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

PRESENT: HON. JUDITH J. GISCHE J.S.C. Justice

PART 10

Index Number : 104905/2011

BENJAMIN, PATRICIA

VS.

NYC BOARD/DEPT. OF EDUCATION

SEQUENCE NUMBER : 001

VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

...n 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 Petition + cross motion

Petition and cross MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION, order + Judgment

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).

APR 02 2012

Dated: _____

HON. JUDITH J. GISCHE 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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

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In the Matter of the Application of
PATRICIA BENJAMIN,

Petitioner,

For a Judgment pursuant to
Article 75 of the CPLR

-against-

THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; DENNIS WOLCOTT, CHANCELLOR OF NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondents

to vacate a decision of a hearing officer pursuant to Education Law 3020-a and CPLR 7511.

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DECISION/ ORDER AND JUDGMENT
Index No.: 104905-11
Seq. No.: 001

PRESENT:
Hon. Judith J. Gische
J.S.C.

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).

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	**Numbered**
Notice of Pet, verif amended pet, exhibits (3 binders)	1,2,3,4,5
Resp's x/m (7511, 3211) w/GMM affirm, exhs (2 vols)	6,7,8
Pet's response/further support w/BDG affirm	9
Resp's response/further support w/GMM affirm	10
Transcript 1/26/12	11

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

Petitioner Patricia Benjamin seeks a judgment from this court vacating the decision by respondent The City of New York; New York City Department of Education,

Dennis Wolcott, Chancellor of New York City Department of Education ("respondent") to terminate her from employment as a teacher (CPLR § 7511, Education Law § 2590-j, 3020, 3020 [a], and Chancellor's regulation C-770). Respondent has, in lieu of an answer, cross moved pursuant to CPLR § 404 [a], 3211 [a][7] and 7511 for the preanswer dismissal of this petition on the basis that petitioner does not demonstrate any statutory basis for vacating or modifying the award and, therefore, failed to state a cause of action (CPLR 3211 [a][7], 7511). Respondent has also cross moved for a judgment confirming the arbitrator's award (CPLR 7511 [e]).

Since respondent's cross motion is aimed at the legal sufficiency of the petition, the court must assume the truth of all allegations contained in the challenged pleadings and resolve all inferences which may reasonably flow therefrom in favor of the non-movant (Cron v. Hargro Fabrics, Inc., 91 NY2d 362 [1998]; Sanders v. Winship, 57 NY2d 391 [1982]).

The following facts are asserted by petitioner:

Facts

Petitioner is challenging the opinion and award of Hearing Officer Robert Grey's ("hearing officer") dated April 8, 2011 ("award" sometimes "determination") on several bases. First, that the hearing officer's findings of guilt on the disciplinary charges against her are arbitrary, capricious and not proven by the preponderance of the evidence. Second, the penalty imposed (termination from employment) is draconian and inconsistent with other decisions by hearing officers involving similar charges against other teachers. Third, her termination is not in accord with due process and she has been deprived of her property interest in tenured employment; and fourth, her

termination is in violation of Education Law § 3020-a.

Petitioner contends that after ten (10) years of flawless service as a tenured high school social studies teacher, she started receiving unsatisfactory or "U-ratings" in 2007-2008. She claims that she was targeted by a new assistant principal ("AP Santiago") hired that school year who has since been removed from that position because of incompetency. According to petitioner, AP Santiago's ratings were motivated solely by racial and gender animus towards her because AP Santiago is a Hispanic male and she is a black female. Petitioner points out that the hearing officer dismissed many of the "objective" misconduct charges against her, yet sustained the "subjective" incompetency charges against her, many of which were alleged by AP Santiago, even though AP Santiago's testimony, the testimony of a PIP Plus observer ("Mutnick") and Principal Eloise Messineo was inconsistent and sometimes contradictory.

