

**Matter of Rieue v New York State Higher Educ.
Servs. Corp.**

2012 NY Slip Op 31005(U)

April 11, 2012

Sup Ct, New York County

Docket Number: 107745/09

Judge: Alice Schlesinger

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

PRESENT: ALICE SCHLESINGER
Justice

LA PART 16
PART 16

Marisa Rieve

INDEX NO. 107745/09

NYS Higher Education
Corp. Services

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ Article 78
proceeding is granted to the
extent provided in the accompanying
memorandum decision.

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: APR 11 2012

Alice Schlesinger
ALICE SCHLESINGER 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

UNFILED JUDGMENT

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In the Matter of the Application of

MARISA RIEUE,

Petitioner,

For An Order Pursuant to Article 78 of the Civil Practice Law and Rules and CPLR 3001,

-against-

Index No. 107745/09
Motion Seq. 001

NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION ("HESC"),

Respondent.

-----X
SCHLESINGER, J.:

Petitioner Marisa Rieue commenced this Article 78 proceeding representing herself to annul the May 14, 2009 order issued by Administrative Law Judge Richard T. Di Stefano. In that decision, ALJ Di Stefano found after a hearing that Ms. Rieue owed respondent New York State Higher Education Services Corporation (HESC) \$108,376.39 for unpaid student loans in the principal amount of \$45,715.30 plus interest at 9%. The ALJ further found that Ms. Rieue was obligated to pay that amount by paying to HESC \$1,460.00 monthly, effective immediately, or face the garnishment of her wages in that amount.¹

Ms. Rieue claims that the ALJ's decision is arbitrary and capricious and in violation of lawful procedure in that it fails to credit her for a \$65,000 payment she indisputably made in 2003 to Hemar Insurance Corporation of America, an entity

¹ As counsel for HESC notes, the ALJ issued an Amended Decision dated June 18, 2009 "correcting" the finding as to the date HESC purchased the loan. The original decision included a date of February 10, 2006, while the amended one included a date of February 10, 1996. Both decisions are attached as Exhibit A to respondent's Answer.

somehow related to the original federal lender Sallie Mae. She asserts that she made that payment with the understanding that the payment represented full satisfaction of all her outstanding student loans, which she had obtained at various times from different lenders and then consolidated.

While acknowledging the apparent authenticity of the check which he saw for the first time at the hearing, respondent's counsel contended that HESC had purchased the loans in 1996, that it had not authorized Hemar to act on its behalf, and that it had no record of the \$65,000 payment. In response to this Article 78 proceeding, counsel for HESC (an attorney different than the one who appeared at the hearing), argues that petitioner has failed to establish that proper procedures were not followed by the ALJ at the hearing or by HESC when proceeding to collect on the loan. He further urges this Court to transfer the proceeding to the Appellate Division pursuant to CPLR § 7803(4) for a determination whether the decision after the hearing was based on substantial evidence.

A review of the hearing transcript reveals that it would be a waste of judicial resources and improper to transfer this case to the Appellate Division based on substantial evidence because the record is barely comprehensible and defective in countless ways. *See Matter of Syquia v Board of Educ. Of Harpursville Cent. School Dist.*, 80 NY2d 531 (1992)(court authorized to address claimed violations of lawful procedure, despite agency's request for transfer to the Appellate Division based on substantial evidence). While the rules of evidence are not strictly applied in administrative proceedings, the hearing must be conducted in an orderly fashion so that it is fundamentally fair, and all exhibits offered into evidence must be appropriately

authenticated and explained by a proper party, with evidentiary foundations established where appropriate.

Such was not the case here. Rather than proceeding as a structured hearing with witnesses called to testify, the hearing was conducted as if it were oral argument on a motion or an extended colloquy with no judge in control of the courtroom. Counsel for HESC did not call a single witness to explain the agency's practices and procedures with respect to the purchasing and collection of student loans. Instead, he offered a pile of documents which he himself argued were business records with significance that he himself ascribed them. Records were not marked individually as exhibits or explained in a detailed fashion. Instead, counsel referred to the exhibits as this document and that without giving a description for the record that might permit reasonable cross-examination by the petitioner or judicial review by this Court or the Appellate Division.

Ms. Rieue representing herself raised numerous questions about the documents offered by HESC, including the agency's failure to demonstrate that the original lenders had assigned the loans to HESC for collection. In addition, Ms. Rieue offered numerous documents on her own behalf which she claimed supported her position of payment in full satisfaction of all her loans some years ago. The transcript reads as a back and forth colloquy, with one person repeatedly interrupting the other with an ever increasing tone of frustration. The ALJ made only limited, and highly unsuccessful, efforts to create order or develop a clear record for review. The hearing continued to devolve, with the ALJ stating at one point to Ms. Rieue: "HESC was ripped off the same way you were ... because your money should have gone to them, and you wouldn't be sitting here. I wouldn't be sitting here" (p 174, lines 16-21).

The hearing concluded with counsel for HESC effectively acknowledging that serious issues existed regarding the debt claimed to be due, stating (pp 179-80):

Now that I have this document and I have the canceled check, I will use the resources that I have available to me, as a guarantee agency in the loan program, to try to get to the bottom of it.

It's clear to me that the big issue here ... is the \$65,000 paid to HEMAR? Who the heck are they? What was their authority to settle? What loans ... What were their original numbers? Where did those original numbers come from? Why did they settle for 65? ...

Counsel then stated (p 180, l 19-20): "This is a whole other spin on the entire situation that I've only just learned about." Then he promised to look into it.

That is how the hearing ended on April 8, 2009. About a month later, on May 14, 2009, the ALJ issued his brief decision with the following shocking statement that appears to be a total disconnect from what transpired at the hearing (p 4):

The NYSHESC has established for the record that the Appellant [Ms. Rieue] owes \$108,376.39 with a fixed interest rate of 9.00%. Appellant has never contended that her indebtedness is incorrect.

Contrary to this conclusion, Ms. Rieue had vigorously disputed the claimed indebtedness at the hearing, insisting that she had paid the amount in full and producing a copy of a cancelled check to confirm her assertion. HESC's counsel at the hearing promised to investigate the payment, and the ALJ agreed that such action was appropriate. Yet the ALJ made no mention at all of this discussion in his decision.

The ALJ further erred in amending the decision in the manner that he did. As indicated above (n 1), the May 9 decision included the finding that HESC had purchased the loan in 2006, a date about three years after Ms. Rieue made the

\$65,000 payment to Hemar. About a month thereafter, on June 18, 2009, the ALJ issued an Amended Decision which simply changed the purchase date to 1996. The date is critical in that it impacts on the alleged authority of HESC to collect the loan. By changing the critical date without explanation, the ALJ further compounded the errors at the hearing.

Considering all these circumstances, this Court finds that petitioner is entitled to have the hearing decision annulled pursuant to CPLR §7803(4) based on violations of lawful procedure. Now that Ms. Rieue has secured able *pro bono* counsel, the matter should be remanded for a new hearing that shall be conducted in accordance with proper procedures. As HESC has repeatedly acknowledged throughout this proceeding and below, it will make the file available to petitioner's counsel for review. Therefore, petitioner's request for leave to conduct discovery in the Article 78 proceeding pending before this Court is denied. Nor is there any reason to address petitioner's claim that certain federal regulations have been violated, as the deficiencies in the hearing held are clear and obvious in themselves.

Accordingly, it is hereby

ADJUDGED that the petition is granted without costs or disbursements, and the Clerk is directed to enter judgment in favor of the petitioner annulling the June 18, 2009 Amended Decision of Administrative Law Judge Di Stefano and remanding this matter to the agency for a new hearing in accordance with the terms of this decision.

Dated: April 11, 2012

APR 11 2012

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Alice Schlesinger

J.S.C.

ALICE SCHLESINGER