

only over matters arising under the School Ethics Act, N.J.A.C. 6A:28-1.4, and will not consider allegations that a respondent has violated statutes other than the School Ethics Act.

On December 3, 2010, the complainant filed an amendment which alleged that property records show that the Ridgefield address “was purchased on September 26, 2001 by Pedro and Alicia Morejon and is currently owned by Jorge and Alicia Hernandez.” (Amendment at p. 2). The complainant further states that he “received information from the Department of Education which shows that Respondent described her name as Alicia Morejon and her bona fide address as [address redacted] Union City, New Jersey, in her Personal Disclosure forms filed for 2005, 2006, 2007.” (Amendment at p. 3). Thus, the complainant reasons that the “[r]espondent concealed her true domicile by filing distorted Disclosure Statements.” (Id.) In this amendment, the complainant withdraws his allegation that the respondent violated N.J.S.A.18A:12-3 and N.J.S.A. 2C:28-1, as he concedes that the Commission has no jurisdiction over these statutes. (Ibid.)

On December 3, 2010, the complainant also filed a second amendment, stating:

- (a) On December 1, 2010, I mailed an Amendment to my Complaint against Respondent to the Commission. Attached to the same was information from the Ridgefield Town Hall relevant to the property at [Ridgefield address redacted]. According to the Sales History section of said document, Respondent, conveyed the property at [redacted address] to Jorge and Alicia Hernandez on September 26, 2001. In my Amendment, I erroneously describe the property in question as being purchased by Respondent on September 26, 2001. (citations omitted)
- (b) Nonetheless, according to the Building Information maintained by the Ridgefield Tax Assessor’s Office, the property at [Ridgefield address redacted] is used as a “Mother/Daughter.” Which means that, despite Respondent’s possible voluntary transfer of said property to her mother [sic], said address is still her domicile. Consequently, Respondent falsified her bonafide address in the Personal Disclosure Forms filed pursuant to N.J.S.A. 18A:12-25. (Second Amendment at p. 2; citation omitted).

Thus, the complainant maintains that the respondent violated N.J.S.A. 18A:12-25(3)c.

REQUEST FOR SANCTIONS

The respondent filed a Motion to Dismiss the within complaint, alleging therein that the complaint was frivolous and factually incorrect. The respondent requested that the Commission impose penalties against the complainant, pursuant to N.J.S.A. 18A:12-29(e). (Motion to Dismiss at p. 16).

The Commission’s regulations state, in relevant part:

- (a) Within 20 days from receipt of the motion to dismiss in lieu of an answer, the complainant shall file an original and two copies of a responsive brief. The complainant shall serve a copy of the

response on the respondent and submit proof of service pursuant to N.J.A.C. 6A:28-1.7.

1. Where a motion to dismiss alleges that a complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e), the complainant shall respond to that allegation within the responsive brief. 6A:28-8.2(a)1.

As noted above, the complainant was accorded an opportunity to respond to the motion and the allegation of frivolousness; he filed a responsive pleading on January 6, 2011 reaffirming his position. Thereafter, the matter was considered by the Commission at its January 25, 2011 meeting. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Where there are allegations of frivolousness, the Commission's regulations specifically state:

(a) Upon receipt of the complainant's response to an allegation that the complaint was frivolous pursuant to N.J.A.C. 6A:28-7.2(b) or 8.2(a) or the expiration of the time for filing such a response, the Commission shall make a determination by majority vote as to whether a complaint is frivolous.

1. **Where the Commission finds that a complaint is frivolous, such a finding shall constitute sole grounds for dismissal. Such dismissal shall constitute final agency action.**

(b) Pursuant to N.J.S.A. 18A:12-29(e), the Commission may impose a fine not to exceed \$500.00. (N.J.A.C. 6A:28-10.4; emphasis added).

A "frivolous complaint" is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, 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.A.C. 6A:28-1.2).

As per the language of the regulation, the Commission need only find that one prong is applicable to support a finding of violation. In so doing, the Commission considers the totality of the circumstances in determining whether a complaint meets the above standard. See, Patricia Lee et al. v. Barri Beck, Union Township Bd. of Ed., C01-05 (September 27, 2005). Here, on the basis of the record before it, the Commission finds that this complaint satisfies both prongs of the standard.

