
IN THE MATTER OF	:	STATE OF NEW JERSEY
ADI NIKITINSKY, MONROE :	:	OFFICE OF ADMINISTRATIVE LAW
TOWNSHIP BOARD OF	:	Agency Docket No. C-03-21
EDUCATION, MIDDLESEX	:	OAL Docket. No.: EEC 07955-2021 S
COUNTY,	:	
	:	
Respondent.	:	

POST-HEARING BRIEF OF RESPONDENT ADI NIKITINSKY

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Statement of Background Facts and Procedural History

Complainant Sarah Aziz, an unsuccessful candidate for the Monroe Township Board of Education (“the Board”) in the November 2020 school election, filed a four-count complaint three months later, on February 10, 2021, against Board member Adi Nikitinsky alleging that he unethically exploited his Board position to secure financial gain for his private printing business.¹ In the first two counts, Aziz asserted that Nikitinsky, while serving as President of the Monroe Township Middle School Parent Staff Association (“the PSA”), pressured Principal Chari Chanley and her staff to send emails to families promoting his business. The third and fourth counts, alleging other unrelated violations, were dismissed by the Commission on motion without a hearing.

On the first two counts, the Commission found that the allegations, if true, could possibly support violations of *N.J.S.A.* 18A:12-24(a), (b) and (c), and *N.J.S.A.* 18A:12-24.1(f). The matter was transmitted to the Office of Administrative Law and assigned to Administrative Law Judge Sarah Crowley for a hearing, which was conducted on October 11, 13 and 16, 2023.² The Commission

¹ The original complaint was rejected by the Commission as defective. Aziz filed an amended version on February 11, 2021, but the Commission deemed the original filing date as controlling for timeliness purposes.

² The transcript of the October 16th hearing session mistakenly states October 13th on the cover.

was substituted for Aziz as the complainant, and the case was prosecuted by the Attorney General.

The Commission presented testimony from Aziz, PSA Treasurer Catherine Crowley, Superintendent of Schools Chari Chanley³ and former PSA officer Elizabeth Preuster. Nikitinsky testified on his own behalf, along with Barbara Lonczak, Chanley's secretary at the time of the relevant events.

The Hearing Record⁴

Aziz was the original complainant in this matter. On direct examination she testified essentially as follows: During the 2020-2021 school year, she had a daughter in sixth grade at the Middle School and received emails and occasional robo-calls from the district promoting fundraising sales by the PSA and the Middle School Parent Teachers Organization ("the PTO"), another parent group. Transcript of October 11, 2021, T:17-14 to T:18-14. The frequency of notifications on behalf of the PSA noticeably increased after the November 2020 annual school election, and typically would include a link to an online store run by the PSA to purchase spirit wear, which was shut down after she filed her complaint. *Id.* at T:19-1 to 25.

³ Dr. Chanley was Principal of the Middle School when the relevant events occurred, but was later promoted to Superintendent.

⁴ The following recitation summarizes the relevant portions of the witnesses' testimony as they gave it. Analysis of credibility and weight is reserved for the "Discussion" section below.

Aziz signed on to the PSA website link in late 2020 after she heard reports that it was “a front for Adi Nikitinsky’s businesses,” and saw a pick-up location at 242 Possum Hollow Drive, which she recognized as the business address of both Dot Designing and Orange Media Group. *Id.* at T:20-17 to 21-1. She filed an Open Public Records Act (“OPRA”) request for any emails sent to district employees from Dot Designing’s email address to determine whether his company was, in fact, selling merchandise to the PSA, and also to confirm who the officers of the PSA were, and saw that Nikitinsky and his wife were both officers. *Id.* at T:23-15 to 24-4.

Aziz received 144 pages of emails dating back a decade before Nikitinsky joined the Board in 2020, showing him donating or selling merchandise to school-related organizations.⁵ Based on these emails, she concluded that Nikitinsky was directing the Middle School staff to market his company’s merchandise and filed her complaint because she felt it was an abuse of power. *Id.* at T:32-6 to 22.

On cross-examination, Aziz acknowledged that she filed her complaint several months after being defeated by Nikinsky’s “preferred candidates” (her term) at the polls in the November 2020 school election. Transcript of October 11,

⁵ Aziz identified P-5, a November 20, 2020 email exchange between Nikitinsky and Lonczak, which was admitted into evidence, *id.* at T:29-24, and also identified P-14, an April 5, 2020 email from Nikitinsky to then-Superintendent Dori Alvich. *Id.* at T:30-13-14. She identified P-2, an April 12, 2021 PSA Store order confirmation, but the Court sustained an objection to its introduction based on hearsay. *Id.* at T:24-11 to 35-25.

