WHASUN LEE, as parent and guardian of V.L. AND ALBERT LEE, individually,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF HOLMDEL, MONMOUTH COUNTY,	:	DECISION ON REMAND
RESPONDENT.	:	
	:	

SYNOPSIS

This matter, which began in 1994, concerned petitioning parents' challenge of Board's residency determination that their children were not entitled to a free public education in Holmdel. Two issues were on remand from the Court and from the State Board: 1) Should the doctrine of "unclean hands" bar the application of "equitable estoppel" from January 1990 to January 1994? (What did Mrs. Lee understand in December 1989 about purchase, ownership and rental of real estate ?) and 2) Should the principles of "equitable estoppel" apply after January 1994?

Having found Mrs. Lee's testimony incredible, the ALJ found that Mrs. Lee knew her boys were not entitled to free education in Holmdel when she sold the first Holmdel house sometime in 1989 since after that sale and for some time thereafter she owned no property in Holmdel and was not a taxpayer in Holmdel. Thus, the ALJ found that Mrs. Lee went into a December 12, 1989 meeting with Dr. Brennan, former superintendent, with "unclean hands" and following the meeting she understood that buying a condo and renting it out was not permitted. Therefore, the ALJ concluded that Mrs. Lee could not claim to Dr. LeGlise, the superintendent since 1993, that she was reasonably relying upon what Dr. Brennan told her. Equitable principles do not preclude the District from collecting tuition for the period from 1990 through 1994 nor bar recovery for tuition from 1994 through 1995. Petitioners were ordered to pay tuition for the time period of December 1989 through January 1994 and for the period from January 1994 through June 1995.

Having reviewed the record of the matter, including transcripts of the hearings, the Commissioner affirmed in part, reversed in part the initial decision. Noting the apparently ongoing misrepresentations offered by Dr. Brennan, the Commissioner was unwilling to ascribe bad faith to Mrs. Lee and, thus, the Commissioner declined to apply the doctrine of unclean hands in order to bar the application of equitable estoppel for the time period January 1990 through January 1994. As to the second issue, however, the Commissioner found that petitioners failed to meet their burden of showing that equitable principles should bar the District from recovering tuition after January 1994 when the Lees were not domiciled in Holmdel. Petitioners were ordered to pay tuition for the time period January 1994 through June 1995.

OAL DKT. NOS. EDU 164-97 and EDU 4176-94 (ON REMAND)
AGENCY DKT. NO. 67-4/94

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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 are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record of this matter, including the transcripts of the hearings conducted on November 2, 3 and 4, 1994,[1] as well as the transcripts from the hearing conducted on remand at the OAL on April 28, 1997, the Commissioner determines to affirm in part, and to reverse in part, the initial decision of the Administrative Law Judge (ALJ). In so determining, the Commissioner finds that, notwithstanding petitioners' arguments to the contrary, the ALJ did not use "***this opportunity to circumvent the Appellate [Division's] findings ***" (Petitioners' Exceptions at p. 2) and did not abuse her discretion by

[1] It is noted that the Commissioner rendered his initial determination in this matter without the benefit of the transcripts from the hearings conducted on November 2 and November 4, 1994. These days included the crucial testimony of Superintendent LeGlise, Mrs. Lee and Dr. Brennan.

permitting the testimony of witnesses other than Mrs. Lee in order to determine the issues on remand.

The Commissioner initially notes that the issues on remand are (1) whether the doctrine of unclean hands should bar the application of equitable estoppel from January 1990 to January 1994;[2] and (2) whether the principles of equitable estoppel should apply after January 1994. (Initial Decision on Remand at p. 3) The Board bears the burden of proof with respect to the first issue, and petitioners carry the burden of proof with respect to the second issue. (Transcript for April 28, 1997 at p. 4) Thus, where petitioners argue that the Board "offered no proof on this [second] issue whatsoever," (Petitioners' Exceptions at p. 11) the Commissioner observes that it was without an obligation to do so.

The Commissioner finds that the record does not support the conclusion that the Board has proven, by a preponderance of the evidence, that the doctrine of unclean hands must bar the application of the principles of equitable estoppel in this matter from January 1990 until January 1994. As the Appellate Division noted, the doctrine of unclean hands

> expresses the principle that a court should not grant equitable relief *to one who is a wrongdoer* with respect to the subject matter of the suit. It calls for the exercise of just discretion in denying remedies where the suitor is guilty of bad faith, fraud or unconscionable acts in the underlying transaction. However, *the doctrine "does not repel all sinners from courts of equity, nor does it apply to every unconscientious act or inequitable conduct"* of a complaint . . . the doctrine may be relaxed in the interest of fairness. (emphasis in text) (*Lee v. Holmdel Township Board of Education*, Appellate Division, 97 *N.J.A.R. 2*d (EDU) 77, 79, citing *Murray v. Lawson*, 264 *N.J. Super.* 17, 37 (App. Div. 1993), aff'd as modified, 138 *N.J.* 206 (1994), *cert.* denied, __ *U.S.* __, 115 *S.Ct.* 2264)

It is further recognized that

[2] In so examining, the sub-issue is what Mrs. Lee understood in December 1989 about purchase, ownership and rental of real estate.

