

At a Special Term of the Supreme Court of the State of New York held in and for the County of Onondaga on March 10, 2021.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

THE FRATERNITY OF ALPHA CHI RHO, INC.,

Petitioner,

v.

**SYRACUSE UNIVERSITY; and M. DOLAN
EVANOVICH**, Individually and as Senior Vice-President
for Enrollment and the Student Experience,

Index No. 003261/2020

Respondents.

DECISION AND ORDER
(Motions Nos. 1 and 2)

APPEARANCES:

Schlather, Stumbar, Parks & Salk, LLP by *Raymond M. Schlather, Esq. for Petitioner*

Hancock Estabrook, LLP by *John G. Powers, Esq. and Michael G. Marrero, Esq. for Respondents*

In this Article 78 proceeding, Petitioner The Fraternity of Alpha Chi Rho, Inc. challenges the outcome of Respondent Syracuse University's disciplinary proceeding against it; in particular, Respondent M. Dolan Evanovich's unilateral rejection of the favorable determination of the University's Appeals Board and reinstatement of an initial finding that the fraternity violated the Code of Student Conduct. The disciplinary proceeding was based on an accusation that an individual shouted derogatory and racially offensive statements at a University student. That individual – who denies saying anything derogatory or racially offensive – did not attend Syracuse University, was not a member of the fraternity, and was not even on the University's campus at the time of the alleged incident. He was, however, friends with an Alpha Chi Rho member, and had been drinking at the fraternity house earlier that day. Based on those facts, the fraternity was charged with harassment.

Following a hearing, the Student Conduct Board found that the woman had been harassed and that Alpha Chi Rho was responsible, suspending the fraternity for one year. Alpha Chi Rho appealed the ruling to the University Appeals Board, which reversed the decision on the grounds that the fraternity could not be held responsible for the independent, off-campus actions of a former guest who was not a fraternity member. Less than a month later, Respondent Evanovich, a Senior Vice President at the University, unilaterally rejected the Appeal Board's well-reasoned decision and reinstated the findings of the Student Conduct Board, claiming that there was an implied "expectation" in the University's policies that fraternities would be held responsible for the actions of their guests. Alpha Chi Rho then commenced this proceeding to annul Evanovich's determination as lacking any rational basis. The University and Evanovich, in turn, move to dismiss the Petition.

For the reasons set forth below, the relief requested in the Petition is **GRANTED**, the motion to dismiss the Petition is **DENIED**, and the determination of Evanovich rejecting the decision of the University Appeals Board is hereby annulled.

I.

The Fraternity of Alpha Chi Rho, Inc. is a nationwide college fraternity organization with local chapters at multiple colleges, including Syracuse University (NYSCEF Doc. 1). In the afternoon of Saturday, November 16, 2019, four Syracuse University students who were members of Alpha Chi Rho and around 10 to 15 of their friends – who were not affiliated with the fraternity or the University – hung out and drank for several hours at the fraternity house located at 131 College Place (NYSCEF Doc. 2). At around 7 p.m., the group left the fraternity house, on foot, and headed to a nearby apartment and watch a basketball game (*Id.*). While they were walking together, one of the individuals in the group – identified only as K.F. – briefly ran towards a woman standing outside of a parked car (*Id.*). According to the woman – who immediately reported the incident to the University Department of Public Safety – K.F. and others in the group shouted racial slurs at her (NYSCEF Doc. 37).

Immediately after the incident was reported, University leadership reacted. Campus police questioned the four fraternity members through the night, and the fraternity itself was suspended “before dawn” (NYSCEF Doc. 1). The following morning, University Chancellor Kent Syverud issued a public statement announcing he was “deeply angered” and that “the individuals involved have been identified and will be held appropriately accountable to the Code of Student Conduct and to the full extent of the law.” Syverud further added that, “we are working with the Syracuse Police Department, and we intend to bring this investigation to a swift and successful conclusion”

(NYSCEF Doc. 6). Over the next week, the University partnered with the New York State Police Hate Crimes Task Force and Division of Human Rights, suspended all four fraternity members, and referred the case to the Onondaga County District Attorney (*Id.*).

Following Syverud's seemingly predisposed public announcements, the University's Department of Public Safety completed its investigation and filed a complaint against each of the four fraternity members for violating Sections 2 and 3 of the Code of Student Conduct, which prohibit harassing or threatening behavior (NYSCEF Doc. 3; one fraternity member was also charged under Section 17, which requires students in leadership positions to prevent or report misconduct). On December 6, 2019, a hearing was held before the University Conduct Board, during which the four charged fraternity members denied making – or even having heard – any derogatory or racially offensive statements during the November 16 incident (*Id.*). At the conclusion of the hearing, by letters dated December 19, 2019, the Conduct Board advised that it found the four fraternity members were not responsible for any violations of the Code of Student Conduct, because it did not find that any derogatory or racially offensive language had been used during the incident (*Id.*).

