No.

In The Supreme Court of the United States

CAF DOWLAH,

Petitioner,

vs.

AMERICAN ARBITRATION ASSOCIATION (AAA), et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Supreme Court for State of New York Court of Appeals

APPENDIX

Caf Dowlah, Ph.D., LLM.
Petitioner, *pro se.*
66-36 Yellowstone Blvd. #4C
Forest Hills, New York 11375
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APPENDIX A

State of New York
Court of Appeals

Decided and Entered on the twentieth day of June, 2024

Present, Hon. Rowan D. Wilson, Chief Judge, presiding.

Mo. No. 2024-145

Caf Dowlah
Appellant,
v.
American Arbitration Association (AAA) et al.
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is ORDERED, that the motion is denied.

Judge Rivera took no part.

Signed/ Lisa LeCours
Clerk of the Court

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL
DIVISION OF APPEALS & OPINIONS

June 24, 2024

Caf Dowlah
63-36 Yellowstone Boulevard, #4C
Forest Hills, NY 11375

Re: Dowlah v. American Arbitration Association (AAA) et al., Mo. No. 2024-145

Dear Caf Dowlah:

Please take notice that the enclosed is a true and correct copy of the Decision and Order on Motion entered on June 20, 2024 by the Office of the Clerk of the New York State Court of Appeals in Dowlah v. American Arbitration Association (AAA) et al., Mo. No. 2024-145.

Please be advised that service of a cover letter together with an order or judgment constitutes service of that order or judgment with notice of entry. *Norstar Bank of Upstate N. Y. v. Office Control Sys., Inc.*, 78 N.Y.2d 1110 (1991).

Sincerely,

David Lawrence III
Assistant Solicitor General
212-416-8023
Encl.

28 LIBERTY STREET, NEW YORK, NY 10005-1400
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APPENDIX B

Supreme Court of the State of New York
New York County

NYSCEF Document # 34

Present: Hon. Lyle E. Frank, Justice
Part IAS MOTION 52EFM
Index No. 653103/2019
Motion Date: 09/04/2019
Motion Seq. No. 001

Caf Dowlah
Petitioner,
--v—

City University of New York (CUNY)
Decision + Order on Motion
Queensborough Community College
Respondent.

The following e-filed documents, listed by NYCSEF document number (Motion 001) 2, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33 were read on this motion to/for
VACATE-DECISION/ORDER/JUDGMENT/AWARD

Petitioner, a former tenured Associate Professor of Economics at the Department of Social Sciences of Queensborough Community College ("QCC"), seeks an order, pursuant to CPLR §7511 to vacate the Opinion and Award dated March 7, 2019, of Arbitrator Deborah M. Gaines of the American

Arbitration Association. On March 7, 2018, the Arbitrator submitted her award together with her opinion, finding that the City University of New York ("CUNY") "had just cause" to terminate Professor Dowlah's employment. Respondents cross-move to dismiss the complaint, alleging that petitioner has failed to allege any facts that would satisfy the requirement to vacate the award and the petitioner has failed to file a Notice of Claim. [1] For the reasons set forth below the petition is denied and respondents' cross-motion is granted.

Background

Petitioner began his employment by QCC in 2003, as an Assistant Professor of Economics and was promoted to Associate Professor in 2009. He applied for a promotion to full professor in 2014. His application was denied, and he grieved the decision. In 2016, the grievance was settled by an agreement, which provided that his application for promotion be submitted to a select faculty committee. The select committee was not formed until 2018. The Committee included, professors from three different colleges, none of which had ever met the petitioner before. After reviewing the petitioner's candidacy for promotion, the Committee unanimously decided not to recommend the Mr. Dowlah for promotion. Shortly thereafter, petitioner sent an email to the members of the committee that read in part:

---

[1] In response to the notice of claim argument the petitioner argues that a notice of claim is not required in this special proceeding. The Court agrees, and as petitioner's legal arguments were not opposed, the Court finds this argument without merit.

> Bringing down a fellow colleague so unscrupulously and so unjustly may bring great joy to your miserable lives, it doesn't do so to decent or conscientious people. Your juvenile indiscretion brought me to my knees, you made me feel like a piece of dirt, and knowingly or unknowingly, you ruined my life forever. Hope someday you will deal with what you have made me go through so horridly. Someday, my resentment towards you will most certainly fade into oblivion, but not my feelings - the hole that you created in my heart so mercilessly will live forever ... And, I damn you all to hell - may your bodies and souls burn in eternal fires. - Caf Dowlah Not a proud colleague of yours. (emphasis added.)

In addition to the letter in question, Arbitrator Gaines found that the evidence demonstrated that Mr. Dowlah sent an inappropriate email to a colleague in 2015, was reprimanded as a result, and received guidance letters prior to that initial reprimand. Arbitrator Gaines determined, based on the credibility of the witnesses and her assessment of the evidence that CUNY established "just cause" to terminate Mr. Dowlah.[2]

Applicable Law

Pursuant to CPLR §751 l(b)(l), an arbitration award can be vacated or modified on the grounds that:

---

[2] Arbitrator Gaines noted in her decision that she did not find Mr. Dowlah to be remorseful.

(i) corruption, fraud, or misconduct in procuring the award;
(ii) (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession;
(iii) (iii) 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
(iv) (iv) failure to follow the procedure of this article. unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.
CPLR §751 l(b)(l).

To be upheld, the award must have evidentiary support or other basis in reason, appear in the record, and not be arbitrary or capricious (*Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214 [1996]; *Mount St. Mary's Hosp. v Catherwood*, 26 NY2d 493 [1970]). The standard of review of a penalty imposed after a hearing is whether the punishment is so disproportionate to the offenses as to be shocking to the court's sense of fairness (*Lackow v Dept. of Educ. (or "Bd ")of the City of NY*, 51 AD3d 563 [1st Dept 2008] citing, *Pell v Bd. of Educ'.*, 34 NY2d 222 [1974]). "An award is not arbitrary and capricious or irrational simply because there are differing views as to the appropriate sanction." (*Matter of Bolt v NY City Dept. of Educ.,* 30 NY3d 1065, 1069 [2018]). The Court of Appeals has held that termination of employment does not 'shock the conscience' when an

employee has an otherwise unblemished career. See, *id.; Matter of Ward v City of New York* 23 NY3d 1046 [2014]; *Matter of Lozinak v. Board of Educ. Of the Williamsville Cent. Sch. Dist.* 24 NY3d 1048. Further, it should be noted that upon determining whether the penalty imposed "exceeds the bounds of acceptable punishment" the court should not replace the judgment of the arbitrator with its own. (*Bolt* 30 NY3d 1065 at 1071, citing *Pell v Bd. of Educ.*, 34 NY2d 222 [1974]).