2022, T:21-6 to 7, T:39-22 to 41-10. She has filed additional complaints against Nikitinsky and other Board members since then as well.⁶ For at least the past three years she has been a consistent public critic of the Board and the district's administration. *Id.* at T:41-21 to 42-11. She was also the administrator of a Facebook page known as "Monroe Township Education" that regularly features attacks on Nikitinsky and other Board members. Although the page's ground rules explicitly prohibit personal attacks (R-6), she claimed that Nikitinsky was fair game because he was a public official. *Id.* at T:42-12 to 46-10.

Although Crowley, Chanley and Preuster were called by the complainant, their testimony refuted the charges against Nikitinsky. Crowley had been the PSA's Treasurer in the organization's inception and testified that she had sole access to the organization's TD Bank account. *Id.* at T:81-4 to 82-1. Once the COVID-19 pandemic shut the schools down in March 2020, the PSA stopped holding in-person meetings and communicated primarily through email or phone calls. *Id.* at

⁶ Aziz filed another ethics complaint against Nikitinsky in January 2022, several months after she lost again in the November 2021 school election (*Aziz v. Nikitinsky*, School Ethics Commission Dkt. No. C10-22), which has been held in abeyance pending the outcome of the present case. She filed yet another complaint against Nikitinsky and several other Board members in May 2022 (*Aziz v. Nikitinsky, et als*, School Ethics Commission Dkt. No. C56-22) which was dismissed without a hearing. She also filed certifications in support of two Superior Court actions against the Board in June 2022, which were later transferred to the Commission and docketed as *Isaacs v. Skurbe, et als*, School Ethics Commission Dkt. No. C78-22, which has been held in abeyance pending the outcome of the present case and others, and *Isaacs v. Skurbe, et als*, School Ethics Commission Dkt. No. C85-22, which was dismissed without a hearing. *Id.* at T:46-11 to 49-18.

T:74-7 to 19. As of the start of the 2020-2021 school year in September 2020, parent groups were not allowed to come into the schools at any time, and she was going to the bank only rarely. *Id.* at T:119-24 to 121-19.

Crowley played no part in the establishment of the PSA's online store in the fall of 2020, but once it was operational customers would purchase goods through a PayPal account linked to the PSA's bank account. *Id.* at T:88-2 to 90-19. The PayPal account showed purchasers' names, email addresses, phone numbers, and a description of the goods purchased. Crowley would periodically check it for sales and electronically transfer any proceeds to the bank account. The PSA did not store the goods put up for sale on the website because they were not allowed to go into the schools, so parents were asked to pick them up directly from Dot Design. *Id.* at T:95-2 to 7.

Before Nikitinsky became President of the PSA in September 2020, the PSA did pay his company, Dot Design, for some band shirts, though the company was also donating t-shirts during the same period of time. *Id.* at T:108-8 to 111-7. But the Commission's counsel stipulated, during Crowley's testimony, that there were no payments to Nikitinsky or his company for anything while he was President of

the PSA, which corresponded to the Commission’s 180-day limitations period. *Id.* at T:114-3 to 115-3.⁷

Crowley identified a certification she signed in support of Nikitinsky’s motion to dismiss the complaint before the Commission stating that the PSA paid no funds to Dot Designing. (P-8) *Id.* at T:103-24 to 105-4. When challenged on why her certification did not explicitly limit her statement to the period when Nikitinsky was PSA President, she testified that she intended to address just the time period relevant to the complaint. *Id.* at T:106-21 to 108-3.

Chanley is currently Superintendent of the Monroe Township School District but was Principal of the Middle School from 2009 to 2022. Transcript of October 13, 2023, at T:13-9 to T:14-18. She testified she has been working in the district for 20 years, and was familiar with Nikitinsky as the owner of Dot Designing and “someone that gave back to his community.” *Id.* at T:39-13 to 40-16; 57-16 to 59-5.