This was not the end of the matter, however. On January 10, 2020, Alpha Chi Rho was given notice that the Department of Public Safety had filed a complaint against it based upon the same incident, charging – despite the December 19, 2020 finding of the Student Conduct Board – that “members and guests of your fraternity were verbally harassing a female student by calling her the ‘N-word’ as she walked by College Place” (NYSCEF Doc. 13). A second hearing was held on January 17, 2020 by the Conduct Board, during which the University prohibited Alpha Chi Rho from being advised by an attorney. At the conclusion of that hearing, in a decision issued on February 11, 2020, the Conduct Board determined that the fraternity had violated the

Code of Student Conduct when, “on or about November 17, 2019, a guest of four members of the Alpha Chi Rho fraternity made a derogatory comment and harassed a Syracuse University student” (NYSCEF Doc. 21). The Conduct Board then suspended the fraternity for one year (*Id.*).

Alpha Chi Rho immediately appealed the Conduct Board’s decision to the Appeals Board, arguing that it was not responsible for the independent, off-campus actions of its former guests and, further, that the University had introduced allegations of sexual harassment during the hearing without giving the fraternity any advance notice or allowing it to be represented by an attorney, in violation of the procedure requirements in the Code of Student Conduct. On February 21, 2020, the Appeals Board issued a decision overturning the Conduct Board’s decision, ruling that “University policy does not provide a basis on which to find the respondent [fraternity] responsible for the conduct that the lower Board found to have occurred” (NYSCEF Doc. 23). Specifically, the Appeals Board found that because K.F. “was not a guest of the fraternity and is not a Syracuse University student,” [he] could not serve as a representative of the fraternity and [there is] no other basis on which [the fraternity] could be held responsible for his alleged actions” (*Id.*).

Once again, however, this was not the end of the matter. Perhaps, as the fraternity suggests, the administrative process did not deliver the “swift and successful” resolution desired by University leadership. By letter dated March 3, 2020, Respondent M. Dolan Evanovich, the University’s Senior Vice President of Enrollment and the Student Experience, unilaterally rejected, as he contends is his sole prerogative, the clear and well-reasoned decision of the Appeals Board and reinstated the Conduct Board’s finding that Alpha Chi Rho violated the Code of Student Conduct based upon the independent, off-campus actions of its former guest (NYSCEF Doc. 25). In his determination rejecting the Appeals Board decision, Evanovich concluded that “[a]lthough it is true the Code [of Student Conduct] does not expressly cover guests

of organizations, such an expectation is present throughout the University's Fraternity and Sorority Affairs policies," including the "Revocation of Recognition" policy and provisions relating to formal social events (NYSCEF Doc. 25).

Alpha Chi Rho then commenced this Article 78 proceeding, arguing that Evanovich's rejection of the Appeals Boards' decision was arbitrary because the Code of Student Conduct does not allow the University to punish fraternities for the independent, off-campus actions of their former guests and, further, that the University failed to substantially comply with the procedural requirements in its disciplinary process by not providing notice of the sexual harassment allegations and by prohibiting the fraternity from having an attorney advisor during the hearing (NYSCEF Doc. 1). The University and Evanovich, in turn, move to dismiss the Article 78 proceeding, arguing that the Court must defer to Evanovich's interpretation that the Code of Student Conduct imposes responsibility on fraternities for the actions of their former guests, and that the appropriate procedural requirements of its disciplinary process were substantially complied with (NYSCEF Docs. 35, 36).

II.

The law is well-settled that disciplinary proceedings brought by private universities against students, student organizations and fraternities are not subject to the "full panoply of due process guarantees" under our State and Federal Constitutions, because the relationships between those entities are private, contractual ones (*Doe v Syracuse University*, 188 AD3d 1570, 1571 [4th Dept 2020]). Accordingly, a private university's decision in a disciplinary matter may only be challenged in a judicial proceeding on the grounds that the university: (1) "failed to substantially comply with its procedures;" (2) made a determination that "lacks a rational basis;" or (3) imposed a penalty "so excessive that it shocks one's sense of fairness" (*Doe*, 188 AD3d at 1572; *Aryeh v*

St. John's University, 154 AD3d 747, 748 [2nd Dept 2017]). Here, Alpha Chi Rho claims that Evanovich's rejection of the Appeals Board's decision lacks any rational basis and, additionally, that the University violated the disciplinary procedures in its Code of Student Conduct.

With respect to the rejection of the Appeals Board's decision, Evanovich's March 3, 2020 determination that the University had the authority to punish Alpha Chi Rho for the independent, off-campus actions of its former guest is based upon his claim that "[a]lthough it is true the Code [of Student Conduct] does not expressly cover guests of organizations such an expectation is present throughout the University's Fraternity and Sorority Affairs policies" (NYSCEF Doc. 25, 26). However, the two examples that Evanovich relies upon to establish this so-called "expectation" do not even arguably support the broad interpretation that he advances. Specifically, the "Social Events Policy" only covers guests attending officially defined "Chapter social events," and the "Revocation of Recognition" provision only covers guests that have, in the judgment of the Assistant Dean, been determined to pose "an unacceptable risk of harm to persons or property," neither of which apply in this case (NYSCEF Doc. 26).

