SBE #510-02/99-198
SB # 51-99

IN THE MATTER OF THE REVOCATION	:	STATE BOARD OF EDUCATION
OF THE TEACHING CERTIFICATE	:	DECISION
OF GERARD BATTLE.	:	

Decided by the State Board of Examiners, September 23, 1999

For the Respondent-Appellant, Feintuch, Porwich & Feintuch (Philip Feintuch, Esq., of Counsel)

For the Petitioner-Respondent, Michael Walters, Deputy Attorney General (John J. Farmer, Jr., Attorney General of New Jersey)

This is an appeal from a decision by the State Board of Examiners to revoke the certification of Gerard Battle (hereinafter "respondent") as a teacher of the handicapped on the basis of a determination by the Commissioner of Education that he was guilty of tenure charges alleging inefficiency. The Commissioner's determination of the respondent's guilt and of the penalty of dismissal, in turn, was the consequence of the respondent's failure to respond to the tenure charges. While we recognize the finality of the Commissioner's determination in relation to both the tenure charges and the penalty of dismissal based thereon, we find that the Commissioner's decision alone does not in these particular circumstances provide an adequate basis to sustain the State Board of Examiners' determination to permanently revoke the respondent's license to teach.

This matter had it genesis on August 28,1998, when the State-Operated School District of the City of Jersey City certified tenure charges of inefficiency against the respondent with the Commissioner of Education. By letter of the same date, the

Commissioner notified respondent of his right to file an answer to the charges. Respondent did not file an answer. Consequently, by decision of September 29, 1998, the Commissioner, acting on the basis of P.L. 1998, c. 42, effective July 1, 1998, and relying on N.J.A.C. 6:24-1.4(e), deemed each of the charges admitted. Noting that the respondent had "chosen" not to deny the charges, the Commissioner found that the respondent's actions constituted inefficiency and incapacity warranting his dismissal from his tenured position. As reflected in the Commissioner's decision, the respondent was not represented by counsel.

On October 21, 1998, the respondent wrote to the Commissioner, and on November 23, he consulted an attorney. Respondent's attorney communicated with the Commissioner in December, but, on December 29, 1998, was advised that the Commissioner had declined to reconsider his decision of September 29.

Respondent did not appeal the Commissioner's decision of September 29, 1998 directing his dismissal from his tenured position. As set forth in the Commissioner's decision, and as in all cases contested before the Commissioner that result in loss of tenure or dismissal, the matter was transmitted to the State Board of Examiners for "action as that body deems appropriate." Commissioner's decision, slip op. at 2. See N.J.A.C. 6:11-3.6(a)(1).

By order dated February 25, 1999, and mailed on March 14, 1999, the Board of Examiners directed that the respondent show cause as to why his certificate should not be revoked or suspended.

On April 5, 1999, the respondent's counsel filed an answer on his behalf. In his answer, the respondent asserted that the Board of Examiners was without any evidence

to conclude that there was a basis to revoke or suspend his teaching certificate. He also asserted that inefficiency or incapacity alone was not sufficient reason to revoke his certificate.

The Board of Examiners concluded that there were no material facts in dispute and that it would therefore hear the matter directly rather than transmit it to the Office of Administrative Law for hearing. After review of the respondent's brief, the Board of Examiners determined that the Commissioner's conclusion in his decision of September 29, 1998 provided cause to revoke the respondent's certificate.

Respondent then appealed the instant appeal to the State Board of Education, arguing that the failure by the Board of Examiners to allow him a hearing before revoking his certificate was, under the circumstances, a violation of his due process rights. Respondent also argues that the case law does not support a determination to revoke his certificate for inefficiency or incompetence alone.

The Commissioner's decision in this case was akin to a default judgment, which was given a preclusive effect by the Board of Examiners in the subsequent proceedings to revoke the respondent's certification. Generally, in judicial proceedings, a default judgment precludes a defendant from offering testimony in his defense. Douglas v. Harris, 35 N.J. 270 (1961). It does not, however, necessarily obviate the obligation of a plaintiff to furnish proof on the issue of liability. Id. Furthermore, a decision as to whether to vacate a default judgment is generally left to the discretion of the trial court. Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92 (App. Div. 1998). Even so, the court must recognize that "[all] doubts…should be resolved in favor of the parties seeking relief." Id. at 99, quoting Mancini v. EDS ex rel. New Jersey Auto Full Ins. Underwriting

Assoc., 132 N.J. 330, 334 (1993). This is the case because a motion to vacate a default judgment "should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Id., quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964), aff'd, 43 N.J. 508 (1964). The reason courts take such an indulgent approach towards these motions is that a default judgment deprives a party of the benefit of an adjudication on the merits. Allen v. Heritage Court Associates, 325 N.J. Super. 112 (App. Div. 1999).

