Matter of Johnson v Riverhead Cent. Sch. Dist.
2015 NY Slip Op 30778(U)
May 5, 2015
Supreme Court, Suffolk County
Docket Number: 17022/14
Judge: Joseph C. Pastoressa
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Index No: 17022/14

SUPREME COURT OF THE STATE OF NEW YORK
IAS/ TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:
HON. JOSEPH C. PASTORESSA
JUSTICE OF THE SUPREME COURT

Mot Seq: #001-**MD**

IN THE MATTER OF THE APPLICATION
OF JOE NELL JOHNSON, II,

Petitioner(s),

FOR A JUDGMENT PURSUANT TO
ARTICLE 75 OF THE CIVIL PRACTICE
LAW AND RULES,

-against-

RIVERHEAD CENTRAL SCHOOL DISTRICT,

Defendant(s).

ATTYS FOR PETITIONER(S):
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Petition/Cross Motion and Affidavits (Affirmations) Annexed 1
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It is,

ORDERED, that the Petitioner's application for an order pursuant to Article 75 vacating the Decision of Hearing Officer Jay Nadelbach, Esq., dated August 15, 2014, is denied; and it is further

ORDERED AND ADJUDGED that the petition is dismissed.

Petitioner, Joe Nell Johnson, II, commenced this proceeding pursuant to CPLR 7511 for a judgment vacating the decision dated August 15, 2014 of Hearing Officer Jay Nadelbach, Esq., on the ground that it is arbitrary, capricious, and irrational. Respondent, Riverhead Central School District ("District") answered the petition and opposed the application.

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The District on December 10, 2013 pursuant to Education Law §3020-a brought disciplinary charges of misconduct against the Petitioner, who at that time was a tenured elementary school teacher with the Riverhead School District. The charges against Petitioner stem from the events taking place on April 21, 2012, when Petitioner was arrested for operating a motor vehicle while intoxicated and possessing a loaded firearm. Petitioner did not have a license to possess the firearm. As a second charge, it was averred that the Petitioner's conduct on April 21, 2012 was incompatible with the standards required for Petitioner to be viewed as a positive role model in the school community. Specifically, the District alleged the following charges:

Charge 1 "On April 21, 2012 Respondent was guilty of misconduct in that, while in Suffolk County, he operated a motor vehicle while intoxicated and was in possession of a loaded firearm, to wit: a .45 caliber handgun for which he did not have a license to possess."

Charge 2 "The Respondent's conduct on April 21, 2012 is incompatible with the standards required to be seen as a positive role model for the students that would be assigned to him as a classroom teacher in the District."

Petitioner moved to dismiss Charges #1 and #2 pertinent to Respondent's alleged "possession of a loaded firearm" prior to the commencement of the hearing. Petitioner's motion alleged that the only evidence against him was obtained via an illegal police search. The District submitted opposition to Petitioner's motion to dismiss, and on March 4, 2014, the Hearing Officer entered a decision denying the Petitioner's motion. Hearings were held in the matter on March 7, March 25, April 9, April 30 and June 26 of 2014. Hearing Officer, Jay Nadelbach, on August 15, 2014, found the Petitioner guilty of both charges against him. Mr. Nadelbach also found that Petitioner's ability to be viewed and to function as a positive role model had been compromised. Mr. Nadelbach determined that Petitioner's employment with the District should be terminated.

The Petitioner was pulled over in the early morning hours of April 21, 2012 by Southampton Village Police Officer, Kimberly McMahon, for suspicion of Driving While Intoxicated. Officer McMahon gave testimony in the hearings concerning this matter, that she observed the Petitioner in a gold 2008 Mercedes Benz crossing over the double yellow line on several occasions and using his cellular phone. Officer McMahon testified that upon

approaching the driver's side of the vehicle, she could smell alcohol on the Petitioner's breath, she observed that the Petitioner's eyes were red and glassy, and that he spoke with slurred speech. Officer McMahon requested that the Petitioner present his driver's license and registration. Unable to locate these documents, the Petitioner opened his glove compartment, wherein Officer McMahon using a flashlight, was able to detect the presence of an iPad and papers, none of which were the sought after license and registration. At that point, Officer McMahon asked the Petitioner to step out of his vehicle, so as to administer field sobriety tests. Officer McMahon administered a horizontal gaze test, which the Petitioner was unable to satisfactorily complete.[1] Officer McMahon testified that she became uncomfortable and directed the Petitioner to return to his vehicle and wait while she called for backup. While waiting for backup to arrive, Officer McMahon then observed the Petitioner again on his cellular phone, but now shuffling about in the vehicle and reaching toward the glove compartment.

