

EDU #8490-94, #8491-94 and #7968-95 (consolidated)
C # 125-97
SB # 31-97

EMILY FOGERTY, SAWSON LABIB, EBEN :
MYERS AND JOHN PORTEE, :
 :
 PETITIONERS-APPELLANTS, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT OF : DECISION ON MOTION
 THE CITY OF JERSEY CITY, HUDSON :
 COUNTY, :
 :
 RESPONDENT-RESPONDENT. :
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Decided by the Commissioner of Education, March 18, 1997

Decided by the State Board of Education, July 2, 1997

For the Petitioners-Appellants, Feintuch, Porwich & Feintuch (Alan S. Porwich, Esq., of Counsel)

For the Respondent-Respondent, Patricia Taylor, Esq.

On March 18, 1997, the Commissioner of Education issued a decision in which he dismissed the consolidated petitions filed by appellants herein, tenured teaching staff members who challenged the State-operated District's actions in withholding their salary increments for the 1994-95 school year. On April 2, 1997, appellants filed a notice of appeal from that decision with the State Board.

Pursuant to N.J.A.C. 6:2-1.11(a), appellants' brief in support of their appeal was due on April 22, 1997. However, no brief was filed by that date. By letter dated

April 29, 1997, we notified the counsel for appellants that no appeal brief had been filed and that this matter was therefore being referred to our Legal Committee for consideration of appellants' failure to perfect the appeal. As a result of that notice, the counsel for appellants requested that the filing deadline be extended until May 7. We granted that request. However, the counsel for appellants still failed to file a brief in support of the appeal or to offer any explanation for his failure to do so. Nor did he request an additional extension of time for such filing. Consequently, on July 2, 1997, eight weeks after the extended deadline, we dismissed the appeal for failure to perfect, pursuant to N.J.A.C. 6:2-1.12(a), which authorizes dismissal of an appeal for failure to meet the filing deadline for an appeal brief. See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

On July 22, appellants filed the instant motion for reconsideration of that decision. In a certification submitted with the motion, the counsel for appellants explains his failure to file a brief by indicating that he has been under treatment for chronic depression and attention deficit disorder. He avers that “[a]s a result of these conditions, I have had difficulty in meeting the pressures of my work load and have been unable to meet time deadlines on certain matters, such as this.” He adds that his secretary had “missed a significant amount of time recently due to personal reasons causing a further back-up of my workload.”

A “Psychological Summary” by Patricia M. Brady, Ed.D. dated June 24, 1997, a week prior to our decision dismissing the appeal, confirms that the counsel for appellants has been under treatment for “Major Depression” since August 1996 and

indicates that he has “made improvements.” She also relates that he has been under treatment for “Attention Deficit Disorder” since April 1997. She adds: “It is notable that since beginning this medication, [the counsel for appellants] is reporting increased productivity and an awareness of both attention and memory improvements, all of which have been validated for him by the positive comments of coworkers.”

After a review of the papers submitted, we find no basis for reconsidering our decision. The counsel for the appellants was notified by letter dated April 29 of his failure to file a brief by the April 22 filing deadline. As a result of that notice, he requested and was granted an extension until May 7. Yet, he still failed to file a brief in support of the appeal. Nor did he request an additional extension, provide any explanation for such failure or otherwise contact us with regard to this matter. He was subsequently advised by letter dated June 20 that this matter was scheduled for consideration by the State Board at our meeting of July 2. He did not respond to that notice. Nor did he file a brief in support of the appeal. As a result, we dismissed the petition, nearly two months after the extended deadline.

We note, in addition, that the documentation provided with the motion indicates that the counsel for appellants was under treatment and showing improvement, including increased productivity, during the relevant periods at issue herein. Nonetheless, despite his request to extend the filing deadline, he still failed to file a brief in support of the appeal or to offer any explanation for his repeated failures to comply with our filing requirements until July 22, when he filed the instant motion for reconsideration, three weeks after our decision to dismiss the appeal and three months after appellants’ brief had originally been due.

As noted by the Court in Paszamant, supra, slip op. at 3, “[a]n entity such as the State Board of Education has to be free to enforce its own procedural rules, providing that it does not do so in a manner which is arbitrary, capricious or unreasonable.” It was the obligation and responsibility of the counsel for appellants to assure compliance with the regulations, and, under the particular circumstances before us, we find no basis for reconsidering our decision to dismiss the appeal. Nor does this case present us with a matter of public importance or substantive issues of transcendent importance compelling resolution. Consequently, we deny appellants’ motion for reconsideration of our decision dated July 2, 1997 in this matter.

October 1, 1997

Date of mailing _____