

IN THE MATTER OF THE TENURE :  
HEARING OF LUCY LESTER, : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL : DECISION  
DISTRICT OF THE CITY OF NEWARK, :  
ESSEX COUNTY. :  
\_\_\_\_\_ :

SYNOPSIS

District certified tenure charges of unbecoming conduct against respondent middle school teacher for allegedly participating in a scheme to defraud the State Health Benefits Program (SHBP) by conspiring with a doctor to submit claims and receive checks (finders' fees and kickbacks) for psychological services purportedly rendered.

ALJ determined that the record clearly supported a conclusion that respondent was aware of the improprieties and she knowingly and willingly engaged in conduct intended to defraud the SHBP by providing information to the doctor to enable him to submit claims to her insurance company for services never rendered to her or her family, by accepting payment, which represented a "kickback" of a portion of the moneys improperly collected for these claims and "finders' fees" for referring colleagues to the fraudulent scheme. Thus, the ALJ concluded that the District sustained its burden of proving the charges by a preponderance of evidence. Moreover, because of the seriousness of the charges, the ALJ concluded that dismissal was warranted. ALJ ordered respondent terminated from her tenured employment.

Upon careful and independent examination and study of the record, including the parties' exception arguments and the transcripts of the hearing, the Commissioner determined to affirm the conclusion of the ALJ that the District established its charge of unbecoming conduct on the part of the within respondent necessitating her removal from her tenured position. Commissioner concluded that the District established said charge as the quality of the evidence herein leads a cautious mind to the conclusion that respondent was not, as she claimed, a "duped victim," but engaged in knowing and intentional participation in conduct with a purpose to defraud and introduced others to the fraudulent scheme. Moreover, despite respondent's apparently unblemished record, the Commissioner determined that the charge established herein, under the particular circumstances of this matter, was sufficiently flagrant to warrant respondent's dismissal. (*Redcay*) Commissioner ordered respondent dismissed from her tenured position as of the date of this decision and transmitted the matter to the State Board of Examiners for action, as that body deems appropriate.

February 25, 1999

OAL DKT. NO. EDU 3173-97  
AGENCY DKT. NO. 552-11/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and the District’s reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Respondent’s exceptions contend, *inter alia*, that the decision of the Administrative Law Judge (ALJ) herein fails to comply with *N.J.S.A.* 52:14B-10, requiring that an initial decision “set forth separate findings of fact and conclusions of law, as well as the ‘underlying facts supporting the findings.’” (Respondent’s Exceptions at p. 2) Specifically, she urges

\*\*\*While the initial decision contains a summary of testimony from the witnesses presented in this case, there is no real discussion of the evidence contrary to the recommended conclusions or any indication of the basis for rejecting this contrary evidence. In essence, the initial decision rejects evidence from the respondent merely by stating that it involves a credibility decision and that respondent could not be believed. Respondent submits that this is an insufficient discussion and analysis of the evidence presented in this case and, as a result, the initial decision fails to comply with the requirements established by *N.J.S.A.* 52:14B-10\*\*\*. (*Id.* at pp. 3-4)

Respondent maintains that the remedy for such deficiency is reversal and remand.

Respondent next advances that the ALJ erred when she found that the District has met its burden of proof on the charges against her. With respect to the first charge, that she knowingly and intentionally participated in fraudulent conduct, respondent contends that there is absolutely no evidence in support of such charge. Rather, she advances that the evidence establishes that the responsibility for a perpetration of a fraud in this matter was solely attributable to Lichtman, arguing

\*\*\*The evidence \*\*\* establishes that Lester sought to have Lichtman treat her for stress and possible panic problems. (T1 56) She was told that he had a program for her and he requested information from her, such as family information, employment, possibly a social security number, etc. (T1 85-86) \*\*\*Lichtman had no recollection of Lester at all. Without Lester's knowledge or action, Lichtman then used the information she provided for purposes of possible treatment, to fabricate bills, insurance claims, treatment schedules and the like. (T1 32-34) (P-4) (T1 36-37) (P-3) He forged her name on payment authorizations and other insurance forms. (T1 34). In short, the District's star witness is a liar, a forger, a thief and a convicted criminal who provided no evidence of any wrongdoing by Lester. She sought his professional help and he took complete advantage of her. The District did not present any competent evidence of a knowing and intentional participation in a fraudulent scheme. If anything, she was duped and set up by a criminal who is now being used by the District to destroy her. (Respondent's Exceptions at pp. 5-6)

