Matter of Choe v State of New York & its Agencies
2020 NY Slip Op 32037(U)
May 1, 2020
Supreme Court, Suffolk County
Docket Number: 3364/2018
Judge: William G. Ford

SHORT FORM ORDER **INDEX NO.: 3364/2018**

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY

PRESENT:

HON. WILLIAM G. FORD
JUSTICE OF THE SUPREME COURT

Motion Submit Date: 09/12/19
Mot Conf Held: 03/21/19 & 06/20/19
Mot Seq 001 - MD; CASE DISP

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In the Matter of the Application of

DAHYE CHOE & LINLIN YE

Petitioners,

For an Order Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

THE STATE OF NEW YORK & its agencies, THE STATE UNIVERSITY OF NEW YORK at STONY BROOK, SAMUEL L. STANLEY, President of Stony Brook University, DR. RACHELLE GERMANA, Assistant Provost for Division of Undergraduate Education, MARIE HUFFMAN, Division of Undergraduate Education Judiciary Committee Chair, WANDA M. MOORE, Division of Undergraduate Education Judiciary Committee Hearing Office, JIA WEI CAO, Graduate Student & Graduate Assistant Higher Education Administration Program,

Respondents.

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PETITIONER'S COUNSEL:
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Stony Brook, New York 11790

RESPONDENT'S COUNSEL:
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Read on the petitioners' special proceeding commenced under CPLR Article 78, the Court considered the following: Notice of Petition, Petition, and supporting papers; Answer, Certified Administrative Return and other related opposing papers; Reply papers in further support of the Verified Petition; and upon due deliberation and full consideration of the same; it is

ORDERED that this special proceeding commenced by petitioners' Notice of Petition and Verified Petition pursuant to CPLR Article 78 seeking to vacate, annul, or otherwise set aside a determination made by respondent the Academic Judiciary Committee of the State University of New York at Stony Brook determining petitioners responsible for violations of academic honesty and integrity and further penalizing them by directing their explusion from the university as arbitrary and capricious is **denied** for the following reasons; and it is further

ORDERED that respondent's counsel is hereby directed to serve a copy of this decision and order with notice of entry via electronic mail and certified first class mail, return receipt requested upon petitioners' counsel forthwith; and it is further

ORDERED that, if applicable, within 30 days of the entry of this decision and order, that respondents' counsel is also hereby directed to give notice to the Suffolk County Clerk as required by CPLR 8019(c) with a copy of this decision and order and pay any fees should any be required.

FACTUAL BACKGROUND & PROCEDURAL POSTURE

This proceeding commenced on petitioners filing of Notice of Petition and Verified Petition on June 22, 2018 against respondents seeking an order to vacate a finding by the academic judiciary committee convened in review of them on allegations of academic dishonesty, further finding them responsible and sanctioning with expulsion from their school, the State University of New York at Stony Brook ("the University") or ("Stony Brook"). Respondents appeared by counsel and filed an answer to the Petition dated July 20, 2018 with certified administrative return and affidavit in opposition.

By their Petition, petitioners aver that Mr. Choe was a fourth year student approaching graduation in May 2018, who along with his then girlfriend or fiancé Ms. Ye a third-year student, applied for admission to a graduate business program at the New York University. To facilitate this applications process, petitioners enlisted the assistance of Ivy Elite Inc., a service located in New York City, holding itself out for assisting undergraduate and international students with the graduate studies admissions process. According to petitioners, Mr. Choe had learned of the service from the relative of a friend who worked for a sister company in China. Petitioners had relocated from Seattle, Washington to Long Island, New York and matriculated at Stony Brook with hopes of remaining in New York for the duration.

The graduate school applications process facilitated by Ivy Elite entailed petitioners meeting with company representatives who required a copy of petitioners' official undergraduate transcripts, a copy of their passports[1], payment of $2,400.00, and a copy of their driver's licenses. Only after securing admission to a graduate program, would the service then require further payment of $21,600.00. Petitioners complied with the requests made of them and requested a copy of their transcripts from Stony Brook and signed a contract written in Chinese. On receiving their transcripts in sealed envelopes from their school, petitioners, without opening to review the same, forwarded them onto Ivy Elite by mail.

Thereafter petitioners corresponded with Ivy Elite periodically checking the status of their applications to NYU for graduate admission. Shortly after this trouble began for the petitioners. Having received applications for admission for the petitioners, NYU contacted the registrar for Stony Brook concerning suspicion and discrepancies with petitioners' school transcripts. This prompted investigation by Stony Brook which resulted in a determination that Ivy Elite fraudulently altered petitioners' transcripts and forwarded them to NYU as part of their graduate school applications. As a result, an Academic Judiciary Committee convened on charges of academic dishonesty against petitioners for violation of the University's policies and procedures.

[1]Mr. Choe is a Chinese national who studied at Stony Brook on a F-1 visa. Ms. Ye is a Korean national who studied at Stony Brook on a F-1 visa.

In furtherance of the disciplinary process, petitioners met with a university representative who advised them of the nature of the charges, provided them with a copy of the university's academic honesty and integrity policy and procedures, and advised them of their rights to appear at and attend the hearing with an advisor of their choosing who would not have the right to advocate or participate, and of their appellate rights to appeal the determination, but not penalty, if any resulted.

Accordingly, petitioners appeared at the resultant hearing with the aid of counsel and provided statements in their defense as well as produced evidence taking the form of a video of a purported meeting between petitioners, a friend/witness, and representatives of Ivy Elite. The Committee consisted of an administrative representative, faculty representative as well as student representatives. Moreover, the University made available a Mandarin Chinese translator for petitioners' benefit. At the hearing, the Committee asked questions of petitioners.

The testimony taken of petitioners could be summarized as follows: petitioners were not aware that Ivy Elite would alter their transcript as part of the graduate school application process; petitioners were aware of their Stony Brook coursework and G.P.A.'s, and Mr. Choe appeared to agree that his 2.7 G.P.A. might be uncompetitive for NYU admission; petitioners were generally unfamiliar with NYU's graduate admissions requirements, and both admitted they had not submitted resumes, letters of recommendation or essays/personal statements[2]. Further, petitioners both independently stressed that "strong connections" Ivy Elite marketed as support for their belief that their use of and reliance on the service was legitimate and innocent. The tenor of the academic board's reception of this testimony ranged from concern to incredulity as evinced by their questioning. At bottom, petitioners essentially maintained that they saw nothing wrong with payment of money and submission of documents to the expediter coupled with their expectation that "strong connections" would secure them admission to graduate school.

Following the hearing, the academic board retreated to deliberate, and after doing so for an hour, returned a unanimous vote finding both petitioners responsible for the alleged act of academic dishonesty. They further recommended a penalty of expulsion, a determination sustained on appeal with the University's Assistant Provost's conclusion finding that no new evidence warranted deviation nor were any procedural errors made during the hearing. This proceeding then followed.

STANDARD OF REVIEW

"[W]hen a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion[,] that procedure must be substantially observed" (***Tedeschi v. Wagner Coll.***, 49 NY2d 652, 660, 427 NYS2d 760; *see* ***Matter of McConnell v. Le Moyne Coll.***, 25 AD3d 1066, 1068–1069, 808 NYS2d 860). " Judicial scrutiny of the determination of disciplinary matters between a university and its students ... is limited to determining whether the university substantially adhered to its own published rules and guidelines for disciplinary proceedings so as to ascertain whether its actions were arbitrary or capricious" (***Ponichtera v State Univ. of New York at Buffalo***, 149 AD3d 1565, 1565-66, 52 NYS3d 795, 796 [4th Dept 2017]).

[2]On this point, petitioners when directly asked appeared of the belief that Ivy Elite would take care of all the required submissions.

"Courts have a 'restricted role' in reviewing determinations of colleges and universities." "A determination will not be disturbed unless a school acts arbitrarily and not in the exercise of its honest discretion, it fails to abide by its own rules or imposes a penalty so excessive that it shocks one's sense of fairness" (***Matter of Aryeh v St. John's Univ.***, 154 AD3d 747, 747-48, 63 NYS3d 393, 395 [2d Dept 2017]).

The parties should be well versed in the fundamental legal principle that pursuant to CPLR § 7803 as relevant here "the only questions that may be raised in a proceeding under this article are ... (3) whether a determination was ... was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." If the action taken is without foundation in fact or not justified it is arbitrary and capricious (*see* ***Pell v Bd. of Educ.***, 34 NY2d 222, 231 [1974]; ***Matter of Peckham v Calogero***, 12 NY3d 424, 431 [2009]; ***Matter of Wooley v N.Y. State Dep't of Corr. Servs.***, 15 NY3d 275, 280 [2010]; ***Ward v City of Long Beach***, 20 NY3d 1042, 1043 [2013]). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis" (***Manning ex rel. Suffolk County Ct. Employees Ass'n v New York State-Unified Ct. Sys.***, 153 AD3d 623, 624, 60 NYS3d 251, 253 [2d Dept 2017]; *see also* ***Perry v Brennan***, 153 AD3d 522, 524, 60 NYS3d 214, 217 [2d Dept 2017], *lv to appeal denied sub nom.* ***Perry v Patricia A. Brennan Qualified Personal Residence Tr.***, 31 NY3d 902 [2018][the sole question before the court under Article 78's arbitrary and capricious standard is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion]).

Nevertheless, it remains true that "[a] public university such as respondent must "provide its students with the full panoply of due process guarantees ... [, which] requires that [students] be given the names of the witnesses against them, the opportunity to present a defense, and the results and finding of the hearing," but not necessarily provision of legal representation (***Bursch v Purchase Coll. of State Univ. of New York***, 164 AD3d 1324, 1328, 85 NYS3d 157, 161 [2d Dept 2018]; *see also* ***Budd v State Univ. of New York at Geneseo***, 133 AD3d 1341, 19 NYS3d 825, 826-27 [4th Dept 2015]).

Put somewhat differently, "in a disciplinary proceeding at a public institution of higher education, due process entitles a student accused of misconduct to "a statement detailing the factual findings and the evidence relied upon by the decision-maker in reaching the determination of guilt." Recognized as one of the " 'rudimentary elements of fair play' " in this context , "[s]uch a statement is necessary to permit the student to effectively challenge the determination in administrative appeals and in the courts and to ensure that the decision was based on evidence in the record" (***Boyd v State Univ. of New York at Cortland***, 110 AD3d 1174, 1175, 973 NYS2d 413, 415 [3d Dept 2013]).

"It is well established that once having adopted rules or guidelines establishing the procedures to be followed in relation to suspension or expulsion of a student, colleges or universities—both public and private—must substantially comply with those rules and guidelines" (***Schwarzmueller v State Univ. of New York at Potsdam***, 105 AD3d 1117, 1118, 962 NYS2d 752, 754 [3d Dept 2013]). However, a college's determination that a student violated its code of conduct will be upheld if supported by substantial evidence in the record (***Agudio v State Univ. of New York***, 164 AD3d 986, 987, 83 NYS3d 343, 345-46 [3d Dept 2018]).

On the question of substantial evidence, the Court of Appeals remarked, as oft quoted, that:

> The concept of substantial evidence, a term of art as related to administrative decision making, is rather easily verbalized but, when put to use in respect to a particular determination, frequently causes difficulty and disagreement, as witnessed here by the divergence at the Appellate Division. It is related to the charge or controversy and involves a weighing of the quality and quantity of the proof; it means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. Essential attributes are relevance and a probative character. Marked by its substance its solid nature and ability to inspire confidence, substantial evidence does not rise from bare surmise, conjecture, speculation or rumor. More than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt

(***300 Gramatan Ave. Assoc. v State Div. of Human Rights***, 45 NY2d 176, 179 - 181 [1978]; ***Halperin v City of New Rochelle***, 24 AD3d 768, 770, 809 NYS2d 98, 103-04 [2d Dept 2005])

Our courts define rational as having "some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition' " (***JSB Enterprises, LLC v Wright***, 81 AD3d 955, 956, 917 NYS2d 302, 303 [2d Dept 2011]). Courts consider "substantial evidence" only to determine whether the record contains sufficient evidence to support the rationality of the determination being questioned (***Harn Food, LLC v DeChance***, 2018 WL 1309927, at *1 [2d Dept Mar. 14, 2018]).

DISCUSSION

Arguing in support of vacatur and reinstatement to their school, petitioners make two separate and distinct arguments. First, they make constitutional claims that the hearing process failed to afford them proper due process in that it gave them inadequate notice, did not afford them aid of counsel at the hearing, and lastly that the University failed to follow its own rules and procedures in convening the hearing and administering punishment. Having reviewed the administrative record in addition to counsel's submissions, this Court finds no support for these arguments. This special proceeding was commenced as a proceeding and not a plenary hybrid action for declaratory relief. Therefore, the constitutional tenor of petitioners' claims may not be properly before this Court. In any event, the proceeding's record contains no evidence supportive of those contentions. As noted previously, petitioners appeared along with counsel, who lacked "the privilege of the floor" pursuant to the University's rules. This proceeding does not challenge the constitutionality of such a rule, and if it did, it was not properly noticed to the Attorney General as it must for that relief, nor does it plead such a contention within the proper context. Additionally, petitioners were properly noticed of the nature of the charges and contentions asserted against them. Counsel does not adduce any support for the notion that petitioners lacked sufficient time to prepare for their hearing.

Lastly, petitioners' contentions that the application of the academic dishonesty and integrity policy for the charged conduct was improperly applied to the petitioners' alleged

conduct do not merit a finding of arbitrariness or capriciousness. The record was replete with evidence supportive of the notion that petitioners knew, or should have known, that their arrangement with Ivy Elite was less than savory. Respondent's argument that this is the very kind of conduct that the academic dishonesty policy is charged with regulating is well taken. It does not require too great an imagination to ponder the potential harm that could befall an educational institute such as the University, or the incentive for fraud undermining all prestige of the institution itself, if it cannot assure the credibility and integrity of its registrar and student transcripts. Here, petitioners sought to attain academic achievement, i.e. G.P.A. and educational credits, not earned or properly awarded. This is or comes as close as possible to the *sine qua non* of dishonest conduct worthy of discipline.

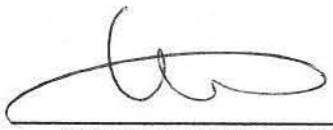
CONCLUSION

For the foregoing reasons, the Verified Petition is **denied,** and this proceeding is **dismissed**.

Accordingly, respondent is hereby **directed** to settle judgment with notice in a manner consistent with the provisions of this decision and order.

The foregoing constitutes the decision and order of this Court.

Dated: May 1, 2020
Riverhead, New York



WILLIAM G. FORD, J.S.C.

__X__ **FINAL DISPOSITION** _____ **NON-FINAL DISPOSITION**