

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Ferraro v. State Univ. of N.Y. at Purchase Coll.

2018 NY Slip Op 04320 (App. Div. 2018) · No. 2015-08027 · Decided June 13, 2018

SUMMARY

The Appellate Division, Second Department, upheld State University of New York at Purchase College's determination that Juliette Ferraro violated the college's community standards code of conduct and was subject to suspension. The court rejected her due process challenge, finding that the hearing decision adequately stated the evidence and factual basis for the violations, and held that the sanction was not disproportionate. The court also held that her remaining nonconstitutional challenges were barred because she waived administrative appeal and failed to exhaust administrative remedies.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	William F. Mastro, J.P.; Mark C. Dillon, J.; Jeffrey A. Cohen, J.; Angela G. Iannacci, J.
JURISDICTION	New York
DECIDED	June 13, 2018
DOCKET	2015-08027
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding challenging a college disciplinary determination; the Supreme Court, Westchester County, transferred the proceeding to the Appellate Division pursuant to CPLR 7804(g).
STANDARD OF REVIEW	The court reviewed whether the disciplinary determination violated due process, whether the hearing decision adequately stated the factual findings and evidence relied upon, and whether the sanction was so disproportionate to the offenses as to shock the court's sense of fairness. Nonconstitutional challenges to the evidence and hearing procedures were barred by failure to exhaust administrative remedies.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion

PARTIES

Juliette Ferraro, petitioner v. State University of New York at Purchase College, other respondents

TOPICS

judicial review of agency action

exhaustion of remedies

administrative law

procedural due process

appellate procedure

PRACTICE AREAS

administrative law

higher education law

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the disciplinary hearing committee denied Ferraro due process by failing to provide factual findings and identify the evidence supporting its decision.
2. Whether Ferraro's suspension was so disproportionate to the offenses and circumstances as to shock the court's sense of fairness.
3. Whether Ferraro's nonconstitutional challenges to the adequacy of the evidence and the hearing committee's procedures and rulings were barred by failure to exhaust administrative remedies after she waived an administrative appeal.
4. Whether the hearing committee was required to apply provisions of the New York State Penal Law even though Ferraro was not charged or prosecuted under that law.

HOLDINGS

1. Although a disciplinary decision must state the factual findings and evidence on which it is based, the hearing decision satisfied that requirement by concisely identifying the evidence relied upon and the specific conduct constituting the violations; therefore, Ferraro was not denied due process on this ground.
2. The suspension was not so disproportionate to the offenses and the circumstances as to shock the court's sense of fairness.
3. Ferraro's nonconstitutional challenges to the adequacy of the evidence and the hearing committee's procedures and rulings were barred because she affirmatively waived her administrative appeal and accepted the committee's findings and conclusions.
4. The hearing committee was not required to consider or apply the New York State Penal Law because Ferraro was neither charged nor prosecuted by the college under that law.

KEY QUOTATIONS

*“While such a statement must be provided, the hearing decision in this case satisfied this requirement by including a concise statement of both the evidence relied upon and the specific conduct of the petitioner which constituted the violations, thereby giving her notice of the basis for the decision.” ([*1])*

*“The petitioner's remaining nonconstitutional challenges to the adequacy of the evidence against her and to the procedures and rulings of the hearing committee are barred by her failure to exhaust administrative remedies, since she affirmatively waived her right to an administrative appeal and accepted the findings and conclusions of the hearing committee.” ([*2])*

FACTUAL BACKGROUND

Ferraro was charged under Purchase College's community standards code of conduct with unwanted sexual touching of a fellow student and underage consumption of alcohol. After an administrative hearing, the college's Disciplinary Hearing Committee sustained the charges. The college upheld the committee's decision and suspended Ferraro. The hearing decision included a concise statement of the evidence relied upon and the conduct constituting the violations.

PROCEDURAL HISTORY

A college disciplinary hearing committee sustained charges that Ferraro engaged in unwanted sexual touching of another student and consumed alcohol while underage. The college upheld the committee's decision and suspended Ferraro. Ferraro commenced an article 78 proceeding, which the Supreme Court, Westchester County, transferred to the Appellate Division. The Appellate Division confirmed the determination, denied the petition, and dismissed the proceeding on the merits.

DISPOSITION

dismissed

CASES CITED

- Matter of Boyd v. State Univ. of N.Y. at Cortland, 110 AD3d 1174, 1175
- Matter of Kalinsky v. State Univ. of N.Y. at Binghamton, 161 AD2d 1006, 1007
- Matter of Lambraia v. State Univ. of N.Y. at Binghamton, 135 AD3d 1144, 1146-1147
- Matter of Powers v. St. John's Univ. Sch. of Law, 25 NY3d 210, 218
- Matter of Featherstone v. Franco, 95 NY2d 550, 554
- Matter of Idahosa v. Farmingdale State Coll., 97 AD3d 580, 581
- Matter of Galiani v. Hofstra Univ., 118 AD2d 572
- Watergate II Apts. v. Buffalo Sewer Auth., 46 NY2d 52, 57
- Young Men's Christian Assn. v. Rochester Pure Water Dist., 37 NY2d 371, 375
- Matter of Carnelian Farms, LLC v. Village of Muttontown Bldg. Dept., 151 AD3d 845, 846
- Matter of Lauriero v. New York City Dept. of Consumer Affairs, 41 AD3d 717, 719
- Matter of Dozier v. New York City, 130 AD2d 128, 135

OPINION

PER CURIAM.

