

TRACEY PITTS,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
STATE-OPERATED SCHOOL DISTRICT	:	DECISION
OF THE CITY OF CAMDEN, CAMDEN	:	
COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – formerly employed as a tenured teacher by the respondent school district – alleged that her due process and tenure rights were violated when the Board unlawfully terminated her employment. The Board contended that petitioner had voluntarily left its employment as a result of an agreement between the two parties; the petitioner asserted that she had never entered into the agreement with the Board, and argued that tenure charges would need to be filed in order to remove her from her tenured position. The matter was litigated in Superior Court, where the Board sought an order enforcing the terms of a settlement agreement it claimed to have entered into with petitioner; under the terms of the settlement, the Board contended that petitioner had agreed to resign, while the Board agreed not to pursue tenure charges against petitioner. The Superior Court Judge (SCJ) ruled that the parties had entered into a binding agreement, under the terms of which the petitioner had agreed to resign effective October 31, 2015, and the Board had agreed not to pursue tenure charges against her.

The ALJ found, *inter alia*, that: the Commissioner does not consider cases in which the issue involves contractual disputes, as these claims do not arise under the school laws; the SCJ determined that a binding agreement had been consummated in this case; the petitioner’s claims herein arose from a provision of the contract between the parties, *i.e.*, the settlement agreement, which details a procedure by which petitioner could revoke her acceptance of the agreement; petitioner’s contention that she effectively invoked her right under the settlement to revoke her acceptance through written communications – and therefore remains a tenured employee who can only be removed through tenure charges – is without merit; the Order of the Superior Court in this matter effectively ends the controversy, as the SCJ determined that the settlement – under which petitioner agreed to resign her position – was binding; and therefore no violation of petitioner’s tenure rights occurred. Accordingly, the ALJ concluded that the petition must be dismissed.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision, with modification. The Commissioner concurred with the ALJ that the petitioner’s claims in this matter arose from a provision in the contractual agreement between the parties, and accordingly can only be properly raised before the Commissioner if the petitioner properly revoked her acceptance of the settlement agreement. As there remains a dispute between the parties as to whether petitioner revoked her acceptance, the Commissioner cannot conclude that petitioner has tenure rights that were violated by the Board. Accordingly, the petition was dismissed without prejudice.

<p>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.</p>

January 30, 2017

TRACEY PITTS, :
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 PETITIONER, :
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 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF CAMDEN, CAMDEN :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto – submitted in accordance with *N.J.A.C.* 1:1-18.4 – were also considered by the Commissioner. Upon a comprehensive review of the record in this matter, the Commissioner adopts the Administrative Law Judge’s (ALJ) decision, as modified herein.

The ALJ found that petitioner’s claims in this matter arose from a provision¹ in an agreement between the parties (Agreement), and noted that the Commissioner does not consider cases in which the issues involve contractual disputes.² The ALJ explained, whether there was revocation of petitioner’s acceptance of the Agreement under the subject provision involved

¹ The relevant provision – Section 6(e) – provides in pertinent part:
[Pitts] has been advised that during the seven (7) day period following her execution of the Settlement Agreement and the Release, she may revoke her acceptance of this Agreement by delivering written notice through her legal counsel . . . and the Settlement Agreement and the Release shall not become effective or enforceable until after the revocation period has expired.

² Presently, there is an outstanding contractual dispute as to whether petitioner revoked the Agreement. Petitioner, who was scheduled to sign the Agreement on October 23, 2015 but failed to show up at her attorney’s office, has maintained that on October 26, 2015, and then again on October 29, 2015, petitioner’s counsel advised the Board Attorney that Pitts no longer wished to sign the Agreement or resign from her position in the District. Thereafter, following the Superior Court Judge’s July 22, 2016 ruling – finding that the parties entered into an enforceable agreement – Pitts sent a letter to the Board on July 28, 2016, stating that she was revoking her acceptance of the Agreement pursuant to Section 6(e).

interpretation of the terms of the Agreement, which is beyond the purview of the Commissioner. The ALJ further found that the Superior Court Judge's (SCJ) granting of the Board's motion to enforce the Agreement meant that either the SCJ did not find effective revocation of the Agreement or that the revocation period had elapsed. The ALJ explained that petitioner's disagreement with the SCJ's decision should have been appealed to the Appellate Division as there is no remedy available through the Commissioner. The ALJ concluded that: petitioner agreed to resign from her position pursuant to the Agreement, which became effective on October 31, 2015; respondent did not violate petitioner's tenure rights; and the SCJ's decision effectively ended the controversy.

The exceptions substantially reiterate the substance of petitioner's submissions at the OAL, recasting the arguments therein to support her contention that the ALJ erroneously concluded that the Board did not violate Pitts' tenure rights. Specifically, petitioner maintains that the Board wrongfully terminated Pitts in violation of her tenure rights. Petitioner further argues that the ALJ improperly inferred that her revocation of the Agreement was not effective or that the revocation period had expired based on the fact that the SCJ ruled in favor of the Board to enforce the Agreement. Petitioner notes that the SCJ stated during oral arguments that the parties retained their rights under the Agreement. In reply, respondent also reiterated the positions advanced in its submissions at the OAL. Respondent contends that Pitts was not terminated; instead, she resigned pursuant to the Agreement. Respondent further submits that, contrary to petitioner's assertion that she retained all her rights under the Agreement – including Pitts' right to revoke – the SCJ rejected those arguments and ruled in favor of the Board.

As a preliminary matter, the Commissioner finds that petitioner's claim – that the Board violated her tenure rights – can be properly raised only if petitioner effectively revoked

her acceptance of the Agreement.³ The dispute between the parties as to whether Pitts revoked her acceptance of the Agreement remains unresolved. The contention over whether there was revocation of petitioner's acceptance does not arise under the school laws. Such dispute clearly implicates contract laws; therefore, the appropriate venue for adjudication of this issue is the Superior Court of New Jersey. In other words, whether Pitts revoked her acceptance of the Agreement will determine if she can bring a claim pursuant to *N.J.S.A. 18A:6-10 et seq.*, and the SCJ has proper jurisdiction to resolve the discord between the parties relating to petitioner's revocation of acceptance.

Petitioner's contention that the ALJ improperly inferred that Pitts' revocation was ineffective, does require discussion. Petitioner argues that her right to revoke the Agreement was not extinguished by the SCJ's ruling because the enforcement of the Agreement meant she had the right to revoke pursuant to Section 6(e). The Board contends that the SCJ rejected petitioner's repeated arguments that Pitts "could or had revoked" the Agreement, and ruled in favor of the Board. In the Initial Decision, the ALJ concluded that the SCJ's ruling in favor of the Board suggests that Pitts did not or could not revoke her acceptance of the Agreement. A review of the limited record of the Superior Court matter,⁴ however, indicates that the issue of revocation was not explicitly addressed by the SCJ. In fact, when petitioner raised the issue of revocation in her arguments during the hearings and included it as part of her motion for reconsideration, the SCJ did not address revocation.

During oral arguments on July 22, 2016, the SCJ stated in relevant part:

³ If petitioner effectively revoked the Agreement, it would mean that Pitts did not resign from her teaching position in the District.

⁴ The parties have submitted copies of relevant pleadings and correspondence, as well as excerpts from transcripts of the hearings on January 8, 2016 and July 22, 2016.

[T]he contract as it was drafted on October 23rd, 2015 is the embodiment of that entire agreement . . . That written agreement, that written agreement is the agreement, so you know, even though she didn't sign it, if you're asking me well, what did you just rule on, what are my rights, they're all contained in that agreement that she did not sign because [there was a] meeting of the minds . . .

Transcript of Motion Hearing, July 22, 2016, pg. 17-18.

When the Board Attorney sought clarification, inquiring whether the ruling on the Agreement included all the provisions, the SCJ responded, “[a]ll the provisions in that agreement.” *See* Transcript of Motion Hearing, July 22, 2016, pg. 18. It is evident from the transcript that the SCJ simply ruled on whether there was a binding agreement between the parties. The SCJ then entered an order enforcing the Agreement. Implicit in such a ruling is the interpretation reached by the ALJ: that the Agreement was not revoked by Pitts. However, the SCJ clarified during the hearing that the rights of the parties were as they appear in all the provisions of the written Agreement. It would, therefore, follow that petitioner had a right to revoke her acceptance of the Agreement. Notwithstanding, the SCJ did not explicitly address whether petitioner had (on October 26, 2015) or could have (on July 28, 2016) revoked her acceptance of the Agreement; nor did the SCJ hold that petitioner’s right to revoke was no longer valid. As such, without explicit finding of the Superior Court of New Jersey that petitioner’s right to revoke the Agreement had extinguished or that her alleged revocation was insufficient, it would be improper for the Commissioner to conclude such. Similarly, and as discussed above, whether petitioner revoked her acceptance of the Agreement is an issue to be determined by the Superior Court of New Jersey.⁵

