

<b>Ghaly v Columbia Univ.</b>
2018 NY Slip Op 32471(U)
October 2, 2018
Supreme Court, New York County
Docket Number: 101137/2016
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM**

*Justice*

-----X

MAGDY GHALY,

Petitioner,

- v -

COLUMBIA UNIVERSITY, THE TRUSTEES OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW YORK

Respondent.

**DECISION AND ORDER**

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The following papers, numbered _____, were read on this application to/for	<u>JUDGMENT</u>
Notice of Petition/ Petition - Affidavits - Exhibits	No(s) <u>1-40</u>
Answering Affidavits -	No(s) <u>41-55</u>
Replying	No(s) <u>56-78</u>

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of Respondent to dismiss the  
Petition is granted and the Petition for writ of mandamus  
compelling Respondent to issue a passing grade or professional  
degree to Petitioner or adjudging Respondent's actions against  
petitioner as arbitrary and capricious (Motion Sequence Number  
002) and for discovery (Motion Sequence Number 003) is denied,  
and the proceeding is dismissed, and the Clerk shall enter  
judgment accordingly.

DECISION

In this special proceeding pursuant to Article 78 of the CPLR, Petitioner Magby Ghaly ("Petitioner") seeks an order (1) declaring that the actions of Respondent Columbia University and the Trustees of Columbia University in the City of New York ("Columbia") in giving Petitioner a failing grade on a qualifying examination that would allow him to pursue a PhD degree in physics at Columbia University were arbitrary and capricious and (2) in the nature of mandamus compelling Columbia to give him a passing grade on the qualifying examination or to issue a professional degree, back pay and other damages from breach of contract to petitioner.

Columbia moves to dismiss the petition pursuant to CPLR 3211, which Petitioner opposes. Petitioner "cross moves" for an order granting him discovery of his answers on the repeat examination that he took, and Columbia opposes such cross motion.

Petitioner Magdy Ghaly was accepted into the Masters/PhD program at Columbia University's Fu Foundation School of Engineering and Applied Science ("SEAS") on October 13, 2008, seeking to ultimately obtain a PhD degree from the Department of Civil Engineering and Engineering Mechanics (the "Department").

Petitioner received a Master of Science Degree in Civil Engineering and Engineering Mechanics on February 10, 2010. After receiving a Master's Degree, to continue toward the PhD degree, students in the Department must pass both sections of a qualifying examination. The qualifying examination consists of two parts (1) the CEEM section and the (2) math section. Candidates must receive a score of 250 points out of 400 points to pass the CEEM section of the qualifying examination. To pass the math section of the qualifying examination, the candidate must achieve a total score of 125 out of 200 points by answering two of the four questions in the math section.

Petitioner took the qualifying examination for the CEEM PhD degree on January 24, 2014 but he did not pass the CEEM section. He achieved a total score of 160 on the CEEM section of the 2014 exam, thus failing that section by 90 points. Petitioner asserts that there was a problem with one of the exam questions (Statics) for which he received 70 out of 100 points. Petitioner does not dispute that if he had received 100 out of 100 points in that category, he would be 60 points below the score he needed to achieve to pass the CEEM section of the examination. Petitioner received a total score of 130 points on the math section, passing that section by five points.

Columbia advised Petitioner that he had failed the qualifying examination and would have one more opportunity to retake it. Petitioner requested permission to review his responses to the 2014 exam questions. Columbia contends that generally the policy is that students are not permitted to contest their scores, absent inaccuracies or problems with the way the examination was written. As there had been concerns about the 2014 exam questions, Columbia granted Petitioner permission to review his exam answers, on condition that his grade would not be changed absent inaccuracies or problems in the way a question was written.

Petitioner took the qualifying examination for the CEEM PhD for the second time in January 2016, and this time passed the CEEM section by 8 points but failed the math section by 5 points. Petitioner made a request to review his 2016 exam answers, but Columbia determined that it would not be appropriate to make another exception and denied him permission.

Petitioner also requested that Columbia issue him a professional degree. Columbia initially denied the request as the SEAS stopped granting professional degrees in 2014. Petitioner asked Columbia to reconsider its denial in light of the fact that in 2014, when he earned his Master's Degree, Columbia had offered him the opportunity to receive the

professional degree. The Department issued Petitioner a professional degree entitled Civil Engineer on May 18, 2016. Petitioner seeks an order compel Columbia to issue a professional degree entitled "Professional Degree". Columbia counters that it has never issued a degree entitled "Professional Degree", and that the "Civil Engineer" degree that it conferred upon Petitioner is different and more advanced than the "Master of Science" engineering degree that Petitioner was awarded in 2010, and that "any potential employer familiar with Columbia's elite engineering degrees" will know that.

