

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATE OF : STATE BOARD OF EXAMINERS
JOHN CARLOMAGNO : ORDER OF REVOCATION
_____ : DOCKET NO: 1314-250

At its meeting of July 24, 2014, the State Board of Examiners (Board) reviewed information it had received regarding John Carlomagno. Pursuant to *N.J.S.A. 18A:6-16*, the Arbitrator assigned by the Department of Education to hear the case, referred to the State Board of Examiners (Board) the tenure matter captioned *In the Matter of the Tenure Hearing of John Carlomagno and School District of the Township of Hillside*, Dkt. No. 180-8/13 (Arbitrator's Decision, December 20, 2013).

Hillside had certified tenure charges against Carlomagno alleging unbecoming conduct, corporal punishment, insubordination and other just cause. Specifically, Hillside alleged that, Carlomagno picked up a student and threw him against a desk; made inappropriate comments to a student, calling her "stupid" and "an idiot" and telling her to "shut up;" grabbed a student by the arm in class; made an inappropriate comment to a student about her parents; left school early one day without prior authorization and did not return to school for the three days thereafter; and ripped up a memo an Instructional Supervisor requested him to sign and called her an "asshole."

In her Decision (which is incorporated herein by reference), the Arbitrator concluded that Carlomagno committed corporal punishment when he challenged a student, E.S., to run at him and when E.S. did so lifted him up and threw him at a desk, thereby injuring E.S. The Arbitrator also determined that Carlomagno stated he "drew first blood" after E.S. was injured and made another comment to the effect that "he didn't care if you were two or five years old, he would do the same thing." According to the Arbitrator, Carlomagno also engaged in conduct unbecoming a teacher when he made inappropriate comments to student A.N., calling her an "idiot" and "stupid" and telling her to "shut up" in front of the entire class. Carlomagno also told A.N. to either throw or take the first punch and he would punch her back. The Arbitrator further determined that Carlomagno engaged in conduct unbecoming a teacher when he grabbed or pushed student, G.O.,'s arm when she was talking with her hands even though her

hands were not touching Carlomagno's face. After evaluating all of the evidence and testimony in the record, the Arbitrator determined that Hillside had proven many of the tenure charges that Carlomagno had engaged in conduct unbecoming a teaching staff member, which warranted discipline. The Arbitrator concluded that Carlomagno's conduct warranted his removal from the district. Carlomagno was dismissed from his tenured employment with Hillside as a result of the unbecoming conduct proven in the tenure proceeding.

Carlomagno currently holds a Teacher of Music certificate. After reviewing the above information, at its September 19, 2014 meeting, the Board voted to issue an Order to Show Cause to Carlomagno as to why his certificate should not be revoked.

The Board sent Carlomagno the Order to Show Cause by regular and certified mail on September 30, 2014. The Order provided that Carlomagno must file an Answer within 30 days. Carlomagno responded on October 20, 2014. In his Answer, Carlomagno claimed that when he applied for unemployment benefits the Department of Labor Appeal Tribunal found that he did not engage in unbecoming conduct when he protected himself against a student who tried to attack him. (Answer, p.1). He also stated that after investigating the incident the IAIU clearly found that child abuse and/or corporal punishment was unfounded. (Answer, p.1). In the remainder of his Answer, Carlomagno referred the Board to his evaluations, medical records indicating he had sustained a back injury on the job and rebuttal documents he had submitted in response to district claims of unbecoming conduct. (Answer, p.1).

Since there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case. Subsequently, on January 21, 2016, the Board issued a second Order to Show Cause to Carlomagno following his conviction for a municipal ordinance violation after being charged with criminal mischief and property damage. According to the criminal complaint, Carlomagno threw a brick at an ATM machine, causing approximately \$1000 in damage. The Board sent Carlomagno the Order to Show Cause by regular and certified mail on January 25, 2016. The Order provided that Carlomagno must file an Answer within 30 days. Carlomagno responded on February 22, 2016. In his Answer, Carlomagno stated that he pled guilty to a municipal

offense after “an incident at a broken ATM machine.” (Answer, p. 1). He stated that he was trying to get his card back after the machine ate it and he “wasn’t trying to steal or engage in any other criminal activity.” (Answer, p. 1). Carlomagno noted that he had a successful business and did not need to engage in criminal activity in order to make a living. (Answer, p. 1). He claimed that the criminal charges were dismissed after he explained what happened and he was ordered to pay a fine, which he did. (Answer, p. 1). Carlomagno added that the damage he caused was not significant and the bank did not sustain \$1000 of damage. (Answer, p. 1). The Board transmitted the second matter to OAL. On July 18, 2016, Administrative Law Judge (ALJ) Margaret M. Monaco issued a partial summary decision on the first Order to Show Cause, concluding that collateral estoppel barred the re-litigation of the factual issues proven before the Arbitrator, but allowing Carlomagno a hearing to present mitigating evidence to be considered in determining the appropriate penalty. On that same date, ALJ Monaco consolidated the two matters. On December 7, 2016, the ALJ denied the Board’s motion for partial summary decision as to the second Order to Show Cause. ALJ Monaco heard the matter on December 9, 2016 and June 16, 2017. The record closed on February 9, 2018 and ALJ Monaco issued an Initial Decision on May 8, 2018. *In the Matter of the Certificates of John Carlomagno*, Dkt. Nos. EDE 16806-14 and EDE 03090-16 (Initial Decision, May 8, 2018).

