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

PRESENT: WALTER B. TOLUB PART 15

Justice

MICHAEL QUERCIA,

Plaintiff,

- v -

NEW YORK UNIVERSITY,

Defendant.

INDEX NO. 108099/2006

MOTION DATE 06/23/06

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, this motion is decided in accordance with the accompanying memorandum decision.

This constitutes the decision and order of the court.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/18/06

WALTER B. TOLUB, *J.S.C.*

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15
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Michael Quercia

Index No. 108099/2006
Motion Seq. 001

Petitioner,

-against-

New York University,

Respondent,
----------x

WALTER B. TOLUB, J.:

Petitioner Michael Quercia was a student at New York University ("NYU" or "the University). Petitioner was suspended by the University following the University Judicial Board Hearing Panel's determination that he was in possession of marijuana in his dorm room. By this Article 78 application, Petitioner moves to stay the University's decision to suspend him. Respondent cross-moves to dismiss the instant application pursuant to CPLR § 3211(a).

Facts

On or about May 5, 2005, while petitioner was not present, officers from NYU's Department of Public Safety entered Petitioner's dorm room and seized a sifter, scale, grinder and baggies from Petitioner's desk space. The officers also found a bin located in a common closet in the dorm room which contained

one vacuum packed plastic bag containing approximately 10 ounces of a green leafy substance, $1,740 in U.S. currency, assorted candy bars, gum and an empty brown bag (Respondent's Exhibit B, p.2). The leafy substance was later identified as marijuana. Petitioner however, denied knowledge as to the nature of contents of the bag (Respondent's Memorandum of Law, p.8).

By letter dated May 6, 2005, Respondent informed Petitioner of his immediate suspension from the University and instructed him to initiate a disciplinary proceeding in accordance with the University's Policy on Student Conduct (Respondent's Exhibit C). Petitioner did not request a formal judicial hearing until March 7, 2006, about ten months after the incident (Respondent's Exhibit I), and only after he pled guilty to disorderly conduct in full satisfaction of the charges arising out of the incident.

At Petitioner's hearing before the University Judicial Board Hearing Panel ("Judicial Board" or "the Panel"), one of his former roommates, Thomas Schecter, testified that he had never observed Petitioner using or distributing drugs (Decision, p.2). Another former roommate, David Neil, told the University staff during the inspection that the items found in the room belonged to Petitioner (Decision, p.4). Based on the evidence presented at the hearing, the Panel concluded that the substance in the

locked container was marijuana and that it belonged to Petitioner.

The May 1, 2006 decision of the University's Judicial Board provided for Petitioner's suspension from NYU until the Fall 2007 semester, at which time he "may" be reinstated upon the submission of a written request[1] (Order to Show Cause Exhibit E). Reinstatement however, pursuant to this decision is only to be considered after petitioner completes 500 hours of community service "with an agency or organization to be approved" by Respondent, preferably relating to substance abuse issues (*Id.*). If Petitioner's request for reinstatement is successful, Petitioner would then be barred from living in or visiting any University residence hall (*Id.*).

Petitioner presently seeks an order from this court (1) reinstating him as a full-time student at NYU; (2) directing Respondent to allow him to register for classes for the Fall 2006 semester; (3) directing Respondent to allow Petitioner to reside

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[1] The complete text, as relevant, reads as follows: "Mr. Quercia may be reinstated as a student at New York University as of the Fall 2007 term by submitting, after June 30, 2007 but by no later than August 1, 2007, a written request to Associate Dean Fredric Schwarzbach of the General Studies Program. Provided that Mr. Quercia has met the terms of this letter and is reinstated, Dean Schwarzbach will assist Mr. Quercia with the process of reapplying for internal transfer to the College of Arts and Science" (*Id.*).

in University housing; (4) directing Respondent to allow Petitioner to complete the necessary course work for any incomplete grades received for the Spring 2005 Semester; (5) ordering the Respondent to expunge all records relating to this proceeding; and (6) adjust all tuition and fees based upon the Petitioner's previously expected graduation date of June 2007 (Petition, p.3). Respondent moves to dismiss the action

