

**Matter of Valcin v New York City Dept. of Educ. of  
the City of N.Y.**

2014 NY Slip Op 32042(U)

August 1, 2014

Sup Ct, New York County

Docket Number: 100244/14

Judge: Michael D. Stallman

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

PRESENT: Hon. MICHAEL D. STALLMAN  
*Justice*

PART 21

In the Matter of the Application of  
EUNICE VALCIN,

INDEX NO. 100244/14

MOTION DATE 5/29/14

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION OF  
THE CITY OF NEW YORK, NEW YORK STATE  
EDUCATION DEPARTMENT, and UNIVERSITY OF THE  
STATE OF NEW YORK,

Respondents.

The following papers, numbered 1 to 3, were read on this Article 78 petition

Notice of Petition —Petition— Exhibits A-H

No(s). 1-2

Verified Answer — Exhibits 1-4

No(s). 3

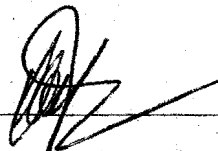
Upon the foregoing papers, this motion is decided in accordance with  
the annexed memorandum decision and judgment.

**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).

HON. MICHAEL D. STALLMAN

Dated: 6/1/14  
New York, New York

  
\_\_\_\_\_, J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:.....PETITION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED                       NON-FINAL DISPOSITION
- GRANTED     DENIED     GRANTED IN PART     OTHER
- SETTLE ORDER                               SUBMIT ORDER
- DO NOT POST     FIDUCIARY APPOINTMENT     REFERENCE

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 21

-----X  
In the Matter of the Application of

EUNICE VALCIN,

Petitioner,

Index No.:  
100244/2014

- against-

NEW YORK CITY DEPARTMENT OF  
EDUCATION OF THE CITY OF NEW YORK,  
NEW YORK STATE EDUCATION DEPARTMENT,  
and, UNIVERSITY OF THE STATE OF NEW  
YORK,

Decision and  
Judgment

Respondents.

**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).

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HON. MICHAEL D. STALLMAN, J.:

Petitioner Eunice Valcin, appearing pro se, commenced this Article 78 proceeding for an order vacating an arbitration award made after a disciplinary hearing held pursuant to Education Law § 3020-a, in which petitioner was terminated from her employment with respondent The New York City Department of Education of the City of New York (the DOE).<sup>1</sup>

\_\_\_\_\_  
<sup>1</sup> Petitioner was represented by counsel at the hearing.

The DOE answers and opposes the petition, stating that the petition fails to state a cause of action and that it acted reasonably.<sup>2</sup>

### **BACKGROUND AND FACTUAL ALLEGATIONS**

Up until her termination from employment in February 2014, petitioner worked as a third-grade teacher at a school in Brooklyn, New York. Petitioner was a tenured employee, and had been working for the DOE since 2005.

For the 2010-2011, 2011-2012 and 2012-2013 school years, pursuant to Education Law § 3020-a, the DOE served petitioner with “specifications,” or charges, alleging that petitioner neglected her duty, failed “to follow procedures and carry out normal duties and responsibilities,” was incompetent and was ineffective. DOE’s exhibit 1 at 1. The DOE charged petitioner with 27 specifications. The following eight specifications are offered as representational of all the specifications:

“1: During the 2010-2011, 2011-2012 and/or 2012-2013 school years, [petitioner] failed to properly and/or adequately plan and/or execute lessons, as documented in observation reports dated or conducted on:

- a) February 12, 2013;
- b) November 26, 2012;

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<sup>2</sup> Petitioner apparently abandoned her claims as against the other parties, which are, in any event, improper parties.

- c) November 26, 2012 [sic];
- d) October 11, 2012;
- e) March 7, 2012;
- f) February 16, 2012;
- g) December 13, 2011;
- h) October 28, 2011;
- i) February 17, 2011; and
- j) February 1, 2011.

4) [Petitioner] failed to timely, properly, adequately, and/or effectively follow procedure regarding notifying school administrators of her absence during the 2012-2013 school year.

5) [Petitioner] demonstrated a lack of professional fitness in that [Petitioner] left students and/or the subject classroom unattended on October 6, 2011.

