

<b>Matter of Russo v Henderson</b>
2013 NY Slip Op 33875(U)
January 7, 2013
Sup Ct, New York County
Docket Number: 103000/12
Judge: Geoffrey D. Wright
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 62

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In The Matter Of The Application Of,  
ANTONY J. RUSSO,

Index #103000/12

Plaintiff-Petitioner(s),

Motion Cal. #  
Motion Seq. #

For a Judgment Pursuant To Article 78 Of The  
Civil Practice Law and Rules  
-against-

**DECISION/ORDER**

LAWRENCE HENDERSON, Arbitrator, New York  
City Department of Education,

Pursuant To Present:  
Hon. Geoffrey Wright  
Judge, Supreme Court

**FILED**

JAN 14 2013

Defendant-Respondent(s),  
-----X

**COUNTY CLERK'S OFFICE  
NEW YORK**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
this Motion to: set aside termination after Educ. Law 3020 hearing

PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	3
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion) & Exhibits Annexed	2
Supporting Affirmation	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Petitioner, a former elementary school teachers, brings this proceeding to set aside the decision to terminate his employment. That decision came after a lengthy hearing, encompassing multiple hearing dates, and hundreds of pages of transcripts. The basic standard of review is provided by Education Law section 3020: " 3020-a. Disciplinary procedures and penalties: 5. Appeal. a. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seventy-five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding." This has been judicially modified to add "inasmuch as the parties are subject to compulsory arbitration, the award must also satisfy further judicial scrutiny in that it "must have evidentiary support and cannot

be arbitrary and capricious.” ( City School District of the City of New York v. McGraham, 17 NY3d 917, 19 [2011] ) quoting Matter of Motor Vehicle Accident Indemnity Corp. v. Aetna Casualty & Surety Co ., 89 N.Y.2d 214, 223 [1996].) The judicial review, therefore, partially implicates application of both Article 75 and 78 of the CPLR. [*STERGIOU v. NEW YORK CITY DEPT. OF EDUC.*, 34 Misc.3d 1229(A), 951 N.Y.S.2d 83 (Table), 2012 WL 593099 (N.Y.Sup.), 2012 N.Y. Slip Op. 50291(U)].

Taking the above into consideration, the petition is rife with quibbles and conclusory statements about what was said in testimony and how it should be interpreted. At best, these arguments challenge the credibility of witnesses against the Petitioner, and argue for his own credibility. As argued in the cross-motion to dismiss, the credibility of any witness is not a proper issue on review. The record is lengthy, and details the steps taken to assist the Petitioner in those areas where it was felt he needed help. The record was also lengthy and detailed in pointing out how the Petitioner fell short in meeting the standards required for the job. In short, the conclusions of the arbitrator are amply illustrated. The petition is not. The petition is denied, and the cross-motion to dismiss the petition is granted. This constitutes the decision and order of the Court.

Dated: January 7, 2013

  
GEOFFREY D. WRIGHT  
AJSC

**FILED**  
JAN 14 2013  
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NEW YORK