

Poliakoff v Sotheby's Inst. of Art

2011 NY Slip Op 33033(U)

November 16, 2011

Supreme Court, New York County

Docket Number: 104597/11

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

POLIAKOFF, AMY

INDEX NO. 104597/11

Plaintiff,

MOTION DATE _____

-v-

FILED
NOV 18 2011

MOTION SEQ. No. 001

SOTHEBY'S INSTITUTE OF ART, et al.,
Defendants.

MOTION CAL NO. _____

The following papers, numbered 1 to 3 COUNTY OF NEW YORK motion.

NEW YORK COUNTY CLERK'S OFFICE

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits 2

Replying Affidavits 3

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion is decided as follows:

DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM

DECISION.

Dated: 11/16/11

Donna M. Mills
DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

AMY POLIAKOFF,

Plaintiff,

- against -

SOTHEBY'S INSTITUTE OF ART, MARY
ROZELL, LESLEY A. CADMAN, and SARA
MOORE,

Defendants.

INDEX NO.
104597/11

DECISION/ORDER

FILED

NOV 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

DONNA MILLS, J.:

Plaintiff, Amy Poliakoff, commenced this action for damages and an expungement of her academic records against the Defendants Sotheby's Institute of Art ("Sotheby's") and their employees, Mary Rozell, Lesley A. Cadman and Sara Moore. Defendants' bring this motion for an Order seeking to dismiss plaintiff's verified complaint in its entirety together with costs and disbursements of this action.

The following facts are presented in the light most favorable to Ms. Poliakoff, as is required on a motion to dismiss. See, Maas v Cornell University, 94 NY2d 87, 91 (1999)]. The Court, however, takes note of the factual disputes between the parties.

On or about June 30, 2010 plaintiff was accepted and enrolled into Sotheby's in anticipation of receiving a Master's Degree in Art Business. Plaintiff began her studies at Sotheby's in the Fall of 2010. It is undisputed that before classes started, Ms. Poliakoff received a Student Handbook which contained all the relevant policies and procedures for enrollment and participation in Sotheby's as a student. Upon enrollment and after the first semester plaintiff timely paid her tuition for a total sum in the amount of forty three thousand, nine hundred and forty dollars (\$43,940.00). At the end of the Fall semester, Sotheby's determined that Ms. Poliakoff failed several of her classes and maintained a

grade point average of 1.6. Therefore, plaintiff was dismissed from her degree program and was not permitted to enroll in the spring semester. It should be noted that Sotheby's refunded plaintiff the tuition she paid for the Spring semester.

Upon receipt of the letter informing Ms. Poliakoff of her dismissal, she submitted an appeal in writing. Pursuant to the appeal procedure, the Sotheby's Director formed an ad hoc Academic Status Review Committee to review Ms. Poliakoff's written appeal. The Committee denied her appeal.

As a result, Ms. Poliakoff is now suing Sotheby's as well as several of Sotheby's staff and faculty members. Plaintiff asks this Court to review Sotheby's exercise of discretion in dismissing her from the Institute because she had a poor attendance record and received failing grades. Ms. Poliakoff also alleges that the named defendants did not follow the procedures laid out in the Student Handbook for appeal of the academic dismissal. Therefore, she seeks reimbursement for tuition paid for both the fall semester she completed and the spring semester, and an order directing Sotheby's to expunge her failing academic record; and attorney's fees and costs for this instant action.

A motion to dismiss a complaint pursuant to CPLR 3211 (a) (1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law (see Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]). Put differently, the documentary evidence must "resolv[e] all factual issues as a matter of law and conclusively dispose of the plaintiff's claim" (Paramount Transp. Sys., Inc. v Lasertone Corp., 76 AD3d 519, 520 [2010]).

