

---

**IN THE MATTER OF**

**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**ARMENIO MONTEIRO, JR. a/k/a/  
TONY MONTEIRO,  
ELIZABETH BOARD OF EDUCATION,  
UNION COUNTY**

---

**Docket No. C26-13  
DECISION  
SUMMARY DISPOSITION**

## **PROCEDURAL HISTORY**

This matter arises from a complaint filed on May 28, 2013 by Sammie Muhammad, Jineen Holmes, Amanda Leon, and Brunilda Cruz, alleging that Armenio Monteiro, Jr., a/k/a/ Tony Monteiro, President of the Elizabeth Board of Education (“Board”), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complaint specifically alleges that the respondent violated N.J.S.A. 18A:12-25 & 26 by failing to file and/or failed to disclose the requisite information on the annual statements as well as violated N.J.S.A. 18A:12-24(a), (b) and (c) of the Act. By letter dated June 11, 2013, the Commission notified the respondent that charges were filed against him and advised him that he had 20 days to answer the complaint. On July 3, 2013, respondent’s attorney requested and was granted a brief extension of time to file a responsive pleading. Respondent filed a Motion to Dismiss in lieu of an Answer on August 7, 2013, alleging that the complaint was frivolous. Complainants filed a reply thereto on September 9, 2013, pursuant to N.J.A.C. 6A:28-8.2.

By letter dated September 10, 2013, the complainants and the respondent were notified that this matter would be scheduled for discussion by the Commission at its meeting on September 24, 2013 in order to make a determination regarding the respondent’s Motion to Dismiss and allegation of frivolousness. At its meeting on September 24, 2013, the Commission voted to deny the respondent’s Motion to Dismiss in its entirety and found the complaint not frivolous. The Commission advised the parties that the matter would be scheduled for a probable cause determination at a later date and directed the respondent to file an Answer on all counts of the complaint within 20 days of receipt of this Decision. On November 22, 2014, the respondent filed his Answer.

By letter of February 7, 2014, the parties were advised that the Commission would review the matter at its next regular meeting on February 18, 2014. Because of State closings due to inclement weather, the matter came before the Commission at its meeting on March 6, 2014. The Commission found probable cause to credit the allegation that the respondent may have violated N.J.S.A. 18A:12-24(c) in Count 3, but found no probable cause as to all other allegations; and voted to decide the matter by summary decision pursuant to N.J.A.C 6:28-10.7(c)1 since there was no genuine issue of material fact that would require an evidentiary hearing. The respondent was granted 20 days to submit a statement why he should not be found in violation of the School Ethics Act. After a short extension, the respondent filed his statement on April 28, 2014 and served a copy on the complainant, pursuant to N.J.A.C. 6A28-1.7. The parties were notified by letter of May 2, 2014 that the Commission would review the matter on summary disposition at the regular meeting scheduled on May 27, 2014.

At the meeting on May 27, 2014, the Commission reviewed the record and respondent's statement and determined that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommended the penalty of reprimand.

## **SUMMARY OF THE RECORD**

The remaining issue before the Commission is limited to the alleged violation of N.J.S.A. 18A:12-24(c) in Count 3 of the complaint when the respondent voted to reappoint Mendonca and Partners LLC (Mendonca) as auditor for the Elizabeth Public School District. The record is clear that the Mendonca firm (formerly Mendonca and Suarez, LLC) has served the District in this capacity since the 1999-2000 school year. The respondent does not dispute his vote although he asserts that it was unintentional.

The complainants contend that the respondent, though not a member of Mendonca, maintained a membership with the auditor and held an interest in a common property named 147 Westfield, LLC in which the respondent owned and operated a restaurant. The complainants aver that the respondent's vote for the Mendonca auditing firm was a clear conflict of interest because Helder Mendonca, a principal in Mendonca and Partners, LLC is the respondent's business partner in the property known as 147 Westfield Avenue, LLC. Moreover, the complainants aver that Helder Mendonca is also a signatory on the Mortgage and Assignment of the property located at 147 Westfield Avenue West. Consequently, respondent's affirmative vote to re-hire Mendonca violated subsection (c) of the Act.

The record shows that the respondent initially served on the Board between December 14, 2006 and November 20, 2008. In September 2012, the respondent was appointed as a member of the Board to fill an unexpired term, and then elected in November 2012 to serve a three-year term, which expires on December 31, 2015. The respondent argues in his statement that there is no factual basis to support this violation since during his terms of service he had no financial interest in Mendonca and no disclosable interest in 147 Westfield Avenue LLC since he did not own a share greater than 10% and did not derive income from the property in excess of \$2000.

Moreover, although the respondent historically abstains from voting on resolutions for payment to the company, on the evening of the reorganization, the respondent became overwhelmed with running the meeting for the first time that he inadvertently engaged in the vote for Mendonca. He does not deny that he voted to retain the firm at the reorganization meeting. Finally, the respondent contends that he is not required to abstain from the vote and that his vote was not the critical vote to secure the appointment.

The respondent does not object to the resolution of this matter on a summary basis.

## **FINDINGS OF FACT**

The Commission finds the following to be undisputed facts:

1. Since 1999-2000 school year, Mendonca and Partners, LLC (formerly Mendonca and Suarez, LLC) has served the Elizabeth School District as auditor uninterrupted for the past 15 years.

