

Before the School Ethics Commission
OAL Docket No.: EEC-02290-22
OAL Docket No.: EEC 00957-16 (On Remand)
SEC Docket No.: C39-15
Final Decision

In the Matter of Felicia Simmons and Stephen Williams,
Asbury Park Board of Education, Monmouth County

I. Procedural History

The above-captioned matter arises from a Complaint that was filed on December 3, 2015, by Barbara Lesinski (Complainant) alleging that Felicia Simmons (Respondent Simmons) and Stephen Williams (Respondent Williams) (collectively referred to as Respondents), members of the Asbury Park Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleged that Respondents violated *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f).

At its meeting on April 27, 2016, and after previously reviewing the Complaint, Respondents' Answer to Complaint (Answer) and allegation of frivolous filing, and Complainant's response to the allegation that the Complaint was frivolous, the Commission adopted a decision finding probable cause for the alleged violations of *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f), and finding the Complaint not frivolous. Based on its finding of probable cause, the Commission transmitted the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing and, pursuant to *N.J.A.C.* 6A:28-10.7(b), the attorney for the Commission (Petitioner) was charged with prosecuting the allegations in the Complaint for which the Commission found probable cause to credit.

At the OAL, the above-captioned matter was initially assigned to the Honorable Patricia M. Kerins, Administrative Law Judge (ALJ Kerins), but was then reassigned to the Honorable Sarah G. Crowley, ALJ (ALJ Crowley) following ALJ Kerins' retirement. *Initial Decision (On Remand)* at 2. Following hearings on July 13, 2021, and July 14, 2021, Petitioner submitted a "closing submission" on August 17, 2021, and the record closed. *Id.*

On August 25, 2021, ALJ Crowley issued an *Initial Decision* detailing her findings of fact and legal conclusions. *Id.* After securing multiple exceptions so that Petitioner could obtain the transcript(s) from the proceedings, the Commission considered the full record in this matter, including ALJ Crowley's *Initial Decision* and the filed Exceptions, at its regularly scheduled meeting on March 22, 2022, and voted to remand the above-captioned matter to the OAL so that ALJ Crowley could determine whether Respondents' conduct violated *N.J.S.A.* 18A:12-24(c) and/or *N.J.S.A.* 18A:12-24(f), and to clarify whether Exhibit P-12 was admitted into evidence. *Id.*

On remand, ALJ Crowley "listened to the recorded hearing and determined that Exhibit [P-]12 was not entered into evidence." *Id.* During a telephone conference on May 4, 2022, "the parties concurred that Exhibit [P-]12 was not entered into evidence and no additional factual findings were required." *Id.*

On May 31, 2022, ALJ Crowley issued an *Initial Decision (On Remand)*, with same detailing her findings of fact, and conclusions of law. The Commission acknowledged receipt of ALJ Crowley's *Initial Decision (On Remand)* on the date it was issued (May 31, 2022); therefore, the forty-five (45) day statutory period for the Commission to issue a Final Decision was July 15, 2022. Prior thereto, the Commission requested a forty-five (45) day extension of time to issue its decision so as to allow the Commission, which only meets monthly, the opportunity to receive and review the full record, including the parties' Exceptions. Pursuant to *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-18.8*, the Commission was granted an extension until August 29, 2022.

On or about June 13, 2022, Petitioner requested a thirty (30) day extension to file its Exceptions because "additional time [was needed] to receive the transcript" from the subsequent proceedings at the OAL. Although Respondents objected, the Commission granted Petitioner's thirty (30) day extension as requested. On July 14, 2022, and because the transcripts had still not been received, Petitioner requested a second thirty (30) day extension, to which Respondents again objected. Because the deadline for the Commission to issue the within Final Decision expires on August 29, 2022, Petitioner was provided with an extension until July 29, 2022, to file its Exceptions (if any), and Respondents were provided with a deadline of August 5, 2022, to file their reply (if any).

