

Before the School Ethics Commission
Docket No.: C17-22
Decision on Motion to Dismiss

Michael Sheldon,
Complainant

v.

Luis Muniz,
Belleville Board of Education, Essex County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on February 14, 2022, by Michael Sheldon (Complainant), alleging that Luis Muniz (Respondent), a member of the Belleville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A. 18A:12-24(d)* and *N.J.S.A. 18A:12-24(f)*.

On February 16, 2022, the Complaint was served on Respondent via electronic mail, notifying him that charges were filed against him with the School Ethics Commission (Commission) and advising that he had twenty (20) days to file a responsive pleading.¹ On March 11, 2022, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on April 5, 2022.

The parties were notified by correspondence dated May 16, 2022, that this matter would be discussed by the Commission at its meeting on May 24, 2022, in order to make a determination regarding the Motion to Dismiss. Following its discussion on May 24, 2022, the Commission adopted a decision at its meeting on June 28, 2022, granting the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)* and/or *N.J.S.A. 18A:12-24(f)*.

II. Summary of the Pleadings

A. *The Complaint*

Complainant states that at the Board's meeting on August 16, 2021, and following a recommendation from the Superintendent (Dr. Richard Tomko), the Board (including

¹ As a result of the ongoing Coronavirus (COVID-19) pandemic, and the implementation of electronic filing, service of process was effectuated by the Commission through electronic transmission only.

Respondent), voted to approve the purchase of a commercial property for \$400,000.00, which was listed and represented by Keller-Williams Realty (KWR), and the Montclair office in particular.² According to Complainant, at the time of the vote, Respondent worked for (and has worked for) KWR as a real estate agent (for the Rutherford office). Although KWR “advertises through its corporate website that its regional offices are independently-owned franchises,” Complainant notes each franchise is charged numerous fees, annually, “including royalty fees, in return for the myriad business support services” that KWR corporate provides to each franchise. Throughout 2021, and during the time when the Board “arranged and approved” the purchase of the property, Respondent was a member of the Board’s Operations Committee, “which provided him with privileged confidential information regarding building and construction plans, as well as any property acquisitions being considered by the [S]uperintendent pending recommendation to the [B]oard for action and approval.”

With the above in mind, Complainant asserts Respondent violated *N.J.S.A. 18A:12-24(f)* because he was “in a conflicted position in that he knew his participatory actions in acquiring the property [] would, at the very least, benefit a sister [KWR] franchise and would certainly benefit the [KWR] corporate business organization with which he is directly related” and, therefore, he should have recused himself from the vote. Complainant also asserts that Respondent violated *N.J.S.A. 18A:12-24(d)* because he “clearly did not exercise proper independence of judgment in participating in” the vote. He was reasonably prejudiced in the outcome, whether or not he received compensation from [KWR] in any form ... knowing that his actions would ultimately benefit his [KWR] family.”

Complainant also notes that, although Dr. Tomko informed the community at the Board’s December 2021 Board meeting that the Board had subsequently rescinded its agreement to purchase the commercial property, same is “immaterial to this ethics [C]omplaint.”

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and initially argues that, as noted by Complainant, each KWR office is “independently owned and operated,” and the “fact these independent franchises are required to remit fees to Keller Williams as the franchise holder is irrelevant.” According to Respondent, he does not have any “interest in whether the [KWR] Montclair office succeeds, any more than he would for any other real estate office.” Furthermore, the Complaint is “wholly devoid of any factual allegations, which ... suggest that Respondent’s employment might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties” Therefore, Complainant has failed to establish a violation of *N.J.S.A. 18A:12-24(d)*.

As for the alleged violation of *N.J.S.A. 18A:12-24(f)*, Respondent argues Complainant did not provide any evidence demonstrating that he “used any non-public information obtained in the course of his Board [m]embership for the purpose of securing financial gain for himself, a member of his immediate family or a business organization with which he is associated.” In

² Dr. Tomko is also a member of the Commission and, therefore, he was recused from the discussion regarding, and the vote on, the above-captioned matter.

addition, Complainant does not “set forth any way in which [Respondent] acted upon this information to benefit himself financially.” Per Respondent, the fact that he is a realtor “is not sufficient to sustain a claim that he used information gleaned through his position as a Board [m]ember to benefit himself or his employer.” Although Complainant mentions the payment that franchisees must pay to the franchisor, he “has provided no information that there is any sharing or comingling of profits or other financial benefits between the independent offices.” Accordingly, Complainant has failed to assert a violation of *N.J.S.A.* 18A:12-24(f).