In her Motion to Dismiss, the respondent included a certification stating, in relevant part:

3. I do not live in Ridgefield, New Jersey. Rather, I make my domicile in Union City, New Jersey *** as stated in my Personal/Relative Disclosure Statements and Financial Disclosure Statements. A copy of my New Jersey Driver's License is attached herewith as Exhibit "A." ***
4. In September 2001, my husband and I conveyed the property to my daughter and her husband, Alicia Morejon-Hernandez and Jorge Hernandez.
5. Thereafter, I moved to Union City and I have resided in Union City ever since.
6. The allegations made by Mr. Valdes alleging that I am not a bona fide resident of Union City and that I falsified my bona fide address in the Personal Disclosure Forms filed pursuant to N.J.S.A. 18A:12-25 and violated N.J.S.A. 18A:12-25(3)c are false, inaccurate and misleading.
7. Prior to my appointment to the Union City Board of Education, I did live at [address redacted] Ridgefield, New Jersey. However, I have not lived there since I conveyed the property to my daughter in 2001, which was before I became the Vice-President of the Union City Board of Education. (Motion to Dismiss; Certification of Alicia Morejon)

The complainant claims that the respondent violated N.J.S.A. 18A:12-25(3)c, which states:

A school official who fails to file a statement or who files a statement containing information which the school official knows to be false shall be subject to reprimand, censure, suspension, or removal pursuant to the procedures established in section 9 of P.L.1991, c.393 (C.18A:12-29). Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

The Commission first notes that the Act does not require that the school official designate an address of any kind on the Personal/Relative and Financial Disclosure Statements. N.J.S.A. 18A:12-25 and 26. Neither does the Act require that the school official demonstrate that s/he is a bona fide resident; rather, residency is a qualification for *election to the Board* and an issue to be addressed by the Commissioner of Education where a complainant maintains that the Board member is not a bona fide resident, pursuant to N.J.S.A. 18A:12-1. The Commission is concerned only with residency insofar as the Act specifically authorizes it to prescribe a form for its annual disclosure statements. Notably, the Commission's form requires *only* that the school

official provide a “Home Address.”³ The respondent provided a home address. (See, Complaint at Second Amendment at Exhibits 4-6) The complainant’s attempts to differentiate “residency” from “domicile” have no relevance herein.

It is particularly noteworthy in this analysis that when the complainant filed his second amendment, he acknowledged the error in facts alleged in the amendment. That is, the complainant conceded in the second amendment that in September 2001, the respondent conveyed the Ridgefield property to another party. The respondent highlights this error, stating:

Mr. Valdes’s error in the First Amendment was that Respondent Board Vice-President purchased the property on September 26, 2001.

Complainant further alleges that “according to the Building Information maintained by the Ridgefield Tax Assessor’s Office, the property at [Ridgefield address redacted] is used as “Mother/Daughter.” Complaint then assumes that since the house is a Mother/daughter type home, said address is still her domicile.
*** (Respondent’s Motion to Dismiss at p. 12)

The respondent correctly argues that, having rescinded this critical factual allegation, the sole basis for the complainant’s claim in this complaint is that the Ridgefield Township designates this property under “Type and Use” as a “Mother/Daughter” residence. Respondent argues:

[The complainant] assumes that since Respondent has a daughter that the fact the home is listed as “Mother/daughter” implies that the address is still Respondent’s domicile. However, the term “Mother/daughter” when used to describe a house is merely a descriptive term describing a certain type of home. Respondent contends that she does not reside in this Mother/Daughter home. Furthermore, Mother/daughter home is merely a type of home, much like a mansion, ranch-style home, two-family home, single family home etc. (Respondent’s Motion to Dismiss at pages 12, 13).

