

SB #25-97

IN THE MATTER OF THE REFINANCING :
OF THE 1994 LEASE PURCHASE :
AGREEMENT BY THE BOARD OF : STATE BOARD OF EDUCATION
EDUCATION OF FAIRVIEW, BERGEN : DECISION ON MOTION
COUNTY. :

Decided by the Commissioner of Education, February 14, 1997

Decided by the State Board of Education, June 4, 1997

For the Appellant, Oury & Mizdol (Dennis J. Oury, Esq., of Counsel)

On February 14, 1997, the Commissioner of Education issued a letter decision in which he denied the request by the Board of Education of the Borough of Fairview (hereinafter "Board") to refinance a lease purchase agreement pursuant to N.J.A.C. 6:22A-1.3. On March 4, 1997, the Board filed a notice of appeal with the State Board.

Pursuant to N.J.A.C. 6:2-1.11(a), the Board's brief in support of its appeal was due on March 24, 1997. The Board, however, failed to file a brief by that date. By letter dated March 31, 1997, we notified the counsel for the Board that no appeal brief had been filed and that this matter was therefore being referred to our Legal Committee for consideration of the Board's failure to perfect the appeal. Yet, the counsel for the Board still failed to file a brief in support of the appeal, 2½ months after the deadline for such filing and more than two months after he was given written notice of such failure.

Nor did the counsel for the Board respond to that notice or provide any explanation for his failure to file a brief until June 3, the day before this matter was scheduled for consideration by the State Board, when he indicated in a letter to the State Board that this matter had “slipped between the cracks.” He explained that “a few weeks ago I was on trial in South Dakota for over one week and frankly this matter was not attended to by my staff in my absence since I am the individual responsible for the Board of Education work.”

We concluded that the belated explanation offered by the counsel for the Board did not, under the circumstances, excuse or justify his failure to file an appeal brief for more than two months or to request an extension for such filing. Consequently, on June 4, 1997, we dismissed the appeal pursuant to N.J.A.C. 6:2-1.12(a), which authorizes dismissal of an appeal for failure to meet the filing deadline for an appeal brief. See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board, April 1, 1992, aff’d, Docket #A-4812-91-3 (App. Div. 1993).

On August 27, 1997, the Board filed the instant motion for reconsideration of that decision. The counsel for the Board again explains his failure to file a brief by indicating that he had been “on trial in South Dakota at the time and was not able to tend to the matter.” He also argues that this case presents a matter of public importance warranting a determination on the merits.

After a review of the papers submitted, we find no basis for reconsidering our decision.

As the Court observed in Paszamant, supra, slip op. at 3, “[a]n entity such as the State Board of Education has to be free to enforce its own procedural rules, providing

that it does not do so in a manner which is arbitrary, capricious or unreasonable.” It was the obligation and responsibility of the counsel for the Board to assure compliance with the regulations, and, under the circumstances, we find no basis for reconsidering our decision to dismiss the appeal. Nor do we find this case to be a matter of such public importance as to compel resolution. See Abel v. Elizabeth Bd. of Works, 63 N.J. Super. 500 (App. Div. 1960). We note in that regard that the Board waited more than 2½ months after its appeal was dismissed to file the instant motion.

Consequently, we deny the Board’s motion for reconsideration of our decision dated June 4, 1997 in this matter.

November 5, 1997

Date of mailing _____