

IN THE MATTER OF ARMENIO MONTEIRO, JR., :
a/k/a TONY MONTEIRO, : COMMISSIONER OF EDUCATION
ELIZABETH BOARD OF EDUCATION, : DECISION
UNION COUNTY :

SYNOPSIS

The School Ethics Commission (Commission) found that respondent – a member of the Elizabeth Board of Education (Board) – violated *N.J.S.A. 18A:12-24(c)* of the School Ethics Act when he voted to reappoint Mendonca and Partners, LLC, as auditing firm for the Board. Respondent was engaged in a separate business partnership known as 147 Westfield Avenue, LLC, with Helder Mendonca – a principal member of the auditing firm – at the time he voted to reappoint Mendonca and Partners as auditor for the Board. The Commission recommended the penalty of reprimand in this matter.

Upon review, the Commissioner concurred that reprimand is the appropriate penalty for the violation found. Accordingly, the Commissioner directed that respondent be reprimanded as a school official found to have violated the School Ethics Act.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

March 16, 2015

AGENCY DKT. NO. 8-7/14A

SEC DKT. NO. C26-13

IN THE MATTER OF ARMENIO MONTEIRO, JR., :
a/k/a TONY MONTEIRO, :
ELIZABETH BOARD OF EDUCATION, : COMMISSIONER OF EDUCATION
UNION COUNTY : DECISION

The record of this matter and the decision of the School Ethics Commission (Commission) have been reviewed. This matter involves an appeal of the Commission’s June 25, 2014 decision finding Respondent-Appellant Armenio Monteiro, Jr. (respondent) violated *N.J.S.A.* 18A:12-24(c) of the School Ethics Act by voting to reappoint Mendonca and Partners, LLC as auditing firm for the Elizabeth Board of Education (Board) while he was engaged in a separate business partnership known as 147 Westfield Avenue, LLC with Helder Mendonca, a principal member of the auditing firm.¹ The Commission recommended a penalty of reprimand for the violation. Respondent appealed the Commission’s finding of a violation pursuant to *N.J.A.C.* 6A:4-1.3(c). Complainants Sammie Muhammad, Jineen Holmes, Amanda Leon and Brunilda Cruz (complainants) filed opposition, and respondent replied thereafter.²

In his appeal to the Commissioner, respondent argues that the finding of a violation is not supported by the factual record; that the Commission acted arbitrarily and

¹ The Commission’s written decision summarily disposed of the matter pursuant to *N.J.A.C.* 6A:28-10.7(c)1 as the respondent admitted the material facts alleged in the complaint.

² Along with its opposition, complainants submitted a motion to strike respondent’s preliminary statement from his appeal brief. Thereafter, respondent filed opposition. The Commissioner notes that *N.J.A.C.* 6A:4-2.8, which sets forth the requirements for formal briefs, does not preclude the use of preliminary statements.

capriciously; the Commission improperly interpreted *N.J.S.A.* 18A:12-24(c); and that the penalty of reprimand should be voided. Because he held only a 10% interest in 147 Westfield Avenue, LLC³, respondent contends that he did not have a direct or indirect financial involvement that would reasonably be expected to impair his objectivity or independence of judgment. In support thereof, respondent emphasizes that the Act requires financial interests greater than 10% to be reported on board member annual financial disclosure statements.⁴ Since his interest was not a “disclosable interest,” respondent claims that it cannot reasonably be expected to impair his objectivity or independence of judgment and urges the Commissioner to interpret *N.J.S.A.* 18A:12-24(c) “consistently with the financial reporting provisions of *N.J.S.A.* 18A:12-26.”⁵ (Respondent’s brief at 9)

Complainants contend that the Commission’s finding of a violation should be upheld and that the penalty of reprimand is appropriate. Since respondent admits he voted to reappoint Mendonca and Partners, LLC while he and Helder Mendonca were business partners in 147 Westfield Avenue LLC, complainants argue that the Commission’s finding of a violation is not arbitrary, capricious or unreasonable. Also, citing School Ethics Commission, *Advisory Opinion A17-04*, dated July 26, 2004, complainants stress that the size of a financial interest is irrelevant when determining if there is “direct or indirect financial involvement” under *N.J.S.A.* 18A:12-24(c).

³ 147 Westfield Avenue, LLC was sold on May 30, 2013. (Respondent’s brief at 4)

⁴ Under *N.J.S.A.* 18A:12-23, an “interest” is defined as the ownership or control of more than 10% of the profits, assets, or stock of a business, excluding the control of assets in a labor union. *N.J.S.A.* 18A:12-26a(4) requires interests to be disclosed annually.

⁵ Respondent’s reply, in large part, reiterates the arguments previously set forth in his appeal brief and before the Commission.

Upon a comprehensive review of the record, the Commissioner finds that the Commission's decision as to the violation of *N.J.S.A.* 18A:12-24(c) is supported by sufficient credible evidence and the respondent has not established that the Commission's decision is arbitrary, capricious or contrary to law.⁶ *N.J.A.C.* 6A:4-4.1(a). The undisputed factual record supports the Commission's determination that respondent violated *N.J.S.A.* 18A:12-24(c) by voting to reappoint Mendonca and Partners, LLC as auditing firm for the Board while engaged in a separate business partnership with Helder Mendonca, a principal member of the auditing firm. The size of respondent's interest in 147 Westfield Avenue, LLC is irrelevant. A small financial interest – or no financial interest at all – can nevertheless constitute direct or indirect financial involvement that might reasonably be expected to impair a Board member's objectivity or independence of judgment. *See Advisory Opinion A17-04, supra*, (employee lacked a financial interest in the firm, but nevertheless had an indirect financial involvement). Regardless of the exact size of respondent's interest, a reasonable member of the public might expect respondent's financial involvement with Helder Mendonca in 147 Westfield Avenue, LLC to impair his objectivity or independence of judgment when he voted to reappoint Mendonca and Partners, LLC.

Although respondent asserts that *N.J.S.A.* 18A:12-24(c) should be interpreted to preclude interests not greater than 10% from constituting direct or indirect financial involvement, his argument is unpersuasive. The proper interpretation of a statute begins with its plain language. *See GE Solid State, Inc. v. Director, Division of Taxation*, 132 *N.J.* 298, 307 (1993). Here, the Legislature's use of the word "involvement" cannot be ignored. "Involvement" neither

⁶ The Commission also found that the respondent did not violate *N.J.S.A.* 18A:12-25, 12-26 and 12-24(a) and (b).

presupposes nor requires a financial “interest.” See *Advisory Opinion A17-04, supra*. On the contrary, a financial “involvement” can encompass a broad scope of business affiliations and is distinguishable from an “interest” under the Act. The Commission’s interpretation of *N.J.S.A. 18A-12:24(c)* supports a result consistent with the overall statutory scheme requiring “[B]oard members...[to] avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” *N.J.S.A. 18A:12-22a; School Ethics Commission v. Michael Kilmurray, Lacey Township Board of Education, Ocean County*, SEC Decision No. C12-94, decided February 24, 1998, at 3. (“The Legislature’s findings and declarations reinforce the notion that the purpose of the Act is to develop standards that avoid not just unethical conduct, but also the perception thereof.”).

As to the penalty imposed, the Commissioner also accepts the Commission’s recommendation that a reprimand is the appropriate penalty in this matter for the reasons expressed in its decision. Therefore, the Commission’s recommended penalty will not be disturbed.

Accordingly, IT IS ORDERED that Armenio Monteiro, Jr. is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: March 16, 2015

Date of Mailing: March 16, 2015

⁷ This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36.