SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. WILLIAM PERRY** **PART** **23**

Justice

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LORETTA MYERS,

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Respondent.

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INDEX NO. 655221/2021

MOTION DATE 09/28/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this Article 75 proceeding, Petitioner Loretta Myers, a tenured teacher, seeks an order vacating the August 20, 2021 arbitration opinion and award (the "award") of Hearing Officer Daniel McCray, which, in an Education Law § 3020-a disciplinary proceeding, found Petitioner guilty of unprofessional misconduct and conduct unbecoming a teacher when she threw a book at a student on January 31, 2019, and ordered her to pay a fine of $3,500.00 over 36 months.

Petitioner argues that the award must be vacated because McCray lacked subject matter jurisdiction, McCray was biased, the hearing violated her due process rights, and the penalty of $3,500.00 is so disproportionate that it shocks the conscience

Respondent cross-moves to dismiss the proceeding. (NYSCEF Doc No. 23, Cross-motion.) For the reasons that follow, the cross-motion to dismiss is granted and the proceeding is dismissed.

Discussion

"The party challenging an arbitration determination has the burden of showing its invalidity." (*Caso v Coffey*, 41 NY2d 153, 159 [1976].)

Education Law § 3020–a[5] provides that judicial review of a hearing officer's findings must be conducted pursuant to CPLR 7511, and vacatur is warranted only "on a showing of misconduct, bias, excess of power or procedural defects." (*Austin v Board of Educ. of City School Dis. of City of New York.*, 280 AD2d 365, 365 [1st Dept 2001].) "Because the arbitration at issue was compulsory, '[t]he 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.'" (*Asch v New York City Bd. Dept of Educ.*, 104 AD3d 415, 419 [1st Dept 2013].) "When reviewing compulsory arbitrations in education proceedings such as this, the court should accept the arbitrators' credibility determinations, even where there is conflicting evidence and room for choice exists." (*Saunders v Rockland Bd. of Co-op. Educ. Servs.*, 62 AD3d 1012, 1013, [2d Dept 2009].)

Preliminarily, the court notes that McCray, in his exhaustive 47-page award, already considered and rejected many of the same arguments Petitioner sets forth here. (NYSCEF Doc No. 3, Award.) For example, Petitioner twice argued at the hearing that McCray lacked subject matter jurisdiction to hear the case because it was improperly initiated by the school principal's finding of probable cause, a finding which must be made by vote in an Executive Session by the Panel for Educational Policy. (*Id.* at 29-33; NYSCEF Doc No. 8, Am. Pet., at 20-22.) McCray specifically, and correctly, rejected this argument. (*Cardinale v New York City Dept. of Educ.*, 204 AD3d 994, 998 [2d Dept, Apr. 27, 2022] ["the absence of a vote on probable cause by the 'employing board' did not deprive the hearing officer of the jurisdictional authority to hear and

determine the underlying disciplinary charges. Rather, as the hearing officer determined, the Chancellor was vested with the authority '[t]o exercise all of the duties and responsibilities of the employing board'"].) Petitioner was not denied due process. (*Id.*; *see also Denhoff v Mamaroneck Union Free School Dist.*, 101 AD3d 997, 998 [2d Dept 2012] [petitioner who received adequate notice of charges and opportunity to participate in hearing was not denied due process.)

Petitioner's conclusory argument that McCray was biased by "not find[ing] Petitioner credible, despite her consistent denial of committing the misconduct" (Am. Pet. at ¶¶ 64-68) is unpersuasive, and, in any event, outside of this court's scope of review. (*See Saunders*, 62 AD3d at 1013 ["the court should accept the arbitrators' credibility determinations"]; *Douglas v New York City Dept. of Educ.*, 52 Misc 3d 816, 822 ["With regard to fact and credibility findings, courts cannot substitute their judgment for that of a hearing officer who had the opportunity to hear and see witnesses"].) Petitioner fails to submit any evidence that McCray was biased against her.

Finally, Petitioner's argument that the imposition of a $3,500.00 fine "shocks the conscience" (Am. Pet. at ¶¶ 60-61) is without merit. The court simply finds that a minor fine for throwing a book at a student is not "so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." (*Asch v New York City Bd. Dept. of Educ.*, 104 AD3d 415, 421 [1st Dept 2013].)

"As to the remaining challenges, the award was not arbitrary and capricious or irrational, and there was evidentiary support for the arbitrator's finding of guilt as to each of the charges. The arbitrator engaged in a thorough analysis of the circumstances, evaluated the witnesses' credibility, and arrived at a reasoned conclusion that [a $3,500.00 fine] was an appropriate penalty." (*Denhoff*, 101 AD3d at 998.) Petitioner's remaining arguments are without merit, and Respondent's cross-

motion to dismiss is therefore granted. (*Barlow v New York City Dept. of Educ.*, 2021 WL 112023, at *5 [Sup Ct, NY County 2021].) Thus, it is hereby

ADJUDGED that the Petition is denied; and it is further

ADJUDGED and ORDERED that the cross-motion to dismiss the petition is granted; and it is further

ADJUDGED that the petition is dismissed and the award which found Petitioner guilty of unprofessional misconduct and conduct unbecoming a teacher and ordered her to pay a fine of $3,500.00 over 36 months is confirmed.

6/29/2022
DATE

WILLIAM PERRY, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE