

Matter of Castillo v St. John's Univ.

2014 NY Slip Op 33144(U)

May 22, 2014

Supreme Court, Queens County

Docket Number: 19760/13

Judge: Allan B. Weiss

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2
Justice

In the Matter of the Application of
JOSE CASTILLO

Index
Number 19760 / 13

Petitioner,
For a judgment pursuant to CPLR Article 78

Motion
Date 1/ 7/ 14

-against-

Motion Seq. No. 1

ST. JOHN’S UNIVERSITY,

Respondent.

The Order dated May 19, 2014 is vacated and the following is substituted in its place.

The following papers numbered 1 to 15 read on this petition by Jorge Castillo to annul, reverse and/or set-aside the decision of the defendant University Conduct Board, which rendered a determination on or about July 12, 2013, finding petitioner responsible for violating the Student Code of Conduct, and thereupon expelling petitioner from academic enrollment; and to direct respondent St. John’s University (STJ), to reinstate petitioner as a student at the same.

| | <u>Papers</u> <u>Numbered</u> |
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| Notice of Petition - Affidavits - Exhibits. | 1- 5 |
| Answering Affidavits - Exhibits | 5-13 |
| Reply Affidavits | 14-15 |

Upon the foregoing papers it is ordered that the petition is denied.

Petitioner brings this Article 78 proceeding to challenge STJ’s decision to expel him from the University for acts of physical violence and deceit– a decision that was made after STJ afforded petitioner all of the rights bestowed in the Student Code of Conduct. STJ submits that its decision to expel petitioner was also based, in part, on petitioner’s history of disciplinary violations at STJ, which included multiple housing violations that led to the

suspension of petitioner's resident hall guest privileges and an incident in which petitioner stole a fellow student's book and sold it back to the STJ bookstore, and then lied about it to STJ authorities. The latter incident resulted in petitioner's suspension from STJ for a semester and his indefinite restriction from the STJ residence halls.

The facts underlying the incident which resulted in petitioner's expulsion are as follows. In December, 2012, STJ received a complaint from petitioner's then-girlfriend that petitioner had physically assaulted her by choking her and had attempted to strangle her, leaving marks on her throat. Upon receiving the complaint, STJ issued a no contact order prohibiting petitioner from making any contact with his then-girlfriend. The Director of Student Conduct also initiated STJ's student conduct process and afforded petitioner the opportunity to address the allegations against him. The student conduct process was held in abeyance, at petitioner's request, pending the outcome of the criminal proceeding against petitioner for the same physical assault. STJ submits that due to the severity of the allegations against petitioner, the Director of Student Conduct issued an interim sanction under the Student Code of Conduct suspending petitioner from STJ.

After petitioner was suspended, the director of student conduct learned that petitioner had lied to an STJ Dean regarding his circumstances when requesting permission to take classes at another institution while suspended from STJ. Petitioner was allegedly told that this deceit would lead to another charge against him under the Student Code of Conduct, and given the opportunity to address that claim as well.

After the criminal proceeding had concluded, the student conduct process commenced with a hearing before the University Conduct Board. Petitioner was provided with notice of the hearing, notice of the formal charges against him and access to the Student Code of Conduct. Under the Student Code of Conduct, petitioner was not allowed to bring a lawyer to the hearing but he was permitted to bring a faculty or student advisor to the hearing if he arranged for one and to call any witnesses if he notified STJ two days prior to the hearing. Under the Student Code of Conduct, witnesses were permitted to submit written statements in lieu of live testimony.

In any event, petitioner was afforded a full hearing under the Student Code of Conduct. At the hearing, petitioner admitted that he physically assaulted his then-girlfriend and that he lied to Assistant Dean Shiela Russell. As a result, the hearing panel found petitioner in violation of the four charges against him and, as required by the Student Code of Conduct, referred their findings to Daniel A. Trujillo, Ph.D., STJ's Dean of Students, to issue the appropriate sanction.

Based on petitioner's admitted assault and his admitted lies to Dean Russell, as well as his prior disciplinary history, Dean Trujillo determined that expulsion was the appropriate sanction. Petitioner was advised of his appeal rights under the Student Code of Conduct but his appeal was both untimely and did not articulate any grounds to overturn his expulsion. As a result, petitioner was not entitled to any further review of the matter under the Student Code of Conduct, and the sanction of expulsion was upheld by STJ.

Petitioner commenced the instant proceeding challenging the expulsion on the ground that it was arbitrary and capricious. STJ opposes the application.

Discussion

"[H]aving accepted a State charter and being subject to the broad policy-making jurisdiction of the Regents of the University of the State of New York, a single corporate entity of which they are deemed a part ... private colleges and universities are accountable in a CPLR article 78 proceeding, with its well-defined standards of judicial review, for the proper discharge of their self-imposed as well as statutory obligations" (*Gertler v Goodgold*, 107 AD2d 481, 486 [1985], *affd.* 66 NY2d 946 [1985]; *see* Education Law § 214; *see also* *Maas v Cornell Univ.*, 94 NY2d 87, 92 [1999]). Accordingly, a proceeding pursuant to CPLR article 78 may be commenced to review whether an administrative determination reached by a private university "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed" (CPLR 7803[3]; *see* *Maas v Cornell Univ.*, 94 NY2d at 92).

