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| <b>Jackson v NYC Dept. of Educ.</b>                                                                                                                                                                                                                              |
| 2013 NY Slip Op 32571(U)                                                                                                                                                                                                                                         |
| October 18, 2013                                                                                                                                                                                                                                                 |
| Sup Ct, New York County                                                                                                                                                                                                                                          |
| Docket Number: 100435/2013                                                                                                                                                                                                                                       |
| Judge: Carol E. Huff                                                                                                                                                                                                                                             |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                                                           |

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

**GAROL E. HUFF**

Index Number : 100435/2013

JACKSON, JOHN

vs

NYC DEPARTMENT OF EDUCATION

Sequence Number : 001

VACATE OR MODIFY AWARD

PART 32

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 decided in accordance~~  
~~with 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).

OCT 18 2013

Dated: \_\_\_\_\_

  
\_\_\_\_\_, J.S.C.  
**CAROL E. HUFF**

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

- 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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 32

-----X

In the Matter of the Application of : Index No. 100435/13  
JOHN JACKSON,

Petitioner, :

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

- against -

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION,

Respondent. :

-----X

CAROL E. HUFF, J.:

In this Article 78 proceeding, pro se petitioner, a tenured teacher employed by respondent, seeks to annul the Award of the hearing officer dated February 17, 2013. In the Award, the hearing officer assessed a fine of \$7,500 to be deducted from paychecks in equal amounts over a one-year period. Respondent cross moves to dismiss the petition.

Petitioner was charged with eight specifications alleging instances of "verbal abuse, corporal punishment, insubordination, conduct unbecoming his profession and . . . further acts of misconduct." Award at 4. A hearing on the specifications was scheduled pursuant to Educational Law § 3020-a. After two pre-hearing conferences were held, the hearing was conducted on October 3, 16 and 22, 2012; November 14 and 18, 2012; December 3, 5 and 17, 2012; and January 7, 2013. Petitioner was represented by counsel throughout. Both parties were permitted to call witnesses and offer documentary evidence. Eleven witnesses testified and more

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than a hundred exhibits were entered into evidence.

On February 17, 2013, the hearing officer issued an 84-page decision upholding four of the specifications. These specifications related to the charges of insubordination in connection with the principal of the school where petitioner worked. The hearing officer found: “The behaviors [petitioner] engaged in represent a veritable litany of examples of acting out, in ways most objective observers could readily discern were woefully ineffective, petty, intemperate, abrasive, thoughtless, self-destructive, defiant and entirely uncivil, disrespectful and insubordinate. The conduct was irresponsible and intolerable, even for an inexperienced junior pedagogue.” Award at 79. “[Petitioner] employed tantrum-inducing, immature, and irresponsible methods and tactics to undermine [the principal’s] plans, decisions and strategies.” Award at 80-81. After denying respondent’s request that petitioner be terminated, the hearing officer stated: “I believe a substantial penalty is warranted to place [petitioner] on clear and unmistakable notice that the statements he made, and the behavior and conduct he engaged in in his interactions with [the principal] cannot, and will not, be tolerated in the workplace.” Award at 82-83.

Petitioner contends that the hearing officer engaged in misconduct and violations of lawful procedure that violated his due process rights and that the award is inequitable.

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.” Nevertheless, where the parties have submitted to compulsory arbitration, 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 v Department of Educ. of the City of New York, 51 AD3d 563, 567 (1<sup>st</sup> Dept 2008)  
(citations omitted).

Petitioner has alleged all of the things enumerated in CPLR 7511(1), but has failed to substantiate any of his allegations. In fact, the arbitrator exhibited exemplary care in conducting the hearing, providing petitioner with the opportunity to defend himself, and detailing his conclusions in an exhaustive Award. There is no evidence that he exceeded his jurisdictional powers or displayed any misconduct.

The Award will be upheld unless it is shown that it “was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion.” CPLR 7803(3). The test is whether the determination is “without sound basis in reason and is generally taken without regard to the facts.” Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, 34 NY2d 222, 231 (1974). Again, there is no evidence that the Award was so affected or unreasonable.

Finally, it cannot be said that the penalty of a \$7,500 fine spread over a year is “so disproportionate to the offense, in light of all the circumstances, as to be shocking to one’s sense of fairness.” Pell, supra, at 233.

Accordingly, it is

ORDERED that the cross motion is granted; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: **OCT 18 2013**

  

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**CAROL E. HUFF**  
J.S.C.

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