

Stapor v Wagner College
2014 NY Slip Op 31787(U)
June 11, 2014
Supreme Court, Richmond County
Docket Number: 85011/2014
Judge: Charles M. Troia
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

MARK STAPOR,

X

Petitioner,

-against-

WAGNER COLLEGE,

Respondent.

X

DCM PART 1

Present:

HON. CHARLES M. TROIA

DECISION AND ORDER

Index No. 85011/14

The following papers numbered 1 to 7 were fully submitted on the 11th day of April, 2014.

	Papers Numbered
Order to Show Cause, with Exhibits (dated March 3, 2014).....	1
Notice of Motion for Default Judgment (dated March 11, 2014).....	2
Affirmation In Opposition, with Exhibits (dated April 2, 2014).....	3
Objections to Respondent's Transcript (dated March 14, 2014).....	4
Affirmation in Response to Objections to Transcript (dated March 18, 2014).....	5
Petitioner's Reply affirmation (dated April 9, 2014).....	6
Record of Disciplinary Proceedings (including all Exhibits).....	7

In the instant action brought pursuant to CPLR Article 78, petitioner seeks to annul respondent's determination, which found him guilty of violations of student conduct and resulted in his suspension. Petitioner also seeks numerous declarations regarding actions

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taken by respondent in its disciplinary proceedings involving petitioner. These declarations are all issues underlying petitioner's main claim to annul the determination of respondent.

Allegations of Fact

Petitioner is a graduate student at respondent's college. He also served as a graduate assistant and an assistant coach on a athletic team. Respondent is a private college.

On Saturday, December 7, 2013, respondent's Athletic Department held an "informal event" at a local restaurant/bar. Petitioner was present. T.C., a female graduate student and graduate assistant, attended this gathering. Petitioner, T.C. and all other witnesses concur that all consumed alcohol at the bar/restaurant. Thereafter, petitioner, T.C. and others left the event and went to petitioner's apartment located a few blocks from both the school and the restaurant. It is undisputed that on the way to the apartment, petitioner and T.C. stopped to purchase alcohol. T.C. maintained that while at petitioner's apartment, she was sexually assaulted by petitioner in his bedroom. Petitioner maintained that it was T.C. who initiated contact and that any contact was consensual. Both petitioner and T.C. admitted that they were under the influence of alcohol at the time, although the extent of it was in dispute. T.C. asserted that the following Monday she discussed this incident with an administrator and made a formal complaint with respondent. Respondent charged petitioner with five violations of student conduct. The violations were: (1) disorderly conduct for lewd, indecent or obscene behavior; (2) disorderly conduct for behaving in a manner that disrupts the daily routine of another student; (3) disorderly

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conduct for actions not committed on school property that relates to the security of the college community, the integrity of the education process or the good name of the college; (4) health and safety of others, conduct which threatens or endangers the health or safety of another person and (5) sexual misconduct, non-consensual, intentional, physical conduct of a sexual nature which includes unwelcome physical contact with another person's genitals, buttocks and/or breasts . Petitioner was notified of a hearing to be held before the Community Standard Review Board of respondent's college.

History of Proceedings

Petitioner originally moved by Order to Show Cause for an order staying the disciplinary proceeding. Petitioner also sought a declaration that respondent did not have jurisdiction to proceed with a disciplinary proceeding since the incident was alleged to have occurred "off campus". A hearing was held on January 27 , 2014. After oral argument on the record, the Court found that respondent had jurisdiction to proceed and denied the application for the stay of the disciplinary proceeding. The petition was dismissed with leave to renew after administrative remedies had been exhausted.

A disciplinary proceeding was conducted by respondent on January 31, 2014 and February 4, 2014. Petitioner was found guilty of the violations and suspended until August 15, 2014. His internal appeal with respondent was denied. Thereafter, petitioner commenced this instant proceeding by Order to Show seeking to annul respondent's determination and the suspension. Petitioner also sought a stay of the suspension pending the determination of this application. This Court scheduled a hearing on the stay

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of the suspension. After oral argument, on the record, the request for the stay of the suspension was denied. This Court found that petitioner had not met his burden of establishing the elements of likelihood of success on the merits and irreparable harm.