Based on the foregoing, this Court finds that Arbitrator Gaines's findings and determination that termination was warranted was deliberative, comprehensive, well-reasoned, supported by the record, and does not "shock the conscious". Accordingly, the petition is denied, the cross-motion to dismiss is granted and the proceeding is hereby dismissed.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied.

This constitutes the decision and order of the Court.

Date: 9/10/2019 Signed/Hon. Lyle E. Frank, J.S.C.
Case Disposed
Application Granted

APPENDIX C

Supreme Court of the State of New York
APPELLATE DIVISION, FIRST DEPARTMENT

NYSCEF Document # 4.
Filed on 12/15/2020.

Renwick, J.P., Gische, Gonzalez, ScarpuUa, Mendez, JJ.

Index No. 653103/19
Case No. 2019-04388

Caf Dowlah
Petitioner-Appellant,
--v—
City University of New York (CUNY) et al.
Queensborough Community College
Respondents-Respondents.

Caf Dowlah, appellant pro se.
James E. Johnson, Corporation Counsel, New York (Barbara Graves-Poller of Counsel), for respondents

Order, Supreme Court, New York County (Lyle E. Frank, J.), entered September 11, 2019, which denied the petition brought pursuant to CPLR article 75, seeking to vacate an arbitrator's opinion and award, dated March 7, 2019, finding that respondents had just cause to terminate petitioner's employment, and granting respondents' cross motion to dismiss the proceeding, unanimously affirmed, without costs.

Pro se petitioner was a tenured associate professor of economics at respondent Queensborough Community College. After several "guidance" memorandum were placed in his personnel file concerning disrespectful written statements to coworkers, in 2015 a disciplinary proceeding was instituted against him for similar conduct. The arbitrator in that proceeding found that petitioner's conduct was unbecoming of a member of the college's staff and imposed the penalty of a letter of reprimand being placed in his personnel file. The letter noted the findings of the arbitrator; advised petitioner to commit to taking steps necessary to maintain a civil tone with coworkers; and warned him that additional incidents may lead to further disciplinary action.

On May 26, 2018, after being denied promotion to full professor by the select committee, petitioner sent an email to committee members stating, in part, that "bringing down a fellow colleague so unscrupulously and so unjustly may bring great joy to your miserable lives," but it made him "feel like a piece of dirt" and ruined his life forever. He wrote: "I damn you all to hell-may your bodies and souls burn in eternal fires." Respondents filed charges seeking to terminate petitioner's employment based on conduct unbecoming a staff member.

After a hearing, the arbitrator determined that respondents had just cause to terminate his employment. Petitioner challenges this finding and asserts that the penalty imposed was disproportionate to the offense.

An arbitration award may be vacated only if the court finds that the party's rights were prejudiced by corruption, fraud or misconduct in procuring the award or the partiality of an arbitrator appointed as a neutral; where the arbitrator exceeded his or her power or so imperfectly executed it that a final and award was not made; or where the arbitrator failed to follow the procedure set forth in CPLR 7511(b)(1) (*Hackett v. Milbank, Tweed, Hadley & McCloy*, 86 NY2d 146, 154-155 [1995]).

A court should not vacate an arbitration award based on errors of law and fact or assume the role of overseers to make the award conform to the court's sense of justice (*see United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. Board of Educ. of City School Dist. of City of N.Y.*, 1 NY3d 72, 83 [2003]).

Here, the arbitrator's findings are supported by the record and are not arbitrary, capricious or irrational. Although petitioner disputes that the email he sent to the committee members was threatening because he had no history of violence, the committee members did not know him and their testimony about their reaction to the email was found credible by the arbitrator.

The record also reveals that petitioner received due process in that he was represented by counsel at the hearing and had the opportunity to call and cross-examine witnesses, present documentary evidence and make arguments. His assertion that the arbitrator was biased against him was not supported by any evidence in the record.

Additionally, the penalty imposed, which may seem harsh given petitioner's lengthy and satisfactory service at the college, was not so disproportionate to the offense as to shock the conscience (see *Pell v. Board of Educ. of Union Free School Dist. No. 1 of Toulns of Scarsdate & Mamaroneck, Westchester County* , 34 NY2d 222, 233 [1974]). Although petitioner acknowledged that his email to the faculty committee members was a mistake in judgment, he received numerous prior warnings about disrespectful and intemperate writings to staff and coworkers. The arbitrator reasonably concluded that a more lenient penalty was unlikely to change petitioner's unprofessional conduct (see *Matter of Miller v. City of New York*, 168 AD3d 6oo, 601 [1st. Dept 2019]).

We have considered petitioner's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.
ENTERED: December 15, 2020

Signed/Susanna Molina Rojas
Clerk of the Court

APPENDIX D

Supreme Court of the State of New York
New York County

NYSCEF Document # 48

Present: Hon. William Perry, Justice

Part 2
Index No. 653197/2022
Motion Date: 12/12/2022
Motion Seq. No. 001, 002. 003. 004

Caf Dowlah
Plaintiff,
-against—
American Arbitration Association (AAA)
City University of New York (CUNY)
Professional Staff Congress (PSC-CUNY),
Deborah Gaines
Defendants.

The following e-filed documents, listed by NYCSEF document number (Motion 001) 17, 18, 19, 20, 21, 34 were read on this motion to/for Dismissal

The following e-filed documents, listed by NYCSEF document number (Motion 002) 22, 23, 24, , 25, 26, 27, 28, 31, 32, 35 were read on this motion to/for Dismiss

The following e-filed documents, listed by NYCSEF document number (Motion 003) 12, 13, 14, 15, 16, 33 were read on this motion to/for Dismiss

The following e-filed documents, listed by NYCSEF document number (Motion 004) 36, 37, 38, 39, 40, 41, 42, 43, 44 were read on this motion to/for Dismiss

Upon the foregoing documents, motion sequence numbers 001, 002, 003 and 004 are consolidated for disposition, and after oral argument, the motions to dismiss are granted for the reasons stated on the record. This constitutes the Decision and Order of the Court.

Date: 12/27/2022

Signed/ William Perry, J.S. C

Case Disposed
Application Granted

653197/2022 DOWLAH, CAF vs. AMERICAN ARBITRATION ASSOCIATION (AAA) ET AL
Motion No. 001 002 003 004.

