Matter of Hamilton v Alley
2014 NY Slip Op 33818(U)
December 16, 2014
Supreme Court, Onondaga County
Docket Number: 2014EF3535
Judge: Donald A. Greenwood

At a Motion Term of the Supreme Court of the State of New York, held in and for the County of Onondaga on November 12, 2014.

PRESENT: HON. DONALD A. GREENWOOD
Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

In the Matter of Application of
WILLIAM E. HAMILTON,

Petitioner,

v.

MARY ALLEY, JAMES FROIO and THE BOARD OF EDUCATION OF THE JORDAN-ELBRIDGE CENTRAL SCHOOL DISTRICT,

Respondents,

for a Judgment Pursuant to Article 75 of the CPLR

DECISION AND ORDER

RJI No.: 33-14-3422
Index No.: 2014EF3535

ON SUBMISSION: **DENNIS O'HARA, ESQ. AND STEPHEN CIOTOLI, ESQ., OF O'HARA, O'CONNELL & CIOTOLI**
For Petitioner

FRANK MILLER, ESQ, OF THE LAW FIRM OF FRANK W. MILLER
For Respondents

LARRY P. MALFITANO, ESQ., OF BOND, SCHOENECK & KING, PLLC
For Respondents

This petition is brought pursuant to CPLR Article 75 and seeks to vacate and annul the Decision and Award of Hearing Officer Stephen LaLonde dated August 12, 2014, rendered in a proceeding commenced pursuant to Education Law section 3020-a against the petitioner by the Board of Education of the Jordan-Elbridge Central School District (hereinafter Board). The

Decision is based on charges filed against petitioner in a section 3020-a proceeding that combined initial charges filed August 18, 2010 by respondent Mary Alley and amended charges filed on February 15, 2012 by respondent James Froio. The Hearing Officer sustained nine charges, as set forth in the Statement of Charges and Amended Statement of Charges, in a 154 page Decision wherein he granted the Board's demand for petitioner's termination and terminated petitioner's employment with the Jordan-Elbridge School District effective as of the date of the Decision and Award.

The statute requires that "not later than ten days after receipt of the hearing officer's decision, the employee of 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 seven thousand 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..." *Education Law §3020-a(5)(a).* The grounds for vacating an arbitration award under CPLR section 7511 are corruption, fraud or misconduct in procuring the award; or partiality of an arbitrator appointed as a neutral; or an arbitrator or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or failure to follow the procedure of Article 75. *See, CPLR §7511(a).*

The record shows that the Hearing Officer's Decision was electronically mailed to the parties on August 20, 2014.[1] The Notice of Petition electronically filed on September 2, 2014, over 10 days after petitioner's receipt of the Decision, alleges that "the Hearing Officer exceeded

[1]The petitioner fails to set forth the date of receipt in the petition. The respondent has alleged service by electronic mail on this date and petitioner has not disputed same. Nor has petitioner addressed the allegation of untimeliness in his reply papers.

his authority in violation of the statute and established public policy by recommending that Petitioner's employment with Respondent be terminated ..." *Notice of Petition, dated September 2, 2014.*[2] The accompanying seven page petition filed on the same date references an attorney's affirmation of Stephen Ciotoli as well as a Memorandum of Law purportedly submitted therewith. However, the Ciotoli affirmation and Memorandum of Law are dated September 30, 2014, four weeks later, and were not filed until that date. The petitioner's remedy is defined in the Education Law and although such claims may have been cognizable in a CPLR Article 78 proceeding, petitioner was required to commence this within the time limitation set forth in. *See, Matter of Watkins v. Bd of Educ. of Port Jefferson Union Free School Dist.*, 26 AD3d 336 (2d Dept. 2006). While this Court has the authority to treat a CPLR Article 78 proceeding as an application pursuant to CPLR Article 75 if brought in a timely fashion, this Court does not have the authority to extend the ten day limitations period as set forth in Education Law section 3020-a(5). *See, Matter of Watkins, supra*; *see also, Myers v. City of New York*, 99 AD3d 415 (1st Dept. 2012). As such, even if arguably the September 2, 2014 Notices of Petition and brief Petition were considered timely, the documents referenced therein and not filed until September 30th are time barred. *See, id; see also, Awarka v. Bd. of Educ. of City of New York*, 59 AD3d 442 (2d Dept. 2009).