With the above in mind, the Commission considered the full record in the above-captioned matter at its regularly scheduled meeting on July 26, 2022, and at a committee meeting on August 10, 2022. Thereafter, at its regularly scheduled meeting on August 23, 2022, the Commission voted to adopt ALJ Crowley's findings of fact; to adopt the legal conclusion that Respondents did not violate *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*; and to dismiss the above-captioned matter.

II. Initial Decision *On Remand*

In her *Initial Decision (On Remand)*, ALJ Crowley again summarized the testimony provided by Complainant, Respondent Simmons, and Respondent Williams, and reiterated that, "[t]he relevant facts in this case are not in dispute, and all of the witnesses were found to be credible." As such, ALJ Crowley issued the following *findings of fact*:

1. Complainant is a member of the public and former member of the Asbury Park Board of Education (Board). She was on the Board with Respondents when the events which form the basis of the Complaint took place.
2. Respondents were elected to the Board in "November of 201[4]," and were sworn into the Board in January 2015.
3. Respondents ran on the same ticket with Arva Council, who was not elected. The three ran on a ticket calling themselves the "A-Team."
4. Respondents filed a "D-2 form" with [the New Jersey Election Law Enforcement Commission (ELEC)], and they were listed as the A-Team.
5. Following his lost bid for election, Arva Council retained the law firm of Mizrahi & Associates to represent him and an unsuccessful City Council member in an election challenge that was filed in New Jersey Superior Court.

6. Neither Respondent had a personal, professional, or financial relationship with the law firm of Mizrahi & Associates before, during, or after the 2014 election.
7. Neither Respondent nor any member of their families retained anyone from the law firm of Mizrahi & Associates to represent them.
8. Following a[] [Request for Proposals (RFP)] process that went through committee and discussions at an open public meeting, the law firm of Mizrahi & Associates was retained as labor counsel for the Board.
9. A State monitor was assigned to the Board.

Id. at 5-6.

Of note, ALJ Crowley did not find as a “fact” the information previously detailed in Finding of Fact #10 (“Complainant raised the “conflict issue” at the open public meeting after the law firm of Mizrahi & Associates was retained, and the State monitor “found no conflict of interest vis-à-vis ... [R]espondents and their ability to vote on the law firm of Mizrahi & Associates”) and Finding of Fact #11 (“Respondents voted to approve the retention of the law firm of Mizrahi & Associates as labor counsel for the Board”) from her *Initial Decision*. *Id.*

In the “Legal Analysis and Conclusion” section of her *Initial Decision (On Remand)*, ALJ Crowley detailed the relevant sections of the Act as follows:

... *N.J.S.A.* 18A:12-24(c), provides in relevant part:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matters where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his family.

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

No school official shall use, or allow to be used, his office or employment, or any information, not generally available to 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, a member of his immediate family, or any business organization with which he is associated.

Id. at 6.

After citing the foregoing provisions of the Act, ALJ Crowley noted that the “conflict” in the above-captioned matter arose from Respondents “running on a ticket called the ‘A-team,’ and the subsequent retention by one of the losing members of the ticket of the law firm of Mizrahi & Associates to represent them in an election challenge.” *Id.* at 7. Furthermore, following Respondents’ involvement in the “RFP process [for Board counsel] due to committee assignment,” Respondents “voted on the retention of the law firm of Mizrahi & Associates.” *Id.*

Although Petitioner cited *I/M/O Richard Long and Frank Sedaghi*, Toms River Board of Education, Ocean County, C05-98 and C07-98, March 4, 1999, as well as *I/M/O Sara Davis and Rosemary Jackson*, City of Camden Board of Education, Camden County, C08-02, February 27, 2003, to support a finding that Respondents violated *N.J.S.A. 18A:12-24(c)* and *N.J.S.A. 18A:12-24(f)*, ALJ Crowley found that neither case is analogous to the facts at issue here. *Id.* at 7. More specifically, and unlike the cases cited by Petitioner, “[n]o relationship ever existed between ... [R]espondents and the law firm in question,” as “[t]he law firm in question never represented ... [R]espondents individually or when they were running on the ticket with other individuals,” and they “had no personal or financial affiliation with the law firm and the law firm had never represented them personally, or any of their family members before, during, or after their retention as labor counsel for the Board.” *Id.*

