

Matter of Principe v New York City Dept. of Educ.

2013 NY Slip Op 31523(U)

July 9, 2013

Sup Ct, New York County

Docket Number: 150950/13

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

IA PART 16

PRESENT: ALICE SCHLESINGER
Justice

PART _____

Index Number : 450285/2013
BOARD OF EDUCATION
vs.
PRINCIPE, PETER
SEQUENCE NUMBER : 001
VACATE OF MODIFY AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____
Answering Affidavits — Exhibits _____ **No(s).** _____
Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is *petition is denied*
in accordance with the memorandum
decision filed in Principe v NYC Dept of
Education, Index No. 150950/13, on this
date.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

13 450285

U N F I L E D J U D G M E N T

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 EFile a "Request for Entry of Judgment", Proposed Judgment, and any supporting documents on the NYSCEF system.

JUL 09 2013
JUL 09 2013

Dated: _____

Alice Schlesinger, J.S.C.

ALICE SCHLESINGER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

PRESENT: ALICE SCHLESINGER
SCHLESINGER

10. PART 16
PART 16

Justice

PETER PRINCIPE

INDEX NO. 150950/13

MOTION DATE _____

MOTION SEQ. NO. 001

NYC DEPT OF EDUCATION

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on 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 is granted in accordance with the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: JUL 09 2013

Alice Schlesinger

ALICE SCHLESINGER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

-----X

In The Matter of the Application of

PETER PRINCIPE,

Petitioner,

For a Judgment Confirming an Arbitration Award Under
Article 75 of the Civil Practice Law and Rules,

Index No. 150950/13

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION,

Respondent.

-----X

In The Matter of the Application of

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Petitioner,

Index No. 450285/13

For a Judgment and Order Pursuant to Article 75 of the
Civil Practice Law and Rules,

-against-

PETER PRINCIPE,

Respondent.

-----X

SCHLESINGER, J.:

On October 30, 2009, Peter Principe, a teacher and dean at JHS 218 in Brooklyn, was punished with a penalty of termination after a mandatory hearing pursuant to Section 3020-a of the Education Law (Exh A to Principe Petition). On April 28, 2010, in an Article 75 proceeding before this Court, I upheld the findings of the Hearing Officer but vacated the penalty as excessive and remanded the matter so that a new, lesser penalty could be imposed (Index No. 116031/09, Exh B).

That has finally occurred. On January 28, 2013, a second Hearing Officer Alan Berg, after reviewing the judicial history of this case¹ and his appointment to it on January 7, 2013, as well as reading all of the previous decisions and the transcript of the original hearing (3986 pages) and arguably relevant decisions cited by counsel, authored a twelve-page decision (Exh E). That decision included a comprehensive discussion (at p. 7) as to why the Hearing Officer had concluded that the decision in *Matter of Riley v City of New York*, 84 AD3d 442 (1st Dep't 2011) was the one closest to this one and thereby "the most helpful in deciding this case."

In *Riley*, also a case involving corporal punishment, the Hearing Officer on remand had directed a punishment of a one year-suspension, which had then received judicial approval. In the instant case, unlike *Riley*, there were two separate and completely unrelated acts of corporal punishment; *Riley* had but one. Also, there were other distinguishing facts. Nevertheless, *Riley* is instructive.

Hearing Officer Alan Berg had stated early on the record that he would follow the format used by the Hearing Officer in *Riley*, which meant that he would order reinstatement with back pay as an interim remedy. He described that remedy as "merely the obvious and only logical consequence of the suspension" (p. 10), noting that it was less than the 44-month suspension sought by the Department because that penalty, in his opinion, would not be "consistent with the court's directive in this case" (p. 11).²

¹On April 5, 2012, the Appellate Division of the First Department affirmed this Court's finding that the penalty of termination was excessive and shocking to one's sense of fairness (Exh C). Then on December 13, 2012 the Court of Appeals affirmed the decision by the Appellate Division, also finding that the penalty was shocking to one's sense of fairness (Exh D).

² Hearing Officer Berg is correct.

Finally, the Hearing Officer found that a suspension of eighteen months from the date when Principe had been removed from the Department's payroll was the appropriate penalty. Therefore, Mr. Principe was "entitled to back pay for the twenty month period from the end of the unpaid suspension to January 17, 2013, the date of the hearing, and for any period after the hearing for which Respondent [Principe] was not reinstated pursuant to my interim order made at the conclusion of the hearing" (p. 11).

With regard to the Department's request that Principe take an anger management course, a remedy this Court had suggested as well, Hearing Officer Berg directed it, but only "if it [such training] is provided by or paid for by the Department" (p. 11).

Before this Court now are competing petitions brought by counsel for the parties. Mr. Principe in the first instance is asking me to confirm the Award of the Arbitrator Alan Berg and to immediately reinstate him to his former position and order back pay to May 7, 2011. (Index No. 150950/13). The Department, however, is petitioning this Court to vacate the penalty imposed in the Opinion and Award by Hearing Officer Alan Berg "on the grounds that the penalty violates public policy, statute and decisional law" (Index No. 450285/13). The two proceedings have been consolidated herein for disposition.

