

EDU # 4176-94  
C # 152-95  
SB# 70-95  
APP. DIV. #A-653-95T5  
EDU # 164-97  
C # 633-97R  
SB # 2-98

WHASUN LEE, as parent and guardian of :  
V.L., and ALBERT LEE, individually, :

PETITIONERS-APPELLANTS, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE TOWN- :  
SHIP OF HOLMDEL, MONMOUTH :  
COUNTY, :

DECISION

RESPONDENT-CROSS/APPELLANT. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, May 11, 1995

Decided by the State Board of Education, September 6, 1995

Remanded by the Appellate Division, October 9, 1996

Decision on remand by the Commissioner of Education, December 8,  
1997

For the Petitioners-Appellants, Kalac, Newman, Lavender & Campbell  
(Peter P. Kalac, Esq., of Counsel)

For the Respondent-Cross/Appellant, Reusille, Mausner, Carotenuto,  
Barger & Steel (Martin M. Barger, Esq., of Counsel)

This case began in 1994 when Whasun Lee (hereinafter "petitioner" or "Mrs. Lee") filed a petition with the Commissioner of Education challenging the determination of the Board of Education of the Township of Holmdel (hereinafter "Board" or "Holmdel Board") that her children were not entitled to a free public education in the Holmdel

district. The Board filed a counterclaim seeking reimbursement for tuition for the period from October 1987 through January 1994.<sup>1</sup>

The record indicated that petitioner and her family had been domiciled in Holmdel until October 1987, when they moved to Colts Neck. However, they retained their house in Holmdel until 1989, when they sold it and bought a condominium in Holmdel. Petitioner alleged that she had purchased the condominium after she had been told by the superintendent of the Holmdel school district, Dr. Timothy Brennan, that ownership of property in Holmdel was sufficient to allow her children to continue to attend school in that district free of charge. Petitioner's children continued to attend public school in Holmdel, although the family was domiciled in Colts Neck during all times relevant to this case.

Petitioner contended that she was not obligated to pay tuition because school officials in Holmdel had been aware of the family's change in domicile in 1987. Petitioner maintained that when school officials were advised of the situation in 1989, they had led her to believe that purchasing a condominium in Holmdel would be enough to entitle her children to a free public education in that district. She further contended that school officials had not made it clear to her until January 1994 that ownership of the condominium was not alone sufficient to create such an entitlement. At that time, petitioner and her children took up part-time residency during the week at the condominium, although the family continued to be domiciled in Colts Neck.

On May 11, 1995, the Commissioner determined that petitioner's children had not been entitled to a free public education in Holmdel since their domicile had been in

---

<sup>1</sup> During the proceedings in the Office of Administrative Law, the Board increased its request to include tuition through June 1995.

Colts Neck during the entire period relevant to this litigation. However, he concluded that equitable estoppel applied so as to prevent the Holmdel Board from collecting tuition for the period between October 1987 and December 1989, finding that the Board had acquiesced to the situation during that period. The Commissioner concluded that equitable estoppel should not be applied to excuse petitioner from her obligation to pay tuition to the Holmdel Board after that date, finding that petitioner had been aware in December 1989 that her children were no longer entitled to attend school in Holmdel free of charge. Consequently, he assessed tuition for the period from January 1990 through June 1995. On September 6, 1995, we affirmed the Commissioner's decision with clarification.

On October 9, 1996, the Appellate Division remanded for further proceedings. The Court found that this agency had not adequately resolved whether petitioner had understood that owning property in Holmdel did not alone entitle her children to attend school in the district free of charge. Consequently, it remanded this matter for additional factual findings and for determination of whether the doctrine of "unclean hands" barred the application of equitable estoppel for the period from January 1990 to January 1994. The Court also remanded for consideration of whether equitable estoppel should preclude Holmdel from collecting tuition for the period from January 1994 to June 1995. The Court affirmed our determination that equitable estoppel applied so as to preclude Holmdel from collecting tuition for the period between October 1987 and December 1989.

On October 21, 1997, following additional hearings on remand, which included the testimony of petitioner and Julia Chu, a real estate agent who had assisted petitioner in purchasing and renting out the Holmdel condominium, the Administrative

Law Judge (“ALJ”) determined that equitable estoppel would not apply so as to prevent the Board from collecting tuition for the period after December 1989. According to the ALJ:

Because Dr. Brennan advised Mrs. Lee not to rent out the condominium, and I am convinced she understood that instruction, and because notwithstanding the Lees rented out the condominium almost immediately and continuing until January 1994 when Dr. Le Glise [the new superintendent] advised them of the requirements of domicile, the equities do not weigh in favor of the Lees.

Initial Decision on Remand, slip op. at 12.

The ALJ continued:

I have found as a fact Dr. Brennan said to Mrs. Lee, in Mrs. Chu’s presence, that she had to use the condominium in some meaningful way and that it would be proof positive that she was not so using it if she rented it out. Mrs. Lee’s English language difficulty manifested itself throughout the hearing with a heavy accent which makes it difficult for others to understand her. I saw little evidence that she had difficulty understanding others when they spoke to her in English. If Mrs. Chu had testified that she explained to Mrs. Lee at or after the meeting that she should not rent out the condo, that would also have been relevant evidence of Mrs. Lee’s knowledge. Of course, Mrs. Chu did not so testify, but the...testimony she did give on that issue when I asked her the question directly was so evasive and unresponsive as to permit the conclusion that she did have such a conversation with Mrs. Lee wherein she advised Mrs. Lee that she should not rent the condo.