Matter of Ferraro v State Univ. of N.Y. at Purchase Coll. (2018 NY Slip Op 04320) Matter of Ferraro v State Univ. of N.Y. at Purchase Coll. 2018 NY Slip Op 04320 Decided on June 13, 2018 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 13, 2018 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department WILLIAM F. MASTRO, J.P. MARK C. DILLON JEFFREY A. COHEN ANGELA G. IANNACCI, JJ. 2015-08027 (Index No. 1499/15) [*1]In the Matter of Juliette Ferraro, petitioner, vState University of New York at Purchase College, et al., respondents. John G. Poli III, P.C., Huntington, NY, for petitioner.

Barbara D. Underwood, Attorney General, New York, NY (Anisha S. Dasgupta and Philip V. Tisne of counsel), for respondents. DECISION & JUDGMENT Proceeding pursuant to CPLR article 78 to review a determination of the respondent State University of New York at Purchase College dated November 7, 2014.

The determination upheld a decision of the Disciplinary Hearing Committee of the respondent State University of New York at Purchase College dated October 30, 2014, finding that the petitioner violated certain provisions of the school's community standards code of conduct and, inter alia, suspended her from the school. ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The petitioner was charged with certain violations of the community standards code of conduct at the respondent State University of New York at Purchase College (hereinafter the college). Following an administrative hearing, the college's Disciplinary Hearing Committee (hereinafter the hearing committee) sustained charges against the petitioner of unwanted sexual touching of a fellow student and underage consumption of alcohol.

The petitioner was advised of the hearing committee's decision and of her right to an administrative appeal, but she declined to pursue any administrative review and indicated that she fully accepted the hearing committee's decision.

In a determination dated November 7, 2014, the college upheld the hearing committee's decision and imposed the sanction of suspension of the petitioner from attendance at the college. The petitioner subsequently commenced this proceeding pursuant to CPLR article 78 to review the determination, and the Supreme Court, Westchester County, transferred the matter to this Court pursuant to CPLR 7804(g).

We find unpersuasive the petitioner's contention that she was denied due process by the alleged failure of the hearing committee to support its decision with a statement of factual findings and the evidence upon which it was based. While such a statement must be provided (see Matter of Boyd

v State Univ. of N.Y. at Cortland, 110 AD3d 1174, 1175; Matter of Kalinsky v State Univ. of N.Y. at Binghamton, 161 AD2d 1006, 1007), the hearing decision in this case satisfied this requirement by including a concise statement of both the evidence relied upon and the specific conduct of the petitioner which constituted the violations, thereby giving her notice of the basis for the decision (see Matter of Lambraia v State Univ. of N.Y. at Binghamton, 135 AD3d 1144, 1146-[*2]1147).

Similarly, the petitioner's challenge to the sanction imposed is without merit, since that sanction was premised on the seriousness of the offenses and the circumstances under which the petitioner was found responsible, and the penalty was not so disproportionate to the offenses as to shock the Court's sense of fairness (see Matter of Powers v St. John's Univ.

Sch. of Law, 25 NY3d 210, 218; Matter of Featherstone v Franco, 95 NY2d 550, 554; Matter of Idahosa v Farmingdale State Coll., 97 AD3d 580, 581; Matter of Galiani v Hofstra Univ., 118 AD2d 572). The petitioner's remaining nonconstitutional challenges to the adequacy of the evidence against her and to the procedures and rulings of the hearing committee are barred by her failure to exhaust administrative remedies, since she affirmatively waived her right to an administrative appeal and accepted the findings and conclusions of the hearing committee (see Watergate II Apts. v Buffalo Sewer Auth., 46 NY2d 52, 57; Young Men's Christian Assn. v Rochester Pure Water Dist., 37 NY2d 371, 375; Matter of Carnelian Farms, LLC v Village of Muttontown Bldg.

Dept., 151 AD3d 845, 846; Matter of Lauriero v New York City Dept. of Consumer Affairs, 41 AD3d 717, 719; Matter of Dozier v New York City, 130 AD2d 128, 135). Contrary to the petitioner's assertions, the hearing committee was not required to consider or apply any provisions of the New York State Penal Law in reaching its decision, since she was neither charged nor prosecuted by the school under the Penal Law.

MASTRO, J.P., DILLON, COHEN and IANNACCI, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court