

[Cite as *Perdue v. State Bd. of Career Colleges and Schools*, 2007-Ohio-7187.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROBERT E. PERDUE

Plaintiff

v.

STATE BOARD OF CAREER
COLLEGES AND SCHOOLS

Defendant

Case No. 2007-02963-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Robert E. Perdue, is an inmate who has been incarcerated at various institutions in the state. Plaintiff related that while he was incarcerated at the Lebanon Correctional Institution in 2004, he enrolled in a mail order career training course offered by an entity identified as the National Academy for Health and Fitness (“NAHF”). Plaintiff pointed out the NAHF listed a Cleveland, Ohio mailing address and was owned by a person identified as Joyce Forte. Plaintiff recalled he paid for the training course offered, received course study materials, and completed the curriculum within ninety days when he took the final examination. According to plaintiff, he had his final examination and a photograph mailed to the NAHF business address in order to receive a certificate of graduation or course completion, but did not receive any response. Plaintiff, who had been assisted in obtaining course materials and mailing his completed examination to NAHF by a person identified as Richard L. Shipp, engaged Shipp to assist him in obtaining the requested certificate from NAHF. Apparently, in 2006, Shipp contacted the Better Business Bureau in Cleveland about NAHF and was referred to defendant, State Board of Career Colleges and Schools (“Board”) for assistance in dealing with NAHF.

{¶2} On December 29, 2006, plaintiff filed a complaint with the Board requesting an investigation of NAHF for the purported failure to render services. The Board is a state agency authorized under chapter R.C. 3332 to license and regulate private career training programs in the state of Ohio. Specifically, R.C. 3332.05¹

¹ R.C. 3332.05 (A) and (B) state in pertinent part:

“3332.05 Certificate of registration - program authorization.

“(A) The state board of career colleges and schools shall issue a certificate of registration to an applicant of good reputation seeking to offer one or more programs upon receipt of the fee established in accordance with section 3332.07 of the Revised Code and upon determining the applicant has the facilities, resources, and faculty to provide students with the kind of instruction that it proposes to offer and meets the minimum standards of the board. A certificate of registration shall be granted or denied within one hundred twenty days of the receipt of the application therefor by the board. A person shall obtain a separate certificate for each location at which the person offers programs. The first certificate of registration issued on or after June 29, 1999, for each new location is valid for one year, unless earlier revoked for cause by the board under section 3332.09 of the Revised Code. Any other certificate of registration is valid for two years, unless earlier revoked for cause by the board under that section.

“(B) The board shall issue program authorization for an associate degree, certificate, or diploma program to an applicant holding a certificate of registration issued pursuant to division (A) of this section upon receipt of the fee established in accordance with section 3332.07 of the Revised Code and upon determining the applicant has the facilities, resources, and faculty to provide students the kind of program it proposes to offer and meets the minimum standards of the state board.

addresses the Board's authority to issue certificates of registration to applying education programs and R.C. 3332.06(A)(1)² prohibits an education program from operating when that program has not been granted a registration certificate. Evidence has show Joyce Forte doing business as the National Academy of Health and Fitness never applied for a certificate of registration with defendant. Although defendant has authority under R.C. 3332.091³ to investigate complaints against certificate of registration holders for violations of R.C. 3332.09⁴, the Board did not have any statutory authority over Joyce

"Any program authorization issued by the board under this division is valid only for the specified program at the location for which it is issued and does not cover any other program offered at the school or at other schools operated by the owner. Program authorization is valid for the period of time specified by the board, unless earlier suspended or revoked for cause by the board under section 3332.09 of the Revised Code."

² R.C. 3332.06(A)(1) provides in pertinent part:

"3332.06 Certificate of registration and appropriate program authorization required for programs.

"(A)(1) No program shall be established, offered, or given for a charge, fee, or other contribution; no certificate, diploma, degree, or other written evidence of proficiency or achievement shall be offered whether in a specified place, by correspondence, or any other means of communication, or awarded; and no student enrollment in such program shall be solicited through advertising, agents, mail circulars, or other means, until the person planning to offer or offering such program, certificate, diploma, or degree has obtained a certificate of registration and appropriate program authorization in accordance with section 3332.05 of the Revised Code."

³ R.C. 3332.091(A)(1) states:

"3332.091 Complaints.