APPENDIX E

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Filed: Appellate Division-1st Department
02-01-2024. NYSCEF Document # 30

Present Hon. Troy K. Webber, Justice Presiding,
David Friedman, Tanya R. Kennedy, Kelly O'Neill
Levy, Justices

Motion No. 2023-05099
Index No. 653197/22
Case No. 2023-00150

Caf Dowlah
Plaintiff-Appellant.
-against-
American Arbitration Association (AAA), et al.
Defendants-Respondents.

Plaintiff-appellant, pro se, having moved for leave to appeal to the Court of Appeals from the decision and order of this Court, entered on November 09, 2023 (Appeal No. 984),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,
It is ordered that the motion is denied.
ENTERED: February 01, 2024

Signed/Susanna Molina Rojas
Clerk of the Court

APPENDIX F

COURT OF APPEALS
STATE OF NEW YORK

----------X

Caf Dowlah
Appellant,

New York County
Clerk Index #
653197/2022

--vs-----

NOTICE OF
MOTION FOR
LEAVE TO
APPEAL TO THE
COURT OF
APPEALS

American Arbitration Association (AAA),
City University of New York (CUNY)
Professional Staff Congress (PSC-CUNY), &
Deborah Gaines
Respondents.

----------X

PLEASE TAKE NOTICE that, upon the annexed statement pursuant to Rules 500.21 and 500.22 of the Court of Appeals Rules of Practice, signed on the 9th day of February 2024, Caf Dowlah, *pro se* Appellant in this matter, will move this Court, at the Court of Appeals Hall, Albany, New York on February 26, 2024, for an order granting leave to appeal to this Court from the order or judgment of the Appellate Division-First Department of New York State Supreme Court (Docket # 2023-00150), dated February 1, 2024.

Dated: Forest Hills, New York
February 9, 2024.

Yours, etc.,

Caf Dowlah,
Appellant, pro se
66-36 Yellowstone Blvd. #4C
Forest Hills, New York 11375
Cellphone: 917-870-1363
Email: dowlah2012@gmail.com.

TO: Clerk of the Court of Appeals
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Albany, New York 12207

American Arbitration Association
C/O. Schnader Harrison Segal & Lewis LLP
Attorneys for Defendant
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City University of New York (CUNY)
C/O. Attorney General of the State of New York
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Professional Staff Congress (PSC-CUNY)
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Deborah Gaines
C/O. Vigorito, Barker, Patterson, Nichols & Porter, LLP. Attorneys for Defendant
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Email: G.Weinstock@vbpnplaw.com.

STATEMENT IN SUPPORT OF MOTION

Service of Judgment or order sought to be appealed

1. On February 1, 2024, my adversary served me with the order or judgment I am seeking leave to appeal from dated February 1, 2024, with notice of entry.

My adversary served me via NYSCEF and NYSCEF-generated email (notice annexed as **Exhibit A**).

2. The Appellate Division-First Department denied my motion for permission to appeal to the Court of Appeals on February 1, 2024.

My adversary served me the Appellate Division Order/Judgement with notice of entry upon me on February 1, 2024, via NYSCEF and NYSCEF-generated email (annexed as **Exhibit A**).

COURT OF APPEALS
STATE OF NEW YORK

----------X

Caf Dowlah

Appellant,

New York County Clerk
Index # 653197/2022

--vs-----

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

American Arbitration Association (AAA),
City University of New York (CUNY)
Professional Staff Congress (PSC-CUNY), &
Deborah Gaines

Respondents.

----------X

Caf Dowlah, representing himself as a *pro se* Appellant, hereby submits this sworn affidavit in support of his Motion for Leave to Appeal to the Court of Appeals of the State of New York, with a return date on 02/26/2024, in the above-referenced matter.

The Affidavit comprises five sections: I. Brief Background of the Matter; II. Procedural Background of the Matter; III. Questions Presented to the First Department and the Court's Adjudication; IV. Questions Presented to the Court of Appeals and why the Court should accept the motion; and V. Conclusion.

I. BACKGROUND OF THE MATTER

The Appellant, Caf Dowlah, Ph.D., was a professor of economics at a junior college of the City University of New York (CUNY) between 2003 and 2019. He joined CUNY as an assistant professor in 2003, granted tenure and promotion to the rank of associate professor in 2009, but in 2014, CUNY denied him promotion to a full professor position despite having a very distinguished career well-recognized by CUNY itself.

The ensuing conflict resulted in the referral of the issue to a Select Committee in 2016 per the CUNY-PSC collective bargaining agreement. Comprising three professors from CUNY's senior colleges, the Select Committee rejected the Appellant's petition on May 23, 2018. Within a couple of days of this adverse decision, the Appellant, experiencing significant mental distress after a protracted four-year wait, sent an emotionally charged email to the committee members.

Exploiting this vulnerable moment of the Appellant's emotional meltdown, on May 30, 2018, the CUNY Administration, which relentlessly persecuted the Appellant through retaliatory measures because he exposed many of their corrupt practices, initiated disciplinary proceedings seeking the revocation of the Appellant's tenure and termination of employment. This matter was then submitted to an arbitration hearing per Article 21 of the PSC-CUNY Collective Bargaining Agreement.

The arbitration hearing convened on February 28, 2019. Preceding the hearing, CUNY proposed a settlement offering a one-semester suspension for

the alleged offense. However, the Appellant's legal counsel advocated for a one-month suspension deeming it a more suitable and proportionate penalty (R:177-198).[3] Despite these efforts, the arbitrator, Gaines, appointed by the AAA and unilaterally chosen by defendants PSC and CUNY, without soliciting or considering input from the Appellant, rendered her decision on March 7, 2019, recommending the termination of the Appellant's employment (R:49-61).

Regrettably, the arbitration proceedings lacked stenographic records or transcripts, leaving Gaines's Arbitration Award as the sole narrative of the events transpiring during the hearing. This omission is concerning, as it precludes numerous procedural irregularities of the hearing, the arbitrator's inappropriate conduct, and instances of deliberate distortion, misrepresentation of facts, and outright falsehoods of the arbitrator.