⁵ The SCJ’s decision is presently on appeal. Although petitioner noted in her December 14, 2016 letter to the ALJ that the issue of revocation cannot be addressed on appeal because it was not argued in any of the moving papers or during oral argument, the Commissioner’s review of the transcripts from January 8, 2016 and July 22, 2016, and petitioner’s motion for reconsideration indicate that the issue of revocation was raised but not addressed by the SCJ.

Since petitioner's right to bring this action would only arise if there was proper revocation of the Agreement – and there is a dispute as to whether petitioner revoked her acceptance of the Agreement – the Commissioner cannot determine whether Pitts effectively revoked her acceptance of the Agreement. For this reason, the Commissioner cannot conclude that petitioner has tenure rights in the District that were violated by the Board. Accordingly, the Initial Decision of the OAL – as modified – is adopted as the final decision in this matter, and the petition is hereby dismissed without prejudice.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2017

Date of Mailing: January 31, 2017

⁶ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 23-16

AGENCY DKT. NO. 375-12/15

TRACEY PITTS,

Petitioner,

v.

**STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF CAMDEN, CAMDEN
COUNTY,**

Respondent.

Morrison Kent Fairbairn, Esq., for petitioner (Michael A. Armstrong and Associates, attorneys)

Joseph G. Antinori, Esq., for respondent (Brown and Connery, attorneys)

Record Closed: November 17, 2016

Decided: December 16, 2016

BEFORE **JEFF S. MASIN**, ALJ t/a:

Tracey Pitts was employed by the Camden City Board of Education as a tenured teacher. On December 29, 2015, she filed a Notice of Motion for Emergent Relief with the Commissioner of Education, seeking a determination that the Board had unlawfully terminated her employment without affording her the rights that she was entitled to as a tenured employee. In essence, the Board, which was desirous of separating Ms. Pitts from the District, considered that she had voluntarily left its employment as a result of an agreement between the Board and Pitts, while Ms. Pitts asserted that she had never

entered into any such agreement and that the Board could only attempt to remove her by filing tenure charges. Emergent relief was denied by Order issued on January 22, 2015, by Honorable Robert Bingham II, ALJ. Thereafter, the parties pursued litigation in the Superior Court, in which the Board of Education sought an order enforcing the terms of what it believed to be a binding settlement agreement, under the terms of which Ms. Pitts had agreed to resign effective October 31, 2015, and the Board had agreed not pursue tenure charges against her. In response to the Board's action, Ms. Pitts moved, and the Board cross-moved, for summary decision. At the conclusion of oral argument, held on July 22, 2016, Honorable Anthony M. Pugliese, J.S.C., ruled that the parties had entered into a binding agreement, the terms of which were embodied in a writing submitted to counsel for Ms. Pitts on October 23, 2015. Although Pitts had never executed this agreement, Judge Pugliese nevertheless found that the

two attorneys representing these entities had a meeting of the minds. They were authorized to represent the entities and they did so, and the deal was embodied fully in the document that was revised by Mr. Antinori and sent back to Ms. Johnson-Stokes in advance of Ms. Johnson-Stokes meeting with Ms. Pitts that was scheduled for sometime on October 23rd.

Judge Pugliese's decision was embodied in two Orders, both issued on July 22, 2016. One Order denied Pitts' summary decision motion and the other granted the Board's cross-motion. On the form Order submitted by the Board, the Judge wrote the following text: "Further Ordered that the terms of the settlement are contained in the attached agreement."

Following the issuance of these Orders, Ms. Pitts sought reconsideration of the judge's ruling, which was denied by Judge Pugliese in September 2016. His Order simply states that the denial is based upon reasons stated on the record, which apparently was a reference to the reasons he stated on July 22, as noted above.