> the "doctrines of unclean hands and estoppel . . . are somewhat akin. . . . They are flexible in their application, turning largely on circumstances involved in the . . . 'total situation.' . . . They may turn, too, upon the relative innocence or culpability of the plaintiff and defendant, for the law may aid the one who is comparatively the more innocent." *** (*O'Keefe v. Snyder*, 83 *N.J.* 478, 517, citing *Untermann v. Untermann*, 43 *N.J. Super.* 106 at 109 (App. Div. 1956)

The Appellate Division quite succinctly instructed that "Mrs. Lee could not have been a 'wrongdoer' if she did not comprehend what Brennan says he told her***." (*Lee v. Holmdel Township Board of Education*, Appellate Division, 97 *N.J.A.R.* 77, 79) The remaining question, however is whether Mrs. Lee *could be* "***disabused by Dr. Brennan of the notion, previously reinforced by him, that merely being taxpayers was sufficient to warrant a free education in the school district," (*id.*) when there is no conclusive evidence on the record that Dr. Brennan gave her the accurate information to correct the misunderstanding. As to the meeting on December 12, 1989, Dr. Brennan testified as follows:

> Q: What happened at that meeting?
>
> A: We had a discussion of what it meant to send your kids to the Holmdel schools and what you would have to do. And I said that -- I told Mrs. L. and Mrs. Chu -- if that was her name -- what our procedures were; that I'd be checking the tax records. And that we'd be checking the transportation. And that it wasn't enough just to be landlord or even just to have a place, you had to be living there.
>
> And there were a number of people in Holmdel who had more than one house and they were living here or because of

business or -- or family problem arrangements. I do recall at that meeting telling Mrs. L. -- and this is the one thing I am absolutely sure -- as sure as I can be that Mrs. L. understood. That proof positive that they were not living in Holmdel would be if they rented that place out to somebody else.

And I remember saying the same thing to Mrs. Chu, and saying, Mrs. Chu -- or whatever her name was -- you have -- seem to have a real understanding of this. And you need to convey this to Mrs. L. about [how] things work in this country. And that if that -- if -- if I ever find out that that property is rented to somebody else, that will be proof positive that you are not in any way living there.

Q: As a result of that meeting did Mrs. L. do something?

A: Did she do something?

Q: Did she come back the same day or next day?

A: I don't recall.*** But I remember her coming back with a contract of sale or a closing document. ***

Q: Do you recall what [the] contract was for? What type of a dwelling?

A: I don't.

Q: Could it have been a condominium?

A: It could have.

Q: You don't know?

A: I don't --I don't think it said condo on it. I think it just had an address. But it looked like a valid contract of sale. And I asked the secretary, put this in the jog file and --

Q: What is a jog file?

A: A jog file was just something that the secretary kept that a month later she would take out to make sure we would check the tax records.

Q: And when you checked the tax records, what did you find?

A: The Ls. were living in Holmdel. At least they had that place in Holmdel. (Transcript, November 4, 1994 at pp. 22, 23)

It is evident from Dr. Brennan's testimony that he did not, during the relevant time periods, possess an accurate understanding of the relevant law. On cross-examination, Dr. Brennan concedes the same:

Q: I would like to direct your attention to your concept of domicile back in 1987, 1988.

A: Um-hum.

Q: I believe you testified in your deposition that you knew a lot more about domicile after this litigation began than you did back then.

Y: Yes.***

Q: Was it your testimony in the deposition that you were under the impression people could have two domiciles?

A: Two homes is what I thought.

Q: And if they had two homes they could have their choice of what District they would want to attend?

A: I really thought they had to be living in the -- in the Holmdel house to --- in some real way -- to attend the schools.

Q: Doctor, I'm referring you to page 66 of your deposition, August 9th, 1994.

A: Okay.

Q: Question, line two: In order for them to attend on a legal basis you had to establish which one was their domicile as the officer in charge of the residence attendance requirements. Is that correct?

You answered: I was of the opinion that there could be two homes, two houses, in which people spend some time and really live in both those places.

The next question was: And if that was your understanding then you were of the opinion there could really be two domiciliaries. Isn't that correct? Which is what you testified to earlier.

And your answer: That people could be living in one house and another. But I do recall telling Mrs. L. it's important that she vote at [the] Holmdel house and get your mail sent to the Holmdel house. But yes, I thought there was a possibility that you could

spend time in more than one home and be legally domiciled in Holmdel.

A: That's correct.

Q: So you were of the opinion that the Ls owning the home in Holmdel -- which they've testified to as 23 Rambling Brook -- would satisfy as a domicile even though they owned a place in Colts Necks and spent time in both places. Is that correct?

A: Not just owning the place, but spending time there and living there in some sense.

Q: In some sense.