Petitioner contends that Columbia's actions were arbitrary and capricious because during the 2014 examination he noticed that there was a problem with the way in which the Statics question was written and pointed out the error to Columbia, and that Columbia's attempts to correct the errors in the question during the exam were unsuccessful. He claims that his answers were adequate to pass both sections of the 2014 exam, including the CEEM section, accounting for the problem with the wording of the Statics question. He contends that but for, Columbia's arbitrary and capricious conduct, he would also have passed both sections of the 2016 qualifying examination. He contends that evidence that he was treated differently from other students who took the 2016 exam the fact that the other students were

notified by electronic mail within four weeks after the exam, while Columbia waited another three weeks after the exam to summons him to a meeting, where he was informed that he had not passed the math section. Petitioner seeks discovery of his 2016 examination answers so that he can establish that Columbia's actions in failing him on the qualifying examination are arbitrary and capricious, as well as in retaliation for his having pointed out to Columbia the problem with the 2014 examination questions. Columbia responds that Petitioner's claim that he was retaliated against for alerting it to a problem with one of the questions on the exam is belied by his concession that he cannot determine if there was such retaliation without reviewing the results of his exam, and those of the other students.

#### DISCUSSION

The standard limiting judicial review of determinations of educational institutions as to the academic performance of their students requires that Petitioner come forward with evidence that demonstrates that Columbia's determinations were arbitrary and capricious, or irrational. See Matter of Susan M. v New York Law School, 76 NY2d 241, 246 (1990). As stated by the Court of Appeals in Keles v Trustees of Columbia University, 74

AD3d 435 (1st Dept 2010), citing Matter of Susan M. V New York Law School, 76 NY2d 241, 245 (2010),

"Courts have repeatedly declined to become involved in the evaluation of academic performance, reflecting 'the policy that the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment [that] these institutions are, for the most part, better suited to make.'"

Matter of Rizvi v New York College of Osteopathic Medicine, 98 AD3d 1049 (2nd Dept 2012) is distinguishable on its facts from the matter at bar because respondent Osteopathic Medicine College failed to comply with the conditions that it had set for petitioner's reinstatement on academic probation. In reversing the order of the Appellate Division that reversed Special Term's granting of the petition, the Court of Appeals reasoned that Respondent's College's refusal to allow Petitioner Rizvi to reschedule the examination in question within the deadline set forth in the terms of his reinstatement were also in contravention of the Student Handbook, i.e. its own rules and regulations.

Conversely, Petitioner at bar has not come forward with any evidence that meets such standard that circumscribes the scope of judicial review of Columbia's findings that he failed the CEEM examination and was consequently ineligible to pursue the PhD Degree in Civil Engineering and Mechanics. Petitioner has

not shown that Columbia's decisions were contrary to its policies or rules and regulations, or federal or New York State statutes or constitutional law. On the contrary, Petitioner points to no evidence that Columbia's process of declining to have Petitioner review his 2016 exam answers was not the general policy, or that there was some other policy in operation.

Nor is the fact that Columbia notified the other students by e-mail within four weeks after the exam, but delayed notifying Petitioner of the results of his exam and requesting that he appear in person constitute evidence that he was treated disparately from other students for arbitrary and capricious reasons. It is just as probable that as respondent argues, Columbia determined that rather than "send an impersonal letter to notify [Petitioner] that he failed the examination and could no longer pursue his PhD at Columbia University, administrators invited him to meet them in person, so that they could deliver the news and provide him with support."

Even assuming arguendo, that after discovery, Petitioner could provide evidence that would convince this Court that he passed the 2016 math section of the exam, were the Court to thereafter compel Columbia to give Petitioner a passing grade, this court would be improperly usurping Columbia's educational administrative function. See Matter of Ortiz v Board of Regents

of the State of NY, 13 AD3d 965, 967 (3d Dept. 2004). Likewise,  
on that same ground, this court has no authority to compel  
Respondent to create a professional degree for Petitioner, which  
it has never conferred, in lieu of the "Civil Engineer" degree,  
which it duly conferred upon Petitioner.

10/2/2018  
DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE