

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

2015 NY Slip Op 32355(U)

December 10, 2015

Supreme Court, New York County

Docket Number: 652120/2014

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

-----x
In the Matter of the Application of

RAISA R. CHAUDRY,

Petitioner,

Index No. 652120/2014

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

JUDGMENT/ORDER

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION and
CARMEN FARINA, as CHANCELLOR,

Respondents.

-----x
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.....	3
Replying Affidavits.....	4
Exhibits.....	4

In this Article 75 proceeding, petitioner Raisa R. Chaudry ("Petitioner") seeks to vacate the Opinion and Award of Hearing Officer Michael S. Lazan ("Hearing Officer Lazan") dated June 30, 2014 issued pursuant to Education Law § 3020-a. Respondents cross-move to dismiss the petition. This court denies Petitioner's petition and grants respondent's cross-motion to dismiss for the reasons set forth below.

The relevant facts are as follows. Petitioner was a teacher employed by respondent Department of Education (“DOE”). Petitioner began teaching in 2003 at M.S. 53. In 2010, Petitioner was hired as a teacher at P.S. 48. Petitioner was served with charges and specifications pursuant to Education Law § 3020-a on November 26, 2012. In all, DOE proffered twenty specifications against Petitioner, as follows:

1. During the 2009-2010, 2010-2011, and 2011-2012 school years, Respondent failed to properly, adequately, and/or effectively plan and/or execute separate lessons as observed on each of the following dates:

- a. January 29, 2010;
- b. May 4, 2010;
- c. December 9, 2010;
- d. December 20, 2010;
- e. January 5, 2010;
- f. February 8, 2010;
- g. May 25, 2011;
- h. June 3, 2011;
- i. January 11, 2012; and/or
- j. January 17, 2012.

2. Respondent failed to provide an effective educational experience for her students, in that her students demonstrated little and/or no progress in English Language Arts and/or regressed in English Language Arts, during the 2011-2012 school year.

3. Respondent failed to provide an effective educational experience for her students, in that her students demonstrated little and/or no progress in mathematics and/or regressed in mathematics, during the 2011-2012 school year.

4. Respondent was repeatedly and/or excessively absent and/or late, during the 2010-2011 school year.

5. Respondent was repeatedly and/or excessively absent and/or late, during the 2011-2012 school year.

6. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to submit lesson plans during the 2011-2012 school year.

7. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to submit running records data, on or about February 10, 2012.

8. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to maintain student assessment binders, during the 2010-2011 school year.
9. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to appropriately respond to inquiries made by the administration during the 2010-2011.
10. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to consistently provide and/or plan adequate instruction for her students, during the 2010-2011 and 2011-2012 school years.
11. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to come upstairs and move her time card when arriving and departing from school, during the 2010-2011 school year.
12. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to have contingency lesson plans on file, during the 2010-2011 and 2011-2012 school years.
13. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to maintain an adequate learning environment in her classroom for her students, during the 2010-2011 and 2011-2012 school years.
14. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to adequately manage her classroom, during the 2010-2011 school year.
15. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to treat her students equally and/or appropriately and/or favored students, during the 2010-2011 school year.
16. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she treated J.R. differently, during the 2010-2011 school year.
17. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to follow Principal Mitchell's directive to refrain from taking notes during a disciplinary conference, on or about March 2, 2010.
18. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to provide an account of her grade book, on or about February and March, 2010.

19. Respondent acted unprofessionally and/or neglected duties and/or was insubordinate when she failed to report to Principal Monereau's office after repeated attempts by Principal Monereau to meet with Respondent, on or about February, 2010.

20. During the 2010-2011 and 2011-2012 school years, Respondent failed to accept and/or heed advice, counsel, instruction, remedial professional development and/or recommendations regarding:

- a. The elements of effective lesson planning and/or execution;
- b. Classroom management;
- c. Classroom environment;
- d. Professional decorum; and/or
- e. Production/maintenance of required records/documents.

Pursuant to Education Law § 3020-a, a hearing was convened on the charges proffered against Petitioner. A pre-hearing conference was conducted on February 13, 2013 before Hearing Officer Marc Winters. Full evidentiary hearings were held before Hearing Officer Lazan on March 4, 2014; March 5, 2014; March 11, 2014; March 25, 2014; March 27, 2014; April 4, 2014; April 10, 2014; April 11, 2014; April 23, 2014; April 28, 2014; April 29, 2014; April 30, 2014; May 2, 2014; May 6, 2014; May 7, 2014 and May 13, 2014. The record before Hearing Officer Lazan consisted of sixteen days of transcribed testimony and exhibits submitted into evidence.

After hearing the witnesses and reviewing the evidence presented, on June 30, 2014, Hearing Officer Lazan rendered a 61-page Award. Hearing Officer Lazan's Award contains detailed findings of fact and conclusions with regard to each charge brought against Petitioner. Hearing Officer Lazan found that DOE met its burden by establishing by a preponderance of the evidence that Petitioner was culpable on specifications 1.b, 1.c, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 20.a, 20.b, 20.c, 20.d and 20.e. Hearing Officer Lazan's finding was based on evidence including the testimony of Principal Claude Monereau and Assistant Principal Ferne Goldsmith of M.S. 53 and Principal Patricia Mitchell and Assistant Principal

Vanessa Christiansen of P.S. 48. Accordingly, based upon the finding of Petitioner's guilt with regard to the aforementioned specifications, Hearing Officer Lazan found just cause for penalties of a \$10,000 fine and additional remedial training.

"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). 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." *Id.* at 567-568 (internal citations omitted).

In the present case, 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 Lazan's decision was rational and supported by adequate evidence. Petitioner's argument that, because Petitioner had previously filed a complaint against Principal Mitchell, Principal Mitchell was biased against Petitioner and Hearing Officer Lazan failed to consider this bias is without merit. Hearing Officer Lazan considered whether Principal Mitchell was biased against Petitioner. He found Principal Mitchell to be a credible witness, particularly finding that there was no evidence that Principal Mitchell was biased as "Principal Mitchell closely monitored [Petitioner] before and after she

learned of this complaint.” Hearing Officer Lazan also found that “Principal Mitchell...provided [Petitioner] with a considerable amount of professional development after learning about the complaint, some from her personally.” Further, Principal Mitchell’s testimony was corroborated by the testimony of Assistant Principal Christiansen, who had no motive for bias.

Finally, the court finds that the penalty of a \$10,000 fine 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.* The imposition of a fine is an allowable penalty when a respondent is found culpable of charges brought pursuant to Education Law § 3020-a. *See Stoyer-Rivera v. New York City Bd./Dept. of Educ.*, 101 A.D.3d 584 (1st Dept 2012).

In the present case, given the finding of Hearing Officer Lazan of Petitioner’s failure, over the course of multiple school years, to appropriately plan lessons, maintain adequate learning environments in her classrooms, comply with school rules and cooperate with administrative efforts to remediate her performance, the court finds that the penalty of a \$10,000 fine 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. Respondents’ 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: 12/10/15

Enter: CK
J.S.C.

CYNTHIA S. KERN
J.S.C.