

**Matter of Maniaci v New York City Dept. of Educ.**

2014 NY Slip Op 30043(U)

January 9, 2014

Supreme Court, New York County

Docket Number: 100943/13

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

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

Index Number : 100943/2013  
 MANIACI, ROBERT  
 vs  
 NYC DEPARTMENT OF EDUCATION  
 Sequence Number : 001  
 VACATE AWARD

PART \_\_\_\_\_

INDEX NO. \_\_\_\_\_  
 MOTION DATE 10/30/13  
 MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 6, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1-2</u>
Answering Affidavits — Exhibits _____	No(s). <u>3-5</u>
Replying Affidavits _____	No(s). <u>6</u>

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

**THIS MOTION IS DECIDED IN ACCORDANCE  
 WITH THE ACCOMPANYING MEMORANDUM DECISION,  
 ORDER and 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).

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

Dated: 1/9/14

JOAN B. LOBIS J.S.C.

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: IAS PART 6**

-----X

In the Matter of the Application of  
ROBERT MANIACI,

Petitioner,  
-against-

Index No. 100943/13  
**Decision, Order, and Judgment**

THE NEW YORK CITY DEPARTMENT  
OF EDUCATION,

Respondent.

-----X

**JOAN B. LOBIS, J.S.C.:**

Robert Maniaci, proceeding pro se, petitions under Section 7511 of the Civil Practice Law and Rules and Section 3020-a(5) of the Education Law for an order vacating an arbitration decision. That decision, dated June 7, 2013, (Determination), found that Mr. Maniaci had engaged in misconduct, including conduct unbecoming a teacher, as charged by Respondent, the New York City Department of Education ("DOE"). The arbitrator imposed a \$10,000 fine. Respondent cross-moves to dismiss Maniaci's petition, as amended, under Rule 3211(a)(7) of the Civil Practice Law and Rules on the grounds that the petition fails to state a cause of action. For the following reasons, the cross-motion to dismiss the petition is granted, and the petition to vacate the arbitration award is denied.

In support of its cross-motion to dismiss Maniaci's amended petition, the DOE has attached the arbitral record as exhibits to its motion. The facts set forth below are gleaned from that arbitral record. That record consists of several days of hearings, witnesses, and exhibits.

Robert Maniaci is a tenured teacher and previously taught for the DOE at Brooklyn

College Academy. In 2010, an allegation that Mr. Maniaci had made an inappropriate comment to a student was substantiated. He underwent sensitivity training as corrective action.

At the beginning of the 2011-2012 school year, Mr. Maniaci was appointed as a physical education and health education teacher at Staten Island Technical High School. On the evening of March 29, 2012, following parent teacher conferences, several faculty members and other personnel were in the physical education department offices. Mr. Maniaci admits that he told the Athletic Director, James McCarthy, "why don't you [and Josepha Corselli, a paraprofessional at the school] just get a room and get it on already." He further admits that while standing next to Ms. Corselli, Mr. Maniaci "moved his hips back and forth." Ms. Corselli further claimed that Mr. Maniaci had told others in sum and substance that she had "sat on [his] lap and put her ass in [his] face." He later apologized to Ms. Corselli.

The next day, Ms. Corselli filed a complaint against him, which was forwarded for investigation. In her complaint, Ms. Corselli claimed that Mr. Maniaci had grabbed her waist from behind and made thrusting motions. Following interviews with witnesses and other school personnel, the DOE investigator found that the allegations were substantiated. As a result, Mr. Maniaci's principal suspended him and reassigned him to an administrative position. That same month, Mr. Maniaci was served a notice of determination of probable cause charging him with misconduct.

A hearing was conducted over the course of several days in March and April of 2013.

Numerous witnesses testified. They included, among others, Mr. McCarthy, Ms. Corselli, and Mr. Maniaci.

Following seven days of testimony, the arbitrator issued an opinion and award. She found, in pertinent part, that the DOE proved the charge alleged in Specification 1(2) that Mr. Maniaci had made a grinding and/or thrusting motion to the extent that the motion was made "while standing next to [Josepha] Corselli" rather than against Ms. Corselli's body, as the charges stated. The arbitrator further found that the "lap" comment had been made as alleged in Specification 2(1), citing testimony of James McCarthy, the Athletic Director. While Mr. Maniaci's conduct constituted "communication of a sexual nature," the arbitrator found that these "isolated instances of inappropriate conduct" did not create any hostile or offensive work environment otherwise alleged in that Specification. Rather, she found that Mr. Maniaci was "capable of rehabilitation." She noted his apology, his remorse at the hearing, the record evidence of positive feedback on his teaching abilities, and professionalism following the incident, including mentoring the substitute teacher who assumed his duties, and his continued efforts to stay current on new material in his field. Given that Mr. Maniaci had already been suspended with pay for five months, the arbitrator found that any further suspension would not be warranted. Instead, she fined him \$10,000, payable within six months. She cited his prior substantiated charge of inappropriate conduct and indicated that the fine was intended to deter further inappropriate conduct in the workplace.

Petitioner Maniaci now appeals the Determination under Education Law Section 3020-a(5). In his petition, as amended, the pro se Petitioner claims that the arbitrator's findings are

unsupported. He further claims that the Determination lacks a basis in law, is arbitrary and capricious, inappropriate and excessive, shocks the conscience, and shows a level of corruption and fraud perpetrated by the arbitrator. He requests that this Court vacate the award under Section 7511 of the Civil Practice Law and Rules in favor of one that is reasonable and just.