We recognize that an administrative agency is not the same as a court. City of Hackensack v. Winner, 82 N.J. 1, 28-31 (1980). However, in fulfilling our quasi-judicial responsibilities, we look to judicial principles for guidance. Id. at 31-33. This is especially true when to do so is necessary to achieve an equitable result in a given case. Application of the judicial principles articulated above requires that we limit the preclusive effect of the default judgment awarded by the Commissioner to the respondent's dismissal from his tenured position. In this respect we stress that the respondent is not seeking to vacate the Commissioner's default judgment, but only to limit its preclusive effect.

Initially, we take note that although the Commissioner relied on N.J.A.C. 6:24-1.4(e) to grant summary decision in favor of the district board, he did not provide notice to the respondent as required by that regulation. N.J.A.C. 6:24-1.4(e) provided that:

> Failure to answer within the 20 day period from receipt of services [of the tenure charges] shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the

> petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

As set forth above, N.J.A.C. 6:24-1.4(e) provided that a respondent who did not file an answer to a petition of appeal would be sent a second notice before any consequences resulted from his failure. Under the terms of that regulation, the Commissioner had to wait ten days after providing the second notice before he could deem the allegations in a petition to be admitted. Prior to July 1, 1998, this regulation controlled the time frame for filing responses to all petitions of appeal, including tenure charges certified to the Commissioner.

Effective July 1, 1998, N.J.S.A. 18A:6-16 was amended by P.L. 1998, c. 42. Before that date, the statute, which governs the procedures to be followed after receipt of tenure charges by the Commissioner, did not include any provision relating to the filing of an answer to tenure charges. Nor were there any regulatory provisions specifically relating to the subject. Hence, as stated, the time limits and notice provisions of N.J.A.C. 6:24-1.4(e) were the sole provisions that applied to the filing of answers to tenure charges.

After July 1, 1998, N.J.S.A. 18A:6-16 mandated that a respondent to tenure charges be afforded 15 days to file an answer and required the Commissioner to determine within 15 days following that period whether the tenure charges were sufficient to warrant dismissal or reduction in salary. The effect of the statutory change was to render the time frame and notice provisions of N.J.A.C. 6: 24-1.4(e) inapplicable to cases involving tenure charges certified to the Commissioner. This is demonstrated by the fact that the Department of Education ultimately amended its rules to include new

provisions reflecting the statutory change. See N.J.A.C. 6A:3-5.4 and 6A:3–5.5 (effective April 3, 2000).

However, no regulatory change was made prior to April 3, 2000. Instead, as previously indicated, while respondents to tenure charges certified to the Commissioner, including respondent in this case, were notified that they had 15 days to file a written response, they were also notified that the Commissioner would be acting pursuant to N.J.A.C. 6:24-1.4(e) if he deemed the charges admitted and that the matter would be decided on a summary basis.[1] Retention of N.J.A.C. 6:24-1.4(e) without change during this period with specific reliance on that provision in the notice provided to respondents introduced ambiguity to that notice during this period. Basically, while making it clear that a respondent had 15 days to file an answer, the notice did not make it entirely clear that when no answer was filed, a default judgment would issue in tenure cases without the benefit of a second notice. This created the potential for confusion during the relevant period.

Regardless of such ambiguity, the respondent in this case has not challenged the application of the default judgment to the disposition of the tenure charges against him. Nonetheless, while not excusing the respondent's failure to answer the tenure charges, we hesitate to sustain revocation of his teaching credential solely on the basis of such default judgment.

[1] The notice provided was included on a form letter sent to respondents by the Bureau of Controversies and Disputes which read in pertinent part that:

> …pursuant to P.L. 1998, c. 42, effective July 1, 1998, an individual against whom tenure charges are certified "*shall have* **15 days** *to submit a written response to the charges to the Commissioner"* and that failure to answer within the prescribed period will, absent an extension granted for good cause shown, result in charges being deemed admitted and the Commissioner deciding the matter on a summary basis pursuant to N.J.A.C. 6:24-1.4(e);….

Nor can we ignore the fact that the respondent was not represented by counsel during the pendency of the tenure charges against him. This circumstance suggests that the respondent may well have acted without an understanding that his failure to answer the tenure charges would impact his teaching credentials. This conclusion is supported by the very limited understanding of the administrative process that is reflected in the respondent's communication to the Bureau of Controversies and Disputes following his receipt of the Commissioner's decision disposing of the tenure charges.

Quite simply, under these circumstances, the State Board of Examiners should not have taken action with respect to the respondent's teaching certificate without an adjudication of the merits of his defenses as they pertain to the issue of whether his certificate should be suspended or revoked. To hold otherwise would preclude the respondent from teaching anywhere in New Jersey without any adjudication of his teaching performance. Such a result would be inequitable.

We conclude, however, that the default judgment was sufficient to support the issuance of an order to show cause by the Board of Examiners. We therefore remand this matter to the Board of Examiners with the direction that it transmit the case to the Office of Administrative Law for a hearing on the merits of the respondent's defenses as they pertain to the retention of his certificate.

Attorney exceptions are noted.

January 3, 2001

Date of mailing _____