It appears that at least in part, if not in its entirety, the Department's rationale for the relief sought is something never before brought to anyone's attention, including Hearing Officer Berg; namely, that "the BOE [Board of Education] became aware that Respondent [Principe] did not hold a valid New York State Teaching Certification." (§ 20 of Petition). Apparently, Mr. Principe had a Provisional Certificate in Business and Distributive Education that expired on January 31, 2009 but was thereafter extended until it expired in January 31, 2010 without a further extension. Attached as exhibit F to the Petition is an

Affidavit from Philip Crowe, who is Director of Certification and Licensing at the New York City Department of Education. He says that in order to be employed as a teacher within the New York City Department of Education, a teacher must be certified and that such certification is issued by the New York State Education Department ("NYSED"). He further states that Principe's Provisional Certificate expired on January 31, 2010.

However, in Respondent's Verified Answer to the Department's Petition (§ 7), Principe states that NYSED placed a "disciplinary hold" on November 28, 2007, which effectively barred him from completing the requirements necessary to obtain a permanent certificate. He further states that on February 1, 2010 NYSED continued the disciplinary hold (§ 8). Finally, on January 29, 2013 NYSED's Office of Teaching Initiatives lifted the disciplinary hold and indicated that it would issue Principe a Provisional Certificate shortly (§ 9).

In Reply is an Affidavit from Ann Jasinski, who identifies herself as the Assistant Director of the Office of Teaching Initiatives of NYSED and the person "responsible for teacher certification in New York State" (§ 1). She states that Principe was initially granted a provisional certificate effective February 1, 2004. She then discusses the process by which a provisional certificate holder obtains a permanent certification. One prerequisite she mentions is two years of teaching experience, which Mr. Principe clearly has.

Ms. Jasinski also reports that Principe did apply for a third extension to extend his certification to January 31, 2012. However, in a letter to this Court dated May 1, 2013, counsel for Mr. Principe indicated that Principe had withdrawn that application after NYSED had informed him that it would not grant a permanent certificate, and he has applied instead for an Initial Certificate. As of July 8, 2013, that application is still pending.

So what does all this mean? It means that despite the fact that Principe has convinced all of the Courts (nine Judges in all) hearing his case that the penalty of termination was too harsh, and despite that years later after the DOE has run out of places to take an appeal and an award has finally issued reducing Principe's penalty and ordering his reinstatement with almost two years of back pay, Principe is still not on the payroll nor in the classroom. This is wrong.

The City and State authorities are denying him benefits which he has fought hard to win and to which he is entitled. No one informed Mr. Principe or his counsel or even Hearing Officer Berg that a state certification rule would in 2013 raise its ugly head and result in denying him his Award, an Award I am confirming by this decision. Hearing Officer Berg carefully and thoughtfully weighed all the mitigating and aggravating factors and selected a penalty that is rational and in accord with similar cases. That is why I am confirming it.

At this point, DOE's only voiced objection to the Award is the absence of a valid certification. But this Court does not see this infirmity as an absolute bar. Hearing Officer Berg directed that after eighteen months, Mr. Principe should be reinstated to teaching and to the payroll. As noted, that has not been done. Now that we are in July of 2013, when presumably most of the schools are closed, Principe probably would not be teaching. Nor in the twenty or so months that have passed, could he have. The past is the past and cannot be relived. But that does not prevent Principe's reinstatement retroactive to May 7, 2011 as he requested and was awarded. I am directing that such be done within one week after service on counsel for the DOE of a copy of this decision with notice of entry.

Finally, one would think Mr. Principe should be in the classroom. He was arguably a fine teacher, which led to his promotion to Dean. Therefore, I urge NYSED, during these summer months, to expeditiously process Principe's application for certification so that in the Fall, September of 2013, any impediments to the resumption of his career will be gone.

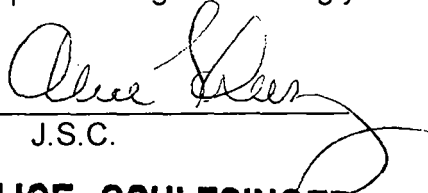
Accordingly, it is hereby

ADJUDGED that the petition in *Principe v New York City Department of Education*, (Index No. 150950/13) is granted and the January 28, 2013 Award of Hearing Officer Alan Berg (Exh E to Petition) is confirmed; and it is further

ADJUDGED that the petition in *The Board of Education of the City School District of the City of New York v Principe* (Index No. 450285/13) seeking to vacate the Award and terminate Principe's services is denied.

The Clerk is directed to enter judgment in both proceedings accordingly.

Dated: July 9, 2013



J.S.C.

ALICE SCHLESINGER

JUL 09 2013

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U N F I L E D J U D G M E N T
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