

LOGAN ALEXANDER AND THE HORACE :
MANN INSURANCE COMPANY, :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF TRENTON, MERCER COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioners sought reimbursement from the respondent Board for costs incurred in defending petitioner Alexander – a security officer employed by the Board – in a Superior Court civil action alleging sexual assault and harassment, which was settled in August 2010. Respondent contended that it has no obligation to indemnify because the issue of indemnification was resolved by the Superior Court settlement agreement.

The ALJ identified the threshold question to be whether the Commissioner has jurisdiction to decide the matter, and whether the civil settlement addressed all of the claims – in which case, there is nothing left for the Commissioner to decide; in seeking to defeat the respondent Board’s assertion that all aspects of this matter ended with the Superior Court’s August 2010 order approving settlement, petitioners are relying on specialized rules and practices of the Superior Court rather than on the Commissioner’s expertise to resolve the claims. The ALJ concluded that in the current instance, the original demand for cross-claim and indemnification was before the Superior Court as part of the civil lawsuit; accordingly, the expertise to determine whether the Superior Court ended that claim with the civil settlement lies with the Superior Court and the question should, therefore, be brought before that court rather than the Commissioner. The ALJ recommended dismissal of the petition without prejudice.

Upon independent review of the record and the Initial Decision of the OAL, the Commissioner concurred with the ALJ that this matter is appropriately dismissed for lack of jurisdiction. In so determining, the Commissioner was compelled to agree that the interpretation of the Superior Court settlement forms the base of this controversy. The petition was dismissed without prejudice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

January 9, 2012

OAL DKT. NO. EDU 422-11
AGENCY DKT. NO. 654-11/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners’ exceptions – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were duly considered by the Commissioner in making his determination herein. The Board did not submit reply exceptions.

Exceptions of the petitioners essentially recast and reiterate their arguments advanced below. In that it is determined that these – in pertinent part – were fully considered and addressed by the Administrative Law Judge in her decision, further elaboration on them is unnecessary here.

Upon full review and consideration the Commissioner concurs with the ALJ that this matter is appropriately dismissed – without prejudice – for lack of Commissioner of Education jurisdiction. In so determining the Commissioner is compelled to agree that “at the base of [this] controversy lies the interpretation of the Superior Court settlement,” (Initial Decision at 4) in the matter entitled *Zalactier Cartagena, Individually and as Guardian ad Litem for Chrystal Harper, a minor v. City of Trenton Board of Education,*

Elizabeth Ramirez, Howard White and Logan Alexander, Jr., Superior Court of New Jersey Law Division, Mercer County, Docket No. MER-L-2081-08. As such, the Commissioner is in full accord – for the reasons clearly presented on p. 4-7 of her decision – with the ALJ’s conclusion in this matter. Specifically:

I CONCLUDE that in the current instance, the original demand for cross-claim and indemnification was before the Superior Court as part of the civil lawsuit. The expertise to determine whether the Superior Court ended that claim in its “Order Entering Judgment and Directing Deposit of Funds” dated August 17, 2010...lies with the Superior Court, and the question should, therefore, be brought before the Superior Court. Should the Superior Court determine that the settlement did not encompass the indemnification claim, the question of the Board’s responsibility to indemnify is then properly brought before the Commissioner. (Initial Decision at 7)

Accordingly, the recommended decision of the OAL is adopted and the instant petition of appeal is hereby dismissed without prejudice.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 9, 2012

Date of Mailing: January 10, 2012

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).