On March 3, 2014, at the hearing on the request for a stay of the suspension (also the time that the instant Order to Show Cause was signed), the parties discussed the production of the record of the disciplinary proceedings. Counsel for respondent advised that the proceedings had been recorded on a auditory disc and needed to be transcribed. Counsel for respondent continuously advised this Court and petitioner's counsel of the efforts to have the disc transcribed. On March 11, 2014, petitioner moved for a default for respondent's failure to file a transcript of the proceedings. A transcript of the proceedings was filed with Court on or about March 13, 2014. Thereafter, petitioner objected to the transcript. Petitioner maintained that it was transcribed by a reporter employed by the court and that there are many portions of the transcript which indicate that what was said was inaudible. This Court notes that the transcript was transcribed by an individual employed by a private reporting agency. This Court is not aware of any attempts to have the proceeding transcribed by any employee of the Unified Court System. The application for default was made prior to the expiration of respondent's time to appear and it was not required to file a transcript of the proceeding (see Gruen v Chase, 215 AD2d 481). Accordingly, petitioner's motion for a default judgment is summarily denied.

Jurisdiction

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Petitioner contends that respondent did not have jurisdiction to conduct a disciplinary proceeding for actions that may have occurred "off campus". Petitioner argues that the student handbook issued by respondent prohibits respondent's actions. In support of this argument, petitioner points to the "Student Bill of Rights" contained in the handbook, which states that "[s]tudents shall not be subject to disciplinary processes in regards to off-campus events that are not sponsored by the college unless their actions relate to the security of the campus community or deface the name of the Institution". Petitioner asserts that since the acts alleged occurred at an off campus private event and it did not relate to the security of the campus or deface the name of the school. As such any disciplinary proceeding was improperly conducted.

While the Court agrees that a school is bound to follow its own rules and procedures set forth in a student handbook (see Tedeschi v Wagner, 49 NY2d 652; Matter of Mitchell v New York Med. Coll., 208 AD2d 929), the Court disagrees with petitioner's interpretation of respondent's rules. The preamble to the Bill of Rights states "we the students" and notes that it was created by the student government association. Immediately following the Bill of Rights is a clause that states that "[t]he Wagner College administration recognizes the Student Bill of Rights as principles to work in partnership with Student Government Association. Student conduct expectations on and off-campus are listed within the Community Standards of Conduct listed in this Handbook; the Community Standards Review Process listed in the Handbook is the guide outlining the student conduct process at Wagner College". The referenced Community of Standards on

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Conduct sets forth that the school reserves the right to suspend any student whose "personal conduct on or off campus is, in the sole judgment of the college, unsatisfactory or detrimental to the best interests of the college". This section further states that [a]ctions not committed on college property may also be subject to the student conduct process, provided that the offense relates to the security of the college community, the integrity of the education process, or of the good name of the College".

The handbook contains a section dedicated to sexual misconduct. It provides that the policy of the college prohibits sexual misconduct in any form. It provides a definition of sexual misconduct as being any sexual contact without clear and voluntary consent. It provides a detailed description as to what is meant by consent and clearly states that one who is incapacitated as a result of alcohol cannot give consent. This section also details the disciplinary process for complaints of sexual misconduct.

This Court finds that the terms of the handbook do permit the respondent to conduct a disciplinary hearing for the acts alleged, even though they were alleged to have occurred "off campus". The handbook sufficiently placed petitioner on notice that such conduct was prohibited and that a disciplinary proceeding could be commenced if such allegations were made. Further, even under the Student of Bill Rights, respondent had the authority to commence a disciplinary proceeding. The allegations directly relate to the security of the students and could deface the name of the school.

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Accordingly, this Court holds that respondent did, under the terms of the student handbook, have the authority and jurisdiction to act on the complaint of a student of sexual misconduct by another student irrespective of the allegation that it occurred "off-campus".