Thus, the Commission finds that although the complainant may not have *commenced* this proceeding in bad faith, solely for the purpose of harassment, delay or malicious injury, once he became aware that his facts were incorrect, *i.e.*, that the respondent had actually conveyed the Ridgefield property to her daughter in September 2001, as he acknowledged in his second amendment, he should have notified the Commission that he did not wish to proceed with the complaint. Instead, he pressed on, asserting that “according to the Building Information maintained by the Ridgefield Tax Assessor’s Office, the property at [Ridgefield address redacted] is used as a ‘Mother/Daughter.’ Which means that, despite Respondent’s possible voluntary transfer of said property to her mother [sic], said address is still her domicile. Consequently, Respondent falsified her bonafide address in the Personal Disclosure Forms filed

³ The form specifically states that school administrators may use the school address.

pursuant to N.J.S.A. 18A:12-25. (Second Amendment at p. 2)” Thus, the complainant continued to assert that the respondent’s designation of the Union City address on her disclosure statements was a misrepresentation based solely on the categorization of the Ridgefield address as a “mother/daughter” property by the Tax Assessor’s Office. However, the complainant set forth no factual allegations as to this respondent that, if true, would establish that the Ridgefield property is the respondent’s “home address” so as to suggest that she supplied misleading disclosure statements.⁴

Viewing the totality of the circumstances, the Commission finds that the complainant *continued* this action in bad faith, solely for the purpose of harassment or malicious injury to the respondent. His failure to request a withdrawal of the complaint after acknowledging that it was grounded on erroneous facts suggests that he was pursuing the complaint for reasons other than a good faith intent to “curb the misconduct of school board members,” as he suggests. (Complainant’s Responsive Brief at p. 5). In I/M/O Persi, et al., Edison Twp. Bd. of Ed., Middlesex County, C29-96 (April 8, 1997), the Commission noted that although it became apparent during the pendency of the complaint that there was no violation of the Act, the complainant did not seek to withdraw his complaint. Rather, he filed a response which demonstrated that he continued to pursue the complaint not because of the incident in question, but because the complainant had some ongoing battle with respondent. The complaint was dismissed and the complainant was fined \$500. In Rogers v. Somjen, Roxbury Bd. of Ed, Morris County, C37-08 (December 15, 2009), the Commission found that the complainant commenced the action in bad faith, having compiled a series of documents through Open Public Records Act requests that painted a picture of the respondent’s business activities *prior* to his election to the Board, but which had no relevance to his actions as a Board member. The complaint was dismissed and the complainant was fined \$500. Similarly, the respondent’s home address prior to her undisputed appointment to the Board in 2002 (see, complainant’s amendment at p. 3) is of no relevance.

Furthermore, the Commission finds that the complainant knew, or should have known, that this complaint was without any reasonable basis in law or equity since the complainant was unable to set forth any facts to support a claim of violation. (See, Young v. Kreimer, Moorestown Bd. of Ed., Burlington County, C02-08 (January 27, 2009), where the Commission found no probable cause, dismissed the complaint as frivolous and fined the complainant \$500.) More specifically, when he filed his second amendment, he knew or should have known that the complaint was without any *reasonable* basis in law or equity. In Kreimer, supra, the Commission underscored that:

[T]he School Ethics Act, and the specific prohibitions set forth therein, were intended to establish ethical standards for school officials along with a mechanism “to weed out the few people who would use our schools for personal gain.” (Office of the Governor, News Release, January 16, 1992, “Governor Florio Signs Law Imposing Greater Accountability for School Districts”) The Commission recognizes that Board members are volunteers who

⁴ For this reason, the Commission notes that the respondent would prevail on her motion, even if this matter was not dismissed on the grounds of frivolousness.

make considerable sacrifices to hold their public offices. (Kreimer, supra, emphasis added)

Quite aside from the many demands that the Commission faces with limited time and increasingly limited resources to adjudicate complaints, the Commission cannot allow itself to become a vehicle for the community to launch baseless claims against school officials. For the foregoing reasons, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and orders that the complainant pay a fine in the amount of \$500.00.

DECISION

Based on the foregoing, the Commission dismisses the complaint on the grounds that it is frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Pursuant to N.J.A.C. 6A:28-10.4(a), this dismissal shall constitute final agency action which is appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Acting Chairperson

Mailing Date: February 23, 2011

Resolution Adopting Decision – C39-10

Whereas, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondent and the reply thereto; and

Whereas, at its meeting on January 25, 2011, the Commission voted to dismiss the complaint on the grounds that it is frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and to impose a penalty of \$500.00 on the complainant; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

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

Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 22, 2011.

Joanne Boyle
Executive Director