

Beatty v City of New York

2015 NY Slip Op 31254(U)

July 15, 2015

Supreme Court, New York County

Docket Number: 652103/14

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: Part 52**

INDEX NO. 652103/14

AMIRA BEATTY,

Petitioner,

DECISION and ORDER

- v -

THE CITY OF NEW YORK;
NEW YORK CITY DEPARTMENT
OF EDUCATION; CARMEN FARINA,
CHANCELLOR OF NEW YORK CITY
DEPARTMENT OF EDUCATION,
Respondents,

To Vacate a Decision of a Hearing
Officer Pursuant to Education Law
Section 3020-a and CPLR Section 7511.

Margaret A. Chan, J.:

Petitioner brought this special proceeding pursuant to Education Law § 3020-a (5) and CPLR § 7511, for an order to vacate and annul the Opinion and Award of Hearing Officer Felice Busto (HO Busto) dated June 30, 2014. HO Busto upheld disciplinary charges against petitioner and imposed a penalty of termination. Respondents cross-moved to dismiss the petition, pursuant to CPLR §§ 404(a), 3211(a) (7), and 7511.

Petitioner was employed by respondent New York City Department of Education (DOE) as a special education teacher for 17 years. She worked in the DOE Home Instruction program in Queens from 2007 until 2014, when her employment was terminated. The Home Instruction program provides instruction to children who are unable to attend school for short- or long-term periods due to a medical condition (Pet. ¶ 8). Home Instruction teachers prepare a daily log showing the names of their students and the times they provided instruction to each assigned student, and a monthly time sheet that corresponds to the daily logs. Home Instruction teachers submit their time keeping records each month. Petitioner had no disciplinary issues until the charges that led to her termination.

In September 2012, petitioner was assigned to provide instruction to student “A,” an eight-year-old boy with cerebral palsy, who lived in Rockaways, Queens, and two other local students. On October 29, 2012, hurricane Sandy hit New York City causing considerable damage to some areas of the city, including where student A and petitioner lived. Both homes were damaged. Student A and his family had to

relocate to a hotel in Brooklyn. New York City schools were closed for a week following the storm.

In January 2013, petitioner's supervisor, Assistant Principal Daniel Raydar, was informed by student A's social worker that student A had not received instruction from petitioner since the hurricane. After confirming the information with student A's mother, Raydar relayed it to Principal Ramona Pizarro, who reported the allegations to the Office of the Special Commissioner for Investigation (SCI). SCI conducted an investigation and reviewed petitioner's time-keeping records. It interviewed the parents of petitioner's two other assigned students, who told SCI that petitioner had provided instruction as scheduled. SCI concluded that, from October 15 to December 19, 2012, there were 24 days that petitioner had recorded as providing instruction to student A when she did not do so. SCI also concluded that in December, 2012, petitioner did not report to schools and libraries as required when an assigned student is not available, which, in this case was student A as indicated in her logs.

Following SCI's investigation, DOE commenced disciplinary proceedings against petitioner pursuant to Education Law § 3020-a, alleging fraud, theft of services, misconduct, criminal conduct, neglect of duty, and conduct unbecoming her profession (Resp's Cross Mot, Exh 1). There were five specifications preferred against petitioner. Specification 1 charged that on 24 dates from October 15, 2012, to December 19, 2012, petitioner had submitted false or fraudulent daily logs and time sheets claiming that she provided instruction to student A. Specification 2 charged that on 12 dates in December 2012, petitioner submitted false or fraudulent daily logs and time sheets that showed petitioner reporting to various schools and/or libraries. Specification 3 charged that from October through December 2012, petitioner, with intent to defraud, made false representations resulting in financial benefits. Specification 4 charged that as a result of the activities alleged in the first three specifications, petitioner received her full salary during October, November, and December 2012, for services she did not perform. Specification 5 charged that because of petitioner's actions student A was deprived of educational services.

The DOE conducted a hearing on the charges over four days in March and May 2014. At the hearing, petitioner did not deny the charges in Specifications 1 and 2 (Resp's Cross Mot, Exh 3, pp. 388-391, 405-410). She acknowledged that it was a violation of her duties to indicate on her daily logs that she was at a location when she was not actually there (*id.* at 404-405), and that she had an obligation to accurately record her instruction activities (*id.* at 432-433). She testified that "her paperwork was garbage," because she did not like doing it (*id.* at 262, 280), and, while she recognized that paperwork must be accurate, she did not document everything she did (*id.* at 299-300). Petitioner explained that her paperwork was not accurate because she filled it out "flat," that is, in advance, and cannot recall which entries were accurate (*id.* at 418, 420-422). Petitioner claimed that when student A

temporarily relocated to the Brooklyn hotel, his mother, Marcia Ingram, told her to suspend instruction service to her child until they returned to Queens.

Marcia Ingram confirmed that she and her family were relocated to a hotel in Brooklyn after hurricane Sandy and returned to Queens in early December. Her son did not receive instruction when they were in Brooklyn or when they returned to Queens in December (*id.* at 191-192, 195). She heard from petitioner on December 4 when petitioner told her that she could not instruct her son in their apartment due to her supervisor's safety concerns (*id.* at 217). Ingram asked if petitioner could meet her son in a library or some other place so that he could get instruction, but petitioner did not agree to it (*id.* at 194). Ingram denied ever telling petitioner to discontinue services to her son. She was under the impression that petitioner's supervisor was aware that the instruction was suspended (*id.*). Nonetheless, she thought petitioner was a good teacher and did an excellent job up until the hurricane (*id.* at 189, 207-208, 233). If petitioner's employment had not been terminated, she would want her to continue instructing her son (*id.* at 209).

Raydar testified that he, like petitioner, lived in the community that was badly affected by hurricane Sandy and was sensitive to the needs of teachers who had suffered through the hurricane (*id.* at 131-132). He testified that Home Instruction teachers work on an honor system when filling out their daily logs (*id.* at 163). There was a basic rule that required Home Instruction teachers to report any changes in their daily schedules (*id.* at 124-125). He had conversations with petitioner after the hurricane, but she had not informed him of any schedule changes (*id.* at 132-133). After discovering the problems with student A, he spoke with the parents of petitioner's other students and they had no complaints (*id.* at 163-164). He had not received petitioner's November and December timekeeping records until January 2013 (*id.* at 137-138).

After considering all the testimony and evidence, HO Busto concluded that petitioner "failed to provide home instruction to Student A and submitted false and fraudulent documentation for services that she did not provide to him and that she gained a financial benefit by doing so." (Resp Cross-Mot, Exh 2, p 15). HO Busto also considered, but did not credit, petitioner's excuses for her conduct, including her claim that Ingram told her to stop services while her family was temporarily in Brooklyn, and that her paperwork was admittedly inaccurate and prepared in advance so that it did not reflect actual services provided (*id.* at 15, 18).

HO Busto found petitioner's testimony less credible than the testimony of Ingram and Raydar, who both were complimentary to petitioner. HO Busto further found that petitioner offered no plausible reason why she did not discuss the situation with her supervisor, with whom she had a good relationship, even though she had a duty to discuss any schedule changes with him (*id.* at 17, 18). Noting that "honesty is an essential ingredient" in the Home Instruction program, HO Busto noted that

petitioner's failure to inform her supervisor about service to student A supported a finding that her actions were intentional; and that by taking advantage of the honor system and the fact that her paperwork was not scrutinized, petitioner breached a fundamental tenet of the Home Instruction program (*id.* at 15, 18). Ultimately, HO Busto sustained specifications 1, 2, 4, and 5., and dismissed Specification 3 as it was duplicative of Specifications 1, 2 and 4 (*id.* at 12, 20).

In addressing the appropriate penalty, HO Busto also noted that petitioner did not take responsibility for failing to provide instruction to student A, refused to recognize how her actions affected him, and instead, blamed Ingram for her son's lack of instruction (*id.*). The hearing officer considered petitioner's long tenure, her unblemished record, the respect she earned, and the challenges she faced after hurricane Sandy. Despite these positive factors and the hardship caused by Sandy, HO Busto did not find them to "overcome her dishonesty, fraudulent conduct and neglect of duty over an extended period of nearly two months." (*id.* at 20-21). HO Busto determined that termination was the appropriate penalty.

"Education Law § 3020-a (5) provides that judicial review of a hearing officer's findings must be conducted pursuant to CPLR 7511" (*Lackow v Department of Education*, 51 AD3d 563 [1st Dept 2008]). An award may only be vacated where there is "misconduct, bias, excess of power or procedural defects" (*id.* quoting *Austin v Board of Educ. of City School Dist. of City of N. Y.*, 280 AD2d 365, 365 [2001][internal quotations omitted]). The hearing officer's 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" (*id.* at 567). Where the opinion and award is made as a result of compulsory arbitration judicial scrutiny is stricter than where there is voluntary arbitration (*id.*). Petitioner has the burden of establishing that the arbitration award was arbitrary and capricious, irrational, or otherwise invalid (*see Lackow*, 51 AD3d at 567).

An arbitrary and capricious determination is one that is "without sound basis in reason" and reached "without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). An award is considered irrational only when "there is no proof whatever to justify it" (*Kalyanaram v New York Inst. of Tech.*, 79 AD3d 418, 419 [1st Dept 2010]). Unless a decision is "wholly irrational," "[t]he path of analysis, proof and persuasion by which the arbitrator reached [a] conclusion is beyond judicial scrutiny" (*Central Squares Teachers Assn. v Board of Educ. of the Cent. Sq. Cent. Sch. Dist.*, 52 NY2d 918, 919 [1981]).

Here, petitioner challenges not the findings that she submitted false records but the propriety of the penalty of termination, which she alleged was made due to HO Busto's illogical conclusions or failure to consider certain facts when determining whether there was fraudulent intent (Pet, ¶ 12). Petitioner contended that there was

no evidence of fraudulent intent in her actions, and the decision and penalty of termination were "particularly harsh, irrational, and shocking to the conscience," given petitioner's 17 years of service and lack of any prior discipline (*id.*, ¶¶ 2, 24).

Contrary to petitioner's contention, the record shows that HO Busto considered and analyzed the facts and circumstances as presented by both sides at the hearing, evaluated the witnesses' credibility, and made a reasoned decision based on the evidence. HO Busto weighed the conflicting testimony, and resolved inconsistencies against petitioner. As the hearing officer was in a better position to determine credibility issues, this court will neither second guess nor disturb them (*see Matter of Leon v Department of Educ. of the City of N.Y.*, 115 AD3d 435, 436 [1st Dept 2014]). Under these facts, this court cannot say that the penalty of termination is so shocking to one's sense of fairness (*see Montanez v Department of Educ. of City of New York*, 110 AD3d 487 [1st Dept 2013] teacher's use of a fraudulent affidavit to get free education for her non-resident justified penalty of termination despite her unblemished record).

Accordingly, the respondents' cross motion to dismiss the petition is granted. The petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court.

Dated: July 15, 2015



Margaret A. Chan, J.S.C.