At oral argument, petitioner elaborated that what happened to her is not uncommon among tenured teachers. Petitioner alleges that the disciplinary process surrounding Education Law § 3020-a is suspect and geared towards terminating good, tenured teachers, like herself. Petitioner maintains that the first step is trumped up charges, culminating in having a DOE selected hearing officer hear the case. Petitioner maintains the PIP Plus observer (here, Mutnick) is held to be an ally or resource for the teacher when, in fact, he is a minion for the respondent. Petitioner points out she had no say in choosing the hearing officer and that Hearing Officer Grey holds a very lucrative position– potentially earning thousands of dollars a month by doing hearings for DOE. According to petitioner, this suggests a natural bias towards making decisions

favorable to the respondent.

The charges against petitioner were for school years 2005-2007, 2007-2008 and 2008-2009. Broadly stated, they include neglect of duty, failure to follow procedures and carry out normal duties, insubordination, and incompetent and inefficient service.

Arguments

Petitioner contends that the award should be annulled because she never received any written guidelines from DOE setting forth the standards by which she would be judged for competency, despite the hearing officer's instruction that DOE search for and turn over "all teacher handbooks for the years in question, if such exist.." Thus, she claims that without a yardstick against which to measure her performance, there was no basis for the hearing officer to find her performance deficient in any way.

Petitioner points out that the inconsistent and contradictory testimony of AP Santiago, Mutnick and the principal should not have been weighed towards the issue of liability, particularly since AP Santiago embellished the charges against her and contradicted school records.

Respondent contends that petitioner has failed to establish any basis for vacating the award and though petitioner may disagree with hearing officer, that is not a statutory ground upon which the award may be vacated. Respondent points out that petitioner was represented by counsel at all stages of the hearing process. There was a pretrial conference and the hearing took place over several days. Thus, respondent contends the court's review of the hearing officer's determination is extremely limited and may only be vacated if the petitioner's rights were prejudiced by one of the bases

set forth in CPLR 7511 [b]. Respondent denies any of those bases are present.

DOE contends that petitioner has not pleaded facts demonstrating her due process rights were violated and, to the contrary, she was provided with a pre-termination process that went well beyond the minimum process, referring to Mutnick's interaction with petitioner. Respondent claims Mutnick is "disinterested" in the outcome of the charges and, was simply therefore, an objective observer of petitioner's class performance.

Respondent rejects petitioner's claim that the hearing officer was biased simply because she did not have a choice in the selection process. Respondent points out petitioner did not object to Grey as the hearing officer before the hearing began and she provides no facts tending to show he was biased against her.

Discussion

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, the court may only vacate an arbitral award when the rights of a party in an arbitration were prejudiced by corruption, fraud, or misconduct in procuring the award or the partiality of an arbitrator (CPLR § 7511 [b]; Lackow v. Department of Education of City of NY, 51 AD3d 563, 567 [1st Dept 2008]). CPLR § 7511 [b] further provides that an award shall be vacated if the rights of that party were prejudiced by "misconduct, bias, excess of power or procedural defects" (Lackow v. Department of Education, 51 AD3d at 567 [1st Dept. 2008]). Pursuant to Education Law § 3020-a (5), CPLR 7511 provides the basis of review of an arbitrator's findings (Id.)

Where, as here, the parties have submitted to compulsory arbitration, judicial

scrutiny is stricter than when the parties have submitted to voluntary arbitration (*see* Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214, 223 [1996]; Lackow v. Department of Education of City of New York, supra at 567). Therefore, the hearing officer's determination must be in accord with due process and supported by adequate evidence; it must also be rational and satisfy the arbitrary and capricious standards of CPLR Article 78 (Lackow v. Department of Education of City of New York, supra at 568 *citing* Motor Vehicle Mfrs. Assn. of U.S. v State of New York, 75 NY2d 175, 186 [1990]).

The burden of showing an award is invalid is on the person who is challenging it (Lackow v. Department of Education of City of New York, *supra* at 568 *citing* Caso v Coffey, 41 NY2d 153, 159 [1976]). An arbitration award may not be vacated even if the court concludes that the arbitrator's interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy, is totally irrational, or exceeds a specifically enumerated limitation on his power." (Hegarty v. Board of Education of the City of New York, 5 A.D.3d 771, 772-773 [1st Dept. 2004)]. Consequently, pursuant to CPLR § 7511 (e), if this petition to vacate the award is dismissed because there is no statutory basis upon which to vacate the award, the court "shall confirm the award."

The first statutory ground asserted by petitioner is that the hearing officer was predisposed towards making a determination favorable to DOE, if not outright biased. A claim of actual bias or misconduct by a hearing officer requires clear and convincing evidence, inference of partiality is not enough to vacate the award (Zrake v. New York City Dept. of Educ., 41 A.D.3d 118 [1st Dept 2007]; Rose v. J.J. Lowrey & Co., 181

A.D.2d 418 [1st Dept 1992]). Aside from her general comments about the hearing officer's livelihood, petitioner has not pled any facts tending to show actual bias or the appearance of bias on the part of Hearing Officer Grey (Matter of Schwartz v. New York City Department of Education, 22 A.D.3d 672, 673 [2nd Dept 2005]). Although petitioner did not have a role in choosing the hearing officer, she did not object to him either. Instead she proceeded with the hearing before him without any objection, waiving that as a basis to vacate the hearing officer's award (see CPLR 7511 [b] [iv]). The fact that Hearing Officer Grey made credibility determinations that were adverse to the petitioner does not constitute bias on his part. General comments by petitioner, that the entire disciplinary process is a sham, are well beyond the scope of this Article 78 proceeding which is focused on whether the award in *her* particular case is supported by the record.

The next statutory basis advanced by petitioner for why the determination should be vacated is that there is insufficient evidence to find that she committed any of the specifications that were not dismissed and that the dismissal of some of the more serious or objective specifications tends to show that the remaining ones are "subjective," lightweight or pretextual. This argument minimizes the detailed explanation the hearing officer provided in deciding to dismiss some specifications but find petitioner guilty of others. Notably, petitioner does not deny she was written up for these charges, given notice of them and allowed to present evidence as to those charges at the hearing or the detailed findings by the hearing officer.

Throughout his determination, the hearing officer identifies what records were in evidence, his assessment of them and the testimony he credited. Under each

specification, he describes the charge and how it was documented by school officials. He also summarized the testimony he credited and why. In his seventy four (74) page opinion, the hearing officer painstakingly goes through each of the ten (10) specifications against petitioner many of which had subparts. In some instances, he culled out subparts that he found unsubstantiated, severing and dismissing those claims. Below are some of the specifications[1], and how they were decided:

The hearing officer dismissed Specifications 1(b) and 1(c) alleging that petitioner had failed to provide "bell to bell" instruction and had not adequately prepared her lessons. The hearing officer found that Mutnick had in fact complimented the quality of her lesson plans and that only on one occasion was she unprepared.

Specifications 2 and 9 (pp.15 and 46-47) were that petitioner failed to effectively manage and control her classroom. With the exception of Specifications 2d and 2e, petitioner was found guilty of all these charges. Specifications 9a -9p are based upon Mutnick's personal observations of petition on sixteen (16) separate occasions. The hearing officer went through each specification, summarized it, described the supporting evidence and explained why he found petitioner guilty of the specification. Among the observations credited were the following: off-task talking among students, severe lack of classroom management and control, students disregarding their assigned seats, petitioner trying to teach over the constant talking, students leaving the classroom without permission, a student with her head down on her desk, petitioner and

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[1]Since the specifications are quite lengthy, the court will identify any specification addressed by its number, subpart and the page on which it appears in the hearing officer's determination: "Specification Xx p. x"

a student arguing about grades in the presence of other students, failure to properly proctor an exam, etc.

Specifications 3 (p.20) and 6d (p.42) involve the so-called "wallet incident." Petitioner, upon discovering her wallet was missing, left the classroom and went out into the hallway whereupon she began yelling that her wallet had been stolen. The wallet was eventually located by cleaning staff and returned to her. She was later written up for leaving her class unattended. Later petitioner threatened to bring criminal charges against AP Santiago for stealing her wallet. Petitioner believed he had stolen the wallet himself, deliberately provoking her to leave the classroom unattended so he could discipline her.

Although noting the obviously stressful nature of this incident, the hearing officer stated that petitioner's conduct was unprofessional and found her guilty of leaving her students unattended while she went on this tirade. He noted that there were other staff members nearby who she could have asked to cover her class while attending to this situation. The hearing officer, dismissed, however, Specification 6d (threatening to bring criminal charges against AP Santiago) as he found there was no reason to believe she made this statement for any malevolent or insubordinate purpose.

Specifications 4a (p.23) and 4b (p.23) each involved student behavior and discipline. The hearing officer dismissed the charge against petitioner, that she had allowed students to play cards in class, but found petitioner guilty of improperly dealing with disruptive students in her class.

Specification 5 (p.30), failure to maintain and enforce the use of the late log in the classroom, was sustained against the petitioner and the hearing officer found that

had petitioner consistently and properly enforced the policy, the chronic lateness in her class might have been minimized.

Specification 6 (p.33) involved a claim by students that she had threatened to pass gas if they continued to converse in class (6a), that she had referred to her students as "maniacs" (6b), and that she had a conversation of a sexual nature with a student (6c). The hearing officer indicated the testimony and other evidence he credited or discredited in deciding to dismiss Specification 6. Notably, the hearing officer considered competing statements by petitioner that she had passed gas to discipline a student, yet later apologized for the incident as having been an accident. The hearing officer also observed that there had been "minimal" investigation into this incident and AP Santiago had not ascertained the surname of the complaining student.

Specification 10 (p.56-57) addressed petitioner's lesson planning (10a), classroom instruction abilities (10b) and classroom management (10c). The hearing officer sustained the specifications, finding that every observation report had contained detailed and extensive recommendations which petitioner either would not or could not implement. Although a Teacher Improvement Plan (TIP) was implemented for petitioner's benefit in October 2008, and it was intended to address petitioner's deficiencies, petitioner did not adhere to its requirements which included visiting other teachers' classes and going over her lessons with AP Santiago so he could spot any potential planning issues. The hearing officer credited the extensive record developed of petitioner's "repeated failure to implement advice, counsel, instruction and recommendations of administrators, coaches, mentors, and peer observers" in finding petitioner guilty of these charges.

The hearing officer thoroughly addressed all of petitioner's claims of AP Santiago's bias against her:

> The record does not support the allegation that racial or gender discrimination played any part in this matter. Likewise, the record does not support any allegation of disparate treatment, harassment or retaliation. I find that [Benjamin] was treated fairly and given numerous opportunities and resources to improve her deficiencies regardless of her gender or race."

In a footnote to the above, the hearing officer further notes that:

> "Though its investigation is not controlling in this proceeding, I note that my finding comports with the New York State Division of Human Rights' investigation of [Benjamin's] related complaint."

The court must defer to the hearing officer's credibility findings, if they are supported by the record, "irrespective of whether a similar quantum of evidence is available to support other varying conclusions" (Matter of Collins v. Codd, 38 NY2d 269, 270 [1976]). Here, the hearing officer dismissed some of the specifications against petitioner because the conduct charged by school officials either did not rise to the level of the specification alleged, or respondent had not met its burden of establishing petitioner's guilt of that charge. The remaining specifications that were not dismissed are well documented in the many of the exhibits that petitioner herself has provided in support of her petition Since they are supported by the record, they must be upheld (Austin v. Board of Education of the City of New York, 280 AD2d at 365-366).