II. PROCEDURAL BACKGROUND

These proceedings inextricably involve two New York County Supreme Court cases—Dowlah v. CUNY, Index # 653103/2019; and Dowlah v. AAA et al. Index #653197/2022), and the appeals of these matters with the Appellate Division-First Department—Dowlah v. CUNY, Docket # 2019-

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[3] Please note that "R" stands for Record on Appeal (Docket # 2023-00150, Appellate Division-First Department, NYSCEF Doc. No.9; R:22-23, for example, refers to pages 22-23 of Record on Appeal. "AB" stands for Appellant Brief for Docket # 2023-00150, NYSCEF Doc. No. 8; and AB:10-11, for example, refer to pages 10-11 of Appellant's Brief. "Ex." stands for Exhibit.

04388, and Dowlah v. AAA et al., Docket # 2023-00150.

ADJUDICATIONS IN DOWLAH V. CUNY, BOTH AT THE LEVEL OF NEW YORK COUNTY COURT AND THE APPELLATE-DIVISION FIRST DEPARTMENT CONSTITUTED A MISCARRIAGE OF JUSTICE AND JUDICIAL CONDUCT

The Appellant fervently believes that the judgments rendered in Dowlah v. CUNY (New York County Index # 653103/2019, annexed as **Exhibit B**) and the First Department (Docket # 2019-04388, annexed as **Exhibit C**) epitomized instances of judicial misconduct and a grave miscarriage of justice, as evidenced in the pertinent records (R:87-89; R:83-86; R:270-294).

As elucidated above, preceding the arbitration proceedings, the parties negotiated whether the appropriate penalty for the alleged transgression should be a one-month suspension or a one-semester suspension. However, arbitrator Gaines, who unquestionably lacked integrity and pertinent legal acumen (R:296-310), capriciously recommended the dismissal of a tenured faculty member solely based on a contentious email (R:49-61), and thus, flagrantly violated the foundational principle of arbitration which aims to foster a compromise conducive to resolving the concerns of both parties.

Even more outrageous fact is that despite the glaringly capricious and irrational nature of this decision, which would perturb any individual possessed of even a modicum of conscience and rationality, New York County Court Judge Lyle Frank (Index # 653103/2019), whose personal

relationship with Gaines was revealed later, adjudicated that the decision did not offend his "conscious" (R:86; ¶2; **Ex. B**). Furthermore, the judge asserted that the award was "well-reasoned" and "supported by the record" (R:86; ¶2), although Gaines' narrative, lavishly commended by Judge Frank, closely mirrored the allegations formulated by CUNY against this Appellant (R: 29, ¶91).

Regrettably, the judges of the First Department in Docket # 2019-04388 ventured beyond mere error and resorted to fabricating false and exaggerated facts to bolster their deceitful judgment in favor of the lower court and the arbitrary award bestowed by Gaines. Among their misrepresentations, they disingenuously asserted that the Appellant had "received numerous prior warnings prior to 2015 about disrespectful and intemperate writings to staff and coworkers" (R:39, ¶136; R:89, ¶3; **Ex. C**). However, the reality of the situation starkly contradicts this assertion, as the Appellant never received any warnings before 2015. In fact, throughout his 16-year tenure with CUNY, he only received one warning in 2016, which was in the form of a Letter of Reprimand (R:33; R:39-40).

The First Department judges thus have not only violated the Judicial Code of Conduct but also have unlawfully denied the Appellant his constitutional rights to receive fair and impartial justice from a court of law (R:37-40; R: 207-209). Notably, none of the Respondents, including defendant Gaines, never disputed the Appellant's claim that Judge Frank had an ulterior motive to salvage Gaines's roundly condemned arbitration career as her Awards were vacated and remanded by the Courts multiple times for baseless and irrational

determinations (R: 39, ¶134; AB:11-14). None of the respondents disputed the Appellant's claim that the First Department judges in Case No. 2019-04388 (R:87-89) fabricated facts to deny justice to this Appellant.

THE NEW YORK COUNTY COURT STAGED A MODERN-DAY COWBOY JUSTICE IN THE MATTER OF *DOWLAH V. AAA ET AL.*

In the matter before the New York County Supreme Court (Index No. 653197/2022), the Appellant asserted causes of action grounded in a) fraud and deceit, and willful concealment of material information designed to induce contractual agreements by AAA; b) fraudulent and deceitful conduct by arbitrator Gaines; and c) facilitation of licentious schemes of fraud and deceit by Defendants AAA and Gaines by CUNY and PSC-CUNY. The Appellant contended that these defendants purposefully engaged in these unlawful acts and transgressions against him during disciplinary proceedings. Consequently, he suffered the loss of employment and career detriments, along with enduring irreparable harm to his occupational and social standing (R: 11-47).

It is this Appellant's steadfast contention that the verdict issued by New York County Judge William Perry (see **Exhibit D**) in the matter not only constituted a gross miscarriage of justice but also represented a glaring instance of what can aptly be described as "Cowboy Justice"—a flagrant disregard for due process reminiscent of the adage "We shall hang him, but give him a fair trial before that" (R:83-86; R:270-294). The judge had a

predetermined judgment at hand before the commencement of the purported hearing, effectively reducing the proceedings to a farcical charade (R:321, ¶1).

Moreover, the online session purported to serve as a hearing was marred by evident chaos, rife with procedural irregularities that left the Appellant as well as several defendants bewildered as to the nature of the proceedings (R: 337). Connectivity issues further exacerbated the disarray, with disruptions occurring repeatedly throughout the proceedings, and individuals unrelated to the matter at hand unlawfully participating in the hearing (see court transcripts, R:326-330). Such blatant deficiencies in the administration of justice not only undermined the integrity of the legal system but also constituted a grave injustice to all parties involved.

Furthermore, Judge Perry himself conceded that before the sham hearing (see Court Transcripts, R:321), he had not perused or familiarized himself with any of the Appellant's Reply Memorandums, which were duly submitted in response to the Defendants' submissions and readily accessible on the NYSCEF (NYSCEF Doc ##31-33, Index# 653197/2022; R:198-235; R: 296-310). This admission is significant as it indicates a glaring oversight on the part of the presiding judge—as the judge proceeded with his adjudication without due consideration of the Appellant's rebuttals to the allegations or arguments presented by the opposing parties. Such a procedural misstep undermines the essential principles of impartiality and integrity of the judicial process, rendering the adjudication fundamentally flawed.

