

<b>Matter of Pauyo v Adelphi Univ.</b>
2017 NY Slip Op 30830(U)
April 21, 2017
Supreme Court, New York County
Docket Number: 452827/2015
Judge: Joan M. Kenney
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS Part 8

-----X  
In the Matter of the Application of  
Dominique Pauyo,  
Petitioner,

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

**DECISION AND ORDER**  
Index Number: 452827/2015  
Motion Seq. No.: 001 & 002

-against-

Adelphi University,  
Defendant/Respondent.

-----X  
**KENNEY, JOAN M., J. :**

Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion to dismiss.

<b>Papers</b>	<b>Numbered</b>
Notice of Petition (001)	1
Notice of Motion (002), Affirmations, Memorandum of Law, and Exhibits	1-18
Opposition Affidavit, Memorandum of Law and Exhibits	19-26
Memorandum of Law in Reply	27

Motion Sequences 001 and 002 are consolidated herein for disposition.

In this Article 78 proceeding, petitioner Dominique Pauyo, moves for an Order, declaring that her dismissal as a student from Adelphi University School of Social Work (Adelphi University) was arbitrary and capricious, and violated Adelphi's own Rules, and violated New York State Human Rights Law (NYSHRL) and Americans with Disabilities Act (ADA).  
Petitioner also seeks an Order expunging her records, refunding her tuition monies and granting her damages. (Motion Sequence 001)

Aldephi University moves for a pre-answer Order, pursuant to CPLR 3211(a)(1), CPLR

3211(a)(7) and CPLR 7804(f) to dismissing petitioner's Article 78 proceeding. (Motion Sequence 002)

### **Factual Background**

In her petition, Dominique Pauyo seeks reinstatement as a student to Adelphi University, and an order declaring that her dismissal from the Master of Social Work Program was arbitrary and capricious, and violated the New York State Human Rights Law (NYSHRL) and Americans with Disabilities Act (ADA). Petitioner also seeks expungement of her records, a tuition refund and damages for the breach of contract causing lost career earnings.

Petitioner enrolled at Adelphi University School of Social Work in 2011, to obtain a Master of Social Work degree. This course of study required students to complete two approved field education placements, also known as internships, that generally begin in September. Ms. Pauyo performed her first field education placement in the 2013-2014 school year at the YWCA - Murray Bergtraum High School. Ms. Pauyo started her advanced year field placement in September 2014 at Kings County Hospital. On November 3, 2014, Kings County Hospital made the decision to terminate Ms. Pauyo's field placement. Neither the petitioner nor the University delineate the circumstances of her termination. However, a letter submitted by the educational coordinator at the Hospital reads:

"Ms. Pauyo was placed in our Psychiatric Emergency Program where she was working with our most impaired patients in their most acute state. Unfortunately this setting did not work out for her and she needed to be removed from the placement. I investigated transferring her to another area here at Kings County Hospital Center in General Care but unfortunately, due to staffing issues, that was not possible. While she was here at K.C.H.C., I was impressed with Ms. Pauyo's passion for the work and desire to learn. She comes across as bright, well spoken, and motivated to help people. I am certain that in a different clinical setting, Ms. Pauyo would have been successful." (Resp't. Aff. Ex. B)

After this termination, Ms. Pauyo signed an “education contract” to acknowledge the school’s expectations from her if placed at a new agency after her dismissal. The contract reads:

“I understand that I must demonstrate the knowledge, values and skills of an **advanced** level MSW student. The following areas of concern have been addressed with me during my meetings with my field instructor, faculty field liaison, and field education staff. I agree to: use supervision and consultation, be receptive to feedback, practice personal reflection and self-correction without being defensive, demonstrate professionalism, follow all directions of my field advisor, and adhere to school protocol if I would like to discuss a problematic interaction I have had with a field instructor. Failure to develop above mentioned skills may result in termination from the internship or a failing grade. A failing grade may result in a referral to the Academic Standards Committee to determine my appropriateness to remain in the social work program.” (Resp’t. Aff. Ex. I) (1<sup>st</sup> Contract)

It is noted that at this early stage of litigation where discovery has not begun, none of the parties have appraised this court as to the specifics that resulted in the necessity to draft this “contract”.