She explained that the Middle School had email systems to send out messages to the school community. *Id.* at T:25-16 to 26-4. When Nikitinsky took over as PSA President, there was no standard procedure in place for sending out

⁷ The allegations of the complaint dealt exclusively with the time period Nikitinsky served as President of the PSA starting in September 2020. The complaint was filed on February 10, 2021. The Commission’s 180-day limitations period would relate back to August 14, 2020. *See N.J.A.C. 6A:28-6.5(a).*

emails on behalf of the PSA and the PTO.⁸ Each time the PSA or the PTO had a new representative, they needed to be oriented on what the procedure was for that school year because they would not otherwise know. *Id.* at T:23-15 to 24-12, 62-21 to 63-3.

Chanley recalled a Zoom meeting with Nikitinsky on behalf of the PSA and Maria Facciponti, President of the PTO. There was tremendous tension between the two groups and Chanley was asked by the Superintendent to explore ways to reduce it. The PTO was planning a fundraiser so, to encourage collaboration, Chanley asked Nikitinsky if his company would provide products to the PTO at his cost. She emphasized that she initiated this proposal herself, at the behest of the Superintendent who wanted her to make peace between the two organizations, and had no knowledge whether the PTO ever ended up using Dot Design as the vendor. *Id.* at T:46-21 to 49-4.69-2 to 70-25.⁹

As of September 2020, COVID-19 restrictions were still in place. By November 2020, the schools had come back to in-person but with a virtual option. Outsiders, including parent organizations, were not allowed in the building. *Id.* at T:63-4 to 64-23. In past years, parent groups would be allowed to conduct

⁸ She confirmed that both the PSA and the PTO were private outside organizations that were not run or controlled by the school district. *Id.* at T:74-4 to 22.

⁹ As Nikitinsky later testified, without rebuttal, he never accepted Chanley's proposal and nothing ever came of this.

fundraisers in the schools, but once COVID hit neither organization was permitted to do so, which was one of the reasons why the PSA conducted fundraisers online that year. *Id.* at T:64-24 to 66-19.

Nikitinsky “absolutely” did not attempt to pressure her or her staff to give him any special treatment of accommodations, as the head of the PSA or in any other respect. *Id.* at T:68-15 to 69-1. She confirmed that both the PSA and the PTO were private outside organizations that were not run or controlled by the school district. At no time did Dot Designing ever enter into any contracts with the school district itself. *Id.* at T:74-4 to 22.¹⁰

Complainant’s counsel attempted to show that Nikitinsky was in a position to exert pressure on Chanley because he voted on personnel matters in his capacity as Board member, but it was stipulated that as an employee with statutory tenure, Chanley essentially enjoyed lifetime employment, and her salary was fixed in advance by a union contract. *Id.* at T:55-21 to 56-14. In other words, she testified, as a practical matter Nikitinsky was not in a position to influence her employment relationship with the district at all. *Id.* at T:74-23 to 75-24. She also categorically denied any discussions or tacit understandings with Nikitinsky regarding any future advancement or preferential treatment. *Id.* at T:75-25 to 76-10.

¹⁰ The complainant’s counsel also conceded there is no evidence of any invoices from Nikitinsky’s company to the school district. Transcript of October 11, 2022, T:65-3 to 9.

Preuster was a founding member of the PSA and an officer in January 2020 when Nikitinsky took his seat on the Board of Education. *Id.* at T:85-7 to 86-1. She testified that as the 2020-2021 school year was getting underway, she called Nikitinsky and “begged him to step up and take over because I know he has done so much for the community, and I asked him if he would take my role as my son was going to the High School.” *Id.* at T:87-3 to 25. Nikitinsky agreed, and took over as President of the PSA in September 2020. In that capacity, it would have been his responsibility to communicate with the school on PSA-related matters, including fundraisers. *Id.* at T:88-18 to 90-23.

The Middle School’s protocols for communications to the school community on behalf of parent groups were “ever evolving . . . so it was always changing based on really what was going on.” She did not know what specific protocol was in effect during the 2020-2021 school year, but recalled the school was trying to do it less frequently so parents were not being barraged with emails. *Id.* at T:90-24 to 91-25.

Lonczak was Chanley’s secretary at the Middle School since approximately 2010 and retired as of July 1, 2023. Chanley was Principal for the entire time Lonczak worked at the Middle School. Transcript of October 16, 2023, T:6-9 to 8-3. Like Chanley, Lonczak held statutory tenure as of the 2020-2021 school year, did not need to be renewed annually, and could only be removed through

successful prosecution of tenure charges. She also was a member of the union and her annual salary was predetermined by that negotiated contract. *Id.* at T:8-9 to 9-8.

