

EDE # 5946-02
SBE #EDE-5946-02
SB # 5-05
App. Div. #A-5847-04T1

IN THE MATTER OF THE REVOCATION : STATE BOARD OF EDUCATION
OF THE CERTIFICATE OF DAVID TOLER : DECISION
BY THE STATE BOARD OF EXAMINERS. :

Decision by the State Board of Examiners issued on December 29, 2004

Decided by the State Board of Education, June 1, 2005

Remanded by the Appellate Division, March 30, 2006

For the Petitioner-Respondent, Melanie M. Brookes, Deputy Attorney General (Zulima V. Farber, Attorney General of New Jersey)

For the Respondent-Appellant, Dennis J. Cummins, Jr., Esq.

In February 2002, the State Board of Examiners issued an Order to Show Cause why the teaching certificate of the appellant, David Toler, should not be revoked or suspended as a result of his participation in an insurance scheme designed to defraud the New Jersey State Health Benefits Program. The record indicated that the appellant admitted that he had allowed Dr. Carl Lichtman, a psychologist, to bill his medical insurance carrier for psychological services Dr. Lichtman had not rendered and that Dr. Lichtman had given the appellant a check representing a portion of the monies he had received for the fraudulent claim. After transmittal to the Office of Administrative Law (“OAL”), the Administrative Law Judge (“ALJ”) granted summary decision to the Board of Examiners and recommended that the appellant’s teacher certificate be revoked for unbecoming conduct.

In a decision issued on October 28, 2004, the Board of Examiners adopted the ALJ's decision and revoked the appellant's certificate. The Board of Examiners, which based its determination upon the appellant's admission that he had participated in the scheme, found that there could be no dispute that the appellant's participation in such a scheme negated any claim he could have to being a role model for students, and it concluded that the appellant's involvement constituted unbecoming conduct justifying revocation of his teaching certificate.

On June 1, 2005, the State Board of Education affirmed the decision of the Board of Examiners for the reasons expressed therein.

On March 30, 2006, the Appellate Division concluded that the Board of Examiners was justified in determining summarily that the appellant had participated in conduct unbecoming a teacher. However, the Court was not convinced, given the appellant's claim that he had been singled out by the Board of Examiners for revocation, that the sanction of revocation should have been decided in a summary manner. The Court explained:

Because the resolution of Toler's claim that he was singled out by the Board [of Examiners] is fact sensitive and impacts upon the reasonableness of the decision to revoke or otherwise suspend his teaching certificate, it should not have been summarily dismissed as irrelevant. We are, therefore, constrained to remand the matter to the OAL to permit further proceedings limited to Toler's claim that he was selectively and unfairly singled out. We take no position on the merits of Toler's claim or whether it provides sufficient justification to warrant a lesser sanction, such as suspension, for his unbecoming conduct as a teacher.

Appellate Division's Decision, slip op. at 8-9.

In view of the Court's decision, we remand this matter to the State Board of Examiners for transmittal to the Office of Administrative Law to fulfill the terms of that decision. We do not retain jurisdiction.

John A. Griffith abstained.

May 3, 2006

Date of mailing _____