On December 1, 2014, Ms. Pauyo re-started her advanced year field placement at Partnership with Children, NYC. On February 5, 2015, Ms. Pauyo met with the assistant director and her field instructor at Partnership with Children to address the field instructor’s concerns about her performance. No details were provided to this court as to what the specific circumstances were that resulted in the necessity for this meeting and the signing of yet another “contract” which read as follows:

“I, Dominique Pauyo, understand that I must demonstrate the knowledge, values and skills of an **advanced** level MSW student. The following areas of concern have been addressed with me during my meetings with my field instructor, faculty field liaison, and field education staff. I agree to: use supervision and consultation, be receptive to feedback, incorporate the feedback into my practice, practice personal reflection and self-correction without being defensive, demonstrate effective communication skills and active listening skills, follow all directions of my field advisor, and demonstrate the ability to work as part of the social work team. Failure to develop above mentioned skills may result in termination from the internship or a failing grade. A failing grade may result in a referral to the

Academic Standards Committee to determine my appropriateness to remain in the social work program.” (Resp’t. Aff. Ex. C)( 2<sup>nd</sup> Contract)

The 2<sup>nd</sup> contract repeated verbatim the language of the first contract and doesn’t appear to be addressing any specific concerns of circumstance.

Eventually, Ms. Pauyo was terminated by Partnership with Children on March 12, 2015. Specific circumstances of her termination from her second field placement was, again, not delineated by either party.

On March 23, 2015, Ms. Basit, Ms. Pauyo’s field liaison, referred Ms. Pauyo to the Academic Standards Committee at Adelphi University. The Committee sent Ms. Pauyo a notice that they scheduled a hearing to evaluate her work. The Committee and Ms. Pauyo exchanged materials for review before the hearing. After reviewing the materials and interviewing Ms. Pauyo, the Committee recommended that Ms. Pauyo be dismissed from the School of Social Work. The stated basis for Adelphi University’s dismissal arises from Ms. Pauyo’s termination from her two advanced year field placements at Kings County Hospital and Partnership for Children. Ms. Pauyo appealed this decision to the Dean of Adelphi University, Andrew W. Sayfer. She was later notified that her appeal was denied. (Resp’t. Aff. Ex. J)

#### Arguments

The Petitioner alleges that her field instructor at the Kings County Hospital field placement, Ms. Taveras, did not complete her seminar in field instruction and had no previous experience training a social work intern. Adelphi University field instruction manual provides that all assigned field instructors are “trained to supervise social work students”. (Resp’t. Aff. Ex. A at 75). Ms. Pauyo alleges that due to her supervisor’s inexperience, she was not given the feedback and support necessary to be successful in her field placement. Ms. Pauyo submits

emails, addressed to Mr. Amato, Assistant Director of Field Education, and Ms. Basit, her faculty liaison, complaining about Ms. Taveras' initial expression of: "I'm surprised that you were selected for this 2<sup>nd</sup> year clinical internship as you haven't taken the Assessment and Diagnosis class yet." Ms. Pauyo alleges that she received "inhumane" treatment from Ms. Taveras, and she had "dehumanizing, demoralizing and difficult interactions" with her. Other than these conclusory statements, Ms. Pauyo did not set forth details of any other specific instances. (Opp. Aff. Ex. 3). Ms. Pauyo requested a different supervisor, but the request was denied. The University responds that the field instructors at internship locations are not their employees and, therefore they are not free to re-assign students from one instructor to the other. Ms. Pauyo was terminated from this field placement approximately two months after she started. Apart from the letter submitted by the Hospital's education coordinator, no details have been provided about the specific circumstances that led to her termination. Certainly, the Hospital appears to have been willing to place petitioner elsewhere but "due to staffing issues" they could not do so.

After her termination from Kings County Hospital, Ms. Pauyo was assigned to a field placement at Partnership with Children, NYC, beginning on December 1, 2014. Ms. Pauyo was limited in the options she had for this placement because the education contract she was allegedly "forced" to sign caused other placements to not interview her. Ms. Pauyo informed Mr. Amato and Ms. Widman, her field supervisor at Partnership with Children, in person and via email that she would not be able to conduct home visits because of a posttraumatic stress disorder (PTSD) she developed when she was attacked by the parent of a student during her previous employment. She asked to be transferred to a different field placement. Adelphi University alleges that, Ms. Pauyo never applied for a disability accommodation by identifying herself to the school's Office of Disability Support Services and filing a petition for reasonable accommodations. The Court

also notes that no medical documentation has been presented to substantiate Ms. Pauyo's disability claims. It does not appear that Mr. Amato sought supportive documentation to try and accommodate plaintiff's alleged concerns. Noting her concerns about being attacked by a parent in her previous work, Mr. Amato suggested that, if she did not want to take what was available, she should have taken a leave of absence and continue the next year. Opp. Aff. Ex.4. Pauyo states that she was not given sufficient opportunity in her placement to be fairly graded because she was given a reduced work load. Due to her PTSD, Pauyo claims that she could not conduct home visits, and that despite her field supervisor, Ms. Widman's opinion that Pauyo was improving and should be given more time, Pauyo claims that Mr. Amato, in an alleged email correspondence that was not presented to this Court, rushed Ms. Widman to terminate Pauyo. Ms. Pauyo contends that she was not afforded any support, as provided in school's field instruction manual, as her field liaison Ms. Basit was out on leave for several months.

