

NEW YORK COURT OF APPEALS

In the Matter of Katie Kickertz v. New York University

Matter of Kickertz v. New York University, 25 N.Y.3d 942 (2015) · No. No. 29 · Decided April 7, 2015

SUMMARY

The New York Court of Appeals held that New York University should have been permitted to answer the student's CPLR article 78 petition after its motion to dismiss was denied, because triable issues existed concerning compliance with the University's disciplinary procedures. The court modified the judgment and Appellate Division order by vacating the grant of the petition and remitting the matter to Supreme Court for further proceedings, without reaching the propriety of the expulsion penalty.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Per Curiam; Chief Judge Lippman; Judge Read; Judge Pigott; Judge Rivera; Judge Stein; Judge Fahey; Judge Abdus-Salaam
JURISDICTION	New York
DECIDED	April 7, 2015
DOCKET	No. 29
DISPOSITION	remanded
PROCEDURAL POSTURE	New York University appealed as of right from Supreme Court's judgment granting Katie Kickertz's CPLR article 78 petition. The appeal also brought up for review the Appellate Division's prior nonfinal order that had reversed Supreme Court's earlier dismissal and granted the petition.
STANDARD OF REVIEW	The Court of Appeals reviewed whether the Appellate Division properly resolved the article 78 proceeding without permitting NYU to answer under CPLR 7804(f).
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	New York University v. Katie Kickertz

TOPICS

[administrative procedure act](#)[motions to dismiss](#)[appellate procedure](#)[pleadings](#)[civil procedure](#)

PRACTICE AREAS

Civil procedure

Administrative law

Education law

Appellate procedure

QUESTIONS PRESENTED

1. Whether the Appellate Division erred by failing to remand the CPLR article 78 proceeding to permit NYU to file an answer under CPLR 7804(f) after denying NYU's motion to dismiss.
2. Whether the record established that NYU substantially complied with its published disciplinary procedures.

HOLDINGS

1. Because the motion papers did not establish that no triable issues of fact existed, NYU should have been permitted to answer under CPLR 7804(f), and the matter had to be remitted to Supreme Court for further proceedings.
2. Triable issues of fact existed as to whether NYU substantially complied with its established disciplinary procedures, precluding final resolution of the article 78 petition without an answer and further proceedings.

KEY QUOTATIONS

"We have indicated, however, that a court need not do so if the "facts are so fully presented in the papers of the respective parties that it is clear that no dispute as to the facts exists and no prejudice will result from the failure to require an answer"" (at 2)

"A student subject to disciplinary action at a private educational institution is not entitled to the "full panoply of due process rights"" (at 3)

FACTUAL BACKGROUND

New York University expelled Katie Kickertz from its College of Dentistry for academic misconduct and made her ineligible for readmission. Kickertz challenged the expulsion in a CPLR article 78 proceeding, seeking reinstatement, a dental degree, and attorney fees. The Court of Appeals determined that triable factual issues existed concerning whether NYU substantially complied with its established disciplinary procedures.

PROCEDURAL HISTORY

Kickertz commenced a CPLR article 78 proceeding seeking reinstatement, a Doctor of Dental Surgery degree, and attorney fees after NYU expelled her for academic misconduct. Supreme Court initially dismissed the petition under CPLR 3211. The Appellate Division reversed and vacated that judgment and granted the petition. Supreme Court then entered a judgment granting relief, which NYU appealed to the Court of Appeals. The Court of Appeals held that NYU should have been permitted to answer and remitted the matter for further proceedings.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Vacate the portion of the Appellate Division order granting the petition and remit the matter to Supreme Court, New York County, for further proceedings, including permitting NYU to file an answer in accordance with CPLR 7804(f). The judgment and order were otherwise affirmed as modified, without costs.

CASES CITED

- Matter of Nassau BOCES Cent. Council of Teachers v. Board of Coop. Educ. Servs. of Nassau County, 63 N.Y.2d 100 (1984)
- Matter of Ebert v. Yeshiva Univ., 28 A.D.3d 315 (1st Dep't 2006)
- Tedeschi v. Wagner Coll., 49 N.Y.2d 652 (1980)

OPINION

In the Matter of Katie Kickertz v. New York University
PER CURIAM.

===== This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 29 In the Matter of Katie Kickertz, Respondent, v. New York University, Appellant. Ira M. Feinberg, for appellant. Bryan Arbeit, for respondent. MEMORANDUM: The judgment appealed from and the order of the Appellate Division brought up for review should be modified, without costs, by vacating that portion of the order granting the petition and remitting to Supreme Court for further proceedings in accordance with this opinion and, as so modified, affirmed. - 1 - - 2 - No. 29 Based on a determination of academic misconduct, New York University (NYU or the University) expelled Katie Kickertz (Kickertz) from its College of Dentistry without possibility of readmission. In this CPLR article 78 proceeding, petitioner Kickertz sought a judgment directing respondent NYU to reinstate her as a student, grant her the degree of Doctor of Dental Surgery and award attorneys' fees. The University now appeals as of right, pursuant to CPLR 5601 (d), from Supreme Court's judgment granting Kickertz's petition. In so doing, NYU brings up for review the Appellate Division's prior nonfinal order which, with two Justices dissenting in part, reversed and vacated Supreme Court's earlier judgment dismissing Kickertz's petition pursuant to CPLR 3211 (30 Misc 3d 1220[A] [Sup Ct, NY County 2011]); and reinstated and granted the petition (99 AD3d 502 [1st Dept 2012]). The principal issue raised by this appeal is whether the Appellate Division erred by failing to remand to Supreme Court to permit NYU to file an answer pursuant to CPLR 7804 (f). That provision specifies that where a respondent moves to dismiss a CPLR article 78 petition and the motion is denied, "the court shall permit the respondent to answer, upon such terms as may be just" (emphasis added). We have indicated, however, that a court need not do so if the "facts are so fully presented in the papers of the respective parties that it is clear that no dispute as to the facts exists and no prejudice will result from the failure to - 2 - - 3 - No. 29 require an answer" (Matter of Nassau BOCES Cent. Council of Teachers v Board of Coop. Educ. Servs. of

Nassau County, 63 NY2d 100, 102 [1984] [emphasis added]). Since "the motion papers" in BOCES "clearly did not establish that there were no triable issues of fact," we held that "the procedure dictated by CPLR 7804 (subd [f]) should have been followed" (id. at 104). For the same reason, NYU should be permitted to answer in this case. A student subject to disciplinary action at a private educational institution is not entitled to the "full panoply of due process rights" (Matter of Ebert v Yeshiva Univ., 28 AD3d 315, 315 [1st Dept 2006]). Such an institution need only ensure that its published rules are "substantially observed" (Tedeschi v Wagner Coll., 49 NY2d 652, 660 [1980]). And here, triable issues of fact exist with regard to whether NYU substantially complied with its established disciplinary procedures. Because of our disposition of this appeal, we do not reach and express no opinion about the propriety of the penalty imposed or any other issue raised by the parties and decided by the courts below. * * * * * Judgment appealed from and order of the Appellate Division brought up for review modified, without costs, by vacating that portion of the Appellate Division order granting the petition and remitting to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed. Chief Judge Lippman and Judges Read, Pigott, Rivera, Stein and Fahey concur. Judge Abdus-Salaam took no part. Decided April 2, 2015 - 3 -