There is no provision in the Fraternity and Sorority Affairs policy, or the Code of Student Conduct, that allows the University to punish fraternities for the independent, off-campus actions of former guests (NYSCEF Docs. 9, 23, 26). Fraternities cannot police the statements of their former guests who leave campus, and it would be unreasonable to have, or apply, a policy that punishes fraternities, or other student social organizations, for conduct they cannot control. While the Courts will generally defer to a university's interpretation of its own policies, such deference does not extend to "unreasonable or irrational" interpretations, such as Evanovich advances here (*Hyman v Cornell University*, 82 AD3d 1309, 1310 [3d Dept 2011]).

The record is clear: Alpha Chi Rho did nothing wrong. As the Conduct Board found, none of its fraternity members uttered any derogatory or racially offensive statements. Evanovich's determination that the fraternity is nonetheless responsible for K.F.'s alleged harassment – which occurred off-campus and was not witnessed by any fraternity members – has no rational basis. As such, his rejection of the Appeals Board decision must be annulled as arbitrary (*Pell v Board of Education of Union Free School District No.1*, 34 NY2d 222, 231 [1974]), and the Appeals Board decision reinstated.

Because the reinstated Appeals Board decision vacates the sanctions in this case, the University's alleged violations of the Code of Student Conduct's disciplinary procedures are moot. Nonetheless, there is no question that a university must substantially comply with the procedures in its disciplinary rules – whatever those procedures might be – in order to impose a punishment on a student, social organization or fraternity (*Ebert v Yeshiva University*, 28 AD23d 315, 315 [1st Dept 2006]). While Alpha Chi Rho was not charged with sexual harassment in this case, there were allegations by multiple witnesses that K.F. had also sexually harassed the victim by attempting to look up her dress during the incident (NYSCEF Doc. 37). The University not only knew about these allegations but, most critically, introduced evidence of them during the hearing before the Conduct Board.

The University's refusal to allow an attorney to represent the fraternity at the hearing when it knew that allegations of sexual harassment had been made (NYSCEF Doc. 15), violated Section 6.3 of the Code of Student Conduct, which permits attorney advisors in any case that “involves allegations of sex-based discrimination or harassment” (NYSCEF Doc. 9). In addition, while the University's January 10, 2020 letter – referring only to the use of racially offensive language that the fraternity was charged with and initially found responsible for – may have

substantially complied with Section 8.1 of the Code (NYSCEF Doc. 13), introducing those allegations at the hearing raises a serious question of undue prejudice. As with the Appeals Board, the Court finds these actions troubling, particularly in light of the fraternity's claim that the charges against it were motivated by factors other than their merits. Accordingly, if the Appeals Board decision had not been reinstated, this Court would remit the matter for a new hearing.

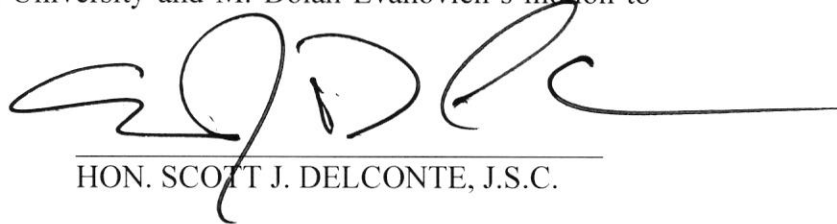
III.

Accordingly, upon due deliberation, it is hereby,

ORDERED that the Petition of The Fraternity of Alpha Chi Rho, Inc. is **GRANTED**, the March 3, 2020 determination of Respondent M. Dolan Evanovich is **ANNULLED**, and the February 21, 2020 decision of the University Appeals Board vacating the sanctions against the Petitioner is **REINSTATED**, with full force and effect; and it is further

ORDERD that Respondents Syracuse University and M. Dolan Evanovich's motion to dismiss the Petition is **DENIED**.

Dated: March 10, 2021



HON. SCOTT J. DELCONTE, J.S.C.

ENTER.

PAPERS CONSIDERED:

1. Notice of Petition, dated June 2, 2020 (NYSCEF Doc. 27);
2. Verified Petition, sworn to May 26, 2020, with Exhibits A through Y, attached (NYSCEF Docs. 1 – 26);
3. Verified Answer, sworn to August 5, 2020 (NYSCEF Doc. 36);
4. Certified Article 78 Record (NYSCEF Doc. 37);
5. Notice of Motion, dated August 5, 2020 (NYSCEF Doc. 35);
6. Affidavit of La'Kesa Allen, sworn to August 5, 2020 (NYSCEF Doc. 38); and
7. Affidavit of Eric Nestor, sworn to August 5, 2020 (NYSCEF Doc. 39).