"(A)(1) *Any person adversely affected by the actions of a certificate holder may file a complaint with the state board of career colleges and schools alleging that any school registered with the board has violated any provision of section 3332.09 of the Revised Code. The complaint shall be in writing and signed by the complainant and shall be filed with the board within six months after the violations allegedly were committed. Upon receiving a complaint, the board shall initiate a preliminary investigation to determine whether it is probable that violations were committed. If the board determines after preliminary investigation that it is not probable that any violations were committed, it shall notify the person who filed the complaint that it has so determined and that it will not issue a formal complaint in the matter.*

"If the board determines after a preliminary investigation that it is probable that violations were committed, it may issue a formal complaint under division (A)(2) of this section or it may endeavor to eliminate such practices by informal methods of conference, conciliation, and persuasion. Nothing said or done during these endeavors shall be disclosed by any member of the board or its staff or be used as evidence in any subsequent proceedings. If, after such investigation and conference, the board is satisfied that such violations will be eliminated, it may treat the complaint as conciliated, and entry of such disposition shall be made in the records of the board." (Emphasis added.)

⁴ R.C. 3332.09 provides:

“3332.09 Limitation, suspension or revocation of registration or authorization - penalty.

“The state board of career colleges and schools may limit, suspend, revoke, or refuse to issue or renew a certificate of registration or program authorization or may impose a penalty pursuant to section 3332.091 of the Revised Code for any one or combination of the following causes:

“(A) Violation of any provision of sections 3332.01 to 3332.09 of the Revised Code, the board’s minimum standards, or any rule made by the board;

“(B) Furnishing of false, misleading, deceptive, altered, or incomplete information or documents to the board;

“(C) The signing of an application or the holding of a certificate of registration by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of a crime involving moral turpitude;

“(D) The signing of an application or the holding of a certificate of registration by a person who is addicted to the use of any controlled substance, or who is found to be mentally incompetent;

“(E) Violation of any commitment made in an application for a certificate of registration or program authorization;

“(F) Presenting to prospective students, either at the time of solicitation or enrollment, or through advertising, mail circulars, or phone solicitation, misleading, deceptive, false, or fraudulent information relating to any program, employment opportunity, or opportunities for enrollment in accredited institutions of higher education after entering or completing programs offered by the holder of a certificate of registration;

“(G) Failure to provide or maintain premises or equipment for offering programs in a safe and sanitary condition;

“(H) Refusal by an agent to display the agent’s permit upon demand of a prospective student or other interested person;

“(I) Failure to maintain financial resources adequate for the satisfactory conduct of programs as presented in the plan of operation or to retain a sufficient number and qualified staff of instruction, except that nothing in this chapter requires an instructor to be licensed by the state board of education or to hold any type of post-high school degree;

“(J) Offering training or programs other than those presented in the application, except that schools may offer special courses adapted to the needs of individual students when the special courses are in the subject field specified in the application;

“(K) Discrimination in the acceptance of students upon the basis of race, color, religion, sex, or national origin;

“(L) Accepting the services of an agent not holding a valid permit issued under section 3332.10 or 3332.11 of the Revised Code;

“(M) The use of monetary or other valuable consideration by the school’s agents or representatives to induce prospective students to enroll in the school, or the practice of awarding monetary or other valuable considerations without board approval to students in exchange for procuring the enrollment of others;

“(N) Failure to provide at the request of the board, any information, records, or files pertaining to the operation of the school or recruitment and enrollment of students.

“If the board modifies or adopts additional minimum standards or rules pursuant to section 3332.031 of the Revised Code, all schools and agents shall have sixty days from the effective date of the modifications or additional standards or rules to comply with such modifications or additions.”

Forte, a non certificate holder. Despite the lack of statutory authority, defendant acted on plaintiff's complaint.

{¶3} Defendant's employee, Kimberly Stein, an investigator, responded to plaintiff's complaint regarding his dissatisfaction with the operations of NAHF. After receiving plaintiff's complaint (December 29, 2006), Stein responded to plaintiff by letter (January 5, 2007) explaining to him that NAHF was not registered with the Board and consequently, defendant had no jurisdiction to regulate the purported educational program or cite Joyce Forte for any statutory violations. Stein also advised plaintiff that attempts would be made to contact Joyce Forte to obtain information about NAHF.

{¶4} On January 8, 2007, Stein on behalf of the Board sent a letter to Joyce Forte informing her that her operation of NAHF did not conform to statutory requirements addressed in chapter R.C. 3332. Stein requested follow-up correspondence from Forte, "confirming (her) compliance with this letter, along with an explanation of how (she) intend[ed] to resolve the complaints that have been filed." Stein advised Forte she would be contacted by a Board representative to schedule a meeting regarding the operation of NAHF.