For the foregoing reasons, ALJ Crowley **concluded** that neither Respondent violated *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*, and dismissed the Complaint. *Id.*

III. Exceptions

On August 15, 2022, which was more than two weeks after the July 29, 2022, extension provided, Petitioner filed Exceptions to the *Initial Decision (On Remand)*. Because Petitioner’s filing was untimely, it was not reviewed or considered by the Commission in rendering the within decision.

IV. Analysis

Upon a thorough, careful, and independent review of the record, the Commission finds that in the absence of sufficient credible evidence that the named Respondents (either individually or collectively) had a direct or indirect financial involvement in the selection and retention of the law firm of Mizrahi & Associates; had a personal involvement in the vote that created a benefit to them (whether individually or collectively); or used their official positions to secure a financial gain for themselves, a member of their immediate families, or any business organization with which *they* were associated, the record supports the findings of fact in ALJ Crowley’s *Initial Decision (On Remand)*, and also supports ALJ Crowley’s legal conclusion that Respondents did not violate *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*.

Although the Commission finds that the evidence in the above-captioned matter is insufficient to support a violation of *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*, it must reiterate that it is the only entity that has the jurisdiction and authority to determine whether a school official has a conflict of interest which precludes his/her involvement in a matter or issue related to the Board, and whether his/her involvement in a matter or issue violates the Act. The opinion of any other individual or body is neither binding on the Commission nor determinative of a violation (or a non-violation).

V. Decision

After review, the Commission adopts ALJ Crowley’s *Initial Decision (On Remand)* finding that Respondents did not violate *N.J.S.A. 18A:12-24(c)* and/or *N.J.S.A. 18A:12-24(f)*, and adopts the decision to dismiss the above-captioned matter.

Accordingly, this is a final agency decision and is appealable only to the Superior Court-Appellate Division. *See, N.J.A.C. 6A:28-10.11 and New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: August 23, 2022

***Resolution Adopting Final Decision
in Connection with C39-15***

Whereas, at its meeting on April 27, 2016, and after thoroughly considering the Complaint, Respondents' Answer to Complaint (Answer) and allegation of frivolous filing, and Complainant's response to the allegation that the Complaint was frivolous, the School Ethics Commission (Commission) adopted a decision finding probable cause for the alleged violations of *N.J.S.A.* 18A:12-24(c) and *N.J.S.A.* 18A:12-24(f); finding the Complaint not frivolous; and transmitting the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, on August 25, 2021, and following a hearing, the Honorable Sarah G. Crowley issued an *Initial Decision* detailing her findings of fact and legal conclusions; and

Whereas, on March 22, 2022, the Commission adopted a decision remanding the above-captioned matter for further action and consideration; and

Whereas, on May 31, 2022, ALJ Crowley issued an *Initial Decision (On Remand)* again detailing her findings of fact and legal conclusions; and

Whereas, at its regularly scheduled meeting on July 26, 2022, and a committee meeting on August 10, 2022, the Commission reviewed and discussed the full record in the above-captioned matter; and

Whereas, at its regularly scheduled meeting on July 26, 2022, and a committee meeting on August 10, 2022, the Commission discussed adopting ALJ Crowley's findings of fact; adopting the legal conclusion that Respondents did not violate *N.J.S.A.* 18A:12-24(c) and/or *N.J.S.A.* 18A:12-24(f); and dismissing the above-captioned matter; and

Whereas, at its meeting on August 23, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its regularly scheduled meeting on July 26, 2022, and a committee meeting on August 10, 2022; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its meeting on August 23, 2022.

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