Even if this Court were to consider the substance of the petitioner's application, this Court finds that it is without merit and the petitioner is not entitled to the relief sought. This Court has reviewed the voluminous record in this matter, including all of the parties'

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[2] The petitioner filed an Amended Notice of Petition on September 4, 2014 seeking the same relief.

submissions, and found that there were a number of hearing and pre-hearing motions resulting in over 1,000 pages of motion papers, 13 days of hearing and 2,945 pages of transcribed testimony, 166 exhibits and the opportunity for the parties to submit post-hearing briefs. Based upon all that information, this Court finds that the Hearing Officer properly determined petitioner to be guilty of the nine charges, and that petitioner is not entitled to have the Decision and Award vacated pursuant to the statutory criteria. *See, CPLR §7511.* The reasons are set forth below.

The petitioner contends that the Decision should be vacated and annulled on the grounds that it was the product of the Hearing Officer's bias against the petitioner, that the Decision was based on an erroneous interpretation of the law, and was not supported by credible or adequate evidence. Petitioner further contends that the Hearing Officer found him guilty of misconduct that was not charged and findings in the Decision were not in accord with due process. Petitioner also claims that several of the charges were barred by the statute of limitations and that the penalty of the termination of employment was so disproportionate to the offenses in light of all the circumstances, including petitioner's long history of exemplary service, as to be shocking to the conscience and to a reasonable person's sense of fairness. The Board has opposed the petitioner's application on the grounds of timeliness as well as on the merits.[3] The Board has denied the allegations in the petition and raised a number of affirmative defenses, including, *inter alia,* failure to state a cause of action, that the Decision rendered was consistent with the hearing record, was supported by substantial evidence and should be confirmed.

With respect to the petitioner's contentions, this Court's scope of review is extremely

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[3] The Board is represented by two separate counsel. The Law Office of Frank Miller represents the Board with respect to Amended Charge No. 1 and Bond, Schoeneck & King, PLLC represents the Board with respect to the remaining charges.

limited and there are only four statutory grounds for challenging an arbitration award: corruption, fraud or misconduct by the hearing officer; partiality or bias by the hearing officer; whether the hearing officer exceeded his scope of authority or whether the statutory procedures were followed. *See, Hackett v. Millbank, Tweed, Hadley & Mcloy,* 86 NY2d 146 (1995). Any other claims, including allegations of mistakes of law or fact cannot be statutorily challenged. *See, Financial Clearing and Services Corp. v. Katz*, 172 AD2d 290 (1st Dept. 1991). The path of analysis, proof and persuasion by which the arbitrator reached his conclusion is beyond judicial scrutiny. *See, Central Square Teachers Association v. Board of Education Central Square CSD*, 52 NY2d 918 (1981).

With respect to petitioner's claim of bias of the Hearing Officer, a demonstration of partiality requires clear and convincing proof of actual bias and there is no basis for such a finding here. In reviewing the Decision in this matter, there is an automatic presumption of integrity afforded by the court, particularly where, as here, the hearing officer was selected jointly by the parties. *See, Rye v. City of Sherill*, 195 AD2d 961 (4th Dept. 1993). To overcome the presumption and vacate an arbitration decision on the grounds of partiality, a petitioner must satisfy the particularly heavy burden by proving by clear and convincing evidence that the hearing officer was biased. *See, Batyreva v. NYC Department of Education*, 95 AD3d 792 (1st Dept. 2012). In doing so a petitioner must be aware that merely pointing to an adverse ruling does not support a claim of bias because that is nothing more than an example of the hearing officer doing exactly what he is supposed to do in rendering a decision. *See, Moro v. Mills*, 70 AD3d 1269 (3rd Dept. 2010). Bias is an inclination or a pre-existing tendency to favor a party before any of the evidence was heard. *See, Black's Law Dictionary, 9th Ed. p. 183.* To establish