Soon after Officer McMahon's observations, Officer Moore arrived to the scene and asked the Petitioner to step out of the vehicle once more. At this time, Officer McMahon resumed administering the field sobriety tests. Petitioner was unable to successfully complete the tests, and was placed under arrest for driving while intoxicated. Petitioner was placed in the back seat of the patrol car, while Officer McMahon returned to secure the Petitioner's vehicle and locate his driver's license and registration. Officer McMahon also retrieved a .45 caliber Springfield black handgun which she found in the glove compartment. When Officer McMahon previously shined her flashlight in the glove compartment, the handgun was not there.

Officer McMahon also testified that when she found the handgun concealed in the glove compartment it was loaded. Officer McMahon inquired as to the handgun, and Mr. Johnson identified the gun as belonging to someone by the name of "Daryl" indicating that he had known that the handgun was indeed in his possession and to whom it belonged. At the police barracks Mr. Johnson refused a breathalyzer test and was given the opportunity to consult with his attorney.

Superintendent of Schools, Nancy Carney, testified regarding the petitioner's conduct and his ability to be a role model for students. Ms. Carney testified: "I think it negates Mr.

[1] Officer McMahon asked the Petitioner to follow her pen with his eyes, she stated that the Petitioner instead stared directly at her.

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Johnson being a positive role model in the District. Something that, as I said, is very, very important to us is that we feel the people that are in front of our children are good citizens who kids can look up to, for kids who need to be taught right from wrong. I feel that has been compromised." Superintendent Carney also testified that had the DWI charge been the sole allegation against the Petitioner, the 3020-a charges would not have been brought. She testified that there have been other instances where District employees were arrested and charged with DWI alone and those employees were not discharged. The difference here being the petitioner's gun possession charge.

Debra Rodgers, the Principal at Phillips Avenue Elementary School, where petitioner teaches also testified regarding petitioner's ability to be a role model. Ms. Rodgers testified: "I have grave reservations about my ability to be able to place students in that class. I have concerns about my ability to facilitate teams and have staff feel comfortable with him on those terms" and "I don't see him as a role model that he used to be. You know, in the past we have typically placed in Joe's class those typically boys that needed a positive role model that was going to be supportive and assist them in making good decisions. And the day that he left or was administratively reassigned around the circumstances of the events, that changed the game."

The Petitioner defends the charges against him on the grounds that he was unaware that the handgun was in the vehicle. Mr. Johnson testified that the handgun belonged to a friend named "Daryl", an Ohio domiciliary. Petitioner claimed that the firearm was placed there by Daryl's girlfriend to whom he had loaned his vehicle, and it was then that the weapon must have been placed in the glove box absent his knowledge. Petitioner testified that he only found out about the firearm on the way to the precinct when Officer McMahon told him she found a weapon in his car. Officer McMahon testified that the police ran a check of the firearm, revealing that the handgun was in fact owned by a female, who was an Ohio resident. The female Ohio resident was later identified as Diana Alvarez, "Daryl's" girlfriend. Although Petitioner claims that he had no knowledge that the gun was in his vehicle, a written statement sworn to by Ms. Alvarez before Ohio police, states that she placed the firearm in the Petitioner's vehicle only after she obtained the Petitioner's permission to do so. Mr. Johnson also testified at the hearing regarding his background and his commitment to the students, the administration, and the community. Mr. Johnson provided his end of the year satisfactory evaluations as a

teacher and testified that he always tried to provide a positive educational atmosphere for his students when teaching or coaching. In addition, Mr. Johnson called a number of witnesses on his behalf to refute the charges against him.

Where as here, the parties are compelled to engage in arbitration by statutory mandate (see Education Law §3020-a[5]), "judicial review under CPLR article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record" (see, Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214, 223; Motor Veh. Mfrs. Assn. of U.S. v State of New York, 75 NY2d 175, 186; Matter of Hegarty v Board of Educ. of the City of N.Y., 5 AD3d 771, 772). An award will not be vacated where the determination has a rational basis and is supported by the record (Matter of Board of Educ. Of Westhampton Beach Union Free School Dist. v Ziparo, 275 AD2d 411). Moreover, it is well established that it is "up to the hearing officer to determine what, if any, weight should be given to the evidence, and a court should not substitute its judgment for that of a hearing officer" (Matter of Board of Education of Byram Hills Central School District v Carlson, 72 AD3d 815, 815; see, Altsheler v Board of Educ. of Great Neck Union Free School Dist., 62 NY2d 656, 657; Matter of Barad v State Bd. For Professional Med. Conduct, 282 AD2d 893,894; Matter of Fitzpatrick v Board of Educ. of Mamaroneck Union Free School Dist., 96 AD2d 557, 558).

