

Matter of Engel v Pace Univ.

2011 NY Slip Op 33069(U)

November 21, 2011

Supreme Court, New York County

Docket Number: 106386/09

Judge: Richard F. Braun

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

PRESENT: HON. RICHARD F. BRAUN
J.S.C. Justice

PART 23

Index Number : 106386/2009
ENGEL, MICAH
VS.
PACE UNIVERSITY, et al.
SEQUENCE NUMBER : 003
ARTICLE 78

INDEX NO. _____
MOTION DATE 3/3/11
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

Petition, Petition
notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

FILED PAPERS NUMBERED
1, (a)
2-9
10
NOV 23 2011

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

and ADJUDGED
Upon the foregoing papers, it is ordered that this ~~motion~~ *petition is denied, and*
it is ADJUDGED and DECLARED that respondents' determinations were not arbitrary, capricious, an abuse of discretion, and contrary to law; respondents did not substantially violate their own rules, policies, and due process procedures; respondents did not breach their promises to petitioner that his dismissal evaluation for NYS §60A would be based in part on an independent dismissal evaluation; and respondents did not violate their duty to petitioner of good faith conduct and fair dealing.

This constitutes the decision, order, and judgment of this Court. See separate Opinion.

Dated: New York, New York November 18, 2011 ENTER: [Signature]

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):
44

Verified

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

----- X
In the Matter of
MICAH ENGEL,

Index No. 106386/09

Petitioner,

OPINION

For Judgment Pursuant to Article 78 of the CPLR.

-against-

PACE UNIVERSITY, STEPHEN J. FRIEDMAN, as
President of Pace University, HARRIET R. FELDMAN, as
Dean of the Lienhard School of Nursing of Pace
University, JOANNE K. SINGLETON as Professor and
Coordinator, Doctor of Nursing Practice Program of the
Lienhard School of Nursing of Pace University, MARTHA
J. GREENBERG as Associate Professor and Chairperson,
Undergraduate Department, Lienhard School of Nursing of
Pace University, KAREN HAGHENBECK, as Assistant
Professor of Pace University, SHARON ABOULAFIA
OKEN, as Instructor of Pace University,

Respondents.

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RICHARD F. BRAUN, J.:

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner has brought a CPLR article 78 proceeding to annul respondents' determination that denied petitioner's appeal of his grade in NUR 460A; direct respondents to enter an interim grade of incomplete for NUR 460A; direct respondents to reinstate petitioner in the Pace University Nursing Program; direct that a substitute clinical practicum experience be provided to petitioner; direct that, if petitioner achieves a passing grade in the substitute clinical practicum experience, respondents will issue petitioner a passing grade in NUR 460A; provide petitioner with a full and fair opportunity to take the courses, and earn the credits to qualify for a B.S. degree in nursing; direct that respondents provide petitioner with the option of having his student record indicate a voluntary

withdrawal in good standing from Pace University, and an authorized voluntary withdrawal from NUR 460A, with no grade for the course; annul the determination of respondent Harriet R. Feldman (Feldman) not to accept petitioner's December 12, 2008 grievance, and direct the appointment of an independent investigator regarding violation of Pace University's policies, rules, and procedures, and render a report and recommendation; direct that petitioner's student record be expunged of petitioner's NUR 460A grade, dismissal notice, and appeals; and, pursuant to CPLR 3001, grant a declaratory judgment that respondents' determination denying petitioner's grade appeal was arbitrary and capricious, an abuse of discretion, and contrary to law; that respondent Feldman's not accepting petitioner's December 12, 2008 grievance was arbitrary and capricious, an abuse of discretion, and contrary to law; that respondents violated their rules, policies, and due process procedures; that promises were breached by respondents regarding an independent evaluation; and that respondents violated their duty of good faith conduct and fair dealing. Alternatively, petitioner seeks discovery and a trial if there are questions of fact. Petitioner also requests costs and attorney's fees.

Petitioner was a student at the Lienhard School of Nursing of respondent Pace University. Petitioner did not pass his clinical practicum, NUR 460A. Ultimately, petitioner was notified that he was dismissed from the Combined Degree Program, due to petitioner's failing grade in NUR 460A.

Although not completely beyond the scope of judicial review, the determinations of educational institutions as to the academic performance of their students are limited to the questions "of whether the challenged determination was arbitrary and capricious, irrational, made in bad faith or contrary to Constitution or statute..." (*Ochei v Helene Fuld Coll. of Nursing of N. Gen. Hosp.*,

22 AD3d 222 [1st Dept 2005].) “This standard has rarely been satisfied in the context of challenges to academic determinations because the courts have repeatedly refused to become involved in the pedagogical evaluation of academic performance.” (*Matter of Susan M. v New York Law School*, 76 NY2d 241, 246 [1990]; see *Matter of Sofair v State Univ of N.Y. Upstate Med. Ctr. Coll. of Medicine*, 44 NY2d 475, 480 [1978]; *Matter of Ebert v Yeshiva Univ.*, 28 AD3d 315 [1st Dept 2006].)

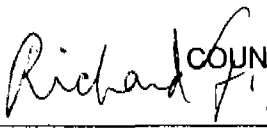
Petitioner has not met his burden of showing a deprivation of his rights or bad faith or other arbitrary action constituting an abuse of discretion (see *Matter of York v McGuire*, 99 AD2d 1023, 1024 [1st Dept 1984]). Petitioner has not shown that Pace University did not substantially follow its rules and policies, implement its due process procedures, and fulfill its obligations (cf. *Matter of Carr v St. John's Univ., N.Y.*, 17 AD2d 632, 634 [2nd Dept 1962] [the Court determined that it may not review the discretionary acts of a university in expelling a student, when the acts were within the university’s jurisdiction, and not arbitrary, but in the exercise of an honest discretion based on facts within the university’s knowledge that justify the exercise of discretion], *affd* 12 NY2d 802 [1962]). Through Pace University representatives, petitioner was advised of his academic deficiencies. Petitioner was given opportunities to correct those deficiencies. Pace University determined that petitioner should be dismissed. Petitioner has not shown that Pace University’s decision to dismiss him was “arbitrary and capricious, irrational, violative of constitutional or statutory rights, or made in bad faith (citation omitted).” (see *Matter of Illickal v Roman*, 236 AD2d 247, 248 [1st Dept 1997].) This court will not disturb Pace University’s determination (see *Matter of Susan M. v New York Law School*, 76 NY2d at 245).

With respect to the requested declaratory relief, this court cannot dismiss petitioner's requests (see *200 Genesee St. Corp. v City of Utica*, 6 NY3d 761, 762 [2006]). Rather, by this court's separate decision, order, judgment and declaration, dated November 18, 2011, the petition was denied, and this court declared that respondents' determinations were not arbitrary, capricious, an abuse of discretion, or contrary to law; that respondents did not substantially violate their own rules, policies, and due process procedures; that respondents did not breach their promises to petitioner that his clinical evaluation for NUR 460A would be based in part on an independent clinical evaluation; and that respondents did not violate their duty to petitioner of good faith conduct and fair dealing. This constitutes the opinion of this court.

FILED

NOV 23 2011

Dated: New York, New York
November 21, 2011


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RICHARD F. BRAUN, J.S.C.