12) [Petitioner] failed to attend a meeting with supervisors on March 15, 2012.

17) [Petitioner] failed to maintain appropriate and/or adequate lesson plans during the 2010-2011, 2011-2012 and/or 2012-2013 school years.

24) [Petitioner] exhibited unprofessional behavior on January 25, 2013, in that she shouted at Assistant Principal Smalls.

25) [Petitioner] submitted inaccurate student assessments on December 21, 2012.

27) During the 2010-2011, 2011-2012 and/2012-2013 school years, [petitioner] repeatedly failed to effectively implement recommendations and/or instruction from administrators, peer teachers, peer observers, mentors and/or coaches regarding:

- a) Proper planning and/or execution of lessons;
- b) Production/maintenance of required records/documents;
- c) Professionalism; and

d) Classroom management techniques.”

*Id.* at 2-4.<sup>3</sup>

The charges were found to constitute:

- “1. Just cause for disciplinary action under Education Law § 3020-a;
- 2. Neglect of duty;
- 3. Excessive lateness;
- 4. Excessive absences;
- 5. Unprofessional Conduct and Insubordination;
- 6. Incompetent and inefficient service;
- 7. Conduct unbecoming [petitioner’s] position;
- 8. Conduct prejudicial to the good order, efficiency or discipline of the service;
- 9. Substantial cause rendering [petitioner] unfit to properly perform her obligations to the service; and
- 10. Just cause for termination.”

*Id.* at 4.

Pursuant to Education Law § 3020-a, a hearing began in December 2013 to determine the outcome of the charges. Hearing Officer Susan Sangillo Bellifemine, Esq. (Hearing Officer) was appointed to preside over the proceedings.

The hearing took place over four days. Although she was represented by counsel, petitioner did not testify during the hearing, nor did she call any witnesses to testify on her behalf. In her decision, the Hearing

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<sup>3</sup> The DOE voluntarily dismissed Specification 1 (C) and Specification 6.

Officer indicated that petitioner received unsatisfactory ratings on her 2010-2011 and 2011-2012 annual performance reviews. When the DOE initiated charges against petitioner in March 2013, it was due to a number of unsatisfactory lesson plans, and also due to letters in petitioner's file which described her deficient performance and inappropriate behavior.

In her opinion and award (Award), the Hearing Officer explained in detail the general contentions of the parties. The DOE argued that petitioner should be terminated since, among other problems, she was not able to provide a valid educational experience to her students, despite ample remediation attempts. The DOE stated that multiple witnesses submitted evidence to establish that petitioner was incompetent in her teaching techniques and, among other deficiencies, could not manage her classroom. In addition, according to the DOE, petitioner "engaged in a recurring pattern of insubordination and abusive and disrespectful behavior." DOE's exhibit 4, Award at 5. Finally, among other allegations, the DOE maintained that petitioner refused to follow certain school policies and was excessively late and absent.

Petitioner argued that she had provided a valid educational experience for her students. She alleged that the observations conducted

[\* 7]

by Dr. Lowell Coleman (Coleman), who no longer works for the DOE, should not be allowed into evidence, since they are hearsay and are not proper business records. Coleman was the school principal during the charged period. According to petitioner, as Coleman did not testify at the hearing, the admissibility of his observation reports compromised petitioner's right to due process. Petitioner further argued that she was "somehow targeted" by the DOE, and that she had the ability to improve but was not provided with a genuine attempt at remediation.

In her Award, the Hearing Officer discussed the circumstances presented to her by both parties. She found that the DOE had proven most of the charges against petitioner, except for specifications 1 (b), 2, 3 and 21, which she dismissed. By way of example, the court will discuss some of the specifications below, and how they were addressed by the Hearing Officer in her Award.