There is no evidence presented by petitioner suggesting she was denied due process. Well before the hearing, petitioner was served with the specifications against her so she could prepare for the hearing. Therefore, her argument, that DOE did not turn over certain handbooks, is not fatal to the process. There was a pre-trial hearing

and the hearing itself, which was transcribed, took place over the course of several days. Petitioner was represented by counsel who made motions and objections on her behalf. Petitioner was free to call her own witnesses and cross examine respondents' witnesses. She could even have testified on her on behalf, had she chosen to. Noting her decision to not testify, the hearing officer made it clear that he did not draw any inference from her decision not to testify nor did he speculate about what her testimony might have been had she done so. Petitioner has not identified how she was deprived of due process and, therefore, failed to establish this as a basis to modify/vacate the award.

Petitioner contends that the hearing officer's decision was arbitrary and capricious, without any rational basis. An action is considered arbitrary and capricious "when it is taken without sound basis in reason or regard to the facts" and irrational if there is "no proof whatever to justify the award ... " (Matter of Peckerman v. D & D Associates, 165 AD2d 289, 296 [1st Dept 1991]). To support her claim, petitioner states that Hearing Officer Grey credited testimony that was inconsistent with or contradicted by other testimony. It is well settled that a hearing officer has the authority to determine the credibility of the witnesses and a hearing officer's determinations of credibility are largely unreviewable because "the hearing officer observed the witnesses and was able to perceive the inflections, the pauses, the glances and gestures – all the nuances of speech and manner that combine to form an impression of either candor or deception" (Lackow v. Department of Education, 51 AD3d at 568) (internal citations omitted).

Other arguments that Mutnick is not a neutral or objective observer raises the same claim of bias the court has rejected (infra) in connection with the hearing officer.

Mutnick is part of the PIP Plus program governed by the contract between respondent and the teacher's union. Participation in this program is supposed to help improve a teacher skills and, presumably, help them keep their job or avoid penalties against them. Pursuant to CPLR 7511, only the bias of the hearing officer is a statutory basis to vacate an award.

Petitioner contends that the penalty imposed (termination from employment) is shocking to the conscience because other hearing officers have been more lenient with other teachers who have been found guilty of similar specifications. In deciding the penalty, the hearing officer states the following:

> "[Benjamin] was unable to provide a valid educational experience for the students assigned to her classroom. Although she had the requisite knowledge of Social Studies content, she did not have the pedagogical ability to effectively deliver that content to her students..."
>
> * * *
>
> "The Department recognized [Benjamin's] shortcomings and offered help. Genuine efforts were made...to remediate [Benjamin's] teaching performance deficiencies. Observations were followed by written recommendations for improvement as well as post-observations conferences. Intervisitations were scheduled. Weekly lesson plan review was offered. An individualized Teacher Improvement Plan ("TIP") was implemented. An "Individualized Professional Development Plan" was implemented under the PIP Plus program. All to no avail..."
>
> ***
>
> "The record demonstrates [Benjamin's] classrooms bordered on anarchy and had an unwarranted and unacceptable potential for danger that no student should be required to endure and that no school district should have to bear. Her classrooms were nearly a free-for-all..."

The hearing officer noted that despite having notice of her pedagogical

deficiencies since March 2007, they persisted unabated.

In comparison, the teachers who were less severely disciplined were found to be:

> "a caring teacher who exhibits a strong desire to work hard and server her students. She should be given another opportunity to prove that she is able and willing to do so on a consistent basis...Precisely because Respondent has proven herself capable of satisfactory performance yet failed to consistently performed in accordance with those abilities, a substantial fine of Ten Thousand Dollars ($10,000), which underscores the serious nature of these lapses in performance is hereby imposed on the Respondent"
> (In re Garraway, SED File No. 16,377)

and:

> "[The] specifications upon which Beylis has been found guilty constitute incompetence, conduct unbecoming respondent's position and neglect of duty...While discipline is warranted in this case, I do not find that termination is an appropriate penalty. As noted above, I find that the deficiencies in Beylis' teaching performance do not establish that, if provided with a valid program of remediation, she would be unable to provide a valid educational experience for her students...Three of the observations included areas where Beylis made improvement...Beylis' deficiencies with regard to the English language had an adverse impact on her ability to communicate effectively and accurately in English... Neither the department nor RMC adequately remediated those deficiencies which is a mitigating factor against the sought after penalty of termination. Also mitigating against termination is the Department's failure to otherwise provide proper remediation regarding lesson plans and pre- and post-observations."
> (In re Beylis, SED File No. 16,379)

Petitioner also cites a decision by this court that granted a teacher's petition, vacating the penalty imposed and remanding the matter to respondent (Patterson v.

City of New York, 2011 WL 1456304 [Sup Ct, N.Y. Co. 2011]). In that case, the teacher had an unblemished record until she filed tax returns using her mother's address in Albany although she was a New York City resident. Once this was discovered, the petitioner filed amended returns, claiming she had not realized her error. Nonetheless, the hearing officer recommended her termination from employment. This court vacated that award and remitted the matter to DOE on the basis that her misconduct did not impact on her ability to teach or classroom performance.

An administratively imposed sanction may not be set aside unless it "shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law" (Matter of Featherstone v. Franco, 95 NY2d 550, 554 [2000]; *see also* Matter of Diefenthaler v. Klein, 27 AD3d 347, 348 [1st Dept 2006]). The shock that properly leads to setting aside a sanction arises principally from a perceived disproportion between the penalty and the misconduct that brought it about (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 34 NY2d 222, 234 [1974]; Matter of Weinstein v Department of Educ. of City of N.Y., 19 AD3d 165 [1st Dept 2005]), although other relevant circumstances, such as a teacher's otherwise unblemished multi-year career, are also considered (*see e.g.* Matter of Solis v Department of Educ. of City of NY, 30 AD3d 532 [1st Dept 2006]). However, "even a long and previously unblemished record does not foreclose dismissal from being considered as an appropriate sanction" (Matter of Rogers v Sherburne-Earlville Central School District, 17 AD3d 823, 824-825 [3rd Dept 2005]).

The underlying factual circumstances, abilities, records, and findings by the hearing officers in the disciplinary actions against the three (3) teachers set forth above

starkly differ from those involving this petitioner. Despite all the resources made available to her, the hearing officer properly determined that petitioner showed no interest, ability to, nor hope of, becoming a teacher even remotely qualified to teach children. The determination to terminate petitioner from employment is firmly supported by the extensive documentation of her incompetence. Therefore, the penalty imposed does not shock the conscience or one's sense of fairness.

In view of all the foregoing, respondent has met its burden of showing that petitioner does not demonstrate any statutory basis for vacating or modifying the award and, therefore, failed to state a cause of action (CPLR 3211 [a][7], 7511; Education Law 3020-a). Furthermore, respondent has shown the hearing officer's award has a rational basis. Having failed to state a cause of action, respondent's cross motion for the dismissal of the petition is granted. The cross motion to confirm the award of the hearing officer is granted and it is confirmed.

Decision Order and Judgment

IT IS HEREBY,

ORDERED that the cross motion by respondents The City of New York, New York City Department of Education and Dennis Wolcott, Chancellor of New York City Department of Education to dismiss the petition of Patricia Benjamin is hereby GRANTED in its entirety; and it is further

ORDERED, DECLARED AND ADJUDGED that the petition of Patricia Benjamin for an order annulling and vacating the Opinion and Award of Hearing Officer Robert A. Grey, Esq. terminating petition from employment with respondent is DISMISSED; and it is further

ORDERED that any relief requested not specifically addressed is hereby denied; and it is further

ORDERED that this constitutes the decision, order and Judgment of the court.

Dated: New York, New York
April 2, 2012

ENTER:

Hon. Judith J. Gische, JSC

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).