She further avows that the initial decision effectively, impermissibly, reverses the burden of proof herein when it finds that she "had knowledge and understanding of how Lichtman's scheme worked because she did not adequately interrogate Lichtman as to what he was doing. (Initial Decision, page 7)." (Respondent's Exceptions at p. 6) She maintains that

\*\*\*This analysis will simply result in the conviction of naïve and easily duped individuals who sought professional help from someone who turned out to be a criminal who stole state insurance money without their knowledge or participation. Lichtman

admitted he did everything from forging names, to certifying false information to fabricating bills. Yet none of this information was ever given to the respondent by him. (Id.)

With reference to the second charge, that she provided Lichtman with names of other employees willing to participate in his fraudulent scheme, respondent asserts that the record is similarly devoid of any evidence that she “gave Lichtman the names of any employees, let alone for the intended purpose of defrauding an insurance company.” (Respondent’s Exceptions at p. 5) Rather, she argues, the record confirms

Lichtman had no specific recollection of any conversations with Lester or dealing with her in any way. (T1 12, 22, 31-32, 38-39, 41-42) He offered no testimony indicating that he received the names of any other employees from Lester. Lester, called as a witness by the District, was apparently never asked if she provided the name of other employees to Lichtman for participation in illegal conduct. She credibly acknowledged providing Lichtman’s name to two colleagues suffering from personal problems because she had heard he was a reputable counselor. (T1 49-50, 55) Even Binn, the State’s lead investigator, offered no testimony suggesting that Lester provided the names of fellow employees to Lichtman.\*\*\*

Despite this complete lack of evidence, the initial decision concludes that based solely on the appearance of names on checks, the respondent knowingly brought others into a criminal scheme with Lichtman.\*\*\* (Id.)

In conclusion, respondent urges, it is clear that the presentation advanced by the District has not satisfied its burden of proving the charges against her by a preponderance of the believable evidence and, therefore, such charges must be dismissed.<sup>1</sup> (Id. at p. 6)

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<sup>1</sup>Respondent’s exceptions herein additionally allege that the ALJ utilized and relied on an exhibit, the Voluntary Sworn Statement of Taft Reed dated May 12, 1997, (Exhibit P-5), which was specifically precluded from being entered into evidence in this case. (Respondent’s Exceptions at p. 2) The Commissioner notes that Exhibit P-5 was neither reviewed nor considered in his determination of this case.

Finally, in the alternative, respondent asks that, if any portion of the charges is deemed established by the Commissioner, he impose some penalty less than dismissal in light of her long, unblemished service in the Newark public schools. (Respondent's Exceptions at p. 9)

In reply, the District, citing *Benjamin Moore & Company v. City of Newark*, 133 N.J. Super. (App. Div. 1975) and N.J.S.A. 52:14B-10(d), maintains that the ALJ's decision must be affirmed because, contrary to respondent's advanced argument, "it reflects factual findings, supported by specific reasoning and underlying facts, which led the ALJ to discredit Ms. Lester." (District's Reply Exceptions at p. 5) Specifically, the District contends that the ALJ went to great length to explain why she was discrediting respondent's testimony, obviously indicating that she had considered respondent's explanations in light of the evidence and found them to be unbelievable. (*Id.* at pp. 5-6) By way of example, the District lists each of the ALJ's undisputed findings of fact (Initial Decision at pp. 3-4) and offers

Before deciding whether Ms. Lester engaged in unbecoming conduct, the ALJ examined Ms. Lester's explanation for her involvement with Lichtman. Ms. Lester testified that she thought she was participating in some sort of special program. The ALJ weighed this explanation against the record and properly discredited Lester's testimony.