bias, a petitioner must set forth a factual demonstration showing the hearing officer favored a specific party before the hearing began. *See, Morrow, supra*. The petitioner failed to submit any evidence of actual basis and offers only conclusory allegations related to unfavorable rulings which are wholly insufficient as a matter of law. *See, Sunnen v. Administrative Review Board for Professional Medical Conduct*, 244 AD2d 790 (3rd Dept. 1997). Petitioner contends that Matthew Fletcher, a retired attorney who used to represent BOCES and briefly represented William Speck, an Interim Superintendent of the School District, in a separate 50-h hearing, endorsed the Hearing Officer on LinkedIn, claiming that this leads to the conclusion that the Hearing Officer endorsed him and thus was biased against petitioner. An affidavit is provided from Matthew Fletcher, which establishes that he does not ever recall meeting Hearing Officer LaLonde. During his employment at BOCES one of his colleagues had used him in an employment dispute and expressed his thoughts that he believed that the hearing officer was helpful and would use him again. He believes that it was those conversations that resulted in the mutual LinkedIn endorsements, and he has had absolutely no involvement with the section 3020-a case concerning petitioner. Nor is there any merit to the petitioner's claim the Hearing Officer denied him access to the District's BudgetSense during the hearing, the record demonstrates that the District already responded to 296 distinct discovery demands, with over 152,000 documents. The petitioner's belated demand for remote access to the program eight months after submission of the District's responses and four days into the hearing was properly denied by the Hearing Officer in a well-reasoned Decision pursuant to his authority to establish the rules and procedures for the conduct of this hearing, including discovery. *See, 8 NYCRR §82-1.10(g).*

Nor is there any merit to petitioner's claim that the Decision was not supported by credible or adequate evidence. When reviewing compulsory arbitrations in education proceedings, this Court is required to accept the arbitrator's credibility determinations even where there is conflicting evidence and room for choice exists. *See, Denhoff v. Mamaroneck Union Free School District*, 101 AD3d 997 (2d Dept. 2012). It is the Hearing Officer who actually sees the witnesses and it is his job to assess the witnesses and determine their credibility, and his decisions in this regard are not reviewable and are not the evidence of bias. The petitioner has failed to meet the clear and convincing evidence standard with respect to this issue.

This Court is also authorized to vacate the Decision of the Hearing Officer for statutory grounds beyond those set forth in CPLR section 7511 if the Decision and Award does not have a rational basis in the record, even though Education Law section 3020-a explicitly states the Decision of the Hearing Officer is final and subject to vacatur only upon the four statutory grounds. *See, Education Law 3020-a(5).* The participants in an Education Law section 3020-a hearing are compelled by law to submit their dispute to arbitration as opposed to consenting to it in a voluntary arbitration agreement and since the arbitration is compulsory, courts have held that the decision must satisfy an additional layer of judicial scrutiny and must have evidentiary support and cannot be arbitrary or capricious. *See, City School District of City of New York v. McGrahamh*, 17 NY3d 917 (2011). The test for whether a decision is arbitrary and capricious is whether there is any rational basis for the decision in the record, and if there is then it is not arbitrary and capricious and cannot be vacated by the court. *See, Elmore v. Plainview-Old Bethpage CSD*, 299 AD2d 545 (2d Dept. 2002). The majority of the petitioner's argument focuses on discrete components of the Decision and small portions of testimony that he alleges

are ambiguous or contrary to those components. However, since the Decision as a whole is reasoned and has support in the record then it must be upheld by this Court as rational. *See, Garcia v. Department of Education of City of New York*, 18 Misc.3d 503 (2007). There was a rational basis for each of the charges and the 155 page Decision was detailed, well-reasoned and replete with citations to the transcript and exhibits. Therefore, there is no basis as a matter of law for vacating the decision as irrational. *See, Elmore, supra: see also, Garcia, supra.* Instead, petitioner incorrectly seeks to have this Court substitute its judgment for that of the Hearing Officer and second guess the impartial arbitrator who saw all of the testimony and evidence over thirteen days of hearing first hand.