Id. at 14.

The ALJ recommended that petitioner be directed to pay tuition to the Holmdel Board for the period from January 1990 through June 1995.

On December 8, 1997, the Commissioner adopted in part and rejected in part the ALJ’s recommendation. The Commissioner agreed that petitioner had failed to meet her burden of showing that equitable principles should bar the Board from recovering

tuition after January 1994. However, the Commissioner was “unwilling to ascribe bad faith, wrongdoing or fraudulent conduct to Mrs. Lee, in that such a label would presuppose that Mrs. Lee knew what the correct course of action would be.” Commissioner’s Decision on Remand, slip op. at 28. The Commissioner found that Dr. Brennan did not “possess an accurate understanding of the relevant law,” *id.* at 25, and “did not appreciate the distinction between a residence and a domicile.” *Id.* at 27. The Commissioner therefore directed petitioner to reimburse the Holmdel Board for tuition only for the period from January 1994 through June 1995.

Petitioner filed an appeal from that decision to the State Board, and the Holmdel Board filed a cross-appeal.

On December 16, 1998, our Legal Committee issued its initial report in this matter, in which it recommended affirming in part and reversing in part the decision of the Commissioner. The Legal Committee agreed with the Commissioner’s determination that equitable principles would not apply so as to bar the Holmdel Board from collecting tuition for the period from January 1994 through June 1995. However, it disagreed with the Commissioner’s conclusion that equitable principles would apply to prevent the Board from collecting tuition for the period from January 1990 until January 1994, concurring with the ALJ’s conclusion that the petitioner came into these proceedings with “unclean hands” and, therefore, could not avail herself of equitable principles.

Upon further reflection of the record in light of exceptions filed to that report, the Legal Committee found it necessary to issue a revised report. The Committee issued its revised report on April 21, 1999, in which it recommended affirming with clarification the Commissioner’s decision. Both parties filed exceptions to that revised report.

After a careful review of the record, we affirm the decision of the Commissioner as clarified herein. We conclude that the record before us does not permit a finding that petitioner had understood prior to January 1994 that owning property in Holmdel did not alone entitle her children to attend school in the district free of charge.

The events pivotal to this issue occurred in December 1989 at a meeting between Dr. Brennan and petitioner, which was also attended by Julia Chu. Dr. Brennan testified during the initial hearing in this matter that he had misunderstood the requirements of domicile, believing that ownership of property in the district while “spending time there and living there in some sense,” tr. 11/4/94, at 44, was sufficient.<sup>2</sup> In essence, Dr. Brennan lowered the standard for “domicile.” Indeed, he acknowledged the possibility that petitioner could have left their meeting with the understanding that owning a home and paying taxes in Holmdel would be sufficient to entitle her children to attend school in that district. Id. at 71-72.

Dr. Brennan, however, also testified that he had advised petitioner that she could not rent out the Holmdel property. Petitioner denied any awareness of such an instruction. The ALJ found in favor of the Board on the basis of the testimony of Chu, who had accompanied petitioner to the meeting with Dr. Brennan and had assisted petitioner in purchasing a condominium in Holmdel and renting it out. Although the ALJ

---

<sup>2</sup> It is now well established that an individual can have more than one “residence,” but can only have one true “domicile.” “Domicile” is the place where a person “has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.” State v. Benny, 20 N.J. 238, 250 (1955), quoting Story, Conflict of Laws (8<sup>th</sup> ed.), § 41, p. 40. “Residence, on the other hand, though parallel in many respects to domicile, is something quite different in that the elements of permanency, continuity and kinship with the physical, cultural, social and political attributes which inhere in a ‘home’ according to our accepted understanding, are missing. Intention adequately manifested is the catalyst which converts a residence from a mere place in which a person lives to a domicile.” Id. at 251. In enacting the legislation now codified in N.J.S.A. 18A:38-1, the Legislature provided that public school attendance would be free only to those individuals who were actually domiciled in the district, i.e., had their true, fixed and permanent home therein. Mere residency was not sufficient.

found that Chu's testimony was so evasive as to "permit the conclusion that she did have a conversation with Mrs. Lee wherein she advised Mrs. Lee that she should not rent the condo," initial decision on remand, slip op. at 14, we find, upon further review, that the evidence in support of the ALJ's conclusion is simply too tenuous to permit such a finding. Although we agree with the ALJ that Chu appears to have been evasive in responding to questioning, in the absence of other evidence supporting the conclusion that petitioner had, in fact, understood that she could not rent out the Holmdel condominium, we are unwilling to ascribe such understanding to her. We note, moreover, in considering the equities of this matter, that Chu had been employed part-time as a teacher by the Holmdel Board in September 1996 and that she was still serving in such capacity at the time she was called as a witness by the Board in April 1997. Tr. 4/28/97, at 12.

Under these circumstances, we are unable to conclude on the basis of the record before us that the doctrine of "unclean hands" barred petitioner from applying equitable estoppel for the period from January 1990 to January 1994. We therefore affirm, as clarified herein, the decision of the Commissioner directing the petitioner to reimburse the Holmdel Board for tuition only for the period from January 1994 through June 1995, agreeing with the Commissioner that equitable principles would not apply so as to preclude the Board from collecting tuition for that period.

Attorney exceptions are noted.

S. David Brandt opposed.

Anne S. Dillman abstained.

June 2, 1999

Date of mailing \_\_\_\_\_