Lonczak confirmed that schools were completely shut down for in-person instruction in March 2020 through the end of that school year. When the 2020-2021 school year got underway, some employees were still working remotely. *Id.* at T:10-10 to 11-16. She recalled Nikitinsky contacting her about communications going out to parents. She had never heard of him before that school year, and did not even know he was a Board member. *Id.* at T:12-2 to 13-2.

Like Preuster and Chanley, Lonczak confirmed that the Middle School's procedures for sending out communications on behalf of parent groups had been evolving over the years, as parents started to raise concerns about the frequency of the emails they were receiving. *Id.* at T:13-12 to 14-1. Lonczak identified her December 2020 email exchange with Nikitinsky (R-12), and agreed he would have received no prior notification of the ground rules. *Id.* at T:17-21 to 18-22. She further testified that while Nikitinsky was President of the PSA starting in September 2020, she and Chanley also received similar emails from Facciponti, President of the PTO. *Id.* at T:23-6 to 14. As with Chanley, Lonczak never felt that Nikitinsky was trying to pressure her or push back on anything she told him, nor did he ever use his position as a Board member to influence her in any way. *Id.* at T:20-7 to 22-2.

Nikitinsky testified on his own behalf. He affirmed the truthfulness of a certification he filed with the Commission in support of his motion to dismiss (R-1), and incorporated those factual representations into his testimony. *Id.* at T:38-5 to 21. He has lived in Monroe Township for 30 years and operated Dot Designing for the past 15. The company manufactures custom apparel, signs and graphics. *Id.* at T:38-22 to 39-18. He agreed that he has a high-profile business in the community with lucrative contracts with the town government and other customers. *Id.* at T:39-19 to 24. While he has done business with the PSA prior to becoming involved with the organization as a member and President, he has never sold any goods to the school district itself. *Id.* at T:49-13 to 22.

Nikitinsky set the record straight on his email address. “[REDACTED]” has been his personal email address for many years, and the one he used to correspond with the district as a parent long before he ever ran for the Board. His company’s email address is info@dotdesigning.com. *Id.* at T:43-13 to 44-24.

Nikitinsky has three children in the Monroe school system. Going into the 2020-2021 school year, his eldest daughter was starting Middle School. *Id.* at T:39-15 to 40-14. In September 2020, Preuster and Chrissy Skurbe, another officer of the PSA, asked him to run the organization that year as their own children were leaving the Middle School for the High School. It had been a challenge getting

parental involvement in the PSA during the COVID-19 pandemic, so Nikitinsky agreed to do it because “someone had to step up.” *Id.* at T:44.25 to 45-21. He understood the PSA and the PTO to be private organizations, independent of the school district which did not control their activities or select their leaders. *Id.* at T:49-23 to 50-9.

Due to the pandemic, the PSA did not have any meetings, and was not allowed in the schools. In October 2020, Nikitinsky came up with the idea of creating a website with an online store to conduct fundraisers, which went live on November 13, 2020. *Id.* at T:52-1 to 53-1. The online store would sell different types of spirit wear. Fundraisers would be promoted through the Middle School’s parent email system. His company manufactured and donated products sold at the store, with all proceeds going to the PSA, and was paid nothing. *Id.* at T:53-4 to 54-2.

Customers would place an order on the website and make payment to a PayPal account. Nikitinsky did not involve himself in the PSA’s finances and had no access to the organization’s bank account. Nor did he know the details of how funds were transferred from PayPal to the PSA bank account, all of which was handled by Crowley. Nikitinsky was informed that customers would have to pick up their purchased goods at Dot Design’s business location because the PSA was not allowed in the schools. *Id.* at T:54-13 to 56-16, 102-25 to 103-12.

As Nikitinsky testified, his wife Marianne is the majority owner of Orange Media Group, which controls all of his businesses' internet sites, and maintains offices at the same address as Dot Designing. *Id.* at T:51-8 to 20. He refuted Aziz's testimony that his wife was an officer of the PSA, and testified that any documents saying otherwise were inaccurate. *Id.* at T:50-10 to 51-7.

Nikitinsky reviewed the December 2020 email exchange with Lonczak that was the foundation of the complainant's case. (R-12) He had not been involved in any parent organizations when his children were in elementary school, but frequently received email communications on behalf of those organizations promoting spirit wear, sometimes as often as twice a day *Id.* at T:47-2 to 22. Upon taking over the PSA, no one had told him anything about how frequently emails could be sent to parents at the Middle School. Once he was told, he responded, simply, "Okay, no problem." There was no objection, pressure or pushback. *Id.* at T:48-15 to 49-12.