2. Respondent did not have an interest in Mendonca Partners, LLC.
3. Respondent was engaged in a partnership with Helder Mendonca, a principal in Mendonca and Partners LLC, in an enterprise known as 147 Westfield Avenue, LLC.
4. Helder Mendonca is also a signatory on the Mortgage and Assignment of the property located 147 Westfield Avenue.
5. The respondent first served the Board between December 14, 2006 and November 20, 2008 and was appointed in September 2012 to fill an unexpired term.
6. During all those times, the respondent abstained from voting to reappoint the Mendonca firm and also abstained from voting on payment to the firm for services rendered to the Board.
7. In November 2012, the respondent was elected to the Board to serve a three year term expiring December 31, 2015.
8. The respondent was sworn in on January 3, 2013 and elected to the office of Board President.
9. At the reorganization meeting, the respondent voted to reappoint Mendonca and Partners, LLC as auditor for the District and failed to abstain from the votes.

## ANALYSIS

In cases involving the application of N.J.S.A. 18A:12-24(c), the Commission considers the language in N.J.S.A. 18A:12-24(c) which provides:

- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

No longer is the focus on an interest greater than 10% or on income derived from a business exceeding \$2000. Under subsection (c), these elements are irrelevant. Instead, the gravamen is whether the respondent has taken action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial **involvement** (emphasis added) that might reasonably be expected to impair his objectivity or independence of judgment or whether the school official has a personal involvement that is or creates some benefit to him. As the respondent points out in his statement, the Commission found a violation of N.J.S.A. 18A:12-24(c) where an indirect involvement might reasonably be expected to impair a school official's objectivity or independence of judgment. What "might reasonably be expected" is determined by what a reasonable member of the public would believe. (Statement, p.9) See I/M/O Patricia Haines, Haddonfield Board of Education, Camden County, Docket No. C07-00, (September 27, 2000), Commissioner of Education Decision,

Docket No. 389-00SEC (November 27, 2000) and School Ethics Commission Advisory Opinion, A17-04 (July 26, 2004).

The record establishes that the respondent engaged in a business partnership known as 147 Westfield Avenue, LLC with Heller Mendonca in which the respondent owned and operated a restaurant on that site. Further, the respondent was sufficiently familiar with the Mendonca firm since the respondent first sat on the Board in 2006 as the Mendonca auditing firm served the Board uninterrupted from 1999 to the present. This relationship was of such significance to the respondent that he voluntarily abstained from any votes to reappoint the firm or to pay for its services. The Commission determines that the respondent and Heller Mendonca were directly linked through this partnership. Under Haines, supra, because a reasonable member of the public might believe that this conflict borne of a financial involvement whether direct or indirect, might reasonably impair the respondent's objectivity or independence of judgment, the Board member should take no official action to benefit the firm and should recuse himself from all matters involving the firm. Failing to do so creates a justifiable impression among the public that their trust is being violated. SEC v. Michael Kilmurray, Lacey Township Board of Education, Ocean County, C12-94 (February 24, 1998).

Moreover, by taking official action in voting for Mendonca, the respondent has provided an additional financial benefit to the accounting firm where one of the named principals is in a separate partnership with this respondent Board member. Finally it is of no moment that the respondent did not intend to vote for the firm. The Commission has determined that it is the responsibility of a Board member to know the items to be voted on in any given meeting and to recuse himself from any vote in which he has a conflict at the time of the vote. See I/M/O Carmelo Garcia, Hoboken Board of Education, Hudson County, C41-05, October 24, 2006.

## **DECISION**

Based on the foregoing, the Commission determines that the respondent, Armenio Monteiro, violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when he voted to reappoint Mendonca as the auditing firm for the Elizabeth Board of Education when his business partner is a principal in that firm and recommends the penalty of reprimand.

## **PENALTY**

The Commission recommends a penalty of reprimand, as it did in matters where a violation of N.J.S.A. 18A:12-24(c) was found and a comparable violation was endorsed. In recommending the penalty, the Commission notes that a reprimand was the appropriate penalty when it found that a personal involvement might reasonably be expected to impair the respondents' objectivity in voting to reappoint the auditing firm. I/M/O Richard Longo and Frank Sedaghi, Toms River Board of Education, Ocean County, C05-98 and C07-98 (October 26, 1998), Commissioner of Education Decision No 56-99SEC, decided March 4, 1999. The Commission also notes that a reprimand is the proper penalty where a Board member was unaware of the item on the agenda in which she has a conflict and inadvertently votes. I/M/O Sheri Scozzaro, Fairfield Twp. Board of Education, Essex County, C09-97 (November 25, 1997), Commissioner of Education Decision No. 17-98SEC, decided January 21, 1998.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

---

Robert W. Bender  
Chairperson

Mailing Date: June 25, 2014

## **Resolution Adopting Decision – C26-13**

**Whereas**, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

**Whereas**, at its meeting on March 6, 2014, the Commission voted to resolve this matter by summary decision, pursuant to N.J.A.C 6:28-10.7(c)1; and

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, and the respondent's statement; and

**Whereas** at its meeting on May 27, 2014, the Commission found that the respondent violated N.J.S.A. 18A:12-24(c) of the Act and recommended a penalty of reprimand; and

**Whereas**, the Commission reviewed the decision recommending a reprimand against Mr. Montiero and finds that the within decision accurately memorializes the Commission's findings of fact and conclusions of law;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of its decision.

---

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on June 24, 2014.

---

Joanne M. Restivo  
Interim Executive Director  
School Ethics Commission