After reviewing the testimony and the record, ALJ Monaco reiterated the Arbitrator’s findings as to Carlomagno’s conduct regarding the tenure charges. (Initial Decision, slip op. at 4-5.) As for the ATM incident, the ALJ determined that the Board’s witnesses “presented credible, persuasive, and substantially consistent testimony as to the pertinent facts.” *Id.* at 6. The Board’s witnesses noted that the surveillance camera footage from the ATM showed Carlomagno inserting a card into the ATM, appearing to be “frustrated” or “aggravated” and throwing several receipts on the ground. He is then seen picking up a rock the size of a brick off the ground, walking back to the ATM and throwing the rock at the ATM when he was two to five feet from the machine. *Id.* at 7. Judge Monaco found that the particular ATM was a heavily used machine, as it was the only ATM available to the public at that branch when the bank was closed. *Id.* at 8.

In his testimony, Carlomagno stated that he did not throw a cinder block through the ATM, but rather banged the machine with a rock to get his card back. *Ibid.* He did admit that the rock he used was similar to a regular-size brick and added that what he did was “wrong” and a “mistake.” *Ibid.* Carlomagno disputed that there was \$1000 in damage to the ATM and noted that he never received a bill for the damage. *Id.* at 9. In addressing the earlier Order to Show Cause, Carlomagno asserted that the facts of the case were greatly exaggerated and that there was lying involved. *Ibid.* He noted that he was in severe pain and on medication during the arbitration and added that he should have gone on disability when he was teaching because of severe damage to his back. *Ibid.* Carlomagno also indicated that during the period of the incidents at school, his physical condition affected his ability to do the job and his medication probably affected his “judgment” or “mood.” *Ibid.* He added that he had worked successfully in elementary schools from 2003 through 2010 and that his problems occurred in the middle school where he had “some disagreements with management” and “felt the building was poorly run.” *Ibid.*

After summarizing the relevant case law regarding appropriate standards of teacher conduct, ALJ Monaco again noted that she had previously determined that “the facts proven before Arbitrator Biren amply demonstrate that respondent engaged in conduct unbecoming a teaching staff member.” *Id.* at 12. She added that the Board “has proved that respondent engaged in conduct unbecoming a teacher when he threw the brick-like object at the ATM. There can be no question that such conduct fails to comport with the type of conduct that the public has the right to expect of a public employee.” *Id.* at 13.

In assessing the appropriate penalty, ALJ Monaco stated that “Although I am not persuaded that respondent’s misguided and inappropriate behavior at the bank would in and of itself warrant action against his teaching certificate, his conduct as proven in the arbitration proceeding stands on different footing.” *Id.* at 14. Considering the “totality of the circumstances” the ALJ concluded that Carlomagno’s unbecoming conduct warranted the revocation of his certificate. *Ibid.* Judge Monaco made note of Carlomagno’s lengthy career as a teacher in Hillside but found that his current infractions were not “an aberration in an otherwise unblemished career.” *Ibid.* She also observed that Carlomagno “failed to take responsibility for his woefully inappropriate actions and poor judgment, which resulted in the loss of his

tenure.” *Ibid.* Furthermore, those actions, could not be “condoned or excused by his asserted back condition” according to the ALJ. *Ibid.* ALJ Monaco concluded that Carlomagno’s “inability to exhibit self-restraint and controlled behavior” was reinforced by his later incident at the bank. *Id.* at 15. She also determined that the gravity of Carlomagno’s conduct greatly outweighed any mitigating evidence and ordered the revocation of his certificate. *Ibid.* Neither Carlomagno nor the Deputy Attorney General (DAG) representing the Board filed Exceptions.

The Board must now determine whether to adopt, modify or reject the Initial Decision in this matter. At its meeting of June 29, 2018, the Board reviewed the Initial Decision. After full and fair consideration of the Decision, the Board voted to adopt the Initial Decision.

“Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, after assessing the evidence and credibility of the witnesses, ALJ Monaco concluded that Carlomagno had damaged the bank’s ATM by throwing a brick-sized rock at it. That action, coupled with his unbecoming conduct as found by the Arbitrator, convinced the ALJ that revocation was warranted here. After reviewing the entire record, the Board agrees with the ALJ’s assessment regarding Carlomagno’s conduct and the appropriate resultant penalty.

The record established that Carlomagno engaged in corporal punishment when he encouraged a student to run at him and then lifted the student up and threw him against a desk. His interactions with other students, including calling one student “stupid” and an “idiot” in front of the class and pushing another student’s arm while she was talking with her hands, further demonstrate that he had no clear sense of appropriate behavior. Moreover, the Arbitrator and ALJ Monaco both noted Carlomagno’s history of prior discipline for several incidents stemming from his aggressive, angry and unprofessional interactions with supervisors. These events, coupled with his egregious and disproportionate reaction to the ATM’s failure to return his card, provide ample justification for the revocation of his certificate and the

mitigation he presented does not compel a different result. The Board therefore believes that the only appropriate penalty in this matter is the revocation of his certificate.

Accordingly, on June 29, 2018, the Board voted to adopt the Initial Decision and ordered the revocation of Carlomagno's certificate. On this 21st day of September 2018, the Board formally adopted its written decision to adopt the Initial Decision in this matter and it is therefore ORDERED that John Carlomagno's Teacher of Music certificate is hereby revoked, effective immediately. It is further ordered that Carlomagno return his certificate to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Robert R. Higgins, Secretary
State Board of Examiners

RRH/MZ/th

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.