Nor do any of the other grounds for review in petitioner's papers support vacating the award here. The hearing process by itself provides more than adequate procedural safeguards to satisfy a petitioner's due process rights, including the opportunity to be informed of the charges against him, to respond to those charges, to be represented by counsel, to examine and cross-examine witnesses and to present evidence on his own behalf. *See, Montefusco v. Nassau County*, 39 FSupp2d 231 EDNY (1999). Nor is there a basis for the claim that the petitioner was found guilty of conduct not charges, and therefore not discharged for just cause. The law requires only that the charges be sufficiently clear to appraise a petitioner of the reasons for the hearing and enable him to prepare a defense. *See, Sperling v. Board of Education Poughkeepsie CSD*, 150 AD2d 584 (2d Dept. 1984). The charges need only be reasonably specific in light of all of the relevant circumstances to apprise the party whose rights are being determined of the charges against him in order to satisfy just cause. *See, Matter of Block v. Ambach*, 73 NY2d 323

(1989). The record demonstrates that the detailed charges here, as well as the voluminous discovery produced, gave petitioner both fair notice of the charges and an opportunity to prepare a defense.

Likewise, the petitioner's challenges to the Hearing Officer's alleged legal errors are without merit, including petitioner's allegations regarding the statute of limitations, the alleged misapplication of the General Municipal Law bidding requirements, the definition of immorality, the burden of proof placed upon the District's claims of criminal conduct and the existence of the contract with the public school's trust. However, an arbitrator's decision will not be vacated for errors of law in fact committed by the arbitrator. *See, Matter of Sprinzen*, 46 NY2d 623 (1979). This includes misapplication of substantive rules of law. *See, Heagerty v. Board of Education*, 5 AD3d 771 (2d Dept. 2004). Even where an arbitrator states an intention to apply a law and then misapplies it, the award will not be set aside. *See, Sprinzen, supra*. Likewise, petitioner's attacks on some of the types of evidence considered by the Hearing Officer, such as hearsay, are wholly inapplicable. Technical adherence to the rules of evidence does not govern arbitration proceedings. *See, Austin v. Board of Education of NYC School District*, 280 AD2d 365 (1st Dept. 2001). Hearsay evidence may form the basis of an administrative determination. *See, Café La China Corp. v. NYS Liquor Authority*, 43 AD3d 280 (1st Dept. 2007). Nor is there any merit to petition's contention that the Hearing Officer's determinations of credibility were incorrect inasmuch as the courts will uniformly accept the arbitrator's credibility determinations even where there is conflicting evidence and room for choice, because the Hearing Officer observed the witnesses and was able to perceive the inflections, pauses, glances and gestures, all nuances of speech and manner that combine to perform an impression of either candor or deception. *See,*

Lacklow, supra. Likewise, with respect to petitioner's claims that the Hearing Officer improperly failed to credit some of the evidence or witnesses offered in his defense, the Hearing Officer was responsible to make credibility determinations and to determine what testimony and issues he should accept and consider; unless his Decision was rendered totally irrational thereby, a refusal or failure to pass upon an arguably relevant issue or piece of evidence even if mistaken is a matter of arbitral judgment, which being part and parcel of the arbitrator's determination is not judicially reviewable. *See, Maross Construction, Inc. v. CNY Regional Transportation Authority*, 66 NY2d 341 (1985). Inasmuch as the District produced evidence showing petitioner had committed the acts he was charged with in the hearing, the determination to disregard contradictory and wholly unrelated testimony offered by petitioner cannot be challenged in court.

Nor is there merit to petitioner's claim that the penalty of termination of employment was disproportionate to the offenses in light of all the circumstances, including petitioner's long history of exemplary service. The decision to impose the penalty of termination is subject to a deferential standard of review and such a decision may only be overturned where it is so disproportionate to the offense in light of all the circumstances as to be shocking to one's fairness. *See, Matter of Pell v. Board of Educ. of Union Free School Dist.*, 34 NY2d 222 (1974). While this term "reflects a purely subjective response ...[and] reflects difficulty in articulating an objective standard....[A] result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the risk of harm to the agency or institution... Additional factors would be the prospect of deterrence of the individual or of others in like situations and therefore a reasonable prospect of recurrence of derelictions by the

individual or persons similarly employed. There is also the element that sanctions reflect the standards of society to be applied to the offense involved." *See, Matter of Pell, supra.* The record shows that the Hearing Officer sustained nine separate charges against the petitioner, finding, *inter alia*, that petitioner repeatedly and intentionally violated the District policies and New York law related to competitive bidding for contracts, attempted to improperly terminate the District's Worker's Compensation insurance, failed to properly account for an spend a public grant and improperly sought reimbursement for expenses from the Department of Transportation. Moreover, the Hearing Officer sustained Charge 4.4, which alleged that: petitioner had full access to the District computer system; maintained District files and information on the District's computer; knew that the computer and information were property of the District knew his actions were being investigated in May, June and July of 2010; prior to his computer access rights being terminated deleted his e-mails and calendaring information as well as numerous other computer and electronic files and data from his desktop, laptop and various other electronic devices; his actions hindered the District's investigation of his alleged misconduct and that he engaged in a series and individual acts of insubordination warranting termination of employment. *See, Decision, p. 134-135.* In discussing the appropriate penalty, the Hearing Office noted that petitioner "violated...laws and policies even in the face of repeated notice of the laws and policy procedures and requirements... refused to follow directives from the Comptroller, the Board and recommendations from the Internal Auditor" and "[f]urther,...often refused to accept responsibility for his actions, would attempt to create excuses and justifications to backfill and rationalize his improper actions and trying to shift blame to others for his inappropriate conduct. *Decision, p. 66.* He further determined that the petitioner's deletion of electronic data and

information from computers and his District e-mail account constituted "an effort to obstruct the District's investigation into his conduct and any additional evidence of his misconduct and incompetence." *Id., at p. 66-67.* A tenured school administrator may be removed by a hearing officer following a section 3020-a hearing upon a showing of conduct that amounts to insubordination, immoral character, inefficiency, incompetency, physical or mental disability or neglect of duty. *See, Bott v. Board of Education*, 41 NY2d 265 (1977)*: see also, Education Law* §3012(b). The Hearing Officer found that petitioner had engaged in multiple instances of conduct that was incompetent, insubordinate and immoral, and thus the penalty of termination does not meet the standard as articulated in *Pell.* Moreover, where there are numerous instances of misconduct and incompetence that are established, the penalty of termination must be sustained as it is not shocking to one's sense of fairness. *See, Morey v. Somers CSD*, 24 AD3d 558 (2d Dept. 2005). Nor is petitioner's claim of an excellent work record, if true, a sufficient basis for overturning the Decision. *See, Patterson v. NYC*, 96 AD3d 565 (1st Dept. 2012). Even a long and previously unblemished record does not foreclose dismissal from being considered as an appropriate sanction, especially where, as here, the terminated employee shows no lack of remorse and fails to take responsibility for his actions. *See, Rogers v. Sherburne Earlville CSD*, 17 AD3d 823 (3rd Dept. 2005). Thus, there is no basis for concluding that the penalty of termination is so disproportionate to the offenses petitioner was found guilty of as to shock this Court's conscience.

NOW, therefore, for the foregoing reasons, it is

ORDERED, that the relief sought in the petition to vacate and annul the Decision and Award of Hearing Officer Steven LaLonde, dated August 12, 2014, is denied.

ENTER

Dated: December 16, 2014
Syracuse, New York

DONALD A. GREENWOOD
Supreme Court Justice

Papers Considered:

1. Notice of Petition, dated September 2, 2014;
2. Petition, dated September 2, 2014;
3. Amended Notice of Petition, dated September 4, 2014;
4. Affidavit of William E. Hamilton in support of petition, dated September 25, 2014, and attached exhibits;
5. Petitioner's Memorandum of Law, dated September 30, 2014;
6. Affidavit of John. A. Sickinger, Esq., dated October 15, 2014, and attached exhibits;
7. Memorandum of Law in opposition to Verified Petition, dated October 17, 2014;
8. Affirmation of Larry P. Malfitano, Esq., dated October 30, 2014, and attached exhibits;
9. Affidavit of Matthew R. Fletcher, dated October 15, 2014;
10. Respondent's Answering Memorandum of Law, dated October 31, 2014;
11. Petitioner's Reply Brief-Amended Charge No. 1, dated November 6, 2014; and
12. Petitioner's Reply Brief Excepting Amended Charge No. 1, dated November 7, 2014.