*Specification One; 1 (a) (d) (i):*

Specification one and all of its subspecifications alleged unsatisfactory lesson observation reports. Four of these were conducted by Coleman. For instance, on February 12, 2012, Coleman conducted a formal observation of petitioner. In his observation report, Coleman noted

that, while petitioner should be “commended” for walking around the room and checking her students’ progress, a “number of areas needed improvement.” DOE’s exhibit 4, Award at 11. Coleman wrote that petitioner’s “learning objective was grammatically incorrect and not measurable because it failed to identify a specific skill that the students would be able to perform after the lesson was taught [internal quotation marks omitted].” *Id.* He further noted that petitioner’s lesson “lacked differentiation,” that she confused the students and that she had no lesson plan. Coleman requested that petitioner visit other teachers to learn from their best practices, and wrote the following:

“Based on your continued unsatisfactory observations and inadequate lesson plans, as per Section 8E of the UFT Contract, I am hereby directing you again to have available each week detailed narrative lesson plans for a minimum of 5 days. In addition, I expect to see all of the ‘Basic Elements of a Lesson Plan’ in all future Lessons [internal quotation marks omitted].”

*Id.*

Although petitioner did not provide any evidence to rebut Coleman’s report, she argued that the DOE failed to prove that this lesson was unsatisfactory. Petitioner claimed that, for the most part, the students were engaged in the lesson and there was a learning objective posted.

After listening to the testimony, the Hearing Officer sustained this specification. She concluded, “[w]hile [petitioner] has identified the positives contained in the observation report, she has offered no persuasive explanation for the negatives.” *Id.* at 11-12.

Assistant Principal Smalls (Smalls) conducted a formal observation of petitioner on October 11, 2012. This lesson was rated unsatisfactory. Smalls testified at the hearing about her written observation report. She stated that students were off task and misbehaving. In addition, petitioner yelled or banged on the table to get the students’ attention, instead of using proper non-verbal techniques. Smalls described the learning objective as not measurable and over broad. Smalls testified that she had spent the prior school year “counseling” petitioner on a number of deficiencies. Despite the fact that petitioner received support, there was no change in petitioner’s teaching techniques. Smalls believed that petitioner was ignoring her request for change.

Although, through counsel, petitioner attempted to rebut Smalls’ testimony, the Hearing Officer sustained that specification. She concluded, “[w]hile [petitioner’s] counsel has postulated what [petitioner] may have been doing on that date, I find the contemporaneously recorded

observations of Assistant Principal Smalls to be more probative of what actually went on in the classroom and credit her testimony that [petitioner] failed to plan and deliver a satisfactory lesson.” *Id.* at 15.

Assistant Principal Porter (Porter) conducted a formal observation of petitioner on February 17, 2011. This lesson was rated unsatisfactory. In the observation report, Porter noted that the objective of the lesson was to teach students how to interpret figurative language. Petitioner began the lesson by asking the students, “what is packing heat?” Petitioner then explained that it means that someone is carrying a gun. Porter testified that she criticized petitioner for using “street slang” as part of the lesson, and that it was inappropriate for petitioner to teach the term “packing heat” to eight-year-old children. Porter also testified about other deficiencies in the lesson, such as petitioner’s failure to address the different learning levels of some of the students. She stated that she “would have expected those students to be given something else on their level that they could comprehend, but that did not happen.” *Id.* at 20.

Through counsel, petitioner argued that the “evidence does not support a finding that the lesson was unsatisfactory but rather shows a teacher who was prepared, who provided the students with a mini-lesson

and did a read aloud.” *Id.* at 20.

The Hearing Officer sustained the subspecification, and concluded that the “evidence demonstrated that [petitioner] did not properly or effectively execute this lesson.” *Id.* at 21.

In her discussion of specification one, the Hearing Officer addressed petitioner’s contentions that she was denied due process, in that Coleman did not testify, and that his reports should not have been allowed into evidence. The Hearing Officer held that petitioner was not deprived of due process because she had already seen the observation reports and had an opportunity to rebut them during the hearing. In addition, the Hearing Officer explained that she was not required to exclude hearsay evidence, and that, in any event, the observation reports were business records.

*Specification 4:*

In this specification, the DOE alleged that petitioner failed to properly call in her absences for seven days in September 2012. According to DOE policy, if a teacher is sick she must call in to SubCentral no later than 7:00 a.m. on that day so that the school can obtain a substitute teacher. The letter in petitioner’s file indicates that petitioner did not dispute that she failed to call in by 7:00 a.m. on the dates that she was sick. Petitioner

maintained that when a person is sick she does not feel like waking up early to make a phone call. The Hearing Officer sustained this specification, stating that, “[a]s a professional, [petitioner] had the responsibility to call in her absences to ensure effective classroom coverage. Petitioner acted improperly and unprofessionally when she failed to follow the school policy and call in her absences as directed.” *Id.* at 23.

