

EDU #6349-04S
C # 406-04
SB # 46-04

YARA MARTIN, :
PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY OF :
ASBURY PARK, MONMOUTH COUNTY, :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Commissioner of Education, October 15, 2004

For the Petitioner-Appellant, Yara Martin, pro se

For the Respondent-Respondent, Schwartz, Simon, Edelstein, Celso & Kessler (Gregory G. Johnson, Esq., of Counsel)

On November 12, 2004, Yara Martin (hereinafter "appellant"), a non-tenured teaching staff member, filed an appeal to the State Board of Education after the Commissioner dismissed her petition challenging the non-renewal of her employment by the Asbury Park Board of Education. The notice of appeal was filed jointly with an appeal filed by George Watson, Jr. from a Commissioner's decision which dismissed his petition challenging his non-renewal by the Asbury Park Board.

On November 15, 2004, the appellant was notified that she was required to provide proof of service of the notice of appeal on Gregory G. Johnson, Esq., counsel for the Asbury Park Board, by November 26, 2004. When the appellant failed to correct that deficiency, she was notified in a letter dated December 1, 2004 from the Director of

the State Board Appeals Office ("Director") that, unless proof of service on Mr. Johnson was received by December 12, 2004, her appeal would be referred to the Legal Committee of the State Board for consideration of her failure to perfect.

On December 7, 2004, in a letter submitted jointly with Watson by fax, the appellant indicated that Mr. Johnson had been sent a copy of the notice of appeal. She also requested oral argument, an extension of time for filing a brief in support of her appeal, and consolidation of her appeal with the appeal filed by Watson. On December 10, the appellant was advised that she was required to provide a signed original and 17 copies of her letter of December 7th by December 20. The Director also informed the appellant and Watson by letter of that date:

In addition, you request an extension for an unspecified period of time in which to file your appeal briefs, which were due on December 2, 2004. By letter dated December 6, 2004, Mr. Johnson indicated that the Asbury Park Board was not willing to consent to your request. In a phone call to this office on December 7, you indicated that you would advise us by December 8 with regard to the length of the extension you are requesting. As of this date, we have not heard from you. As a result, these matters are being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeals. If you wish to submit certifications setting forth the circumstances of your failure to file briefs in support of your appeals or to request an extension by the due date for your briefs, you must do so by providing an original and 17 copies of such certifications by December 20, 2004.

By letter dated December 23, 2004 and received by fax, Watson indicated that he and the appellant had not been able to file a brief in a timely manner "because we contacted the law firm and they didn't get back to us." Watson also requested that the two matters be placed into abeyance while he and the appellant ordered hearing transcripts.

By letter dated December 30, 2004, the Director acknowledged receipt by fax of the December 23 letter. The Director again reminded the appellant of her:

responsibility to serve all submissions on Gregory Johnson, Esq., counsel for the Asbury Park Board of Education. Please be advised that you are required to send us an original signed copy of your letter along with 17 copies by January 10, 2005. You are also required to provide proof of service on Mr. Johnson by January 10.

As previously stated in our letter dated December 10, 2004, these matters are being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeals. Your request to place the briefing schedule in abeyance will be considered at that time.

On January 11, 2005, the appellant and Watson filed a joint letter brief.

By letter dated January 20, 2005, the Director advised the appellant that the Legal Committee had determined to accept her brief for filing. The appellant and Watson were further advised, however, that:

since the State Board has not yet considered your request to consolidate the two appeals, you are required to file two signed original copies of your brief with this office. You also are required to submit an additional 17 copies of the brief. In addition, your brief does not indicate that a copy was sent to Gregory Johnson, Esq., counsel for the Asbury Park Board. You are again reminded of your responsibility to serve all submissions on Mr. Johnson at Schwartz, Simon, Edelstein, Celso & Kessler, Ten James Street, Florham Park, NJ 07932. You are required to correct these deficiencies by January 31, 2005. The Asbury Park Board's answer brief will be due 20 days after service of your brief on Mr. Johnson.

Please be further advised that you still have not submitted an original signed copy of your letter of December 1, 2004, which was received by fax on December 7, in which you seek oral argument and request to consolidate your appeals. Nor does that letter indicate that a copy was sent to Mr. Johnson. The State Board cannot consider your request to

consolidate until you have corrected these deficiencies, which must also be corrected by January 31.

The appellant did not respond to that letter or correct any of the cited deficiencies. By letter dated February 1, 2005, the Director notified the appellant that the matter was being referred to the Legal Committee for consideration of the effect of her failure to correct the deficiencies and perfect the appeal.

The appellant still has failed to correct any of these deficiencies. Most significantly, the appellant, despite repeated notice, has failed to file a signed original and 17 copies of her appeal brief or provided proof of service of that brief on Mr. Johnson, as required by the regulations governing appeals to the State Board. N.J.A.C. 6A:4-1.10. In view of the fact that the appellant was given several opportunities to cure the deficiencies, we find such noncompliance to be fatal to her appeal. Hence, while we are mindful of the appellant's status as a pro se litigant, we conclude under these particular circumstances that dismissal of the appeal is warranted.

March 2, 2005

Date of mailing _____