Review of the Findings

Decisions made by private educational institutions both in the area of academics and non academics are subject to judicial review, although different standards are applied depending on the nature of the decision (see Tedeschi v Wagner Coll., 49 NY2d 652). As to decisions involving academic matters, the standard of review is whether the institution acted in good faith or its action was arbitrary or irrational (see Tedeschi at 658). Where the action taken is "unrelated to academic achievement, the operative standard requires that the educational institution proceed in accordance with its own rules and guidelines" (Matter of Rizvi v New York Coll. Of Osteopathic Medicine of N.Y. Inst. Of Tech., 98 AD3d 1049, 1052). With respect to non-academic discipline, when an educational institution "acts within its jurisdiction, not arbitrarily, but in the exercise of an honest discretion based on facts within its knowledge that justify the exercise of discretion, a court may not review the exercise of its discretion" (Matter of Carr v St. John's Univ., N.Y., 17 AD2d 632, 634 *affd* 12 NY2d 802). Thus, a Court's review of the determination in matters unrelated to academic performance is whether the action was arbitrary and capricious (see Matter of Rivzi).

Petitioner argues that there is testimony and evidence that supports his claim that he did not commit the acts alleged. However, there was testimony and physical evidence

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considered by the determining board which, if believed and accepted, support the finding made by respondent. It is not the role of the court to make its own determination as to what testimony (or part thereof) to accept and what testimony should be rejected. It is not the role of the court to assess credibility of the witnesses or disagree with the findings. When conflicting evidence has been presented, the court may not weigh the evidence or reject the determination made the determining body simply because of the dispute in the evidence (see Matter of Miserendino v City of Mount Vernon, 96 AD3d 946 , 947). When there is room for choice, that choice is to made by the determining body and not the Court.

Petitioner also alleges that the fifth charge does not specifically exist in the student handbook . Respondent is not a governmental entity that has a legislative body charged with drafting a penal code to cover every offense possible. Respondent's handbook sufficiently sets forth that the conduct underlying the charges were prohibited and subject to disciplinary action. Petitioner was sufficiently "on notice" that this type of conduct was prohibited.

This Court finds, after a review of the record, that there was relevant proof sufficient to support the finding made by respondent. There is no support that the finding was arbitrary and capricious . There is substantial evidence supporting this finding.

Sanctions Imposed

Petitioner challenges the sanction imposed as being excessive in light of the offense. In order to set aside a sanction, it must be established that in light of all the circumstances, it is so disproportionate to the offense that it shocking to one's sense of

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fairness (see Matter of Powers v St. John's Univ. Sch of Law, 110 AD3d 888). This Court finds that considering all of the circumstances the sanction imposed is not disproportionate to the offense and is not shocking to one's sense of fairness.

Due Process

Petitioner also alleges that his due process rights were violated throughout the course of the disciplinary proceedings. Specifically petitioner argues that he was not permitted to have an attorney present at the proceeding, was not provided with the statement of his accuser and that the transcript of the proceedings was insufficient.

It is not disputed that petitioner is entitled to some form of due process. The issue is really to what extent do these rights extend in a school disciplinary proceeding. Petitioner correctly points out that there are gaps in the transcription of the testimony. However, there is no requirement that school must in any way transcribe or record a disciplinary proceeding (see Gruen v Chase, 215 AD2d 481). Further, there was sufficient record available for this Court to conduct its limited review of whether the determination was arbitrary and capricious or supported by substantial evidence.

Petitioner also argues that he was prevented from having counsel present and representing him at the hearing. Again, there is no requirement that petitioner be permitted to be represented by counsel. Respondent was required to comply with its rules and procedures. The student handbook sets forth that petitioner would be provided with an advisor at the hearing . An advisor was provided and was present at the hearing. Petitioner was given an opportunity to consult with his advisor during the proceeding. In

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fact, petitioner was also permitted an opportunity to speak with his attorney on the telephone and read a prepared statement.

Finally, petitioner's argument that he was not provided with the statement of his accuser is belied by the record. He was given a copy of a written statement made by his accuser and certainly knew her identity. Petitioner was even permitted to question his accuser at the hearing as well as all other witnesses that testified and call witnesses in his defense

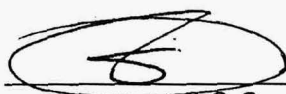
Due process in a school disciplinary hearing requires the student "be given the names of the witnesses against them, the opportunity to present a defense and the results and finding of the hearing" (see Chase at 482.). All of these requirements were met and respondent complied with the procedures set forth in its handbook.

The Court has considered petitioner's remaining arguments and finds them to be without merit.

Accordingly, for the reasons set forth above, petitioner's application is denied.

This constitutes the Decision and Order of the Court.

ENTER,



J.S.C.

Dated: June 11, 2014
gl

Hon. Charles M. Troia