*Specifications 9-15:*

These specifications addressed petitioner’s failure to attend meetings with her supervisors. Petitioner did not attend these meetings, despite receiving notice. The Hearing Officer sustained all of these specifications. She concluded that petitioner “repeatedly ignored her supervisor’s instructions to attend disciplinary meetings, resulting in a waste of administrative time and forcing them to be rescheduled two, sometimes three times.” *Id.* at 26-27.

*Specification 27:*

In this specification, the DOE alleged that petitioner failed to implement suggestions given to her to improve her pedagogy. Smalls testified, for instance, that during the 2012-2013 school year, she created a log of assistance to document the support petitioner received. Smalls

further noted that she gave petitioner numerous directives and instructions “in the areas of Lesson planning, execution, assessments, and classroom management, all contained in Letters to File and/or Observation Reports.” The Hearing Officer concluded that Smalls “testified credibly that she believed that [petitioner] was ignoring her directives; moreover, she did not demonstrate improvement in the deficient areas.” *Id.* at 38. The Hearing Officer sustained this specification, and stated that the DOE had satisfied its burden of proving this charge.

The Hearing Officer concluded her Award by stating that the proper penalty for petitioner should be termination. She noted that the petitioner’s deficiencies are “serious and for the most part, span the entire charged period.” *Id.* at 40. She wrote the following, in pertinent part:

“In assessing [petitioner’s] fitness, I observe that the proven Specifications clearly demonstrate that [petitioner] exhibited a pattern of insubordinate behavior, that she was unprofessional in neglecting her duties as a teacher, and that she repeatedly failed to follow procedures and carry out normal duties and responsibilities . . . [Petitioner] not only refused to follow the directives, but she was also disrespectful and abusive. This behavior alone may be sufficient to justify termination. However, the proven Specifications also clearly demonstrate that [petitioner] was an unsatisfactory teacher during the charged years. . . The evidence shows that [petitioner] failed to maintain a classroom environment reasonably conducive to learning. She consistently failed to properly plan her lessons, assess and evaluate student performance, differentiate her

instruction, engaged her students and effectively manage her classroom. Moreover, as noted above, the testimony demonstrates that [petitioner] repeatedly engaged in serious acts of insubordination demonstrating to this arbitrator a negative attitude and serious resistance to significant efforts to remediate her teaching deficiencies. Indeed, the record supports the conclusion that in this respect [petitioner] was incorrigible.”

*Id.* at 39-40.

Shortly after receiving the Award, petitioner filed the instant proceeding, seeking to vacate the Award and return the petitioner to her teaching position. Among other things, petitioner contends that the decision should not be upheld because the Hearing Officer relied on “unreliable, corruptly secured and hearsay documents,” and also relied on the testimony of Coleman, who no longer works for the DOE, and was not present at the hearing. Petitioner’s reply aff at 1. According to petitioner, her counsel did not inform her of her right to subpoena Coleman.

Also, according to petitioner, the other witnesses’ testimony was allegedly influenced by Coleman as, at one point, he was their mentor. Petitioner states, “[n]otice that not one teacher or parent testified against me . . . .” *Id.* at 2.

In addition, without further explanation, petitioner argues that the Hearing Officer exceeded her authority “so as to render the decision

meaningless.” *Id.* at 1. However, petitioner does allege, among other things, that the record should have proven “sabotage,” by, for example, demonstrating that the record of fire drills always coincided with her preparatory period. Although not well articulated, petitioner maintains that, although she may have been insubordinate, her actions were justified, “given that Administration’s repeated demands endangered my health to the point that I had to undergo two major medical procedures in a short period of time.” *Id.* at 4.