Despite the outcome of the Superior Court proceedings, which resulted in the determination that Pitts had indeed entered into a binding settlement agreement with the Board under which she was to resign her tenured position, Ms. Pitts continues to

argue in this administrative proceeding that the Board has violated her tenure rights. Upon Judge Bingham's appointment to the Superior Court, the case was transferred to this judge, serving on recall.

Ms. Pitt's claim arises from a provision of the contract between the parties, for of course the settlement agreement is just that, a contractual arrangement. The provision contained on page 3 of the written "Settlement Agreement and Release," at "6," refers to the "Older Workers Protection Act" and the "Age Discrimination in Employment Act," waives all claims under each and releases the Board from such claims and the states

(e) She has been advised that during the seven (7) day period following her execution of the Settlement Agreement and the Release, she may revoke her acceptance of this Agreement and the Release, she may revoke her acceptance of this Agreement by delivering written notice through her legal counsel for Company (as identified below), and that the Settlement Agreement and the Release shall not become effective or enforceable until after the revocation period has expired.:

Pitts contends that through written communications sent prior to the expiration of the seven days following the October 23, 2015, date on which Judge Pugliese determined that a binding agreement had been consummated, and/or through a letter sent within seven days of the judge's July 2016 Order deciding that a binding contract had been entered into and was to be enforced, she effectively invoked her right under the agreement to revoke her acceptance of that agreement. Having done so, she did not agree to resign, and remained a tenured employee. As such, if the Board still desires to separate her from her tenured status, it must file tenure charges with the Commissioner. In the meantime, she must be returned to the Board's payroll.

In response, the Board argues that Judge Pugliese's Order of July 22 determined that the Agreement was binding, and that his Order granting the Board's request to enforce the settlement precludes any need to take any further action vis a vis Ms. Pitts, who has resigned her position as per the Settlement Agreement and Release.

I have considered the positions of the parties, as expressed in their briefs, attached documents, partial transcript of the Superior Court discussion and oral arguments, and have examined the briefs filed in Superior Court in order to assure that I had sufficient understanding of what was before Judge Pugliese. In regards to these latter documents, in light of the legal conclusion reached herein, they are deemed not to be of significance to the outcome.

It should first be noted that the Commissioner of Education does not consider cases in which the issue involves contractual disputes. These claims do not arise under the school laws, but under principles of common or statutory law. Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424-25 (App. Div. 2002). Whether there was an effective revocation of acceptance of the Agreement under the provision previously quoted would appear to involve issues arising under the specific contract provisions and involving possible interpretation of contract terms, and, as such, is not a proper subject for the Commissioner to consider. However, more fundamentally, a simple reading of the very provision notes that it states that the agreements embodied in the written terms “shall not become effective or enforceable until after the revocation period has expired” (bolding not in the original). Thus, in light of the fact that Judge Pugliese granted the Board’s motion to enforce the terms of the settlement that he found had been entered into, it must perforce be the case that he did not see any basis for refusing to do so due to an effective revocation of acceptance by Pitts. He had to have concluded that the revocation period had passed without effective action to revoke, which had it occurred would have precluded enforcement under the very provision itself. If Ms. Pitts believed that the judge’s decision to enforce the settlement was incorrect, either because there was no binding agreement or because she had properly revoked her acceptance of the agreement in a timely fashion and thereby precluded enforcement, and in light of the judge’s refusal to reconsider and overturn his July 22, Order, she should have appealed his ruling to the Appellate Division. But there is no recourse to the Commissioner in this case. I **CONCLUDE** that as a matter of law the Superior Court ruling effectively ends the controversy. Ms. Pitts agreed to resign her position, and her resignation must be deemed to have been effective, as the Settlement Agreement states, on October 31, 2015. Thus, I

CONCLUDE that there has been no violation of her tenure rights by the Board. Her petition must therefore be **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



December 16, 2016 _____

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

mph

EXHIBITS:

Briefs and attachments on Motion for Summary Decision:

For petitioner Tracie Pitts:

March 8, 2016 and August 11, 2016

For respondent Board of Education:

April 12, 2016 and August 10, 2016

Additional exhibits:

Partial transcript of motion hearing, July 22, 2016, Superior Court, Law Division