Ms. Pauyo was subsequently referred to the Academic Standards Committee at the University that "has the responsibility for acting as consultant to faculty field liaison and academic advisers with respect to the student progress, as well as maintenance of educational standards." It was this Academic Standards Committee that dismissed Ms. Pauyo as a student at Adelphi University.

#### **Discussion**

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail." (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). A pleading which, fairly construed, fails to allege any facts which constitute a wrong but only

general conclusions, is entirely insufficient and may be dismissed on that ground. (*Gerdes v. Reynolds*, 281 N.Y. 180, 184 (1939)).

Under Fed. R. Civ. P. 8(a)(2), a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although this pleading standard does not require “detailed factual allegations,” it does demand “more than an unadorned, the defendant-unlawfully-harmed-me accusation.” (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Thus “[a] pleading that offers ‘labels and conclusions’ or a formulaic recitation of the elements of a cause of action will not do...[n]or does a claim suffice if it tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556, 557, 127 S. Ct. 1955, 167 L. Ed.2d 929 (2007)).

Here, petitioner alleges arbitrary and capricious dismissal from the School of Social Work. To prove that her dismissal was wrongful, she alleges that the University did not comply with its own policies and procedures in providing her guidance. She also alleges that the University failed to provide her reasonable accommodation for her disability.

In order to state a claim for disability discrimination under New York State Human Rights Law (NYSHRL) or Americans with Disabilities Act (ADA), the complaint must allege that plaintiff suffers from a statutorily defined disability and the disability caused the behavior for which the plaintiff was terminated. (*Jacobsen v. N.Y.C. Health & Hosps. Corp.*, 22 N.Y.3d 824, 834). Here, plaintiff alleges that after she informed the school of her disability (PTSD) thorough correspondence with Mr. Amato, Adelphi University did not accommodate her and rather suggested that she basically go away for a year and essentially take a break. Unfortunately, the student handbook makes it clear that petitioner should have notified the University and the Student Access Office and provided them with required documents in order to be evaluated



and/or accommodated based on a known disability. Here, petitioner did not substantiate her claim of disability and therefore cannot now allege that she was discriminated against because of the said disability when, in fact, Adelphi University was never notified of the said PTSD disability. Based upon this undisputed fact, petitioner's claim of discrimination under NYSHRL and the ADA must fail.

For the arbitrary and capricious dismissal claim, the Court previously held that "Strong policy considerations militate against the intervention of courts in controversies relating to an educational institution's judgment of a student's academic performance. In the absence of demonstrated bad faith, arbitrariness, capriciousness, irrationality or a constitutional or statutory violation, a student's challenge to a particular grade or other academic determination relating to a genuine substantive evaluation of the student's academic capabilities, is beyond the scope of judicial review." (Susan M. v. N.Y. Law Sch., 76 N.Y.2d 241, 245, 556 N.E.2d 1104, 1106 (1990)). While this Court will not disturb the determination of the Academic Standards Committee, questions of underlying facts remain as to Ms. Pauyo's **referral** to this Committee, such as: 1) whether Ms. Pauyo's field adviser in Kings County Hospital was qualified to supervise her as set out by the school's own field education manual, 2) the exact flow of events that led to her termination from the hospital, 3) whether Ms. Pauyo was forced to sign the "education contracts" in order to continue her studies, 4) whether the first "education contract" was the reason that led to limited options for her subsequent field placements, 5) whether she was given reduced workload and not a fair opportunity to be graded, and 6) which specific unethical/unprofessional behaviors, as set out on page 65 of the field instruction manual, led to her dismissal.

Defendant failed to set forth entitlement to dismissal at this juncture of the litigation given the lack of factual background available to this Court. Moreover, it is clear that plaintiff has stated causes of action asserting arbitrary and capricious determinations made by defendant in the course of her termination from Adelphi University.

Accordingly, it is

ADJUDGED that Adelphi University's pre-answer motion to dismiss (Motion Sequence 002) the claims under NYSHRL and ADA, is granted and said causes of action are dismissed; and it is further

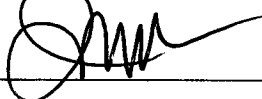
ADJUDGED that petitioner's remaining causes of action shall remain; and it is further

ADJUDGED that Adelphi University shall file an answer NO LATER THAN May 26, 2017; and it is further

ADJUDGED, that the parties appear for a preliminary conference on June 8, 2017 at 9:30 am in Room 304 located at 71 Thomas Street, NYC.

Dated: 4/21/2017

ENTER:

  
\_\_\_\_\_

Joan M. Kenney, J.S.C.