In his purported ruling, the judge also aligned with the Respondents, dismissing the Complaint on the grounds of *res judicata* and *collateral estoppel.* The judge thus completely disregarded the Appellant's assertion that the cause of action was rooted in allegations of fraud and deceit, distinct from the Appellant's prior arbitration proceedings (New York County case Index #653103/2019). Notably, the Appellant never previously initiated any legal proceedings against three of the four defendants in the current matter, and no court had rendered judgment on such nonexistent cases. Therefore, the applicability of *res judicata* in this matter is highly deceitful. To invoke *res judicata*, it is essential to establish that the issue in the prior action is identical to, and hence determinative of, the issues in the current action (R:206-213; AB:18-22).

III
QUESTIONS PRESENTED TO THE FIRST DEPARTMENT AND THE COURT'S ADJUDICATION

In his appeal to the First Department in the case of Dowlah v. AAA et al. (Docket # 2023-00150), the Appellant implored the Court to overturn judgments issued by the New York Supreme Court (Index #653103/2019) in Dowlah v. CUNY and the First Department's judgment in the same matter (Docket No. 2019-04388) on the grounds of conspicuous miscarriage of justice and judicial misconduct. The Appellant also sought to vacate the judgment of the New York Supreme Court case Dowlah v. AAA et al. (Index #653197/2022) asserting that it constituted what can be termed as "Cowboy

Justice" (see AB, NYSCEF Doc. No, 8, Docket #2023-00150).

The Appellant also contested the lower court's dismissal of the matter on the grounds of *res judicata and collateral estoppel* arguing that such legal principles lacked merit in the instant matter as three of the four Respondents were not parties to the previous case, and the cases were also significantly different in terms of their legal theories, purposes, parties involved, underlying facts, and the remedies sought (AB:1-2)

The Appellant submitted the following specific questions before the First Department for its consideration:

1. A. Although judges enjoy absolute immunity from prosecution, is there any Rubicon that dishonest judges must not cross when inventing their own lies, fabricating facts, or passing judgments based on altered facts, instead of relying on dispassionate analysis of actual facts and pleadings as required by law? And,

B. If such allegations are backed by incontrovertible evidence, will this Court reverse the fraudulent judgment rendered by such judges, and refer the concerned judges for appropriate disciplinary action?

2. A. Should a judgment be reversed when the presiding judge himself admits that he has not read or seen the Appellant's well-recorded response memorandums against the opposition memorandums, and passes his judgment without any consideration of the Appellant's rebuttals and counterarguments? And,

B. Can a judgment be considered fair and just when the judge holds a sham hearing while holding

a written judgment in his pocket, but grants the parties a chance to make presentations before reading out the judgment that he had in his pocket while conducting the hearing?

3. A. Is the doctrine of *res judicata* applicable when the previous action is not yet adjudicated?

B. Is the doctrine of *res judicata* applicable to all parties when three of the four opposing parties were not even parties to the previous proceeding? And,

C. Are the doctrines of *res judicata and collateral* estoppel applicable when not only the causes of action but also the theories of justice as well as the facts and evidence of the proceedings are totally different?

4. Is it fair to dismiss a well-pled and legally sound Complaint that seeks justice against legally cognizable offenses and crimes, when the injuries caused to the victim are real and undisputed, and when the opposing parties' only asset is a bunch of aggressive lawyers who seek to win the case by creating legal smokescreens?

THE ADJUDICATION OF THE FIRST DEPARTMENT IN *DOWLAH V. AAA ET AL.* IS A MONUMENTAL TRAVESTY OF JUSTICE

The First Department however dismissed the Appellant's submissions in its entirety. The Court completely ignored the initial inquiries regarding judicial impropriety and miscarriage of justice by New York County Supreme Court in Index # 653103/2019 (**Ex. B**), as well as that the First Department in Docket No. 2019-04388 (**Ex. C**), notwithstanding the principle that "An appellate

court has inherent and plenary authority to exercise its discretion to review a previous order obtained by means of misconduct by a party toward the court" (*Cohoes Realty Assocs. v. Lexington Ins*), and "the semblance of impropriety merits equal condemnation to the impropriety itself' (*Matter of Spector v State Commn. on Jud. Conduct, 47 NY2d 462, 466, 392 N.E.2d 552, 418 N.Y.S.2d 565 [1979]; Matter of Putorti (New York State Commn. on Jud. Conduct), 2023 N.Y. LEXIS 1756, *10).* Worse still, the Court used these fraudulent judgments in support of its decision in the current case.[4]

The Court also rebuffed the Appellant's request to vacate the judgment in Dowlah v. AAA et al. (Index # 563197/2022; R: 11-48), contending that "the current claims are based on the same transaction as in the earlier action, and are therefore barred even though they are based upon different theories" (**Exhibit E**. p.2). The Court invoked the principles of *res judicata and collateral estoppel* even though the cause of action in the present case pertained to fraud and deceit, a claim not previously asserted by this Appellant against these defendants. Moreover, only one out of the four defendants in the present case was a party to the prior action.

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[4] The Court asserts: "On Appellant's previous appeal, in which he also sought to set aside the arbitration award, this Court rejected the same argument that he makes in this action — namely, that the arbitration award is invalid and must be set aside under CPLR article 75 because the arbitration proceeding was improper and because the findings by arbitrator Gaines were unsupported by the record and were arbitrary and capricious (*see Matter of Dowlah v City Univ. of N.Y.*, 189 AD3d 533, 534 [1st Dept 2020]). (See **Ex. E.** p.2).

Additionally, the First Department upheld the ruling of the New York County Supreme Court in Index # 563197/2022 entirely disregarding and overlooking the procedural irregularities and errors evident in Judge Perry's conduct of the hearing, which resulted in a form of justice reminiscent of the Wild West (R:319-342). Furthermore, the Court misinterpreted the doctrine of arbitral immunity, extending protection to Defendants AAA and Gaines with a declarative assertion: "Both AAA and Gaines are protected by immunity, as their acts were performed in their arbitral capacity" (**Ex. E**, p.2).

The Court also granted Defendant PSC a reprieve, asserting, "As for defendant Professional Staff Congress/CUNY (PSC), the complaint fails to plead, as is necessary to sustain a claim against an unincorporated association, that the entire membership authorized and later ratified its actions (see *Palladino v CNY Centro, Inc., 23 NY3d 140, 149-150 [2014]*)" (**Ex. E.** p.2). However, this case law pertains specifically to actions brought by labor union members against their union. On the other hand, this Appellant had lost his membership with his former union (PSC-CUNY) on the very day he was dismissed from his job.