### DISCUSSION

Pursuant to Education Law § 3020-a (5), CPLR 7511 provides the basis of review of an arbitrator’s findings. *Lackow v Department of Educ. (or “Board”) of City of N. Y.*, 51 AD3d 563, 567 (1<sup>st</sup> Dept 2008).<sup>4</sup> CPLR 7511 limits the grounds for vacating an award to “misconduct, bias, excess of power or procedural defects [internal quotation marks and citation omitted].” *Id.*

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<sup>4</sup> Petitioner incorrectly brought this proceeding under Article 78, however the court may treat the petition as one made pursuant to Article 75. See *Matter of Watkins v Board of Educ. of Port Jefferson Union Free School Dist.*, 26 AD3d 336, 337 (2d Dept 2006) “the Supreme Court had the authority to treat the CPLR Article 78 proceeding as an application pursuant to CPLR article 75 . . . )”.

However, where, as here, the parties are subjected to compulsory arbitration, the Appellate Division, First Department, has held that judicial scrutiny is greater than when parties voluntarily arbitrate. *Id.* The arbitration award 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.” *Id.* The person challenging the award shoulders the “heavy burden” of vacating the award. *Lehman Bros., Inc., v Cox*, 10 NY3d 743, 744 (2008).

Alleged Procedural and Due Process Violations:

Many of petitioner's problems with the award stem from the introduction of Coleman's observation reports into evidence. Petitioner believes that Coleman's allegations against petitioner were “bogus” and that her due process rights were compromised since she should have been allowed to subpoena Coleman as a witness.

Petitioner made these arguments to the Hearing Officer, who concluded that petitioner was not deprived of any due process rights, and that Coleman's reports could be allowed into evidence. The Hearing Officer noted that petitioner had already seen the observation reports, that the reports are routinely created in the course of the DOE's business, and that

the petitioner had the ability to produce any evidence or witnesses on her behalf to contradict the reports. She further explained that hearsay evidence does not need to be excluded from the arbitration, and that the “availability of the author to testify is immaterial to the admissibility of a business record.” Award at 10.

The court agrees that Coleman’s reports could be introduced into evidence. It is well settled that the power of the arbitrator to resolve a dispute is “plenary” and he is “not bound by principles of substantive law or rules of evidence.” *Hunter v Glenwood Mgt.*, 156 AD2d 310, 311 (1<sup>st</sup> Dept 1989); see also *Austin v Board of Educ. of City School Dist. of City of N.Y.*, 280 AD2d 365, 365 (1<sup>st</sup> Dept 2001) (“[p]ursuant to Education Law § 3020-a (3) (c), the rules governing hearing procedures do not require compliance with technical rules of evidence; therefore, a Hearing Officer may accept hearsay testimony”). The Hearing Officer further had the authority to determine what weight, if any, should be given to the evidence. *Matter of Board of Educ. of Byram Hills Cent. School Dist. v Carlson*, 72 AD3d 815, 815 (2d Dept 2010)(“the hearing officer did not err in refusing to give substantial weight to the tape recording and the documents which had been submitted by the petitioner into evidence”). Accordingly, the Award will not

be vacated because the Hearing Officer admitted alleged hearsay evidence into the hearing.<sup>5</sup>

Moreover, the specifications relating to unsatisfactory lesson plans were only partially based on Coleman's reports. During the hearing, three assistant principals testified as to petitioner's deficiencies in the classroom. The Hearing Officer found those deficiencies to be "serious" and that they spanned the entire charged period. The Hearing Office further stated that petitioner's acts of insubordination alone were sufficient to justify termination. And, although petitioner may believe that some of the witnesses were biased by Coleman in some way since he may have been their "mentor," it is well settled that the Hearing Officer has the authority to determine the credibility of the witnesses. See *Matter of Asch v New York City Bd./Dept. of Educ.*, 104 AD3d 415, 420 (1<sup>st</sup> Dept 2013).

Lastly, petitioner argues that her due process rights were compromised because she could not cross-examine Coleman at the hearing. With respect to due process, Education Law § 3020-a (3) (C) (i) (C) states that the "employee shall have a reasonable opportunity to defend

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<sup>5</sup> Coleman's record was authenticated by the school's current principal and would have been admissible business records.

himself or herself and an opportunity to testify in his or her own behalf . . . Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses.” Furthermore, an employee “shall not be required to testify.” *Id.*

Pursuant to the above, petitioner could have subpoenaed Coleman. Therefore, petitioner was not deprived of a due process right when the DOE did not produce Coleman as a witness. See e.g. *Matter of Farabell v Town of Macedon*, 62 AD3d 1246, 1249 (4<sup>th</sup> Dept 2009)(“[c]ontrary to the contention of petitioner, he was not denied a fair hearing based on his inability to confront and cross-examine the Florida witness inasmuch as he was free to subpoena that witness”).