Judicial review of disciplinary decisions by educational institutions is extremely limited. Simply put, if the court finds that the institution has substantially complied with its written guidelines, the court's inquiry should end there. Thus, for example, in Quercia v

New York University, 41 AD3d 295 (1st Dept 2007), the appellate division reversed the trial court's decision, which had vacated the extended suspension of the student after disciplinary proceedings and limited the penalty for confirmed drug possession in the dormitory room to community service. In so doing, the court highlighted the limits on judicial review, stating that "it is well established that judicial review of an educational institution's disciplinary determination involving nonacademic matters is limited to whether the institution substantially adhered to its own published rules and guidelines and was not arbitrary and capricious. *Id.* at 296.

Further, a student subjected to disciplinary proceedings at a private university is not entitled to the "full panoply of due process rights." Ebert v Yeshiva University, 28 AD3d 315 [(1st Dept 2005)]. As the Court of Appeals emphasized in Tedeschi v Wagner College, 49 NY2d 652, 658 (1980), judicial review of academic decisions by private institutions is perhaps even more restricted than review of disciplinary decisions. [B]ecause matters involving academic standards generally rest upon the subjective judgment of professional educators, courts are reluctant to impose the strictures of traditional legal rules. Though such matters are subject to judicial scrutiny, the issue reviewed in such a case is whether the institution has acted in good faith or its action was arbitrary or irrational.

When asked to review the substance of a genuinely academic decision, such as the one at issue here, courts should show great respect for the faculty's professional judgment. "Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment" (Regents of Univ. Of Mich. v Ewing, 474 US 214, 225 [1985]).

Ms. Poliakoff alleges she did her best to attend classes and pursue course requirements, which included various group projects with her classmates. She alleges that

her midterm review by defendant Mary Rozell provided no negative comments so she believed she was keeping with the requirements of the academic standards of Sotheby's, and had she known at any point prior to the completion of the Fall 2010 semester that the institution, or that any one of her professors were dissatisfied with her progress, she would have sought their immediate review and assistance.

Plaintiff further alleges that Sotheby did not follow its procedures in the Student Handbook since her course instructors did not provide written responses to her appeal letter. Moreover, she claims that Sotheby denied her an in-person hearing where she would have the opportunity to state her case.

The academic review process found in the Student Handbook is clearly defined and provides in relevant part:

The review of students' academic progress determines the conditions under which they will continue their program of study. Academic review is also an important means of communication to inform students of the quality of their Academic performance. Students who fail to demonstrate satisfactory academic progress based on the guidelines enumerated below will be placed on probation.

1. All students must maintain a 3.0 cumulative GPA to remain in good Academic standing;
4. Students who fail a course will be subject to an academic review to determine their standing.

The process for appealing dismissal is also clearly laid out in the Student Handbook which provides in relevant part:

Students who are dismissed from their degree program may appeal for a reversal of the decision by filing a formal request. The Institute Director will

form an Academic Status Review Committee ad hoc to process appeals. The student will be informed of a decision no later than four weeks after the submission of the appeal. The decision of the Academic Status Review Committee ad hoc is final.

It is undisputed that Ms. Poliakoff had a 1.6 cumulative GPA and did not meet the minimum standard for good academic standing. The Student Handbook clearly and unmistakably provides that since Ms. Poliakoff received two F's, she was subject to academic review to determine her standing. A large portion of Ms. Poliakoff's Complaint challenges Sotheby's judgment regarding the grades she received in her courses and Sotheby's decision to dismiss her from the Institute.

Applying the legal standards set forth above to the facts of this case, this Court finds that plaintiff's challenge to Sotheby's expulsion decision is lacking in merit. Sotheby's substantially complied with the guidelines and procedures set forth in the Student Handbook. Also unavailing is Ms. Poliakoff's claim that she was denied due process by not being afforded a hearing before the Academic Review Committee. As the above cited cases establish, a student is not entitled to the full panoply of due process rights, nor even a formal hearing with counsel, so long as the university substantially complies with its written guidelines. As such, this Court finds that the documentary evidence submitted by movant clearly refutes the factual allegations of the complaint and establishes a defense to the claims as a matter of law. Additionally, this Court refuses to override the professional judgment of Sotheby's in its decision to expel plaintiff.

Accordingly, in the circumstances of this case, it is

ORDERED that the defendants' motion to dismiss is granted and the complaint is dismissed without costs and disbursements.