Discussion

Applications brought pursuant to CLPR § 7803 requires the court to determine whether "a 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, including abuse of discretion as to the measure or mode of penalty or discipline imposed" (CPLR § 7803). 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 (*Nawaz v. State University of New York University*, 295 AD2d 944, 944 [4th Dept 2002]). "When a private school expels a student 'based on facts within its knowledge that justify the exercise of discretion,' then a court

may not review this decision and substitute its own judgment. (*Hucheson v. Grace Lutheran School*, 132 AD2d 599, 599 [2d Dept 1987], quoting *Matter of Carr v. St. John's Univ.*, 17 AD2d 632, 634 [2nd Dept 1962], *see also, Stein v. 92nd Street YM-YMHA, Inc.*, 273 AD2d 181, 182 [1st Dept 2000]). New York law reflects the policy that the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment and these institutions are, for the most part, better suited to make decisions concerning wholly internal matters (*Mass v. Cornell University*, 94 NY2d 87, 92 [1999]).

It follows that the first question before this court is whether Respondent's exercise of discretion was arbitrary and capricious based on University policy and the facts of this case. The published rules of the NYU School of Continuing and Professional Studies are explicit: "Disciplinary hearings . . . are not governed by the formal rules of evidence ... The charges must be proved or disproved using a level of evidence of 'preponderance of evidence' to find someone responsible or not responsible" (Respondent's Exhibit N). Therefore, this court must look to whether based on the record, the University could determine, by a preponderance of the evidence, that Petitioner violated University policy. (Respondent's Memorandum of Law, p.3)

The evidence contained within the record suggests that a reasonable person could conclude that it is more likely than not that the leafy substance in the shared closet was marijuana and that it belonged to Petitioner. The record contained testimony from Mr. Jules Martin, who identified the substance as marijuana, and who had extensive experience in security (Respondent's Exhibit T). Petitioner's possession of drug paraphernalia bolsters Respondent's conclusion that the marijuana belonged to Petitioner. The Panel considered the testimony of Mr. Neil in determining Petitioner's ownership of the items (Respondent's Exhibit J). Taking into consideration all of these factors, the Panel also found it suspect that Petitioner failed to respond to the disciplinary charges brought against him for ten months. It follows that the Panel's determination that Petitioner was in possession of marijuana was not arbitrary or capricious.

Since the Panel's determination of Petitioner's possession was not arbitrary and capricious, the second question is whether the punishment imposed on Petitioner is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness. (*Pell v. Board of Education of Union Free School Dist. No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231

[1974]; *see also,* Mapp v. Burnham, 23 AD3d 37 [1st Dept 2005]).

The NYU Statement of Policy on Substance Abuse states:

> "The unlawful possession, use, or distribution of drugs will not be tolerated on University premises. Upon finding evidence of the unlawful possession, use, or distribution of drugs on its premises by any student, the University will take appropriate disciplinary action, including, but not limited to, probation, suspension or expulsion....Students may also be required to undergo evaluation and/or participation in and satisfactorily complete an appropriate counseling or rehabilitation program." (Respondent Exhibit H, p.232)

There is no question that Respondent has the has the power to take disciplinary action in accordance with its own written rules. However, Petitioner has already accepted and pled guilty to one count of Disorderly Conduct, a violation of the penal law which resulted in a conditional discharge of one year, a fee of $95.00, and ten days of community service. Petitioner has also missed a full academic year of school. Under these circumstances, the decision of Respondent to suspend Petitioner for a second academic year with only the possibility of reinstatement after the completion of 500 hours of community service is found to be a draconian measure that is disproportionate to the offense committed. As such, this court directs Respondent to reinstate Petitioner's status as a full time student upon completion of 100 hours of community service.

Moreover, this court directs Respondent to allow Petitioner to be permitted to complete the necessary course work for any incomplete grades received for the Spring Semester prior to Petitioner's suspension by the University in 2005. The remaining relief sought by Petitioner however, is denied.

Accordingly it is,

ADJUDGED that the petition is granted to the extent that Petitioner is to be permitted to be reinstated as a student at NYU and to enroll in academic classes pending the completion of 100 hours of community service. Petitioner is also to be permitted to complete the necessary course work for any incomplete grades received for the Spring, 2005 semester prior to petitioner's suspension by the University. The remainder the relief sought by Petitioner is denied; and it is further

ORDERED that Respondent's cross-motion to dismiss is denied.

Dated: 9/18/06

HON. WALTER B. TOLUB, J.S.C.