Matter of Koznesoff v New York City Bd./Dept. of Educ.
2015 NY Slip Op 31669(U)
August 31, 2015
Supreme Court, New York County
Docket Number: 651076/15
Judge: Cynthia S. Kern

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

LEEANA B. KOZNESOFF,

Petitioner,

Index No. 651076/15

JUDGMENT/ORDER

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

-against-

THE NEW YORK CITY BOARD/DEPARTMENT OF EDUCATION,

Respondent.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Notice of Cross Motion and Answering Affidavits.....	2
Affirmations in Opposition to the Cross-Motion.....	
Replying Affidavits.....	
Exhibits.....	3

In this Article 75 proceeding, petitioner Leeana B. Koznesoff ("Petitioner") seeks to vacate the Opinion and Award of Hearing Officer Doyle O'Connor ("Hearing Officer O'Connor") dated March 23, 2015 issued pursuant to Education Law § 3020-a. The New York

City Department of Education (the "DOE") cross-moves to dismiss the petition. This court grants the DOE's cross-motion to dismiss for the reasons set forth below.

The relevant facts are as follows. Petitioner was formerly a tenured teacher employed by DOE. At all times relevant to this Petition, specifically during the 2011-12 and 2012-13 school years, Petitioner was assigned to teach at the Business of Sports School ("BOSS") in Community School District 2. On or about June 24, 2014, Petitioner was served with charges and specifications pursuant to Education Law § 3020-a, charging Petitioner with incompetence and inefficient service, neglect of duty, and unwillingness and/or inability to follow procedures and carry out normal duties, during the 2011-2012 and 2012-2013 school years. In all, DOE preferred five specifications against Petitioner, as follows:

> SPECIFICATION 1: [Petitioner] failed to properly, adequately, and/or effectively plan and/or execute separate lessons, on the following dates:
> (a) April 27, 2012;
> (b) May 8, 2012;
> (c) October 11, 2012;
> (d) December 4, 2012;
> (e) February 28, 2013; and
> (f) May 8, 2013.
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> SPECIFICATION 2: [Petitioner], during the 2011-2012 school year, failed to fulfill her professional responsibilities, and/or demonstrated conduct unbecoming a professional, in that she failed to maintain professional and/or cordial relations with school administration and/or staff.
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> SPECIFICATION 3: [Petitioner], during the 2012-2013 school year, failed to fulfill her professional responsibilities, and/or demonstrated conduct unbecoming a professional, in that she failed to maintain professional and/or cordial relations with school administration and/or staff.
>
> SPECIFICATION 4: [Petitioner], during

2012-2013 school year, was derelict in her duties, and/or negligent in her duties, in that she failed to adhere to her action plan as directed by her supervisors.

SPECIFICATION 5: [Petitioner] failed, during the 2011-2012 and 2012-2013 academic years, to implement supervisory support, directives and recommendations for pedagogical improvement and professional development from observation conferences, one-to-one meets with school administrators and support staff, as well as in school support, with regard to:
(a) Effective instructional management;
(b) Effective use of instructional time;
(c) Effective handling of duties and responsibilities;
(d) Effective classroom instruction;
(e) Effective classroom management;
(f) Effective delivery of lessons using proper methodology; and
(g) Effective lesson construction and planning.

Pursuant to Education Law § 3020-a, a hearing was convened on the charges preferred against Petitioner. A pre-hearing conference was conducted on March 31, 2014 before Hearing Officer Stephen O'Bierne, and two additional pre-hearing conferences were conducted before Hearing Officer O'Connor on October 1 and October 6, 2014. Full evidentiary hearings were held before Hearing Officer O'Connor on October 22, 23; November 5, 6, 7, 18, 19; and December 11, 12, 15, 2014 at DOE's offices in New York, NY. Oral closings were given on December 15, 2014 – with supporting caselaw submitted by email – and the record was closed upon the filing of additional exhibits by Petitioner on February 3, 2015. The record before Hearing Officer O'Connor consisted of these 10 days of transcribed testimony along with numerous exhibits offered into evidence by DOE and Petitioner.

After hearing the witnesses and reviewing the evidence presented, on March 23,

2015, Hearing Officer O'Connor rendered a 22 page Award. Hearing Officer O'Connor's Award contains detailed findings of fact and conclusions with regard to each charge brought against Petitioner. O'Connor found that Petitioner could not work effectively in BOSS's co-teaching environment because she was either not capable and/or believed herself to be superior to her colleagues; and rising to the level of insubordination, she believed BOSS administrators to be incompetent.

Hearing Officer O'Connor found that DOE "met its burden of establishing by a preponderance of the evidence that [Petitioner] [was] culpable on each of the Specifications" and that DOE "met its burden of establishing by a preponderance of evidence that [Petitioner] is unfit to properly perform the obligations of service and is not competent as a teacher." Accordingly, based upon the finding of Petitioner's guilt with regard to all of the Specifications preferred against her, Hearing Officer O'Connor found just cause for termination. He determined that the evidence at the hearing established that Petitioner was unable to perform the functions of a teacher, finding that "[o]ver the course of two years and multiple Formal, Informal, and casual evaluations, [Principal] Solomon and [AP] Choi objectively determined that [Petitioner] was ineffective as a teacher. Their testimony, and their written observations, clearly and substantively supported the charge that [Petitioner] did not provide competent instruction."

"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'." *Lackow v. Dept. of Education of the City of New York*, 51 A.D.3d 563, 567 (1st Dept 2008); *see The City School Dist. of the City of New York v. McGraham*, 2010 WL 2731911 at *4 (July 13, 2010, N.Y.App. Div. 1st Dept.). However, where arbitration is mandated by law, as here, "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*, 51 A.D.3d at 567-568 (internal citations omitted).

In the instant action, petitioner has failed to provide any evidence demonstrating misconduct, bias, excess of power, or procedural defects in the manner in which the hearing was conducted. Moreover, Hearing Officer O'Connor's decision was rational and supported by adequate evidence. Petitioner's argument that her due process rights were violated because the school board did not vote on the charges against her is without merit as "Education Law § 2590-f(1)(c) (L 1996, ch 720, § 5), part of article 52-A applicable only to the New York City school district (Education Law § 2590), specifically grants community superintendents authority to appoint and discharge all employees." *Munoz v. Vega*, 303 A.D.2d 253, 254 (1st Dep't 2003); Education Law § 2590-f (1)(c).

Finally, the court finds that the penalty of termination does not shock one's sense of fairness. An award may be modified only if the "punishment is so disproportionate to the offense, in light of the circumstances as to be shocking to one's sense of fairness." *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 233 (1974). A penalty is shocking to one's sense of fairness if "the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution." *Id.*

In the present case, given the finding of the Hearing Officer of Petitioner's failing to properly plan and execute lessons, insubordination, neglect of duties, and failing to implement

remedial efforts and the unsuccessful attempts at remediating Petitioner, the court finds that the penalty of termination does not shock one's sense of fairness.

Accordingly, this court denies Petitioner's request for relief under Article 75 of the CPLR and dismisses the proceeding in its entirety. The DOE's cross-motion to dismiss the petition is granted. This constitutes the decision, order and judgment of the court. The clerk is directed to enter judgment accordingly.

Dated: 8/31/15

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.