

Kadiri v New York Inst. of Tech.
2022 NY Slip Op 30745(U)
April 1, 2022
Supreme Court, New York County
Docket Number: Index No. 152999/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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OLUWAKEMI KADIRI,

Petitioner,

- v -

NEW YORK INSTITUTE OF TECHNOLOGY, NEW YORK
INSTITUTE OF TECHNOLOGY-COLLEGE OF
OSTEOPATHIC MEDICINE

Respondent.

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INDEX NO. 152999/2021

MOTION DATE 09/08/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the Petition is resolved as follows:

Petitioner, Oluwakemi Kadiri, commenced the instant Article 78 proceeding by filing same on March 26, 2021, challenging Respondent's refusal to reinstate or readmit Petitioner to the school on January 22, 2021. Respondent New York Institute of Technology College of Osteopathic Medicine ("NYITCOM") is the osteopathic medical college of Respondent New York Institute of Technology. Kadiri was accepted to NYITCOM and matriculated in August 2014. In November 2014, Kadiri requested a medical withdrawal from NYITCOM, which was granted. Thereafter, Kadiri was reinstated as a student and began her first year of osteopathy school again in August 2015. Kadiri completed her second year at NYITCOM during the 2016-2017 academic year. Prior to commencing her clinical clerkships in her third year at NYITCOM, Kadiri was required to timely pass the COMLEX-USA Level I examination ("COMLEX I exam"), administered by the National Board of Osteopathic Medical Examiners ("NBOME"). Petitioner took an assessment test on June 19, 2017, the results of which determined that she was not prepared to take the

COMPLEX I exam. Petitioner was enrolled in a Directed Study Course which commenced on July 31, 2017 and was scheduled to end on October 8, 2017, which was designed to assist students in preparing for the COMPLEX I exam. On or about August 22, 2017, Kadiri requested a six-month medical leave of absence, which was granted. Upon the expiration of her medical leave, Kadiri was allowed to complete the Directed Study Course and took the COMPLEX I exam on April 30, 2018. Kadiri reported interruptions and interference with the exam to NBOME and on June 22, 2018, Kadiri was notified by NBOME that it was not scoring her April 30, 2018 COMPLEX I exam due to the purported issues at the examination site. Pursuant to NYITCOM's Student Handbook for the 2017-2018 academic year provides that students cannot take leave from NYITCOM for more than 180 days during a 12-month period. If a student requires leave for more than 180 days then the student must withdraw. As such, on July 12, 2018, Petitioner was notified by e-mail asking her to complete a Request for Withdrawal Form, assuring Petitioner that she would be reinstated upon passing the COMPLEX I exam. Petitioner did not return the Withdrawal Form. Thereafter, Petitioner took the COMPLEX I exam in August 2018, November 2018 and again in 2019, failing each time. Petitioner registered to take the exam again in September 2020, however as Kadiri was not an enrolled student at NYITCOM, a NBOME requirement to take the COMPLEX I exam, Respondent contacted NBOME to inform them that Kadiri was not an enrolled NYITCOM student. On December 14, 2020, Kadiri applied for readmission to NYITCOM and said application was rejected on January 22, 2021.

In an Article 78 proceeding for judicial review of a determination of an educational institution, the standard to be applied is whether the action taken by the institution is arbitrary or capricious, or without rational basis or whether the institution has acted in good faith, *See, Tedeschi v. Wagner College*, 49 N.Y.2d 652 (1980); *Pell v. Board of Educ. Union Free Sch. Dist. No. 1*, 34

N.Y.2d 222 (1974). The arbitrary or capricious test has been said to chiefly relate to whether a particular action should have been taken, is justified or is without a foundation in fact or without a sound basis in reason. "[W]hen a student is admitted to a university, an implied contract arises between the parties which states that if the student complies with the terms prescribed by the university, he will obtain the degree he seeks." *Vought v. Teachers Coll., Columbia Univ.*, 127 A.D.2d 654 (2nd Dept. 1987). The rights and obligations of the parties to this contractual relationship flow from "the university's bulletins, circulars and regulations made available to the student, [which] become a part of this contract. *Id.*, see also *Sweeney v. Columbia University*, 704 N.Y.S.2d 617 (2nd Dept. 2000).

However, "Strong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance." *Matter of Susan M. v. New York Law School*, 76 N.Y.2d 241, 245 (1990). It is Petitioner's burden to prove that the challenged determination was arbitrary or capricious, made in bad faith or for an impermissible reason. See *Matter of Hendessi*, 960 N.Y.S.2d 50 at *3 (citing *Matter of Che Lin Tsao v. Kelly*, 28 A.D.3d 320, 321 (1st Dep't 2006)).

Petitioner contends that NYITCOM "breached its contractual obligation by conflating my medical leave with the six-month COMLEX leave that I was entitled to pursuant to the school handbook. NYIT pressured me to take COMLEX I at the end of August instead of allowing me to have six months to prepare for the examination as all other students were entitled to and knowing that I suffered from a general anxiety disorder."

Even if Petitioner were entitled to COMLEX leave as she suggests, Petitioner still failed the COMPLEX I exam on three separate occasions. Further, Petitioner makes no argument that NYITCOM's decision not to grant her readmission was arbitrary, capricious, made in bad faith or

otherwise wrongful. Additionally, NYITCOM’s Student Handbook provides that students who fail any single COMLEX exam on three occasions may be dismissed from NYITCOM. As such, Petitioner’s claims must fail.

ORDERED that the instant Petition is DENIED and DISMISSED in its entirety.

4/1/2022
DATE


LAURENCE LOVE, 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