

Johnson v New York Univ.

2023 NY Slip Op 30633(U)

March 3, 2023

Supreme Court, New York County

Docket Number: Index No. 100942/2022

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

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VANDYKE JOHNSON,

Petitioner,

- v -

NEW YORK UNIVERSITY, ANGIE KAMATH,

Respondent.

-----X

INDEX NO. 100942/2022

MOTION DATE 01/24/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed on Petitioner's Petition (Petition 001) numbered 1-4 and by NYSCEF document number (Motion 002) 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17

were read on this motion to/for DISMISS.

Upon the foregoing documents, the instant Petition and Respondents' motion to dismiss are decided as follows:

Petitioner commenced the instant Petition by filing same on October 7, 2022, seeking an Order pursuant to CPLR Article 78 reinstating Petitioner as a student at New York University ("NYU"). As described in the Petition, Petitioner, Vandyke Johnson, was expelled from NYU in 2007. Petitioner filed an application for re-admission on April 13, 2022, which was denied on June 21, 2022. Petitioner further alleges that since his expulsion, Respondents have retaliated against Petitioner by blocking his re-admission on numerous occasions, despite his allegedly meeting the qualifications under NYU's re-admission policy.

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).

In their motion to dismiss, Respondents cite the history of Petitioner's expulsion from NYU and the resulting litigation, based upon the documents used in said litigation. Petitioner attended the NYU School of Professional Studies ("SPS") from Fall 2003 until Spring 2006, before being expelled after a disciplinary hearing addressing an August, 2006 incident where Petitioner was accused of theft. It is undisputed that Petitioner was found "Not Guilty" in the criminal trial arising out of the same incident. The Disciplinary Panel's decision noted that Johnson could apply for readmission to NYU no sooner than the Fall 2009 term and that the decision to readmit Johnson would be at the discretion of the SPS Dean.

Following Petitioner's expulsion, Petitioner filed an action in federal court alleging claims under 42 U.S.C. §§ 1981, 1983, 1985-88, together with state law claims. Said action was dismissed in an Order dated November 12, 2009, finding that Petitioner had failed to state a plausible claim to relief with respect to the NYU defendants in any of his federal law claims and Petitioner was directed to show cause as to why his state law claims were not barred by the applicable statutes of limitation, *See, Johnson v. City of New York*, 669 F. Supp. 2d at 447-448.

The remaining causes of action were disposed of in an Order dated June 7, 2010, *See*, 2010 WL 2292209.

Petitioner applied for readmission to SPS in or about March 2017. Said application was denied in a letter dated June 28, 2017, resulting in a successive federal suit in the Southern District of New York on August 15, 2017 alleging various claims under § 1981 and New York Civil Rights Law as well as claims for breach of contract and intentional infliction of emotional distress. In an Order dated October 10, 2018, Judge Valerie Caproni dismissed Johnson's federal claims and declining to exercise supplemental jurisdiction over his state law claims. *Johnson v. New York Univ.*, No. 17-CV-6184 (VEC), 2018 WL 4908108, at *7 (S.D.N.Y. Oct. 10, 2018), *aff'd*, 800 F. App'x 18 (2d Cir. 2020).

In opposition to Respondents' motion, Petitioner hotly contests the circumstances of his 2008 dismissal from NYU SPS. Specifically, Petitioner contends that his initial dismissal from NYU was wrongful as the Disciplinary Panel erred in allowing Carl Villanueva, an employee at NYU, to file a complaint though he was not involved, that Patrick Wing, a retired NYPD Captain with a disciplinary history was the investigator for NYU, and that an essential witness was unavailable. However, the circumstances of Petitioner's expulsion are irrelevant to the instant action and cannot be challenged at this time. If Petitioner sought review of his expulsion from NYU, he was required to do so within 120 days of his expulsion in 2008.

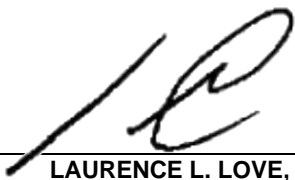
The sole issue in this case is whether Respondents' refusal to grant re-admission to Petitioner is arbitrary and capricious. As discussed in *Lesser v. Bd. of Ed. of City of New York*, 18 A.D.2d 388, 390 (2d. Dept. 1963), "Courts may not interfere with the administrative discretion exercised by agencies which are vested with the administration and control of educational institutions, unless the circumstances disclosed by the record leave no scope for the use of that

discretion in the manner under scrutiny (*Matter of Wasmund v. La Guardia*, 287 N.Y. 417, 420–421, 40 N.E.2d 233, 234; *People ex rel. Peixotto v. Board of Education*, 212 N.Y. 463, 466, 106 N.E. 307, 308).” Further, as the Court in *Lesser* discussed “a court should refrain from interjecting its views within those delicate areas of school administration which relate to the eligibility of applicants and the determination of marking standards, unless a clear abuse of statutory authority or a practice of discrimination or gross error has been shown.” Based upon the findings in the two prior federal actions and Petitioner’s failure to timely challenge his initial expulsion, it is impossible to conclude that Respondents’ refusal to grant re-admission to Petitioner is arbitrary and capricious.

ORDERED that Respondents’ motion to dismiss is GRANTED to the extent that the instant Petition is DISMISSED; and it is further

ORDERED that the branch of Respondents’ motion seeking to enjoining Petitioner from commencing any new litigation against New York University (“NYU”) or anyone associated with NYU arising from his dismissal from NYU or any subsequent denials of his applications for readmission without prior court approval is DENIED at this time.

3/3/2023
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE