

LISA ANN MORRELL	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
DAVID McNULTY	:	Docket No. C08-03
RIDGE AND VALLEY	:	
CHARTER SCHOOL	:	
WARREN COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on February 13, 2003, alleging that Ridge and Valley Charter School Board of Trustees (“Board”) member, David McNulty (“Respondent”) has a conflict of interest in violation of the School Ethics Act (“Act”), N.J.S.A. 18A:12-24, because he sold a property to the Board owned by he and his wife, Elizabeth Marshall.

In his answer filed on March 5, 2003, Respondent denies that he violated any provision of the Act in that he purchased the property with the specific intent to preserve the land as a site for the Charter School, with the understanding that he would not profit from the sale of the property to the Board either monetarily or materially. He also states that he had not signed a contract at the time the complaint was filed. He further notes that many improvements were needed on the property and that Respondent and his wife were likely to lose money in purchasing this property and selling it to the Board.

The Commission invited the parties to attend its meeting on May 27, 2003, to present witnesses and testimony to aid in the Commission’s investigation. Although Respondent is represented by counsel, he appeared at the hearing *pro se*. The complainant and a witness, Carol Haag, appeared *pro se*.

At its public meeting on May 27, 2003, and again at its public meeting of June 24, 2003, the Commission voted to table making a determination pending further investigation into the matter, including review of the contract between Respondent and Ridge and Valley Charter School, concerning the land in question.

At its public meeting of July 22, 2003, the Commission determined to dismiss the complaint finding no probable cause.

FACTS

The Commission found the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Respondent, David McNulty is a member of the Ridge and Valley Charter School Board of Trustees, which has not yet received a Charter from the State Department of Education (“Department”). Respondent and his wife, Elizabeth Marshall, purchased the property located at 93 Kerrs Corner Road in Frelinghuysen, to preserve it as a site for the Ridge and Valley Charter School. The School, pending approval, plans to open in September 2004 for grades K-8. The complaint alleging that Respondent sold the property to the school was filed in February 2003. As of the date that Respondent’s answer was filed with the Commission, March 5, 2003, Respondent had not sold the property in question to the Board. On May 7, 2003, after Respondent’s answer was filed with the School Ethics Commission, Respondent and his wife, entered into a Contract for the Sale of Real Estate (“Contract”) with the Ridge and Valley Charter School Board, for the sale of the property in question. This contract was signed by Carol Barnett, also known as Kerry Barnett, as “contract purchaser” on behalf of the Board. Stated in the contract was a provision that the Respondent and his spouse would take back a mortgage if the Board was unable to attain the proper funds with 4% interest, however, this provision was not invoked, according to Respondent’s attorney. The Board was able to obtain financing and purchased the property on July 9, 2003. Respondent and his wife have no further financial interest in the property.

ANALYSIS

Although complainant did not cite a specific provision of the Act, she alleged a violation under N.J.S.A. 18A:12-24 generally. The Commission considered this and finds the applicable provisions of the School Ethics Act for this analysis are N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24(c).

N.J.S.A. 18A:12-24(a) provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

The statute is specific and mandates that no school official, or member of his immediate family, shall “engage in any business, [or] transaction... which is in substantial conflict with the proper discharge of his duties in the public interest.” Although Respondent and his wife, a member of his immediate family by definition, both have engaged in a transaction with the Board, the Board is still in its planning and

organizational phase and the Department has not yet approved the School and issued it a charter. Consequently, the Commission does not find a substantial conflict with the proper discharge of Respondent's duties to exist at this time. However, the Commission did find that if a financial relationship were continuing once a Charter was issued to this Board, through payments on a promissory note or through a mortgage, a substantial conflict with this provision may exist and Respondent's status as a Board member would be problematic in that his recusal from matters involving the charter school may not be enough to obviate this substantial conflict with subsection 24(a) of the Act. Because there is no continuing financial relationship between the Respondent and the Board, the Commission finds no probable cause that Respondent violated N.J.S.A. 18A:12-24(a).

N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

There is no allegation that Respondent acted in his official capacity as a Board Trustee with regard to the sale of the property. Therefore, the Commission finds no probable cause that Respondent violated N.J.S.A. 18A:12-24(c).

Consequently, the Commission finds no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24 (a) or (c).

Lastly, the Commission notes that Respondent answered, and certified, that he never signed a contract to sell the site to the school on March 4, 2003, and then he entered into a contract to sell the property to the Board on May 7, 2003, without notifying the School Ethics Commission of this fact. It was only through questioning of Respondent at the School Ethics hearing and from testimony presented by the Complainant at the hearing that the Commission learned that Respondent and his wife had, in fact, contracted to sell the property to the Board. The Commission admonishes Respondent that it considers a purposeful omission in the same manner as it considers false testimony and Respondent should have amended his answer upon signing the Contract.

DECISION

For the foregoing reasons, the Commission concludes that Respondent's sale to the Board of property he purchased does not rise to a violation of the School Ethics Act.

For the foregoing reasons, the Commission finds no probable cause to credit the allegations and dismisses the complaint.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C08-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, testimony and the information obtained from its investigation; and

Whereas, at its meeting of July 22, 2003, the Commission found no probable cause to credit the allegations that David McNulty violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas; the Commission has reviewed the decision and agrees with the decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2003.

Lisa James-Beavers, Executive Director

(PCG/ljb/psc:m:ethics:C08-03)