

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 91-2978
Summary Calendar

FABIAN VAKSMAN,

Plaintiff-Appellant,

VERSUS

THE BOARD OF TRUSTEES OF THE UNIVERSITY
OF HOUSTON/DR. BARNETT, DR. GEORGE MAGNER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 88 2346)

(February 17, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

FACTS

Fabian Vaksman is a former doctoral student in the History Department at the University of Houston (UH). In 1986, the History Department's graduate committee dismissed Vaksman from the doctoral program for failure to make satisfactory progress toward completing

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

his degree requirements, poor teaching skills, and unsatisfactory professional conduct. Vaksman did not receive prior notification that he might be dismissed, and was not afforded an opportunity to appear before the committee prior to dismissal.

In 1987, Vaksman wrote to the graduate committee requesting an appeal of his termination. In response, the graduate committee reviewed his dismissal and considered a verbal presentation by Vaksman and his graduate advisor, Dr. Clifford Egan. His appeal was rejected. Vaksman then appealed at the university level, and an ad hoc committee comprised of impartial faculty members and graduate students was appointed by the Dean of the College of Humanities and Fine Arts, James Pickering to review the appeal and make a recommendation to the Dean's office. The ad hoc committee reviewed the appeal, concluded that the History Department had not acted unfairly in dismissing Vaksman, and recommended to Dean Pickering that Vaksman's dismissal be affirmed. Dean Pickering accepted the committee's recommendation, and his decision constituted the final step in the UH's grievance process.

Vaksman then filed suit pursuant to 42 U.S.C. § 1983 against the Board of Trustees of the University of Houston and various university officials. He alleged that his dismissal was a retaliation for his exercise of First Amendment free speech rights, and that he was deprived of liberty and property without due process of law. Following cross-motions for summary judgment, the district court granted partial summary judgment in favor of the defendants on all of Vakman's claims except his First Amendment

claim. In doing so, the district court found that the university officials in their individual capacities were entitled to qualified immunity and were dismissed from the suit. The only claim remaining was Vaksman's First Amendment claim against the university officials in their official capacity. The district court then entered partial final judgment pursuant to Rule 54(b). Vaksman appeals.

ANALYSIS

A. Standard of Review

In reviewing a district court's grant of a partial summary judgment, we apply the same standard as the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989). We will affirm the partial summary judgment if the evidence shows that there is no genuine issue as to any material fact and that the University of Houston Board of Trustees and university officials are entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). We view all evidence and inferences to be drawn from that evidence in the light most favorable to Vaksman. Marshall v. Victoria Transportation Co., 603 F.2d 1122, 1123 (5th Cir. 1979) (citing U.S. v. Diebold, Inc., 369 U.S. 654 (1962)). We review questions of law de novo. Netto v. Amtrak, 863 F.2d 1210, 1212 (5th Cir. 1989).

B. Due Process

We examine procedural due process questions in two steps: (1) whether there exists a liberty or property interest which has been

interfered with by the state; and (2) whether the procedures attendant upon that deprivation were constitutionally sufficient. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

1. Property Interests

Constitutionally protected property interests are determined by reference to state law. Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Vaksman contends that the UH catalog, in combination with a letter from the History Department's graduate coordinator, created a property interest in his continued enrollment in the doctoral program. Under the law of Texas, this assertion is unfounded.

Texas state law indicates that the UH catalog, absent any express terms or promises which could reasonably be construed as implied contract provisions, are only general guidelines that do not create contract rights sufficient to give rise to a property interest. See Reynolds Mfg. Co. v. Mendoza, 644 S.W.2d 536, 539 (Tex. Corpus Christi App. 1982 no writ); Spuler v. Pickar, 958 F.2d 103, 106 (5th Cir. 1992) (UH Faculty Handbook). The UH catalog does not contain any express terms or promises which could be construed as implied contract provisions. In fact, it expressly provides that the department may terminate a student's enrollment at any time if the student's rate of progress is not satisfactory. Furthermore, the letter from the History Department's graduate coordinator does no more than inform Vaksman of his admission to the doctorate program, and by no means promises his continued

enrollment. Under Texas state law, Vaksman has no property interest.

2. Liberty Interest

Vaksman argues that his liberty interests have been violated both by the stigma associated with his expulsion from UH as well as by the fact that he was branded as "psychologically unstable" which seriously hindered his academic career. To establish the deprivation of a liberty interest, Vaksman must show (1) that he has been stigmatized, (2) in or as a result of the discharge process, and (3) that the stigmatization resulted from charges that were made public. Kelleher v. Flawn, 761 F.2d 1079, 1087 (5th Cir. 1985) (citations omitted). Vaksman has failed to offer any evidence that he was stigmatized, and has also failed to show that university officials publicized the charges against him. No record evidence exists to support Vaksman's contention that he was deprived of a liberty interest.

3. Due process violation

Because Vaksman has failed to demonstrate that he had a property interest in continued enrollment at the doctoral program, and has failed to show that he has been deprived of a valid liberty interest, we need not address whether Vaksman was afforded adequate due process.

C. Qualified immunity

Vaksman contends that the district court erroneously granted qualified immunity to the university officials. The threshold determination in the qualified immunity context is "whether the

plaintiff has asserted a violation of a constitutional right at all." Siegert v. Gilley, ___ U.S. ___, 111 S. Ct. 1789, 1793 (1991). Vaksman has failed to satisfy this threshold determination. Thus, this court need not reach the issue, and his claim must fail.

D. First Amendment

Vaksman argues that his First Amendment claim was erroneously dismissed. Vaksman has misconstrued the district court's grant of partial summary judgment to include the granting of summary judgment dismissing his First Amendment claim. The district court found that a factual dispute existed with regard to the First Amendment claim, and denied summary judgment as to that claim. Any appellate argument concerning this claim is premature.

CONCLUSION

For the foregoing reasons, we AFFIRM the district court's partial summary judgment in favor of the university officials on all of Vaksman's claims except his First Amendment claim.