THE FIRST DEPARTMENT FLATLY DENIED THE APPELLANT'S MOTION FOR LEAVE TO APPEAL TO THE NEW YORK STATE COURT OF APPEALS

In his Motion for Leave to Appeal to the Court of Appeals, filed with the First Department on November 19, 2023 (NYSCEF Doc. No. 24, Docket #

2023-00150), the Appellant submitted the following questions to the Court for its consideration:

1. Did the First Department fulfill its duty to uphold the principles of justice by disregarding substantial allegations of judicial impropriety and fraudulent rulings attributed to specific justices of the Court and a subordinate tribunal, despite these matters being brought forth for its consideration?

2. Was the validation of the lower court's ruling by the First Department equitable and impartial, given the acknowledgment by the lower court judge of neglecting to review significant pleadings submitted by the Appellant, notwithstanding their proper filing and accessibility via the NYSCEF platform, before rendering the judgment?

3. Can the affirmation by the First Department be deemed justified in light of the evident disorder and confusion apparent in the online proceedings of the lower court, coupled with the disclosure that the presiding judge possessed a prepared written judgment (subsequently recited after a namesake hearing) during the conduct of said proceedings?

4. Was it just and appropriate for the First Department to uphold the lower court's dismissal of the Complaint on the grounds of *res judicata and collateral estoppel*, notwithstanding the disparity between the issues raised in the Appellant's prior action and those pivotal to the present case, the distinct nature of the underlying causes of action, and the involvement of only one of the four defendants from the prior legal proceeding in the current matter?

5. Did the First Department appropriately interpret and apply the doctrine of arbitral immunity by affirming the lower court's grant of immunity to arbitrator Deborah Gaines, notwithstanding her recurrent condemnation by the courts for irrational and capricious determinations?

7. Was it equitable and appropriate for the AAA—a prominent arbitration agency of global repute—to engage the services of arbitrator Gaines, who has garnered notoriety for her repeated condemnation by the courts, while the AAA publicly asserts on its website to exclusively engage arbitrators of the highest caliber and unblemished character?

8. Was the First Department's dismissal of the allegations of aiding and abetting fraud and deceit of defendants Gaines and AAA by the PSC and CUNY against this Appellant just and proper, particularly in its application of *Palladino v CNY Centro, Inc.* (23 NY3d 140, 149-150 [2014]), which is specifically relevant to labor union members, despite the Appellant not being affiliated with any labor union since his termination from employment in March 2019?

The First Department, of course, denied the motion by a single declarative assertion, "Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon" (**Ex. A, p.3**).

IV
QUESTIONS PRESENTED TO THE APPEALS COURT AND WHY THE COURT OF APPEALS SHOULD GRANT THE MOTION

The First Question Presented–
WAS IT LAWFUL FOR THE FIRST DEPARTMENT TO BRUSH ASIDE ALLEGATIONS OF JUDICIAL MISCONDUCT AND MISCARRIAGE OF JUSTICE WHEN SUCH MATTERS WERE SQUARELY PLACED BEFORE THE COURT FOR ITS ADJUDICATION?

This was also the first question the Appellant asked in his Appellant's Brief in *Dowlah v. AAA et al.* (Docket # 2023-00150; NYSCEF Doc. No. 8, p.1), referring to the First Department's adjudication in Docket # 2019-04388*).* The Appellant asked the Court whether there existed a threshold that dishonest judges were prohibited from transgressing when manipulating foundational facts and inflating allegations, thereby rendering judgments based on contrived and manipulated facts rather than on dispassionate analysis of genuine facts and pleadings as mandated by legal standards. The Appellant also asked whether it would overturn such fraudulent judgment and refer the concerned judges for judicial misconduct if such allegations were found to be credible.

The Appellant pointed out that the First Department, in its adjudication of *Dowlah v CUNY* (Docket # 2019-04388; **Ex. C**), falsely asserted that the Appellant had "received numerous prior warnings about disrespectful and intemperate writings to staff and coworkers" (R:89; ¶3), while in reality Appellant had received only one "warning" throughout his entire tenure with CUNY, and the sole disciplinary measure imposed was a 'letter of reprimand,' issued in 2018 (R:33).

Opposing parties speculated, albeit incorrectly, that there might be three such instances. Even if "three" such non-existent instances were taken as true for the sake of argument, even kindergarten kids do not describe three birds as numerous birds, but that is precisely what the First Department judges did. It was a unanimous decision—that means three esteemed judges of the Court found it justified to describe one to three instances as "numerous."

The First Department judges also made a disingenuous assertion that "After several 'guidance' memoranda were placed in his personal file...in 2015 (*emphasis added*) a disciplinary proceeding was instituted" (R:87; ¶2; **Ex. C**). However, the Appellant had received only one purported "guidance memoranda" throughout his entire tenure, and the singular occurrence transpired in 2016, not before 2015 as the judges noted (R:39-40). Beyond factual misrepresentations, the evident exaggeration of a solitary incident as "several" raises serious questions about the honesty and impartiality of these judges.

These judges also asserted that "The records show that (the) petitioner received due process in that he ... had the opportunity to call and cross-examine witnesses" (R:89; ¶2; **Ex. C**), but contrary to their false assertion, apparently derived from the fraudulent claims made by Judge Frank (R:49-50; **Ex. B**), the Appellant neither had called any witnesses nor had cross-examined any witnesses. Judge Frank, in his turn, picked up this false narrative from fraudster arbitrator Gaines who began her report with this false claim (R:49) knowing full well that it was a blatant lie—she presided over the hearing.

The Appellant asserted that the judgment of the First Department in Docket # 2019-04338 deserved to be annulled because the concerned judges had egregiously abused their judicial authority, transgressing their fundamental duties inherent to their positions, which resulted in the denial of the Appellant's constitutionally guaranteed entitlement to fair, honest, and impartial justice. But the First Department, in its decision, in Docket # 2023-00150 **(Ex. E)**, not only refused to set aside the fraudulent judgment in the interest of the integrity of the judicial system but also ignored the plea altogether.

The Appellant contends that the First Department's omission to address allegations of judicial misconduct and miscarriage of justice in Docket # 2023-00150 contravenes established laws and legal precedents within the jurisdiction. As elucidated in relevant case laws, including *re Mason* (100 N.Y.2d 56, 58), any transgression of judicial canons, particularly those concerning honesty and integrity, necessitates disciplinary measures. "Generally, any violation of the judicial canons, such as those dealing with honesty and integrity, call for disciplinary measures without consideration of whether the judges conduct in many, most or all other matters may be above reproach (*In re Greenfield, 76 N.Y.2d 293, 294; Matter of Sardino v State Commn. on Judicial Conduct, 58 NY2d 286).*

Thus, the appellant believes it is imperative for the Court of Appeals to grant this petition and review the First Department's fraudulent judgment in Docket # 2019-04388 from a legal standpoint, and set aside and vacate the deceptive judgment for the sake of ensuring the integrity of the judicial system.