Since determinations regarding a student's academic qualifications "rest in most cases upon the subjective professional judgment of trained educators, the courts have quite properly exercised the utmost restraint in applying traditional legal rules to disputes within the academic community" (*Matter of Olsson v. Board of Higher Educ. of City of N.Y.*, 49 NY2d 408, 413 [1980]). "Suspension or expulsion for causes unrelated to academic achievement, however, involve determinations quite closely akin to the day-to-day work of the judiciary" (*Tedeschi v Wagner Coll.*, 49 NY2d 652, 658 [1980]). "Recognizing the present day importance of higher education to many, if not most, employment opportunities, the courts have, therefore, looked more closely at the actions of educational institutions in such matters" (*id.* at 658; *see* *Klinge v Ithaca Coll.*, 244 AD2d 611, 613 [1997]).

"When, as here, action taken against a student is predicated upon grounds 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 [2012]). In situations involving nonacademic discipline, when a university "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 [1962], *affd.* 12 NY2d 802 [1962]; *see Dalton v Educational Testing Serv.*, 87 NY2d 384, 398 [1995]; *Matter of Rizvi v New York Coll. of Osteopathic Medicine of N.Y. Inst. of Tech.*, 98 AD3d at 1052; *Matter of Coleman v Hackley School*, 251 AD2d 328, 328–329 [1980]; *Matter of Galiani v Hofstra Univ.*, 118 AD2d 572, 572 [1986]).

Generally, in a CPLR article 78 proceeding, the court examines whether the action taken by the agency has a rational basis (*see e.g. Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). The court may overturn administrative action where it is “taken without sound basis in reason” or “regard to the facts” (*id.*, citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). A rational basis exists where the determination is “[supported] by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination.” (*Ador Realty, LLC v Division of Housing and Community Renewal*, 25 AD3d 128, 139–140 [2d Dept 2005], *quoting Pell* at 231). If the court concludes “that the determination is supported by a rational basis, the court must sustain the determination even if [this Court] concludes that it would have reached a different result than the one reached by the agency” (*id.*, citing *Matter of Pell*, 34 NY2d at 231). Furthermore, an administrative agency’s construction of its own regulations and the legislation under which it functions are given special deference by the courts if that construction is not irrational or unreasonable (*Shuman v New York State Racing and Wagering Board*, 40 AD3d 385 [2007]).

Here, the school's determination was made on the grounds of the petitioner's admissions of assault and deceit as well as the testimony of his then-girlfriend, and was based upon the exercise of discretion after a full review. Despite the testimony of petitioner's girlfriend that she was the initial aggressor, under the circumstances presented here, and in light of petitioner’s prior infractions, the university’s determination to expel petitioner was not arbitrary and capricious, and does not warrant judicial intervention (*see Matter of Harris v Trustees of Columbia Univ.*, 62 NY2d 956 [1984], *rev'g.* 98 AD2d 58, 67–73 [1983], for reasons stated in dissent of Kassal, J.; *Tedeschi v Wagner Coll.*, 49 NY2d 652, 660 [1980]; *Matter of Galiani v Hofstra Univ.*, 118 AD2d 572 [1986]; *see also Matter of Carr v St. John's Univ. N.Y.*, 17 AD2d 632 [1962], *affd.* 12 NY2d 802 [1962]; *Matter of Simkovich v Vassar Coll.*, 249 AD2d 551 [1998]). The record indicates that STJ substantially complied with its procedures for expelling a student on the grounds of assault (*see Matter of Trahms v Trustees of Columbia Univ. in City of N.Y.*, 245 AD2d 124, 125 [1997]). Petitioner received adequate notice of the committee's hearing, as well as a meaningful opportunity to be heard at the hearing. Moreover, petitioner was accorded every right to which he was

entitled in the context of a disciplinary proceeding instituted by a private university (*see, Tedeschi v Wagner Coll.*, 70 AD2d 934, 935 [1979], *revd on other grounds* 49 NY2d 652 [1980]; *Ayton v Bean*, 80 AD2d 839, 840 [1981]). Moreover, since the determination to expel petitioner was rendered in accordance with the university's published regulations (*see, Tedeschi v Wagner Coll.*, *supra.*; *Matter of Fain v. Brooklyn Coll.*, 112 AD2d 992 [1985]), and was based upon the exercise of honest discretion after a full review of the operative facts, it was neither arbitrary nor capricious so as to warrant judicial intervention (*see, Matter of Harris v Trustees of Columbia Univ.*, 62 NY2d 956, *revg* 98 AD2d 58, 67-73, for reasons stated in dissent of Kassal, J., at App Div; *Matter of Patti Ann H. v. New York Med. Coll.*, 88 AD2d 296, 301, *affd* 58 NY2d 734; *Matter of Carr v. St. John's Univ.*, 17 AD2d 632, 634, *affd* 12 NY2d 802).

Finally, in light of all the circumstances, including petitioner's admissions to the assault and deceit which was the subject of the expulsion, the court does not consider the penalty imposed to be "so disproportionate to the offense ... as to be shocking to one's sense of fairness" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 233 [1974]; *see e.g. Matter of Attard v. Kampe*, 95 AD3d 1005 [2012]), thus constituting an abuse of discretion as a matter of law.

Accordingly, it is

ORDERED and **ADJUDGED** that the petition to annul, reverse and/or set-aside the decision of the defendant University Conduct Board and reinstate petitioner as a student at STJ, is denied and dismissed; and it is further

ORDERED that Exhibit 1 annexed to the affirmation of Michael J. Keane shall be filed under seal.

Dated: May 22, 2014

J.S.C.