{¶5} After not receiving any word from Joyce Forte or other NAHF representatives, Kimberly Stein wrote another letter to Joyce Forte mailed to the NAHF Cleveland address on February 22, 2007. This correspondence again addressed the complaints filed with the Board regarding NAHF and again advised NAHF to not offer career training or advertise offers of career training without obtaining a valid certificate of registration from the Board. Again Kimberly Stein, acting in her capacity as an investigator for the Board, urged Joyce Forte or some official from NAHF to respond to the letter or the matter could be referred to the Attorney General's office.

{¶6} On March 9, 2007, Kimberly Stein received a letter from Joyce Forte (dated March 4, 2007). Forte wrote she had discontinued offering career training through NAHF in January, 2007 and was "in the process of moving out of state" to

accept employment in the medical field. Forte pointed out that once she had fully moved she would forward her out of state mailing address to the Board. Forte did not respond to the complaints filed against her with the Board.

{¶17} On March 9, 2007, Kimberly Stein responded to the Forte letter by sending an e-mail to her requesting she advise the Board about her intentions to resolve the complaints filed against her. Stein recorded, “there is still an issue regarding the two outstanding complaints from individuals that paid you money for training they did not receive, and for which you were not licensed or approved to offer.” Stein again advised Forte that failure to provide resolution of the complaints such as issuing tuition refunds to the complaining students would prompt the Board to contact the Attorney General’s office for some resolution of the matter. Stein sent a follow-up letter on April 5, 2007 to Joyce Forte at the NAHF Cleveland address. Copies of the complaints against Forte were attached to this correspondence. Requests were made for Forte to resolve these complaints and contact the Board regarding her intended plan to resolve the complaints.

{¶18} On April 28, 2007, Joyce Forte sent a handwritten letter to the Board noting she was not doing business and was still intending to move outside Ohio to another state. Forte wrote, “[o]nce we are settled we will attend to all students needs.” Forte did not provide any information regarding how she specifically intended to resolve the complaints filed against her with the Board. Apparently, Forte never refunded any tuition payments plaintiff made to her or provided plaintiff with a certificate of graduation.

{¶19} On March 13, 2007, plaintiff filed a complaint against defendant in this court contending defendant should bear responsibility for reimbursing him for tuition payments he made to NAHF. Plaintiff did not produce any legal argument to support his contention that the Board should be liable for payments he made to NAHF for course instruction. Plaintiff also requested reimbursement for payments he made to Richard L. Shipp in assisting him with the complaints he filed against Joyce Forte and NAHF.

Plaintiff also seeks recovery of postage costs he incurred in pursuing his various complaints against Joyce Forte. Total damage requests in this claim amount to \$692.40. Plaintiff was not required to pay a filing fee to prosecute this action.

{¶10} Defendant denied any liability in this matter asserting plaintiff has failed to state a claim under R.C. 2743. Defendant explained the Board, “is the designated state agency responsible for licensing and regulating private career training programs” and plaintiff failed to produce any evidence to prove the Board violated any statutory duty regarding such licensing and regulating. Defendant maintained NAHF was not licensed or registered with the Board. Therefore, defendant did not have authority over the acts or omissions of NAHF. Defendant implied NAHF should be the proper defendant in plaintiff’s action and the Court of Claims does not have jurisdiction over private party defendants in claims of this type.

{¶11} Plaintiff, in a response, insisted defendant should bear liability for loss he incurred at the hands of NAHF, because defendant, “is designated State Watch Dog [and] agency responsible for licensing and regulating private career programs in the State [and] prevent illegal con schemers targeting education seekers etc.” Plaintiff further maintained defendant is responsible for preventing and deterring illegal activity. Plaintiff suggested defendant had a statutory duty to recover tuition money from Joyce Forte. Plaintiff essentially argued defendant owed him a duty to protect him from dishonest individuals offering fraudulent educational opportunities.

{¶12} Defendant is a state agency granted statutory authority under chapter R.C. 3332 to regulate and license educational institutions operating in Ohio. Defendant has no jurisdiction to regulate an educational entity that has not applied for or received a certificate of registration. Evidence has shown NAHF operated outside the regulatory authority of the Board. No statutory section of R.C. 3332 grants aggrieved individuals such as plaintiff a right to recover tuition reimbursement from the state when that tuition was originally paid to an unlicensed private education facility operating outside the

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regulatory law. Plaintiff has failed to produce any set of facts or laws entitling him to recovery from defendant in this court. Defendant has no duty to recover plaintiff's tuition payments or expenses incurred. Consequently, plaintiff's claim is denied.



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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert E. Perdue, #352-167
P.O. Box 45699
Lucasville, Ohio 45699

Amy Nash Golian
Assistant Attorney General
Office of the Ohio Attorney General
Education Section

30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3400

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