the Spring and Summer of 2009, under the continued guidance of Professor Glick, the research was analyzed and the paper after going through several drafts was completed by the end of September, several months prior to the Provost Office's action denying her appeal and upholding her termination.

Petitioner exhibits an email dated December 15, 2010, from Professor Glick to Professor Chapin to demonstrate that the paper satisfies the Second Year Paper requirement. Professor Glick's email states:

I believe that Stephanie Cabonargi is seeking readmission to the Environmental Psychology subprogram. She has sent me the attached PDF which she feels satisfies the second year, field research paper requirement.

It is competently done, complete and were I to evaluate it (as her advisor) I would say that it satisfies the requirement for the second year field research requirement. I also believe that it opens up an area of environmental psychology which includes the fundamental idea that people are environments for each other (think Jane Jacobs).

(Affidavit of Petitioner in Further Response to Respondents' Answer and Opposition to Petition, exhibit A).

Based upon Professor Glick's email, it appears that Ms. Cabonargi completed a


paper that satisfies the second-year research paper requirement at some point after CUNY terminated her matriculation. In other words, neither the Psychology Council nor the Student Appeals Committee had an opportunity to consider this fact, for the paper was completed after the council and the committee had already rendered their decisions.

The Court finds that, in light of the substantial time and effort Ms. Cabonargi spent researching and writing the paper, respondents must, as a matter of good faith and fairness, give Ms. Cabonargi an opportunity for reconsideration.

For the above reason, the petition is granted, and the matter is hereby remanded for reconsideration.

The foregoing constitutes the decision and order of the court.

Date: April 12, 2011  
New York, New York

  
Anil C. Singh

HON. ANIL C. SINGH  
SUPREME COURT JUSTICE

**FILED**

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