A: Yes. (Transcript, November 4, 1994 at pp. 43, 44)

Although the latter excerpt may have concerned the period of time in which the Lees still owned their house at 23 Rambling Brook Drive, Holmdel, after having purchased their home in Colts Neck, it nonetheless clearly demonstrates that Dr. Brennan did not appreciate the distinction between a residence and a domicile, and the legal entitlement to a free public education which flows *only* from the latter status.[3] *N.J.S.A.* 18A:38-1a. Accordingly, the Commissioner is 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.[4] Although the Commissioner wholly affirms the ALJ's observation that "[e]veryone is presumed to know

[3] The Commissioner notes that this finding is not inconsistent with the ALJ's finding, and his affirmance of same, in the earlier decision that Dr. Brennan's testimony was internally consistent and that "he never wavered from his version of the conversation." (*Lee v. Holmdel Township Board of Education*, 95 *N.J.A.R. 2*d (EDU) 215, 217)

[4] Indeed, had Mrs. Lee immediately followed Dr. Brennan's direction after the December 1989 meeting and occupied the Holmdel house "in some meaningful way," but, still maintained the home in Colts Neck, as, in fact, she did after January 1994, she *still* would not have been entitled to send her children to the Holmdel schools since the Lees *still* would not have been domiciled in Holmdel.

the law, whether she has actual knowledge or not" (Initial Decision on Remand at p. 12, citation omitted), under these peculiar circumstances, considering the affirmative and apparently ongoing misrepresentations offered by Dr. Brennan, and further observing that

> [i]t is undisputed that the responsible Holmdel school officials were aware of the Lees' move to Colts Neck; *** that the Lees at no point made any effort to hide their Colts Neck residence, and that school bills and other notices were sent to the Colts Neck address, (*Lee v. Holmdel Township Board of Education*, Appellate Division, 97 *N.J.A.R. 2*d (EDU) 77, 78),

the Commissioner declines to apply the doctrine of unclean hands in order to bar the application of equitable estoppel for the time period January 1990 through January 1994.

In so determining, the Commissioner has not rejected the ALJ's finding, following both the initial hearing and the hearing on remand, that upon selling their house at 23 Rambling Brook Drive in the fall of 1989, petitioners "***were fully aware that even under Dr. Brennan's flexible concepts, they were no longer entitled to attend the schools in Holmdel free of charge." (*Lee v. Holmdel Township Board of Education*, 95 *N.J.A.R. 2*d (EDU) 215, 219; see also, Initial Decision on Remand at pp. 5, 8) As the ALJ observes, Mrs. Lee did not contact the district upon sale of the Holmdel house and remove the children from the Board's school system, but, rather, waited until the Board sent a letter advising the Lees that the boys could no longer attend the Holmdel schools. (*Id.*) Although there is no copy of this letter on the record, *Lee*, *supra*, 95 *N.J.A.R. 2*d (EDU) 215, 216, and there is no indication in the record of the exact date of the sale of the home at 23 Rambling Brook Drive, (*id.* at 221, footnote 1), the Initial Decision on remand indicates that the house was sold sometime in the fall and petitioner "received a call and a letter from the district in December 1989 advising that the children could no longer attend" school in the District. (Initial Decision on Remand at p. 8) Thus, there was a period of two or

three months at most where Mrs. Lee might have removed her sons from the district or otherwise contacted the school to inquire about their continued attendance. Additionally, there was virtually no delay between the time petitioner was notified by the District that the children were ineligible to attend, and the time she came in to see Dr. Brennan and proceeded to act upon what she believed to be his instructions. Given this narrow time frame, as well as the dearth of documentation evidencing the degree to which the district clearly and correctly communicated its policies and expectations on residency, domicile and school attendance, and further cognizant of the Board's burden on this issue, the Commissioner, mindful of the "total situation" and flexible nature of equitable principles, (see *O'Keefe, supra),* cannot find that petitioner's inaction pursuant to the sale of the Holmdel house must preclude the application of equitable estoppel for the time period January 1990 through January 1994.

As to the second issue, however, the Commissioner finds that petitioners have failed to meet their burden of showing that equitable principles should bar the District from recovering tuition after January 1994, a period in time where it has been determined that the Lees were *not* domiciled in Holmdel, but in Colts Neck, notwithstanding their temporary occupation of the condominium in Holmdel, and were not entitled to a free education under *N.J.S.A.* 18A:38-1d. As the ALJ aptly noted,

> How can the respondent be equitably estopped when the Lees' ignorance of the law after January 1994 was not in any way induced by respondent? *** Dr. LeGlise dispensed no misinformation upon which petitioners could reasonably rely.
>
> (Initial Decision on Remand at p. 13)

Indeed, Dr. LeGlise provided uncontradicted testimony that she met with petitioners and specifically explained to them the meaning of the term "domicile," and the significance of same with respect to the entitlement to a free education. (Transcript, November 2, 1994 at pp. 25, 26)

Thus, there is simply no evidence on the record to support a finding that the doctrine of equitable estoppel should be applied after January 1994.

Accordingly, the initial decision of the ALJ is reversed with respect to the first issue, as set forth herein, and affirmed with respect to the second issue, as set forth in the initial decision and amplified herein. The Commissioner, therefore, directs that petitioners are responsible for tuition to respondent for the time period January 1994 through June 1995.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date: December 8, 1997