In explaining her credibility determination, the ALJ first pointed to the documentary evidence: checks from Lichtman to Ms. Lester with the notation of names of individuals which Ms. Lester identified as colleagues in the Newark public school system. Opinion P. 5. The ALJ then cited Lichtman's testimony that he paid a \$750 referral fee to insureds who referred colleagues to him, and made notations of these referrals on the memo line of checks to indicate payment of the finder's fee. Opinion P. 5. The ALJ concluded that, "Not only is this testimony unrebutted in the record, it's uncontroverted. There is no other explanation of why such notations would have been made on checks to Respondent." Opinion P. 5. This finding is also bolstered by the testimony of Inspector Binn and by Ms. Lester's allegation that she never received an Explanation of Benefits from her insurance company. The ALJ cited Lester's own testimony where Lester claimed that she always received Explanation of Benefits in the past. Opinion

P. 5. Based on this record the ALJ discredited this testimony.  
\*\*\* (District's Reply Exceptions at pp. 6-7)

As such, the District argues that, notwithstanding respondent's protestation to the contrary, the initial decision, on its face, clearly demonstrates that the reasoning of the ALJ was not arbitrary or capricious. Rather, it shows that she considered all of respondent's explanations and found them to be implausible. (*Id.* at p. 8)

Next, the District urges that it has met its burden of proof with respect to each of the within charges. In considering the first charge, respondent's knowing and intentional participation in the fraudulent scheme, the District advances that the testimony adduced at hearing and the evidentiary proofs in the within record fully establish this charge. In this regard, it cites selected hearing testimony, exhibits, and documentation here which it avers demonstrate: Lichtman admitted he conducted a scheme intended to defraud the State Health Benefits Program and implicated Lester; he submitted false claims for psychological services purportedly rendered to insureds and their dependents and when reimbursed for these services, he returned approximately 25% in a "kickback" to the insured; he additionally paid a \$750 "referral fee" to scheme participants who referred another individual to the scheme; in his conversations with these individuals he never discussed treating them; and it was his belief that the individuals he spoke to understood they were participating in such a "scheme." (District's Reply Exceptions at pp. 2-3) Further buttressing these proofs, the District asserts, is Lichtman's affidavit and testimony which attests to respondent's participation in the scheme; Lichtman's issuance of \$5,585 in checks to respondent representing her 25% kickbacks and referral fees; both Lichtman's and respondent's testimony that Lichtman never provided respondent with services of any kind; that respondent supplied Lichtman with information necessary for him to complete the insurance claim forms, *i.e.*, name, address, employer, possibly her social security number,

and her son's name; and subsequent to her provision of this information, respondent received checks from Lichtman each of which she endorsed and deposited. (*Id.* at pp. 3-4) The District urges that respondent's account of these events, and her rationalization that "maybe she was receiving money from a special grant, for which she never applied \*\*\* [o]r she was enrolled in some sort of 'special project'" \*\*\*(*id.* at p. 4), was an incredulous explanation for her receipt of "over \$5,000.00 from a doctor that never counseled, treated nor provided services to her." (*Id.*)

In further substantiation of the establishment of this charge, the District next advances that Rita Binn, investigator for the New Jersey Division of Criminal Justice, credibly testified that she took a voluntary, sworn statement from an individual who was an admitted participant in Lichtman's "scheme," Taft Reed, who implicated the respondent and, indeed admitted to encouraging her participation. (District's Reply Exceptions at p. 4) Moreover, it maintains, Ms. Binn further testified

Mr. Reed said to me that he – it was clear from his conversation with Ms. Lester that she know (sic) that Dr. Lichtman would be submitting fraudulent insurance claim forms and from the proceeds that he received from the carrier, that she would be receiving a portion of that. T98, L 9-13. (*Id.* at pp. 4-5)

In conclusion here, the District advances that it has met its burden of proof with respect to this charge as "[t]he weight of the evidence as a whole, including Ms. Lester's implausible excuses, is against Lucy Lester.\*\*\*" (District's Reply Exceptions at p. 11)

As to the second charge, that respondent received payment for referring others to the scheme, the District avers that the checks, copies of which are included in the record here, speak for themselves in that

\*\*\*On the memo line, the checks indicate the name of the person Ms. Lester referred into the scheme. These checks were made payable to Ms. Lester. Ms. Lester negotiated each check.

Furthermore, Lichtman testified that when paying the insured referral fees, he indicated the name of the person referred on the memo line. Lichtman's affidavit also states that he paid Ms. Lester referral fees and made notations as such on the checks he issued to her. (District's Reply Exceptions at p. 11)

Further strengthening this evidence, the District contends, again, is the credible hearing testimony of investigator Rita Binn who testified that she took a voluntary, sworn statement from an individual named Claude Moses wherein "Moses admitted that Ms. Lester referred him to Lichtman, so that he could also participate in the scheme. T99, L 23-25." (District's Reply Exceptions at p. 5) Her testimony further reported

Mr. Moses told me that he was having a conversation with Ms. Lester regarding financial problems. She told him that he could contact this Dr. Lichtman and he could receive a quarter of the insurance claims and he could also receive – further receive referral fees from this doctor. T101, L24-25; T 102, L 1-3. (*Id.*)

In support of such testimony, the District points out, a check, made payable to respondent, having Mr. Moses' name written on the memo line, is part of the evidentiary record in this matter. (District's Reply Exceptions at p. 11)

Finally, as to the penalty which should be imposed herein the District urges that the State Board's October 3, 1997 decision in *In the Matter of the Tenure Hearing of Alyce Stewart, State-operated School District of the City of Newark, Essex County*, wherein "the State Board held that participation in the Lichtman insurance fraud scheme constitutes unbecoming conduct warranting dismissal," is controlling in the instant case. (District's Reply Exceptions at p. 13) It declares that this decision, along with the egregious nature of the conduct involved in this matter, the far reaching effects of this fraud, and the fact that respondent's behavior here is diametrically opposed to that which should be expected of a teacher entrusted



with shaping young minds, *i.e.*, honesty, integrity and truthfulness, definitively confirms that termination from her position is the only possible result in this case. (*Id.* at pp. 12-13)

Upon a careful and independent review of the record in this matter, which included a transcript of the hearing conducted at the OAL on June 4, 1998,<sup>2</sup> the Commissioner, finding respondent's exceptions without merit, determines to affirm the initial decision of the ALJ, for the reasons articulated therein, as he finds that the record before him amply establishes that the District has established its charges of unbecoming conduct against the within respondent by a preponderance of the credible evidence, necessitating her dismissal from her tenured position.

In reaching his determination that the within charges have been established, the Commissioner gave full consideration to all evidentiary proofs which comprise the record and was cognizant that of particular importance here is the plausibility of the ALJ's factual findings and her weighing of the evidence and the credibility of the witnesses. In this regard, the Commissioner is satisfied, based on the record as a whole, that the ALJ considered all testimony and evidence and weighed it according to the credibility of the witnesses and the plausibility of its content and he finds no basis whatsoever in the record before him for overturning such findings or credibility assessments of the ALJ who had the benefit of observing the witnesses firsthand. In so concluding, the Commissioner was especially mindful that

\*\*\*Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.\*\*\* (*In re Perrone*, 5 N.J. 514, 522 (1950))

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<sup>2</sup>Also contained herein is a transcript of proceedings conducted at the OAL on October 20, 1998, dealing with a request by respondent for dismissal of the charges and presentation with respect to respondent's past record in the District and admission to the record of a number of respondent's formal evaluations conducted during such period.

Particularly illustrative in this regard is respondent's testimony with respect to her receipt of checks totaling \$5,585 from Lichtman, which she negotiated and deposited

**Q.** Okay. why did you get money from Dr. Lichtman?

**A.** I -- there was no explanation as to why Dr. Lichtman sent me the checks. I received checks and there was no explanation.

**Q.** And -- as you testified before, you deposited those checks, correct?

**A.** I deposited those checks.

**Q.** Okay. And you have no -- you have no idea whatsoever as to why you received those checks?

**A.** Well, I expected Dr. Lichtman to get back to me. Since he wrote the checks, I expected that he would get back to me explaining his reasoning for sending the checks.

**Q.** Did you call him to ask him why he was sending you the checks?

**A.** I call -- I -- I spoke to him after receiving a check. I didn't mention a check. Since he had sent the check, I felt -- since he sent a check -- a personal check, it was his responsibility to say to me why he had sent it.

(Tr. 6/4/98, p. 60, L. 7-23)

and

**Q.** Did you think you were entitled to the checks that you received from Dr. Lichtman?

**A.** I'm not clear. I don't understand the question.

**Q.** Well, did you do anything to earn over \$5,000 that you received from Dr. Lichtman?

**A.** I wasn't-- I -- and I'm not now -- I wasn't sure then and I'm not sure the reason for the check.

**Q.** Well, let -- my question is did you do anything to earn the money that you received from Dr. Lichtman?

**A.** I'm -- I'm not sure you could -- you always have to do something to earn -- something to earn -- earn something. People get money and I don't -- I'm not sure --

**THE COURT:** The question was, whether you ever did anything to earn the checks -- the money. And that's -- either you did or you didn't.

**THE WITNESS:** No.

(Tr. 6/4/98, p. 68, L. 13-25; p. 69, L. 1-3)

Upon his reasoned review of this discourse, the Commissioner is in full accord with the ALJ that it "*defies* credulity to believe that a professional person who provided personal information to a

person whom she had never met would simply accept substantial sums of money without questioning why she was receiving them” (emphasis in text) (initial decision at p. 7), and he further finds respondent’s contention that such a determination improperly shifts the burden of proof in this matter untenable. This and the remaining testimony adduced at hearing, along with the other significant documentation clearly present in the record, persuades the Commissioner that respondent’s attempts to portray herself as a “duped victim” in this matter are utterly devoid of any logical or reasonable inference from the record before him. Rather, he concludes that the quality of evidence here leads a reasonably cautious mind to the conclusion that respondent engaged in knowing and intentional participation in conduct with a purpose to defraud and introduced others to the fraudulent scheme.

In considering the appropriate penalty in this matter, the Commissioner is compelled to reiterate his long-standing belief that educators, by virtue of the unique position they occupy, must be held to an enhanced standard of behavior and must continually realize that they serve as role models to students and the community. When it is established that these individuals have failed to fulfill their obligations and have violated the public trust, it is imperative, to assure public confidence in the state’s educational system, that they be subject to appropriate penalty for their behavior. Although duly considering respondent’s lengthy, apparently unblemished record with the District, the Commissioner, nonetheless, determines that the charges established herein, under the particular circumstances of this matter, and when committed by a teaching staff member charged with molding and shaping young minds both academically and by virtue of example, is “sufficiently flagrant” to warrant respondent’s

dismissal. (See *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (Sup. Ct. 1943); aff'd 131 N.J.L. 326 (E. & A. 1944).)<sup>3</sup>

Accordingly, for the reasons expressed therein, the Commissioner affirms the initial decision of the OAL and hereby orders that Lucy Lester be dismissed from her tenured teaching position with the State-operated School District of the City of Newark as of the date of this decision. This matter shall be transmitted to the State Board of Examiners, pursuant to N.J.A.C. 6:11-3.6, for action, as that body deems appropriate, against respondent's certificate.<sup>4</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 25, 1999

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<sup>3</sup>Notwithstanding the Commissioner's determination herein, he is compelled to clarify that the District's reliance on *In the Matter of the Tenure Hearing of Alyce Stewart, State-operated School District of the City of Newark, Essex County* as dispositive in this matter is misplaced. This cited case was decided on a summary basis, in that respondent failed to answer the charges lodged against her, and is of no precedential value in the instant matter.

<sup>4</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 *et seq.* and N.J.A.C. 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.