Here, the Petitioner pled guilty to the charge of driving while intoxicated in his criminal proceeding and he further admitted in his testimony at the hearings underlying this action, that on April 21, 2012, he did in fact operate his vehicle while intoxicated. As such, the District did not have the burden of proving that portion of Charge number 1.

There is no basis for this court to find that the hearing officer's reliance on Officer McMahon's testimony as a basis for his determination as to Charge number 1 alleging illegal gun possession, was arbitrary, without rational basis, or without evidentiary support or unfair. Officer McMahon testified that she pulled the Petitioner over for suspicion of DWI, and when she peered into the glove compartment with her flashlight to assist the Petitioner in locating his license and registration, there was no firearm. While Petitioner sat in his car waiting for Officer McMahon's backup to arrive, Officer McMahon testified that she noticed the Petitioner making movements and reaching toward the glove compartment. Upon a search of the vehicle after the Petitioner was placed in custody, Officer McMahon located a loaded .45 caliber Springfield

black handgun in the glove compartment. Despite the Petitioner's claim that he did not know the firearm was in the vehicle with him, the hearing officer's determination to reject that claim was within his purview to do so.

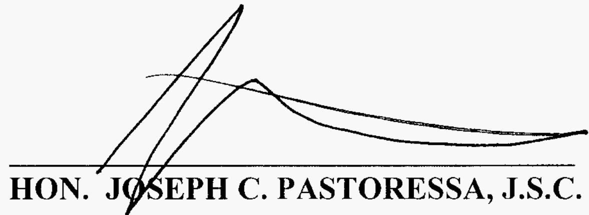
In this regard, the hearing officer also relied on testimony from the owner of the firearm, Diana Alvarez as well as a prior statement she made to the Elyria police regarding how the gun came to be in the Petitioner's possession. Alvarez testified that when she placed the handgun in the vehicle, it was in its original packaging, a box. This is of particular note, as when the firearm was retrieved from the Petitioner's vehicle it was not in a box, nor was a box retrieved from the vehicle. She also stated repeatedly during the course of questioning by the Elyria police and in testimony she gave during the hearings, that Petitioner knew that she placed the firearm in the glove compartment. Alvarez also had cause to believe, through communications with the Petitioner, that the handgun would be placed in the Petitioner's safe, located in his home.

On this record the hearing officer concluded that the Petitioner did have knowledge and possession of the firearm. The Petitioner's conduct was deemed sufficient to assess a charge pursuant to Education Law§ 3020-a(5). The petitioner's contention that the hearing officer incorrectly applied the exclusionary rule is without merit. "The exclusionary rule is applied in administrative proceedings by balancing the deterrent effect of exclusion against its detrimental impact on the process of determining the truth. Relevant evidence is not excluded when little or no deterrent benefit will result" (Moro v Mills, 70 AD3d 1269, 1270). Here, the testimony elicited was relevant to the determination of petitioner's moral fitness to teach children and petitioner identified no real deterrent effect likely to result from its exclusion (see, Moro v Mills, supra). Under these circumstances, there was a rational basis for and sufficient evidence to support the hearing officer's conclusions (see, Matter of Trupiano v Board of Educ. of the East Meadow Union Free School Dist., 89 AD3d 1030; Matter of Board of Educ. of Bram Hills Central School Dist. v Carlson, 72 AD3d 815).

As to Charge number 2, the hearing officer determined that it was fair and reasonable for the District to conclude that the Petitioner could no longer serve as a positive role model for his assigned students.. The hearing officer concluded that although the Petitioner at one point enjoyed a stellar work record due to his student and community outreach efforts, his gun possession charge caused irreparable damage to his reputation, both in the school community

and general community at large. The Hearing Officer in making his determination, relied on the testimony of Principal Debra Rogers and Superintendent Nancy Carney, that Mr. Johnson's ability to be viewed and to function as a positive role model has been thoroughly compromised. As such, the sanction of termination as chosen by the District and as determined by the Hearing Officer is rational given the facts and circumstances of this case. Once again, the court's review of this determination is limited to whether it was, arbitrary, capricious, irrational, or lacked sufficient evidentiary support or violated due process. Barring that, the court even if it disagreed with the hearing officers conclusions, cannot, by law, vacate them and substitute its own judgment.

Accordingly, the petition is dismissed.



DATED: May 5, 2015

HON. JOSEPH C. PASTORESSA, J.S.C.

FINAL DISP. X **NON-FINAL DISP.**_____

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