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IN THE MATTER	:	BEFORE THE
OF	:	SCHOOL ETHICS COMMISSION
DR. JONATHAN HODGES	:	Docket No.: C13-03
<i>PATERSON BOARD OF EDUCATION</i>	:	DECISION
<i>PASSAIC COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

The above matter arises from a complaint filed by Paterson Board of Education (Board) member Juan Santiago on March 7, 2003, alleging that fellow Board member Jonathan Hodges, M.D., violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, the complainant alleges that Dr. Hodges had interest in a preschool that has a contract with the District and that he voted to approve payments to the preschool in violation of N.J.S.A. 18A:12-24(a) and (b).

Dr. Hodges filed an answer to the complaint on April 3, 2003 and filed an amendment to his answer on April 24, 2003. He admitted that he voted to pass resolutions during the Board meetings of September 18, 2002 and January 8, 2003, but was not specific as to the content of those resolutions. Dr. Hodges asserted that prior to his election to the Board, in April of 2002, he had a financial interest in the Kidz Pre-school Academy (“Academy”), but sold his interest in the Academy upon his election to the Board. He responded that he has had no role in the Academy’s management, since that time. Dr. Hodges denies that he violated the Act.

The Commission invited the parties to attend its June 24, 2003, meeting to present witnesses and testimony to aid in the Commission’s investigation. Mr. Santiago appeared represented by John D. Lynch, Esquire. The Commission also heard testimony from his witness, Toni Scholing, an internal auditor with the Board. Dr. Hodges appeared represented by Joel M. Miklacki, Esquire. Joseph Atallo, a member of the Board, was also present, as witness for Dr. Hodges. After hearing testimony, the Commission tabled the matter.

At its public meeting on July 22, 2003, the Commission found probable cause that Dr. Hodges’ conduct was in violation of the Act, N.J.S.A. 18A:12-24(a) and (b) of the Act. The Commission asked Dr. Hodges to file a written submission in response to the finding of probable cause. He was also asked to comment on the appropriate penalty should the Commission determine that he violated the Act. Dr. Hodges filed a timely response. After consideration of Dr. Hodges’ response to its probable cause decision, the Commission found, at its meeting of September 23, 2003, that Dr. Hodges violated N.J.S.A. 18A:12-24(a), but that he did not violate N.J.S.A. 18A:12-24(b) and dismissed this charge against him.

FACTS

The Commission find the following facts to be undisputed.

Dr. Jonathan Hodges was elected to serve on the Paterson Board of Education in April 2002. He and Malikah Abdulla incorporated Kidz Academy in the State of New Jersey in 1996 to provide daycare and after school care for children. Dr. Hodges and Ms. Abdulla were the two sole shareholders. The Paterson School District became an “Abbott” District in 1989 and, therefore, became entitled to receive State funding. In 1999, 2000 and 2001 the Academy contracted with the Paterson School District to provide pre-school services. The Academy was allotted a total of \$354,000 in State funding for the 2001-2002 school year. Dr. Hodges was designated a salary of \$30,000 for the same year, as the Academy’s Chief Financial Officer.

In April 2002, Dr. Hodges was elected to the Board. On April 23, 2002, Dr. Hodges executed an agreement to sell his 500 shares in the Academy to Ms. Abdullah, who was the executive director of the Academy at that time. The agreement stipulated that the purchase price for the 500 shares was \$500,000 to be paid in installments of \$2,777.78 per month, with interest, commencing June 1, 2002 and concluding June 1, 2017.

In January 2003, the District prepared an audit of Kidz Academy which revealed that Dr. Hodges received a check from the Academy in the amount of \$2,500, dated September 6, 2002. The memo at the bottom of the check notes it as a “mortgage payment.” In his certification, Dr. Hodges indicated that Ms. Abdullah has other businesses that she runs in addition to the Academy that have no connection with the Board. He asserted that for business purposes, Ms. Abdullah channeled the proceeds of these businesses into the Academy’s general business account.

Dr. Hodges testified that he advised the Board that for one year he would not vote on matters regarding early childhood education in an effort to avoid the appearance of conflict. At the Board’s September 18, 2002 meeting, Dr. Hodges voted to pass a resolution to pay vendors’ bills, including the payment of \$52,115.40 to the Academy. Dr. Hodges also voted to approve the payment of \$52,115.40 to the Academy at the Board’s January 8, 2003 meeting.

The Board did not renew its contract with Kidz Academy for the 2003-2004 school year.

ANALYSIS

The Commission found probable cause that Dr. Hodges violated N.J.S.A. 18A:12-24(a) and (b) of the Act. Section (a) provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

The Commission noted in its decision on probable cause that under N.J.S.A. 18A:12-23, “interest” is defined as the ownership or control of more than 10% of the profits, assets, or stock of a business. While Dr. Hodges agreed to sell his 500 shares in the Academy to Ms. Abdullah for \$500,000, the agreement stipulated that the payments were to be made in installments of \$2,777.78 per month for a period of 15 years. As a result, Dr. Hodges holds the note for the sale of his shares. The Commission also recognized that Ms. Abdullah has only been paying on the note for one year. The Commission found that the note is an asset. Therefore, in its probable cause decision, the Commission found that Dr. Hodges held an interest in the assets of the Academy, due to the agreement, which is in substantial conflict with the proper discharge of his duties in the public interest.

In his response to the Commission’s probable cause decision, Dr. Hodges argues that he divested all of his interest in Kidz Academy. He indicates that in exchange for the relinquishment of his interest and control of the business, he received an unsecured Promissory note from Malikah Abdullah. Dr. Hodges argues that the note does not provide for the return of stock or control of Kidz Academy upon default, is not collateralized with any security against the business and is not contingent upon Kidz Academy continuing to do business with the Board.

The Commission acknowledges the agreement binding Ms. Abdullah and not the Academy. However, the Commission recognizes that upon the default of the agreement, Dr. Hodges would have a legal claim to Ms. Abdullah’s assets, which include the Academy. The Commission recognizes that Dr. Hodges does not currently hold interest in the Academy. However, it is undisputed that Dr. Hodges received at least one check from Ms. Abdullah that was drawn on the general business account of the Academy. The Commission finds that this one transaction was in substantial conflict with the proper discharge of Dr. Hodges’ duties in the public interest, since the Academy receives funding from the District. The Commission, therefore, finds that Dr. Hodges violated N.J.S.A. 18A:12-24(a).

The Commission also found probable cause to credit the allegation that Dr. Hodges voted to approve the payment of \$52,115.40 to the Academy in violation of N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

The Commission reasoned that there was sufficient evidence that Dr. Hodges used his official position to ensure that by voting on the payments, Ms. Abdullah could

continue to pay him. In his response to the Commission's probable cause decision, Dr. Hodges asserts that the vote to pay the Academy "was not a preferential vote, but was one of hundreds of vendor bills approved for payment." Dr. Hodges argues that he did not use or attempt to use his position to secure unwarranted advantages or privileges.

The Commission is persuaded by Dr. Hodges' argument and finds that there is insufficient information to demonstrate that he cast the aforementioned vote to use or attempt to use his official position to secure an unwarranted advantage for himself or others. Therefore, the Commission finds that Dr. Hodges did not violate N.J.S.A. 18A:12-24(b).

DECISION

For the foregoing reasons, the Commission finds that Dr. Hodges violated N.J.S.A. 18A:12-24(a). The Commission, however, finds that Dr. Hodges did not violate N.J.S.A. 18A:12-24(b) and dismisses this charge against him.

PENALTY

Based on the findings set forth above that Dr. Hodges received funds drawn on the general account of the Academy, which was a vendor of the District, the Commission found that Dr. Hodges violated N.J.S.A. 18A:12-24(a), and should receive a reprimand. This penalty is warranted in that Dr. Hodges must be admonished that his action was wrong and that the Commission will not tolerate such action from him or others. The Commission does not recommend a higher penalty in this instance because it is mindful that Dr. Hodges initially took precautions to try to comply with the law. The fact that the Board no longer contracts with the Academy should preclude future conflicts. Therefore, the Commission recommends that the Commissioner of Education impose a penalty of a reprimand in this matter.

This decision, having been adopted by the Commission, shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, the respondent may file written comments on the recommended sanction with the 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.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C13-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof; and the testimony, and,

Whereas, the Commission found that Dr. Jonathan Hodges violated N.J.S.A. 18A:12-24(a) of the School Ethics Act, but found that he did not violate N.J.S.A. 18A:12-24(b) and dismissed the charges against him; and

Whereas, the Commission believes that the penalty of a reprimand is the appropriate sanction for Dr. Hodges;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding the respondent in violation of the School Ethics Act and recommends that the Commissioner of Education impose the penalty of a reprimand.

Paul C. Garbarini, Chairman

I hereby certify that the School
Ethics Commission adopted this decision
at its public meeting on October 31, 2003.

Lisa James-Beavers
Executive Director