
KATHERINE VERDI

v.

THOMAS BAUER,
MANASQUAN BOARD OF EDUCATION,
MONMOUTH COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C36-13

**DECISION
FAILURE TO APPEAR**

PROCEDURAL HISTORY

This matter arises from a complaint filed on August 5, 2013 by complainant, Katherine Verdi, alleging that respondent, Thomas Bauer, President of the Manasquan Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By letter of August 19, 2013, the complainant was advised that each of her submissions was deficient. On August 29, 2013, the complainant cured the deficiency and specifically alleged in her complaint that the respondent violated N.J.S.A. 18A:12-24(b) (c), and (g) of the Act and N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members (Code).

On September 26, 2013, respondent's new counsel requested and received an extension of time to respond to all Counts of the complaint, and on October 11, 2013, the respondent filed a Motion to Dismiss in lieu of an Answer, alleging that the complaint was frivolous. The complainant submitted her response to the Motion and "frivolous" allegation on November 4, 2013.

By letter dated November 8, 2013, the parties were notified that the Commission would review this matter at its meeting on November 26, 2013 in order to make a determination on respondent's Motion to Dismiss and his allegation of frivolousness, in accordance with N.J.A.C. 6A:28-8.3.

At its meeting on November 26, 2013, the Commission granted respondent's Motion to Dismiss the allegation in Count 1, regarding only the banner signage as untimely and voted to find the complaint not frivolous. The Commission denied the Motion to Dismiss as to Counts 2 and 3 and advised that it would schedule the matter for a probable cause determination at a later date after the filing of respondent's Answer. Respondent filed his Answer on January 23, 2014.

By letter of February 7, 2014, the parties were advised that the Commission would review those alleged violations at its next regular meeting on February 18, 2014. Because of State closings due to inclement weather, the matter came before the Commission at its meeting on March 6, 2014 at which time the Commission found no probable cause to credit the allegations of prohibited acts, as set forth in this complaint. Accordingly, the Commission voted to retain this matter for a hearing where the

complainant shall carry the burden to factually prove that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code.

By letter dated May 2, 2014, the parties were notified that the Code hearing was scheduled for May 27, 2014. Enclosed with the letter was the Verification of Attendance, returnable on May 19, 2014, on which the parties were to list their witnesses. On May 14, 2014, the complainant advised the Commission that she needed an adjournment to attend a school function. The complainant was advised to contact her adversary for his consent and to offer two dates, provided by the Commission for the rescheduled hearing. She was advised to speak with counsel since she had refused to engage in any verbal communication throughout the pendency of the matter. Instead, multiple emails were exchanged. When the respondent did not consent to adjournment, the Commission advised the complainant that the matter would be heard on the scheduled date, and she was further directed to submit her Verification of Attendance since it was due May 19, 2014. The respondent timely filed his Verification of Attendance on the due date and listed himself as the only witness. The complainant did not comply.

On May 27, 2014, the respondent appeared with counsel, Lawrence Powers, Esq. The complainant did not appear. After waiting a short time for the complainant to arrive, the respondent moved to dismiss the remaining allegations, asserting that the complainant did not meet her burden of proof. After hearing arguments from counsel, the Commission asked him and the respondent to leave the room so that it could deliberate. N.J.A.C. 1:1-14.4, the rule governing a failure to appear for a scheduled hearing, allows the complainant an opportunity to submit an explanation for the nonappearance. The Commission advised the respondent that the complainant would be granted this opportunity and that the Commission would make a determination on the motion at a later date. By letter dated June 12, 2014, the complainant was invited to submit an explanation, but she has failed to do so. She has not communicated with the Commission to date.

At its meeting on July 22, 2014, the Commission granted the respondent's motion to dismiss with prejudice.

ANALYSIS

Pursuant to N.J.S.A. 18A:12-29(b) and N.J.A.C. 6A:28-6.4, it is the complainant's burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth in the Commission's regulations. Where a party fails to appear for a hearing before any agency, regulations grant the agency head, here the Commission, with the discretion after proper notice to the parties, to issue a summary dismissal of the case. N.J.A.C. 1:1-14.4(a).

The complainant was given proper notice that a hearing on her complaint was scheduled for May 27, 2014. Although directed to submit her Verification of Appearance, the complainant failed to comply. When she did not appear, by letter dated June 12, 2014, the Commission offered the complainant an additional opportunity to

provide an explanation to the Commission for her non-appearance, in writing. The complainant has failed to comply with the regulations and has not communicated with the Commission by letter, email or telephone to date.

DECISION

Having noted that the complainant bore the burden of proof in this matter and that she failed to appear at the hearing without good cause, the Commission hereby grants the respondent's Motion to Dismiss the allegation that respondent violated N.J.S.A. 18A:12-24.1(e), and (g) of the Code of Ethics for School Board Members for complainant's failure to prosecute. This decision is a final decision of an administrative agency which is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: July 23, 2014

Resolution Adopting Decision C36-13

Whereas, by letter of May 2, 2014, the parties in this matter were given due and ample notice of the hearing scheduled for May 27, 2014;

Whereas, by May 19, 2014, complainant failed to submit her Verification of Attendance, as directed, that she would appear with her witnesses on the scheduled date;

Whereas, the complainant failed to appear for the scheduled hearing and failed to prosecute the complaint; and

Whereas, pursuant to N.J.A.C. 1:1-14.4(a), the Commission directed the complainant provide an explanation for her failure to appear; and

Whereas, the complainant failed to submit a sufficient explanation for her nonappearance;

Whereas, at its meeting on July 22, 2014, the Commission voted to dismiss the complaint with prejudice; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 22, 2014.

Joanne M. Restivo
Interim Executive Director