

FRANCES SARNO	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	Docket No. C42-07
KIM LALLY, BARNEGAT BOARD OF EDUCATION OCEAN COUNTY	:	DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 15, 2007 by Frances Sarno alleging that Kim Lally, a member of the Barnegat Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleged that the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c), (d), (e), (f) and (h) of the Code of Ethics for School Board Members.

Pursuant to N.J.A.C. 6A:28-6.5(e), on December 18, 2007, the respondent filed a Motion to Dismiss the Complaint, with a supporting certification, in lieu of filing an Answer. The complainant submitted a response to the Motion to Dismiss. The Commission considered the complaint, the Motion to Dismiss and the complainant’s response to the motion at its meeting on February 26, 2008, at which time the Commission voted to grant the respondent’s Motion to Dismiss all allegations except the allegation that Ms. Lally violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. The Commission so notified the parties in its decision issued on April 1, 2008. The respondent filed an Answer on April 26, 2008.

A hearing on the merits of the complaint was initially scheduled for October 27, 2008, but adjourned at the request of the respondent. The matter was rescheduled for the Commission’s meeting of November 25, 2008, and the parties were so notified by letter dated October 29, 2008. The respondent appeared with counsel, Edward Corrigan, Esq. and Bradley Tishman, Esq. The complainant did not appear. The respondent immediately moved to dismiss the remaining allegation, asserting that the complainant did not meet his burden of proof. The respondent cited to N.J.A.C. 1:1-14.4, the rules governing hearings at the Office of Administrative Law (OAL) which specifically set forth the authority of an administrative law judge (ALJ) when a party fails to appear for a scheduled hearing. The respondent also provided the Commission with a brief in support of the motion. After hearing arguments from counsel, the Commission asked the parties to leave the room so that it could deliberate. Thereafter, the Commission returned to public session and voted to grant the respondent’s Motion to Dismiss.

ANALYSIS

The complainant alleges that he witnessed the respondent during a Board meeting on August 22, 2007 leave the dais and verbally attack a candidate for the open positions on the board by shouting accusations and using expletives. The complainant asserts that during this episode, approximately 20 people could hear the respondent yelling. He offers affidavits from three people to corroborate his account of events. (Complaint at page 4; Exhibit F) In her Answer, the respondent denies that she left the dais and verbally attacked the candidate. She also denies that she ran up to the candidate and shouted accusations containing expletives. (Answer at 1). Rather, the respondent asserts that, as she walked into the room where executive session was being held, she was accosted by the candidate who was violently waving a paper and came dangerously close to her face. She further asserts that the candidate viciously accused her of breaking the law; the respondent replied that the candidate “had a lot of nerve” saying this since his son had robbed her and he should worry about his own family before accusing others of breaking the law. (Id. at 1-2 and Respondent’s Certification.)

Pursuant to N.J.A.C. 6A:28-6.9(b) and N.J.S.A. 18A:12-29(b), it is the complainant’s burden to factually establish violation(s) of the Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission recognizes that when conducting hearings on complaints that solely allege a violation of the Code of Ethics for School Board Members, such hearings shall be conducted in accordance with the rules of the OAL. N.J.A.C. 6A:28-6.9(c). The Commission further acknowledges that, where a party fails to appear for a hearing at the OAL, such rules provide the administrative law judge with the discretion to return the case to the transmitting agency for appropriate disposition, with notice to the parties, which may result in a summary dismissal of the case. N.J.A.C. 1:1-14.4(a). Thus, as a matter of procedure, the Commission could dismiss this matter simply because of the complainant’s failure to appear for the scheduled hearing without providing an explanation for nonappearance and/or without requesting that the matter be rescheduled.

Notwithstanding this alternative, the Commission also reaches to a review of the substance of the complainant’s claim and concludes that the complainant failed to present any legally competent evidence in support of his complaint, as is required by N.J.A.C. 1:1-15.5. The Commission, therefore, finds that the complainant has failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

DECISION

Based on the foregoing, the Commission grants the respondent’s Motion to Dismiss the allegation that respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of

Ethics for School Board Members. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C42-07

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, and the documents submitted in support thereof; and

Whereas, at its meeting of November 25, 2008, the respondent moved to dismiss the complaint; and

Whereas, the Commission determined that the complainant failed to meet his burden to prove that the respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against her; 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 December 16, 2008.

Joanne Boyle, Executive Director