Respondent DOE cross-moves pursuant to Rule 3211(a)(7) of the Civil Practice Law and Rules to dismiss Mr. Maniaci's petition for its failure to state a cause of action under Section 7511. In support of its cross-motion to dismiss, however, the DOE attaches copies of the transcripts of the arbitral proceedings, exhibits that were received into evidence during those proceedings, and the arbitrator's decision. Much of this evidence goes beyond the contents of Mr. Maniaci's amended petition. In its memorandum of law, the DOE addresses the merits of Mr. Maniaci's petition. The DOE further argues on the merits that the penalty imposed by the arbitrator does not shock the conscience.

In general a motion to dismiss under Rule 3211(a)(7) of the Civil Practice Law and Rules will fail if within the four corners of the pleading there are discernable facts that show a cause of action. *E.g.*, Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275 (1977). The Court must accept as true the facts alleged in the pleading and those in the non-moving party's submission opposing the motion to dismiss, and accord the plaintiff all favorable inferences. *E.g.*, ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 227 (2011). Where the moving party presents evidence outside the four corners of the pleading, such as affirmations and exhibits, however, this Court shall determine "whether the proponent of the pleading has a cause of action, not whether he has stated one."

Biondi v. Beekman Hill House Apt. Corp., 257 A.D.2d 76, 81 (1st Dep't 1999), aff'd, 94 N.Y.2d 659 (2000) (quoting Guggenheimer, 43 N.Y.2d at 275). “[B]are legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not presumed to be true and accorded every favorable inference.” 81 A.D.2d at 81 (quoting Kliebert v. McKoan, 228 A.D.2d 232, 232 (1st Dep't 1996)).

Education Law Section 3020-a sets forth the procedures and penalties for disciplinary actions against tenured teachers. Subsection 5 of that statute authorizes judicial review of a hearing officer's decision. That review is limited to grounds set forth in Section 7511(b) of the Civil Practice Law and Rules. Section 7511(b), in turn, provides that the Court shall vacate an arbitration award where a party's rights were prejudiced by corruption, fraud or misconduct in procuring the award, by partiality of the arbitrator, by an arbitrator exceeding his power or “so imperfectly” executing it that a “final and definite award” was not made, or by failure to follow the procedure of Article 75. Id. § 7511(b)(1)(i)-(iv).

Where parties have submitted to compulsory arbitration, this Court applies a stricter standard of review than it does in voluntary arbitrations. See, e.g., Lackow v. Dep't of Educ., 51 A.D.3d 563, 567 (1st Dep't 2008). The arbitrator's decision must accord with due process, be supported by adequate evidence, and be rational and satisfy the arbitrary and capricious standards under Article 78 of the Civil Practice Law and Rules. Id. A hearing officer's credibility determinations, however, are “largely unreviewable.” Id. at 568. Petitioner bears the burden of proof in challenging the arbitrator's decision under these standards. Id.

Applying these standards to the case at hand, this Court finds that Petitioner has failed to meet his burden. Petitioner's claims that the arbitrator's findings are improper are flatly contradicted by the arbitral record in this case, which is before this Court as attached to the DOE's papers. A review of that record shows that no due process violations have been shown. Petitioner had notice of the charges and was represented by counsel in the arbitration proceedings. Pro Se Petitioner's claim that the proceedings must be invalidated because under Section 3020-a(2)(a) a majority of the Board of Education did not make the determination of probable cause in his case overlooks long-standing amendments to the law that allow that duty to be delegated. See, e.g., Educ. Law § 2590-h(38).

Nor is this Court persuaded that because the hearing officer credited Mr. Maniaci's testimony that he merely conducted his thrusting motion next to Ms. Corselli rather than against her, that finding somehow violated his due process rights of notice in this case. See, e.g., Black's Law Dictionary 1656 (7th ed. 1999) ("Major continet in se minus") (translated as the "greater includes the lesser"); cf. Soucy v. Bd. of Educ., 41 A.D.2d 984, 984 (3rd Dep't 1973) (vacating where teacher was dismissed for acts of incompetence not charged and denied notice with appropriate detail of the charges that were vague and general).

The arbitrator held a multi-day hearing on the charges in which numerous witnesses testified, including Petitioner, and exhibits were admitted into evidence. Nothing suggests that the witnesses upon whose testimony the arbitrator relied, such as Athletic Director McCarthy, were incredible as a matter of law. See, e.g., Lackow, 51 A.D.3d at 569. Petitioner admits certain

misconduct relating to the March 29, 2012, incident. Numerous charges were dismissed. Prior to the hearing several charges alleging criminal conduct were dismissed as outside the arbitrator's subject matter jurisdiction, and the charge of obstructing the investigation was dismissed as unfounded following the conclusion of the evidence. The hearing officer properly refused to admit into evidence the results of Petitioner's polygraph test. E.g., Powell v. Bd. of Educ., 91 A.D.3d 955, 956 (2d Dep't 2012). Under these circumstances, this Court concludes that the Determination finding misconduct was not contrary to law, arbitrary and capricious, inappropriate and excessive, or demonstrative of any level of corruption or fraud.

Finally, this Court does not find that the penalty imposed in this case, a \$10,000 fine, shocks the conscience. E.g., Batyreva v. N.Y. City Dep't of Educ., 95 A.D.3d 792, 792 (1st Dep't 2012). Although the penalty is harsher than the one that Petitioner received for misconduct earlier in his employment, as the arbitrator noted, this is not the first time that Petitioner's conduct has been found wanting. Moreover, the disciplinary proceedings in this case involved more incidences of misconduct than did the first action, as well as involved those of a sexual nature. Lastly the arbitrator chose the lesser penalty of a fine over termination, which harsher penalty the DOE had sought. Accordingly, it is

ADJUDGED that the cross-motion to dismiss the petition is granted; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: January 9, 2014

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).

ENTER:



JOAN B. LOBIS, J.S.C.

