SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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GILLIAN MURY

Plaintiff,

- v -

THE FASHION INSTITUTION OF TECHNOLOGY,

Defendant.

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INDEX NO. 152788/2024

MOTION DATE 03/28/2024, 07/23/2024

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 5, 6, 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).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this hybrid proceeding, petitioner seeks to challenge her removal as a residence assistant (RA) while a student at respondent Fashion Institute of Technology ("FIT"), and seeks an injunction and declaration based on the allegations that her First Amendment rights were violated. Respondent opposes the instant petition. For the reasons set forth below, the petition is denied in its entirety[1].

Preliminarily and for the reasons set forth in this Court's decision and order in the related matter, index number 652926/2024, the motion for consolidation is denied, as the issues raised in both matters have been fully briefed under this index number.

Background

[1] As with index number 652926/2024, the parties without leave, have submitted letters after argument was heard, the Court did not consider these letters in the determination of this special proceeding.

The underlying action arises out of petitioner's removal as RA, and the allegations that her First Amendment rights were violated. Petitioner is a junior at FIT and was an RA in Alumni Hall, a dorm on FIT's campus. Petitioner had already been renewed as an RA for 2024-2025 and had accepted the renewal, when the underlying incident and subsequent termination occurred.

On or about February 23, 2024, an acquaintance asked petitioner whether they could affix a flyer to a bulletin board on the floor on which petitioner was staffed as an RA. The flyer expressed support for people in Palestine and criticized the Israeli government. Petitioner granted the acquaintance's request. Later petitioner was informed that the acquaintance and another individual, both had been in petitioner's dorm room, placed flyers under the doors of dorm rooms.

That same day, FIT's Dean of Students notified Director of Resident Life, Angela Brown (Director Brown), and Residential Education Coordinator, Alyssa Haining (REC Haining), about a report from a parent of a student who resides at Alumni Hall, that flyers were being pushed under residents' room doors. FIT commenced an investigation.

On March 1, 2024, petitioner was contacted by REC Haining to schedule a meeting, and along with Brandice Wheatley, Coordinator of Community Standards and Student Leadership for residential affairs, the parties met virtually on Google Meet. Petitioner was ultimately terminated from her RA position. Petitioner appealed the determination, and dismissal was upheld.

Standard of Review

Article 78 review is permitted, where a determination was made that "was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed…." CPLR §7803(3).

"Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* "Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard." *Id.* If the court reviewing the determination finds that "[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed." *American Telephone & Telegraph v State Tax Comm'n* 61 NY2d 393, 400 [1984].

It is well settled that judicial scrutiny of a university's disciplinary determination involving nonacademic matters is limited to whether the institution substantially adhered to its own published rules and guidelines and was not arbitrary and capricious. *Quercia v New York University*, 41 AD 3d 295, 296 [1st Dept 2007].

Discussion

Petitioner contends that respondent arbitrarily enforces its rules, and that those rules, that resulted in the removal of petitioner from her position, were not always enforced. At this juncture, petitioner no longer seeks to challenge her termination as an RA and does not seek reinstatement to that position, however she still contends that her First Amendment rights were violated thus, the Court will only analyze the allegations regarding her First Amendment claims.

It is undisputed that respondent, FIT, is a public university, thus, First Amendment principles apply to its conduct. Petitioner contends that FIT's bulletin boards are a designated public forum, yet FIT's attempt to impose a time, place, and manner restriction on the bulletin

boards is constitutionally invalid. Petitioner avers that respondent's decision to terminate her and evict her from her dormitory for allowing an acquaintance to post pro-Palestine speech on a bulletin board constitutes viewpoint discrimination in violation of her First Amendment rights.

In support of her position, petitioner cites the Ninth Circuit Court of Appeals holding that, since the university had no policy or practice of regulating the content of materials placed on university bulletin boards, the bulletin boards were a designated public forum. *Giebel v Sylvester*, 244 F.3d 1182, 1188 (9th Cir. 2001). That case and those facts are distinguishable. Though petitioner seeks to draw a parallel, contending that respondent does not have a practice of regulating and enforcing the content of materials placed on the bulletin board in question, and that respondent does not consistently enforce its policy, is conclusory, speculative and misses the mark. Petitioner's contention that although a policy exists along with its conclusory allegation that it does not get enforced does not render the policy non-existent.

While petitioner argues that she believed she had the discretion as an RA to allow the flyer to be placed on the bulletin board and that she was not violating any University policy, those arguments are insufficient to establish a violation of her First Amendment rights.

Time, place, and manner of expression regulations are permissible when they are content-neutral and narrowly tailored to serve a significant collegial interest and other methods of communication are available. *See Rogers v New York City Transit Authority*, 89 NY2d 692, 698 [1997].

Respondent has established and the Court agrees, that the bulletin board and flyer policies that FIT enforced in the residence halls were content-neutral, as they required that "All notices/flyers must be approved by the Residential Life Office," *see* NYSCEF Doc. 13, Residential Life Staff Handbook at 22. It is undisputed that petitioner admitted her flyer was

neither approved nor stamped by the Residential Life department, it was an unauthorized posting, which was a violation of the Staff Handbook. Respondent contends, that the content of the flyer was immaterial with respect to the violations of the Staff Handbook.

Thus, respondent's policy prohibiting unauthorized flyers from being posted on its residential bulletin boards or distributed in its residential halls, was a proper restriction, and therefore did not violate petitioner's First Amendment rights, nor does the Court find that the restriction is unconstitutional viewpoint discrimination against petitioner. The Court finds that respondent's policy and enforcement of that policy was not in violation of petitioner's First Amendment rights.

The Court has reviewed the petitioner's remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that the petition is dismissed in its entirety.

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11/18/2024
DATE

LYLE E. FRANK, 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**