



THE FINDING THAT THE COMPLAINANT CONSENTED TO LYING DOWN IN BED WITH PETITIONER FOR THE NIGHT BUT DID NOT CONSENT TO HAVING SEX WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE; THE COLLEGE'S DETERMINATION THAT PETITIONER VIOLATED THE STUDENT CODE OF CONDUCT ANNULLED (SECOND DEPT).

The Second Department, annulling the determination of the Campus Appeals Board of SUNY Purchase College, held the Board's conclusion petitioner had sexual intercourse with the complainant without the complainant's consent was not supported by substantial evidence. The Board had found the evidence that complainant was unable to give consent "conflicting and unreliable:"

After the hearing, the Hearing Board found "the complainant's statements to be conflicting and unreliable as it pertained to her inability to give consent." The Hearing Board concluded that "[t]here were considerable gaps in the complainant's memory," and indicated that it was "concerned that some of her statements after her initial report were tainted by reading the reports that were submitted by other witnesses and parties." Nevertheless, the Hearing Board found that although there was consent for lying together in bed, kissing, and the removal of the complainant's pants, the complainant had not consented to the remainder of the sexual activity. ...

... [T]he determination that the petitioner violated code C.8 was not supported by substantial evidence. Having rejected the complainant's testimony that she was incapable of giving consent, the Hearing Board was not left with adequate evidence to support the conclusion that while the complainant consented to spending the night in the petitioner's bed, kissing, and removing her pants, she did not consent to the remainder of the sexual activity. The Board indicated that its finding of nonconsensual conduct was based on the statements of the petitioner and the complainant "that clear, affirmative consent for these activities was not given." However, the petitioner, while freely admitting that he did not obtain verbal consent, clearly asserted that the complainant consented with her actions [Matter of Doe v Purchase Coll. State Univ. of N.Y., 2021 NY Slip Op 01974, Second Dept 3-31-21](#)