

Matter of Voorhis v New York City Dept. of Educ.

2012 NY Slip Op 30143(U)

January 19, 2012

Supreme Court, New York County

Docket Number: 103374/11

Judge: Cynthia S. Kern

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

PRESENT: _____

PART _____

E
1/23/12
eg

Index Number : 103374/2011
VAN VOORHIS, GREGORY
vs.
NYC DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

in 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, It is ordered that this motion

is decided in accordance with the annexed decision.

RECEIVED

JAN 23 2012

MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

FILED

JAN 23 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/19/12

eg
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Application of

GREGORY VAN VOORHIS,

Petitioner,

Index No. 103374/11

JUDGMENT/ORDER

For a Judgment Pursuant to Article 75 of the Civil Practice
Law and Rules

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

FILED

JAN 23 2012

NEW YORK
COUNTY CLERK'S OFFICE

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	_____
Replying Affidavits.....	_____
Exhibits.....	<u>3</u>

In this Article 75 proceeding, petitioner Gregory Van Voorhis ("petitioner") seeks to vacate the Opinion and Award of Hearing Officer Martin F. Scheinman Esq. ("Hearing Officer Scheinman") dated February 24, 2011 issued pursuant to Education Law § 3020-a. The New York City Department of Education (the "DOE") cross-moves to dismiss the petition. This court

denies the petitioner's request and grants the DOE's cross-motion for the reasons set forth below.

The underlying facts are as follows. Petitioner is a tenured teacher employed by the DOE. Petitioner was assigned to teach at the Bronx School of Law and Finance during the 2008-2009 and 2009-2010 school years. According to respondent, petitioner distributed "Guts" – a sexually explicit short story by Chuck Palahniuk – to his high school students during the 2008-2009 and 2009-2010 school years without seeking prior approval. It is undisputed that although "Guts" was listed on the class syllabus which was provided to petitioner's supervisors before it was distributed to the class, petitioner did not seek specific permission to distribute this story to his students.

The DOE preferred charges against petitioner pursuant to Education Law § 3020-a for distributing sexually explicit material to his students without obtaining permission from administration. Hearing Officer Scheinman was assigned to arbitrate the § 3020-a charges filed against petitioner. Hearings were held in November 2010 during which time the parties were afforded a full opportunity to present witnesses, testimony, exhibits and arguments in support of their respective positions. On February 24, 2011, Hearing Officer Scheinman rendered his Opinion and Award finding petitioner guilty of poor judgment in distributing "Guts" to his students without prior consultation and permission from a supervisor during the 2009-2010 school year. He reasoned that although the story was listed on the syllabus, it was so explicit in nature that petitioner should have obtained specific permission from his supervisors. The hearing officer issued a penalty of a \$7500 fine to be paid in equal monthly installments over a period of eighteen months. On March 17, 2011, petitioner commenced the instant petition

seeking to vacate Hearing Officer Scheinman's award on the basis that it shocks the conscience, is against public policy infringing on the role of teacher and that he exceeded his authority in finding petitioner guilty of distributing material that respondent had knowledge of and failed to object to.

"Education Law § 3020-a(5) provides that judicial review of a hearing officer's findings must be conducted pursuant to CPLR 7511. Under such review an award may only be vacated on a showing of 'misconduct, bias, excess of power or procedural defects'." *Lackow v. Dept. of Education of the City of New York*, 51 A.D.3d 563, 567 (1st Dept 2008); *See The City School Dist. of the City of New York v. McGraham*, 2010 WL 2731911 at *4 (July 13, 2010, N.Y.App. Div. 1st Dept.). However, where arbitration is mandated by law, as here, "judicial scrutiny is stricter than that for a determination rendered where the parties have submitted to voluntary arbitration. The 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. The party challenging an arbitration determination has the burden of showing its invalidity." *Lackow*, 51 A.D.3d at 567-568 (internal citations omitted).

In the instant action, petitioner has failed to provide any evidence demonstrating misconduct, bias, excess of power or procedural defects. Moreover, Hearing Officer Scheinman's decision was rational and supported by adequate evidence.

Accordingly, this court denies petitioner's request for relief under Article 75 of the CPLR and dismisses the proceeding in its entirety. The DOE's cross-motion to dismiss the petition is granted. This constitutes the decision, order and judgment of the court. The clerk is directed to