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, and regarding Respondent’s counsel’s statement that Respondent “has no interest in whether the KWR Montclair office succeeds, any more than he would for any other real estate,” Complainant submits this statement “is not only demonstrably false, but inadvertently supports [Complainant’s] very reason for filing this ethics [C]omplaint.” Complainant maintains had “there been different real estate companies involved in this particular [Board] transaction rather than [KWR] effectively represented on both sides of the negotiation table in the forms of both seller and buyer,” he (Complainant) “would have absolutely no reason to question” Respondent’s actions. Despite his clear and known connections to KWR, Respondent did not even recuse himself from the vote and, had he done so, “this particular ethics complaint would have never been filed.” Complainant notes he believes “it is an affront to basic common sense for [] [R]espondent’s counsel to effectively maintain that [Respondent] exercised proper judgement in this matter. Therefore, Complainant “respectfully request[s]” the Commission deny the Motion to Dismiss.

III. Analysis

A. *Standard for Motion to Dismiss*

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation(s) of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C.* 6A:28-8.1 *et seq.* Thus, the question before the Commission is whether Complainant has pled sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24(d) and/or *N.J.S.A.* 18A:12-24(f).

B. *Alleged Prohibited Acts*

Complainant submits that Respondent violated *N.J.S.A.* 18A:12-24(d) and *N.J.S.A.* 18A:12-24(f), and these provisions of the Act state:

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

f. 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;

In order to credit a violation of *N.J.S.A. 18A:12-24(d)*, the Commission must find evidence that Respondent engaged in employment or service, regardless of whether compensated, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

Following its review of the Complaint, the Commission finds that even if the facts as asserted are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(d)*. In the absence of facts demonstrating how Respondent's employment as a realtor with the KWR Rutherford office, *in and of itself*, might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties as a Board member, a violation of *N.J.S.A. 18A:12-24(d)* cannot be supported. As the Commission stated in *Barone v. Polozzo*, "a violation of *N.J.S.A. 18A:12-24(d)* requires a credible link between a school official's *external* employment or service, and a resulting prejudice to his/her independence of judgment as a school official." [Toms River Regional Board of Education, Ocean County, Commission Docket No. C64-20](#). Other than referencing an affiliation between Respondent's employer (KWR Rutherford) and that of the Board's real estate agent (KWR Montclair), namely as being associated with the same national franchisor (but being discrete and separately owned entities), Complainant has not provided any facts, which could establish that his employment as a realtor (for KWR Rutherford) prejudices his independence of judgment generally and/or in a real estate transaction in which the Board is represented by an agent employed by a KWR affiliate (KWR Montclair). Therefore, the Commission finds that the purported violation of *N.J.S.A. 18A:12-24(d)* should be dismissed.

To credit a violation of *N.J.S.A. 18A:12-24(f)*, the Commission must find evidence that Respondent used his public employment, or any information not generally available to the public, and which he received in the course of and by reason of his employment, for the purpose of securing financial gain for himself, his business organization, or a member of his immediate family.

After review of the Complaint, the Commission finds that even if the facts as argued are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24(f)*. Complainant has not provided any facts, other than speculation, demonstrating how Respondent used his position as a Board member and/or information he learned by virtue of his position with the Board (but was not generally known or available to the public) to secure financial gain for himself, his business organization, or a member of his immediate family. In this regard, there are no facts evidencing how Respondent would have received financial remuneration (e.g., a commission), of any kind, had the real estate transaction in question been fully consummated. In addition, although Respondent works for a business, the Complaint does not aver that Respondent is the franchisee of the KWR Rutherford office, or how

this business (or Respondent) would have profited from a real estate transaction in which neither the KWR Rutherford office nor Respondent was directly involved. Had Complainant provided factual averments and support indicating otherwise, a violation could have been possible. Nevertheless, and based on the facts as enumerated in the Complaint, the Commission finds that the stated violation of *N.J.S.A.* 18A:12-24(f) should be dismissed.

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24(d) and/or *N.J.S.A.* 18A:12-24(f).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: June 28, 2022

***Resolution Adopting Decision
in Connection with C17-22***

Whereas, at its meeting on May 24, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at its meeting on May 24, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A. 18A:12-24(d)* and/or *N.J.S.A. 18A:12-24(f)*; and

Whereas, at its meeting on June 28, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on May 24, 2022; and

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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 28, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission