

BERIL V. STEWART-RANCE, :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE ESSEX : DECISION
 COUNTY VOCATIONAL-TECHNICAL :
 SCHOOL DISTRICT, :
 RESPONDENT. :

SYNOPSIS

Petitioning nontenured teacher challenged the Board’s nonrenewal of her contract for the 1999-2000 academic year. Petitioner contended that the Board discriminated against her on the basis of race or national origin. An administrative hearing commenced, the proceeding was interrupted due to an aborted settlement, and petitioner sought to start over again in a different forum. The Board moved to dismiss the petition for lack of prosecution when petitioner failed to continue with the presentation of evidence at the administrative hearing scheduled for April 9, 2001 and asked to withdraw her petition.

The ALJ concurred with the Board that the case must continue in the administrative forum since the Board had invested time and money in the administrative hearing, and the Superior Court already dismissed her parallel complaint “with prejudice,” leaving petitioner no place else to go. Moreover, given the time that has already passed, the Board should not be subjected to further delay of its opportunity to demonstrate that the allegations against it were groundless. Citing *Aldrich*, the ALJ noted that withdrawal of the pending OAL action should not automatically be permitted in cases where the parties are in the middle of a hearing. The ALJ ordered the petition dismissed with prejudice.

The Commissioner adopted findings and determination in the Initial Decision as his own. The Commissioner additionally noted that petitioner failed to meet the standards for the grant of a stay of proceedings at OAL pending appeal to the Appellate Division. Petition was dismissed.

May 25, 2001

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the Board's reply thereto were timely filed pursuant to the requirements of *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions rely upon the original papers submitted to the OAL in favor of her Motion to Stay the OAL matter pending the appeal of the New Jersey Superior Court Judge's decision denying her transfer of the matter to that jurisdiction, or, in the alternative, to voluntarily dismiss the OAL matter. The exceptions reiterate her arguments that *N.J.S.A.* 10:5-13, 27 allow Law Against Discrimination (LAD) claims to be heard only before the Division of Civil Rights (DCR) or New Jersey Superior Court, in whichever jurisdiction the matter is pending.¹ (Petitioner's Exceptions at 2) Petitioner also avers that the *Aldrich* case² upon which the Administrative Law Judge (ALJ) relied was a DCR case which, in her judgment,

¹ The Commissioner notes for the record that the court held in *Hinfey v. Matawan Regional Board of Education*, 77 N.J. 514 (1978) that the Commissioner of Education may determine claims alleging discriminatory conduct in violation of LAD.

² *Aldrich v. Manpower Temporary Servs.*, 277 N.J. Super. 500 (App. Div. 1994).

supports her request for a stay or voluntary dismissal. She further argues that the ALJ and the Superior Court Judge erred in their determinations. (Petitioner's Exceptions at 1) Moreover, it is petitioner's position that there is no prejudice to defendants if her request is granted because the facts are the same in both proceedings, while she, on the other hand, would be prejudiced if her request is denied. Furthermore, she does not want *res judicata* to preclude her Superior Court action. Petitioner argues that:

With regard to [the ALJ's] suggestion that Petitioners' [sic] election of remedies preclude her Superior Court action, same flies in the force [sic] of NJSA 10:5-13, 27. *Scouler v. Camden*, 332 NJ Super 69 (App.Div 2000) and *Fuchilla v. Layman*, 109 NJ 319 (1988). (Id. at 2)

The Board's reply exceptions urge that the ALJ's recommended decision be adopted, averring that petitioner's exceptions merely reiterate arguments which have been previously considered by the ALJ and properly dismissed, and that she is essentially seeking a second bite of the apple through forum shopping. (Board's Reply Exceptions at 2, 5)

More specifically, the Board argues that both the ALJ and the Superior Court Judge correctly relied on *Aldrich, supra*, for the proposition that withdrawal of the pending OAL action should not automatically be permitted in cases where the parties are in the middle of a hearing. The Board contends, *inter alia*, that the court in *Aldrich* recognized that in such cases "estoppel principles" might arise. (Board's Reply Exceptions at 5) Further, the Board avows that the ALJ correctly recognized that the instant matter presents such a circumstance when he states at page five of the Initial Decision that "[o]ur own case presents such middle ground, where the administrative hearing has already commenced, the proceeding was interrupted due to an aborted settlement, and petitioner now seeks to start all over again in a different forum."

Additionally, the Board urges that the ALJ properly determined that staying this

matter, which has been litigated since 1999, pending an appeal of her Superior Court matter would be highly prejudicial to the Board. (Board's Reply Exceptions at 5) As to this, the Board argues that not only has it expended a significant amount of time and resources defending the action but, as correctly recognized by the ALJ at pages five and six of the Initial Decision, a delay in this matter would impose a hardship on the Board.

Finally, the Board contends that the doctrine of election of remedies barred the Superior Court action in the instant matter and petitioner's blanket and unsupported contention that the Commissioner of Education cannot hear LAD claims is simply wrong. (Board's Reply Exceptions at 6)

Upon review of the record, the Commissioner agrees with and adopts the recommended decision of the ALJ because, contrary to the arguments advanced by petitioner, he finds that the ALJ was correct in his legal conclusions relative to *Aldrich, supra*. A review of the record, which includes the transcript of the proceeding held on March 15, 2001 in Essex County Superior Court regarding petitioner's motion to transfer the matter to said court, established that the judge, in dismissing transfer motion, rejected petitioner's legal arguments with respect to the *Aldrich, Scouler* and *Fuchilla* cases. In rejecting petitioner's arguments, Superior Court Judge Kimmelman states, "The Court sees the matter otherwise. The plaintiff is barred from proceeding in the Superior Court because the plaintiff has chosen an administrative remedy *which has not been but is about to be concluded.*" (emphasis supplied) (Tr. 3/15/01 at 19) Unlike the factual circumstances in the *Aldrich* matter, where the court held that the plaintiff was allowed to withdraw her matter from the DCR before any OAL hearings had even been scheduled, the facts in the instant matter indicate that the OAL hearing was not only nearly

completed, but a settlement agreement was reached, to which petitioner agreed on the record during the third day of hearing and later repudiated; whereupon, she then sought to start litigation over again in another forum. Consequently, under the circumstances presented herein, the Commissioner agrees with the ALJ's conclusion that principles of estoppel support denial of petitioner's request for a stay of the OAL hearing or voluntary dismissal of the petition. In so holding, the Commissioner fully concurs with the ALJ that:

Given the time that has already passed, the Board should not be subjected to further delay of its opportunity to demonstrate that the allegations against it are groundless. As the Board aptly points out, memories will fade and witnesses may become unavailable if this hearing should be further put off until disposition of an appeal to the Appellate Division.

Petitioner had ample time to prepare for the hearing which commenced last October and has had an additional six months since then to get ready for hearing.*** (Initial Decision at 5-6)

Moreover, upon review of the record, the Commissioner is in complete agreement with the arguments set forth by respondent in its brief in opposition to a stay that the grant of a stay is an extraordinary remedy. In order for a stay to be granted in this matter, petitioner must meet the standards for the grant of such relief as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982); namely, a demonstration that petitioner will experience irreparable harm if the remedy is not granted; the legal right underlying her claim is settled; she has a likelihood of prevailing on the merits; and, in balancing the interests and weighing the equities, she would experience greater harm or hardship than the Board. Under the facts of this matter, petitioner fails to meet her burden.

Accordingly, for the reasons expressed in the Initial Decision and expanded upon herein, the Petition of Appeal is dismissed with prejudice.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: May 25, 2001

Date of Mailing: May 25, 2001

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.