

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

2014 NY Slip Op 30702(U)

March 20, 2014

Supreme Court, New York County

Docket Number: 101073/13

Judge: Carol E. Huff

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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

CAROL E. HUFF

Index Number : 101073/2013

DAVIS, ALICIA

vs

NYC DEPARTMENT OF EDUCATION

Sequence Number : 001

VACATE OR MODIFY AWARD

PART 32

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~~

motion is decided in accordance

with accompanying memorandum ~~decision~~

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

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).

Dated: MAR 20 2014


CAROL E. HUFF, 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
COUNTY OF NEW YORK: PART 32

-----X

In the Matter of the Application of : Index No. 101073/13
ALICIA DAVIS, :
Petitioner, :

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

- against -

THE NEW YORK CITY DEPARTMENT OF
EDUCATION,

Respondent. :

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141B).

-----X

CAROL E. HUFF, J.:

In this Article 78 proceeding, pro se petitioner, a tenured teacher who was employed by respondent beginning in 1999, seeks to annul the Award of the arbitrator dated July 5, 2013. In the Award, the arbitrator upheld numerous specifications against petitioner and recommended her termination. Respondent cross moves to dismiss the petition.

Petitioner was charged with nine specifications including allegations of failure to effectively plan or execute lessons, lack of professional fitness, failure to differentiate instruction, failure to align her lessons with Common Core Learning Standards, failure to properly use the "Collaborative Analysis of School Learning" process, and failure to implement directives from administrators. Award at 2-4. A hearing on the specifications was scheduled pursuant to Educational Law § 3020-a. In 2013, after two pre-hearing conferences were held, the hearing

was conducted on February 12, 25, 26 and 28; March 5, 6, 11, 12, 19 and 20; April 3, 4, 5 and 11; and May 1. Petitioner was represented by counsel throughout. Both parties were permitted to call witnesses and offer documentary evidence. Respondent called four witnesses and petitioner called four, including herself. Thirty-three exhibits were offered into evidence.

The arbitrator issued a 100-page decision upholding seven of the nine specifications. In deciding the penalty, the arbitrator concluded: "This case involves a teacher of many years who has not kept her pedagogical skills at the level necessary to provide her students with a valid educational experience despite remedial efforts by her supervisors, over an extended period of time." Award at 95. "I find that [respondent] has carried its burden of proving that [petitioner] was not a competent teacher, and that despite its efforts to assist her to improve her performance to a consistently acceptable level, she failed to improve." Award at 100.

Petitioner contends that the hearing officer engaged in misconduct and violations of lawful procedure that violated her due process rights, that the decision is not supported by the evidence and that the Award is inequitable.

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 an award may only be vacated on a showing of "misconduct, bias, excess of power or procedural defects." Nevertheless, where the parties have submitted to compulsory arbitration, judicial scrutiny is stricter than that for a determination rendered where the parties have submitted to voluntary arbitration. The determination must be in accord with due process and supported by adequate evidence, and must also be rational and satisfy the arbitrary and capricious standards of CPLR article 78. The party challenging an arbitration determination has the burden of showing its invalidity.

Lackow v Department of Educ. of the City of New York, 51 AD3d 563, 567 (1st Dept 2008)

(citations omitted).

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Petitioner has alleged all of the grounds enumerated in CPLR 7511(1), but has failed to substantiate any of her allegations. In fact, the arbitrator exhibited exemplary care in conducting the hearing, providing petitioner with ample opportunity to defend herself, and detailing her conclusions in an exhaustive Award. There is no evidence that she exceeded her jurisdictional powers or displayed any misconduct. Petitioner's contention that the Arbitrator exceeded her powers because the charges had not been voted upon by the employing board, pursuant to Education Law §3020-a, is undermined by Education Law § 2590-h, which enables the Chancellor to exercise the duties and responsibilities of the employing board and to delegate such duties and responsibilities.

The Award will be upheld unless it is shown that it "was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion." CPLR 7803(3). The test is whether the determination is "without sound basis in reason and is generally taken without regard to the facts." Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, 34 NY2d 222, 231 (1974). Again, there is no evidence that the Award was so affected or unreasonable.

Finally, it cannot be said that the penalty of termination is "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." Pell, supra, at 233.

Accordingly, it is

ORDERED that the cross motion is granted; and it is further

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

Dated:

MAR 20 2014


CAROL E. HUFF
J.S.C.

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