The Second Question Presented—
WHETHER THE LOWER COURTS APPLIED THE DOCTRINES OF *RES JUDICATA AND COLLATERAL ESTOPPEL* JUSTLY AND APPROPRIATELY

The First Department declined the Appellant's request to vacate the judgment in *Dowlah v. AAA et al.* (New York County Supreme Court, Index # 563197/2022), affirming the lower court's decision. The Court asserted that the current claims stemmed from the same transaction as those in the prior action, and therefore, were barred, notwithstanding their basis on different legal theories (**Ex. E. p. 2**). This determination was based on dubious application of the doctrines of *res judicata* and *collateral estoppel*, and by overruling the Appellant's contention that these doctrines were inapplicable in the instant matter which was an action based on fraud and deceit, and the Appellant never pursued such a cause of action against these defendants before. Furthermore, only one of the four defendants in the present matter was party to the previous action which was an Article 75 proceeding (AB: 21-22; R:206-213),

The Appellant further argued that for *res judicata* to be deemed applicable, it is imperative to establish that the issue adjudicated in the prior action is not only identical to but also decisive of the issues at hand in the current action. This principle is supported by legal precedents such as *Kossover v Trattler, supra,* and *Doherty v. Cuomo, 76 A.D.2d 14, 15*).

Similarly, the doctrine of *Collateral Estoppel* applies when several conditions are met, such as: a)

the issues must exhibit complete identity in both actions, as underscored in *Kaufman v Lilly & Co., 65 NY2d 449, 455*); b) the identity of the issues must be of such significance that a contrary judgment in the subsequent action would disrupt or undermine rights or interests established in the initial action, following *Schuykill Fuel Corp. v Nieberg Realty Corp., 250 NY 304, 307);* and c) there must be a conclusive judgment on the merits of the claim, as emphasized by *Bannon v. Bannon, 270 NY 484.* None of these essential elements align with the circumstances of the instant matter (AB:21-22; R: 198-232).

Moreover, the mere existence of two lawsuits stemming from a common transaction or occurrence does not automatically warrant dismissal. The legal principles outlined in CPLR 3211(a)(4) state that the requirement for the identity of claims is not met unless the relief sought in both actions is either identical or substantially similar, as affirmed in *White Light Productions* (231 AD2d at 94). Alternatively, dismissal may be justified where the claims in each action arise from distinct facts and seek redress for different wrongs, as elucidated in *Sprecher v Thibodeau* (148 AD3d 654, 656 [1st Dept 2017]). Differentiation in the capacities or purposes for which the claims are brought can also preclude dismissal, as highlighted in *Alpert v 28 Williams St. Corp.* (63 NY2d 557, 568 n 4 [1984]). Additionally, if the relief sought varies between the actions, and the resolution of the prior action does not necessarily address the instant claim, dismissal may not be warranted, as affirmed in *Sprecher v Thibodeau* (*supra*), *Parker v Rich* (140 AD2d 177, 178), and

Corporate Inv. Co. v Mount Vernon Metal Prods. Co., Inc. (206 App Div. 273, 276).

The appellant thus contends that both lower courts have misconstrued and misapplied the doctrines of *res judicata and collateral estoppel* in the instant matter, and it is imperative for the Appeals Court to grant this motion and review the applicability of these legal doctrines in the instant matter.

The Third Question Presented—
HOW A COWBOY JUSTICE COULD BE DEEMED VALID AND LEGAL IN THE TWENTY-FIRST CENTURY?

In the matter of Docket # 2023-00150, the First Department "unanimously affirmed" the New York County Supreme Court's judgment in Index # 563197/2022, (**Ex. E, p.2**), despite the Appellant established that the lower court's handling of the case exhibited characteristics akin to what is colloquially termed "Cowboy Justice" (AB: 24-27), wherein the presiding judge possessed a pre-written judgment during the hearing, delivered what was perceived as a pseudo hearing, and then proceeded to read out the judgment post-facto (R:321, ¶1).

Additionally, the presiding judge himself acknowledged not reviewing the Appellant's Reply Memorandums, despite their proper submission and availability on the NYSCEF website (NYSCEF Doc ##31-33, Index# 653197/2022; R:198-235; R:296-310). Furthermore, the virtual hearing was purportedly marred by significant disruptions and chaos (AB:25-27). Several parties to the matter were confused about the proceedings of the hearing, some of them even voiced their concerns (R: 337). Moreover, the

online connection experienced multiple disruptions, adding to the disorderliness of the proceedings (R: 326-330).

The Appellant believes it is incumbent upon the Court of Appeals to carefully consider whether a judgment bearing all the hallmarks of what is colloquially referred to as "Cowboy Justice" should be deemed legally valid in the twenty-first century, or whether such a highly questionable judgment warrants a prompt dismissal to uphold the principles of proper and impartial administration of justice.

The Fourth Question Presented—
WAS THE FIRST DEPARTMENT RIGHT IN PROCLAIMING THAT ARBITRAL IMMUNITY IS ABSOLUTE, OR DO THE STATUTES GRANT COURTS THE AUTHORITY TO VACATE, MODIFY, OR REMAND IRRATIONAL AND CAPRICIOUS ARBITRAL AWARDS?

In its adjudication of Docket # 2023-00150 (**Ex. E**), the First Department extended blanket immunity to Defendants AAA and Gaines through a single-sentence proclamation, stating, "Both AAA and Gaines are protected by immunity, as their acts were performed in their arbitral capacity" (Ex. E, p.2). The Appellant asserts that the Court did so by intentionally misinterpreting the doctrine of arbitral immunity and in clear defiance of the controlling law—the *Federal Arbitration Act of 1847*, which confers upon Courts the authority to vacate, modify, and review arbitration awards to safeguard innocent victims from irrational and capricious decisions, denial of due process of law, and explicit bias, corruption, and misconduct by arbitrators.