Nonetheless, petitioner claims that her counsel did not inform her of this right to subpoena Coleman. However, after reviewing the record, the court does not find that the petitioner’s due process rights were compromised. Prior to petitioner’s termination, she was accorded a full hearing whereby she was represented by counsel, and, although she chose not to testify, was able to present arguments and evidence on her own behalf. See e.g. *Harris v Department of Educ. of the City of N.Y.*, 67 AD3d 492, 493 (1<sup>st</sup> Dept 2009) (petitioner’s due process rights were not violated

when the “DOE held a full hearing pursuant to Education Law 3020-a and presented testimony from the complainant and other witnesses; petitioner also presented evidence, including his own testimony”). Moreover, as noted by the DOE, “parties in administrative proceedings have only a limited right to cross-examine adverse witnesses as a matter of due process.”

*Matter of Hildreth v New York State Dept. of Motor Vehs. Appeals Bd.*, 83 AD3d 838, 840 (2d Dept 2011); see also *Matter of Groht v Sobol*, 198 AD2d 679, 681 (3d Dept 1993) (“our examination of the record leads us to conclude that petitioner's right to cross-examine respondent's witnesses was not so circumscribed as to violate petitioner's entitlement to a fair hearing”).

Accordingly, petitioner cannot establish a valid ground for vacating the Award due to procedural or due process violations.

#### The Findings Were Rational:

An action is considered arbitrary and capricious “when it is taken without sound basis in reason or regard to the facts.” *Matter of Peckham v Calogero*, 12 NY3d 424, 431 (2009). An arbitration award is considered irrational if there is “no proof whatever to justify the award . . . .” *Matter of Peckerman v D & D Assoc.*, 165 AD2d 289, 296 (1<sup>st</sup> Dept 1991).

Applying both standards to the present case, it was not irrational for the Hearing Officer to terminate petitioner based on the testimony and evidence. After the Hearing Officer reviewed the record and listened to testimony, she determined that petitioner was guilty of most of the specifications. The Hearing Officer, in her lengthy and detailed determination, went through every specification and sub part and explained both parties' arguments, and why she believed they could be substantiated or not. Petitioner was found to be an incompetent teacher, despite being given ample remediation by the DOE. Her lesson plans were inadequate and her classroom environment was not conducive to learning. She exhibited a pattern of insubordinate behavior, which included refusing to meet with supervisors and failing to properly notify the DOE when she was out sick. In addition, she was unprofessional, had a negative attitude and was described as "incorrigible." Although this court has addressed only some of the specifications as examples, the reasoning found herein applies equally to each specification which the Hearing Officer substantiated.

Award Upheld and Confirmed:

There is evidentiary support for the Award in the record and it is not irrational. Accordingly, petitioner's request to vacate the Award is denied in

its entirety and the petition is dismissed. In accordance with CPLR 7511 (e), the February 19, 2014 Award is confirmed.<sup>6</sup> See e.g. *Matter of Board of Educ. of Unadilla Val. Cent. Sch. Dist. (McGowan)* 97 AD3d 1078, 1080 (3d Dept 2012) (“Petitioner then commenced this proceeding seeking to vacate that determination — an arbitration award — pursuant to CPLR 7511 (b) . . . Supreme Court denied the application to vacate and confirmed the award”).

The court has considered petitioner’s other contentions and finds them without merit.

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<sup>6</sup> CPLR 7511 (e) “Confirmation . . . upon the denial of a motion to vacate or modify, [the court] shall confirm the award.”

**CONCLUSION**

Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

ADJUDGED that the February 19, 2014 award is confirmed.

Dated: 8/1/14  
New York, New York

ENTER:

  
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J.S.C.

HON. MICHAEL D. STALLMAN

**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).