

KAREN AUTENRIETH	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
JOHN BENDOKAS	:	Docket No. C47-04
<i>BRICK TOWNSHIP</i>	:	
<i>BOARD OF EDUCATION,</i>	:	
<i>OCEAN COUNTY</i>	:	
	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on August 17, 2004, by Karen Autenrieth alleging that respondent, John Bendokas violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq* when he was a member of the Brick Township Board of Education (Board). Specifically, complainant alleges that respondent violated N.J.S.A. 18A:12-24(f) of the Act when, over a period of seven years, he recommended and voted for the Brick Township School District’s (District) broker of record, Delaware Valley Financial Group (DVFG), even though he had a personal relationship with the managing partner. Complainant also alleges that respondent recommended and voted for DVFG after his son was hired by DVFG in July 2003.

On August 17, 2004, the Commission requested the complainant to amend the complaint because, at the time the complaint was filed, respondent was no longer a Board member and the Act governs the conduct of school administrators and board members. The Commission notified the complainant that if the complaint was not amended that it would consider dismissing it at its September 27, 2004 meeting. The complainant did not submit an amended complaint. At its September 27, 2004 meeting, the Commission voted not to dismiss the complaint because the conduct complained of occurred when the respondent was a Board member thereby giving the Commission jurisdiction over the complaint.

On October 7, 2004, the complaint was sent to the respondent for an answer. The Commission extended the time to answer in order to allow the respondent to obtain an attorney. On December 2, 2004, the respondent, through his attorney, Ben A. Montenegro, Esquire, filed a motion to dismiss the complaint because it lacked probable cause and was time-barred pursuant to N.J.A.C. 6A:28-6.1(b), which provides that all complaints must be filed within one year of notice of the alleged violation. The respondent also requested that the Commission determine that the complaint is frivolous and impose a fine upon the complainant in accord with N.J.S.A. 18A:12-29(e).

The matter was scheduled for the Commission’s January 25, 2005 meeting for a discussion on whether the complaint was time-barred. The January 25, 2005 meeting

was cancelled due to inclement weather and the matter was rescheduled for the Commission's February 7, 2005 meeting. At that meeting, the Commission determined that the complaint was not time-barred because the time begins to run at the time of notice of the violation and the complainant certified that she became aware of the violation at the June 2004 board meeting and filed the complaint on August 17, 2004.

On February 25, 2005, the Commission notified the parties that the complaint had been placed on the agenda for the April 4, 2005 Commission meeting and the parties were notified of their right to appear and present witnesses. Due to a scheduling conflict with respondent's attorney, the matter was rescheduled for the May 24, 2005 Commission meeting. The complainant attended the meeting and presented testimony. She also presented the testimony of Richard Kight and Cynthia McCarthy. Respondent's attorney also was present at the meeting. At its public meeting on May 24, 2005, the Commission voted to find no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(f) and dismissed the complaint. The Commission also found that the complaint was not frivolous. The Commission adopted this decision at its meeting of June 28, 2005.

FACTS

The Commission was able to discern the following facts based on the pleadings, the documents submitted and the testimony.

Respondent served as a Board member since 1996, but was not reelected in the April 2004 school board election. Complainant was employed by the school district from 1993 until 1997. Complainant was never denied employment by the Board.

At the June 26, 1997 Board meeting, upon a motion seconded by respondent, the Board approved National Associates Life as broker of record. At the June 29, 1998 and June 24, 1999 Board meetings, the Board again approved National Associates Life as broker of record. At the November 4, 1999 Board meeting, the Board approved the name change of the broker of record from National Associates Life to DVFG. DVFG was approved as the broker of record from 2000 to 2004. The respondent made the motion for the approval of DVFG as the broker of record only twice in the seven years that the Board acted on the appointment.

Respondent has had a long-time friendship with the managing partner of DVFG. Respondent's son was hired by DVFG in July 2003. After his graduation from college in 1999, respondent's son was employed as a teacher in Colorado until 2003. Respondent did not vote on any DVFG appointment following his son's hire at DVFG.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(f) of the Act when, over a period of seven years, he recommended and voted for the District's broker of record, DVFG, even though he had a personal relationship with the managing partner.

Complainant also alleges that respondent recommended and voted for DVFG after his son was hired by DVFG in July 2003.

N.J.S.A. 18A:12-24(f) provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Initially, the Commission notes that there is no information to demonstrate that respondent secured any financial gain for himself when the Board approved DVFG as the broker of record over a seven year period. Similarly, although the School Ethics Act does not define the term “associated,” the Commission does not discern that respondent was associated with DVFG in any way. At the most, he was friendly with the managing partner. However, respondent’s son was hired by DVFG in July 2003. The Act at N.J.S.A. 18A:12-23 defines “member of immediate family” as “the spouse or dependent child of a school official residing in the same household.” N.J.A.C. 6A:28-1.2 defines “dependent child” as “any child claimed as a dependent on the school official’s Federal and State tax return.” The respondent’s son lived and worked in Colorado from 1999 until 2003. The respondent has certified that he does not claim his son on his Federal or State tax return. The Commission finds that respondent’s son is not a member of his immediate family. Thus, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(f) because there is no information that the respondent secured any financial gain for himself, any member of his immediate family or any business organization with which he is associated.

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the Act and therefore dismisses the complaint in its entirety.

REQUEST FOR SANCTIONS

Respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The Commission can find no evidence to suggest that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. Respondent asserts that complainant filed the complaint in retaliation for not being hired after she was interviewed by the Board's Personnel Committee of which respondent was a member. However, complainant testified that she was employed by the school district from 1993 until 1997 and that she was never denied a job by the Board. The Commission also finds credible the testimony of complainant that she does not have a personal vendetta against respondent. Therefore the first standard has not been met.

The Commission must next review the second standard. Complainant and her witnesses all testified that they had serious concerns with respondent's relationship with the managing partner of DVFG. They also testified that, because of that relationship, they were concerned that DVFG was not working hard for the school district. It was also clear from the testimony that complainant believed that there was a reasonable basis for the complaint. Therefore the second standard also has not been met.

For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant. However, the Commission is troubled with testimony from complainant that if the respondent would provide his financial disclosure statement to her, she would drop the complaint. The Commission notes that financial disclosure statements are public records, which the complainant could have easily accessed. It is not incumbent upon respondent to provide that statement to complainant. Furthermore, for good cause, this matter was postponed several times and complainant had plenty of opportunity to obtain a copy of the financial disclosure statement prior to the hearing. If complainant would have considered dropping the complaint based on her review of respondent's financial disclosure statement, she should have made such a review before moving forward with a hearing before the Commission.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C47-04

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

Whereas, the Commission finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-21 et seq.; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 28, 2005.

Lisa James-Beavers
Executive Director