

<b>Matter of Yong Won Choi v Columbia Univ.</b>
2012 NY Slip Op 32884(U)
December 5, 2012
Sup Ct, NY County
Docket Number: 102947/12
Judge: Peter H. Moulton
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON  
SUPREME COURT JUSTICE  
Justice

PART 40B

Index Number : 102947/2012  
CHOI, YONGWON  
vs.  
COLUMBIA UNIVERSITY  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

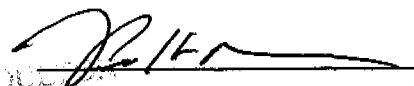
Upon the foregoing papers, it is ordered that ~~this motion is~~

*petition is denied and this  
proceedy dismissed for the reasons  
stated in the written decision dated  
12/5/12.*

### 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: 12/5/12

 J.S.C.

HON. PETER H. MOULTON  
SUPREME COURT JUSTICE

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

**UNFILED JUDGMENT**

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Supreme Court: New York County  
Part 40B

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In the Matter of the Application

YONG WON CHOI,

Petitioner,

For a Judgment under Article 78 of the  
Civil Practice Law and Rules,

-against-

Index No. 102947/12

COLUMBIA UNIVERSITY,

Respondent.

-----X  
Peter H. Moulton, Justice

In this Article 78 proceeding, petitioner, a former student at Columbia University's School of Engineering, challenges the respondent University's decision to expel him for cheating on an examination. Respondent moves to dismiss the petition.

**BACKGROUND**

In December 2011, petitioner Young Won Choi ("Choi") alleges that he took a final exam in the course entitled Introduction to Operations Research: Stochastic Models, taught by professor Ward Whitt. It is undisputed that he initially received an "F" on the exam because Whitt and the Teaching Assistants found no answer book from Choi among those submitted by his classmates.

Petitioner asserted that he had taken the examination, and that his answer book must have been lost by the faculty. He was given a chance to re-take the exam in an administrative office at the school on January 27, 2012.

Professor Whitt was present at the outset of the exam, and he found that petitioner had brought some disallowed materials into the room, which Whitt placed outside of the room where petitioner took the exam. At one point during the exam, Choi got up from his seat to retrieve the folder that contained the materials removed by Whitt. He was stopped by one of the proctors. Choi avers that he was attempting to get some materials that were among the permissible materials he could use during the examination.

Choi left the room twice to go to the bathroom. He asserts that he had gastroenteritis, which was brought on by the stress of the examination. On the second occasion he was seen on the fourth floor of the building, which was at street level. Choi claims that he wanted to get outside for fresh air. On another occasion, respondent asserts that Choi attempted to leave the room to retrieve his calculator, which he left in the library. Choi disputes this account and states that he simply asked one of the proctors to retrieve the calculator.

When Whitt graded Choi's answers to the exam he found that three answers were extremely similar to model answers provided to the students. One of Choi's answers contained a typo from one of

the model answers. The remaining two exam questions were unanswered by Choi.

Whitt communicated his concerns to University administrators. The University notified petitioner that it would hold a Dean's Disciplinary Hearing to investigate the incident. Respondent's personnel informed petitioner that he could submit a written statement at the hearing, and that he could review written materials prepared by the University about the incident called "Incident Core Information." Petitioner reviewed this material prior to the hearing. Petitioner was also informed of a web page where he could review the procedures of a Dean's Disciplinary Hearing.

The hearing went forward on February 2. The hearing officers explained the procedures of the hearing. Petitioner attended and spoke at the hearing. After the hearing, the hearing offices spoke with the two proctors present while petitioner took the make up exam.

This was not the first Dean's Disciplinary Hearing where petitioner had had to answer charges of cheating. In 2007, and again in 2008, petitioner was found, after hearings, to have copied the work of other students and pass it off as his own. After the first finding of academic dishonesty, petitioner had been placed on probation. After the second finding, he had been temporarily suspended.

On February 8, 2012, respondent notified petitioner in writing that the hearing officers believed that petitioner had cheated on the examination. Due to the seriousness of this offense, and due to petitioner's prior offenses, Columbia expelled Choi.

Respondent notified petitioner of his right to appeal the dismissal to the Dean of the School of Engineering. Petitioner appealed, invoking two grounds: 1) new information not available at the time of the hearing and 2) the unnecessary severity of the penalty. He did not raise a third ground available to him: concerns about the process that may have changed the hearing's outcome.

Petitioner's appeal was denied on February 20, 2012. He subsequently brought the instant proceeding.

#### DISCUSSION

In his petition, Choi asserts that the hearing failed to provide him with a fair process. Petitioner waived this argument as he failed to raise it on administrative appeal. (See Rauer v State University of New York, 159 AD2d 835.)

Even if he had preserved this argument, it is without merit. The record demonstrates that respondent followed the Dean's Disciplinary Rules that are provided to students in the Student Bulletin and on line. A private college or university is required to substantially adhere to its own rules in conducting student

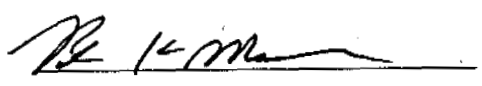
disciplinary hearings. (Harris v Trustees of Columbia University, 62 NY2d 956 [adopting the dissent at the Appellate Division, 98 AD2d 58, 67].) Petitioner was afforded all the rights due him under the University's rules. The rules of evidence that bind courts in New York State do not control under Columbia's rules. Unlike the record in Basile v Albany College, 279 AD2d 770, the hearing officers in the instant matter had before them the statements of proctors who actually observed petitioner on the date of the exam, as well as the text of petitioner's answers to the examination. The hearing officers were also entitled to weigh the credibility of petitioner's statements at the hearing.

Based on the record before it, respondent was not arbitrary and capricious, or in violation of any statute or the state or federal constitution, in determining that petitioner had cheated on the make up exam. (Galiani v Hofstra University, 118 AD2d 572.) The penalty of dismissal is not so disproportionate to the offense as to "shock the conscience." (Sabin v State University of New York, 92 AD2d 831.) Respondent's findings concerning petitioner's cheating on the make up exam would be sufficient to support his dismissal. Choi's prior academic offenses provide additional basis for the penalty.

**CONCLUSION**

For the reasons stated it is ADJUDGED that the petition is denied, respondent's motion is granted, and the proceeding is dismissed. This constitutes the Order and Judgment of the court.

Date: December 5, 2012



A.J.S.C.

**HON. PETER H. MOULTON  
SUPREME COURT JUSTICE**

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