In extending sweeping absolute immunity to the defendants, the First Department also intentionally overlooked the principle that arbitral immunity does not absolve arbitrators from their ethical obligations and the responsibility to engage in the arbitration process with fairness, honesty, and good faith, as established in *Metropolitan Prop. & Cas. Ins. Co. v J.C. Penney Cas. Ins. Co. 780 F Supp 885, 892*) (AB:15-20). Moreover, numerous landmark legal precedents establish that the courts enjoy the rights and powers to do so, see, for example, *Iowa Elec. Light & Power Co. v. Local Union 204 of the Int'l Bhd. of Elec. Workers, 834 F.2d 1424 (8th Cir. 1987); Marine Pollution Serv., Inc., 857 F.2d 91 (2d Cir. 1988); Contico Int'l, Inc. v. Local 160, Leather Goods, Plastic & Novelty Workers, 738 F. Supp. 1262 (E.D. Mo. 1990).*

In granting blanket immunity to defendant Gaines, the First Department has effectively shielded a fraudulent arbitrator who has been implicated in various deceptive and fraudulent activities. These include willfully concealing adverse information about her background, deliberately misrepresenting material facts, and incorporating unsubstantiated claims, falsehoods, and distortions into her Awards (R:25-35; 230-31; 296-310). The Court also overlooked the significant fact that this arbitrator holds the distinction of being the only one in American history whose determinations have been condemned by the Courts multiple times (see *Matter of Gabriel v. NY City Dept of Educ. 2009, NY Slip Op. 322249 (N.Y. Sup. Ct. 2009; and Matter of Wright v. New York City Tr. Auth. (2018) N.Y. Slip Op. 28293 [6] Misc. 3d 797)*

It is equally concerning that the Court granted wholesale immunity to respondent AAA, despite its conscious decision to engage a fraudster arbitrator like Gaines, who has been repeatedly condemned by the Courts for her irrational and capricious determinations. This decision is particularly troubling given AAA's global advertising claims of exclusively hiring the most qualified, competent, and neutral arbitrators (AB:32-33; R:206-207; 216-219; 229-231). By doing so, the Court may have incentivized the defendant to continue endangering the rights and interests of unsuspecting parties through baseless claims and advertisements.

The First Department's issuance of blanket immunity to Defendants Gaines and AAA thus represents a clear miscarriage of justice. Under vicarious liability statutes, Defendant AAA bears responsibility for the actions and offenses committed by Gaines herself (New York Consolidated Laws Service NY CLS Penal § 20.25 Penal Law). "An employer is vicariously liable for the tortious acts of its employees if those acts were committed within the scope of employment" (*Chau v. Donovan, 357 F. Supp. 3d 276, 280; Abdelhamid v. Altria Group, Inc., 515 F. Supp. 2d 384, 389).*

The Appellant thus contends that the First Department's reckless grant of blanket immunity to fraudulent arbitrator Gaines and her sponsor AAA signifies a deliberate misinterpretation and misapplication of pertinent arbitration laws, as well as relevant legal precedents and factual considerations. Consequently, this necessitates the Appeals Court's thorough examination and interpretation of the pertinent laws and precedents.

The Fifth Question Presented—
WAS THE FIRST DEPARTMENT CORRECT IN ASSERTING THAT *PALLADINO V. CNY CENTRO* APPLIES TO NON-UNION MEMBERS AS WELL?

In its adjudication of Docket # 2023-00150, the First Department asserts, "As for defendant Professional Staff Congress/CUNY (PSC) the complaint fails to plead, as is necessary to sustain a claim against an unincorporated association, that the entire membership authorized and later ratified its actions (*see Palladino v CNY Centro, Inc.*, 23 NY3d 140, 149-150 [2014])" (**Ex. E. p.2**). But this judgment is simply absurd on its face, as it is simply not applicable in the present matter. As the First Department itself pointed out in its declarative statement, *Palladino* involves a trade union member's action against his/her trade union. *Palladino* thus cannot be applied to this Appellant who lost his membership with his union (PSC-CUNY) on the very day he was dismissed from his job. It is simply basic commonsense that a law or a legal precedent meant for a union member cannot be applied to a non-union member.

The Appellant contends that the Court of Appeals should look into the First Department's assertion that *Palladino* applies to non-union members as well.

V. CONCLUSION

The facts and circumstances delineated herein unmistakably demonstrate a lamentable oversight by both the New York County Supreme Court and the Appellate Division-First Department, wherein critical laws and material facts vital to the equitable

adjudication of the present matters have been either deliberately disregarded or inadvertently misconstrued. In their respective determinations, whether through conscious action or inadvertence, voluntary or involuntary, these judicial bodies have regrettably inflicted severe injustices and miscarriages of justice upon the Appellant, thereby gravely infringing upon his Constitutional entitlements to fair, impartial, and equitable adjudication. Such egregious dereliction of the principles underpinning the administration of justice cannot be countenanced.

Accordingly, the Appellant, in due deference to this Honorable Court, respectfully petitions for an order granting leave to appeal to this esteemed tribunal from the order or judgment rendered by the Appellate Division-First Department of the New York State Supreme Court, as delineated under Docket Number 2023-00150.

Dated: Forest Hills, New York
February 9, 2024

Yours, etc.,

Caf Dowlah
Appellant-Appellant (*Pro se*)
66-36 Yellowstone Blvd. #4C
Forest Hills, NY 11375
Phone: 917-870-1363

Please note that the Exhibits of this Petition have been attached above as Appendices of the Writ of Certiorari.

STATUTES:

Federal Arbitration Act (FAA) Title 9 U. S. C. §10(a) (2000 ed., Supp. V) provides:

"(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

"(1) where the award was procured by corruption, fraud, or undue means;

"(2) where there was evident partiality or corruption in the arbitrators, or either of them;

"(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

"(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

NYCPLR § 3211 (a) (4).

Section R3211 - Motion to dismiss **(a)** Motion to dismiss cause of action.
A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

1. a defense is founded upon documentary evidence; or
2. the court has not jurisdiction of the subject matter of the cause of action; or
3. the party asserting the cause of action has not legal capacity to sue; or
4. there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires; or**5.** the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds;

New York CPLR 7511 (b)
Article 75 - Arbitration
§7511. Vacating or modifying award.

(a) When application made. An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b) Grounds for vacating. 1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or

(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or

(iii) 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

(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection. 2. The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

(i) the rights of that party were prejudiced by one of the grounds specified in paragraph one; or

(ii) a valid agreement to arbitrate was not made; or

(iii) the agreement to arbitrate had not been complied with; or

(iv) the arbitrated claim was barred by limitation under subdivision (b) of section 7502.

(c) Grounds for modifying. The court shall modify the award if: 1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;