None of the emails sent out by the school mentioned Nikitinsky's company name, nor was his company name or logo on any of the items sold. *Id.* at T:56-17 to 57-4. At no time from September 2020 to February 2021 did he ever attempt to use his position as a Board member to influence, pressure or otherwise direct the actions of Chanley or any of her staff at the Middle School. *Id.* at T:58-21 to 59-2.

Nikitinsky addressed the meeting Chanley conducted with him and Facciponti from the PTO, and confirmed that he never accepted Chanley's proposal for him to sell goods to the PTO at cost, and never even responded to Facciponti's email. *Id.* at T:65-8 to 66-2.

Nikitinsky denied using the PSA website to generate additional business or good will, even if all the goods were donated, noting that with his already-high profile in the community he did not need it. *Id.* at T:117-25 to T:118-9.

Discussion

This case brings to mind the old adage, no good deed goes unpunished. Nikitinsky is a generous, public-spirited community member who has been subjected to an unfounded attack by a disgruntled, unsuccessful candidate for the Board. Aziz, the original complainant, had no personal knowledge of any of the material facts on which her complaint was based. Fresh off her defeat at the polls, she frantically submitted an OPRA request hoping to turn up some dirt on Nikitinsky, and jumped to unwarranted conclusions based solely on her view of several emails taken out of context. For the following reasons, the Commission has not met its burden of proving a violation of any of the provisions of the School Ethics Act.

We begin by reviewing the required elements of the charges at issue in this case. *N.J.S.A.* 18A:12-24(a) requires proof that Nikitinsky's business interests, or

those of his wife, were “in substantial conflict with the proper discharge of his duties in the public interest.” *N.J.S.A.* 18A:12-24(b) requires proof that he “use[d] or attempt[ed] to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.”

N.J.S.A. 18A:12-24(c) requires proof that “act[ed] in his official capacity” in any matter where he, his wife or his business “ha[d] an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment.” A violation may also be shown if he “ac[ed]t in his official capacity” in any matter where he, his wife or his business “ha[d] a personal involvement that is or creates some benefit to” him or his wife.

N.J.S.A. 18A:12-24.1(f) requires proof that Nikitinsky “surrender[ed] [his] independent judgment to special interest or partisan political groups or . . . use[d] the schools for personal gain or for the gain of friends.” The Commission’s regulations further require “[f]actual evidence . . . that [Nikitinsky] took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that [he] used the schools to acquire some benefit for [himself], a member of [his] immediate family or a friend.”

These four charges are all different variations on the same theme -- that Nikitinsky exerted undue influence on Chanley and her staff, throwing his Board member weight around to promote his private business interests. As we will show, the evidence fell far short of proving these allegations. In fact, the testimony and evidence adduced on the complainant's own case affirmatively disproved them.

Little weight can be accorded Aziz's testimony. Distraught over her defeat in the November 2020 school election, she set upon a mission to discredit Nikitinsky whom she blamed for her loss. Over the year leading up to her run for the Board she administered a Facebook page, Monroe Township Education, which often posted negative stories about then-current Board members. (R-1, ¶ 5)¹¹ She was especially bitter because her campaign spent over \$16,000 while her opponents only spent around \$5,000 and defeated her.¹²

Nikitinsky's company provided lawn signs for Aziz's opponents' campaign and it is clear, from her behavior and her many Facebook posts, that she believed Nikitinsky's involvement contributed to her defeat. (R-1, ¶ 5) Even before the election, she posted a message on Facebook announcing she had filed a complaint

¹¹ R-1 was a certification Nikitinsky filed with the Commission in support of his motion to dismiss the complaint. He attested to its truthfulness at the hearing, incorporated its representations into his testimony, and was available for cross-examination concerning it.

¹² Nikitinsky was already on the Board and not on the ballot for re-election that year, but Aziz referred to her opponents as Nikitinsky's "preferred candidates." Transcript of October 11, 2022, T:21-6 to 7, T:39-22 to 41-10.

against Nikitinsky with the New Jersey Election Law Enforcement Commission. (R-1, ¶ 6) After she filed her complaint with the School Ethics Commission in early February 2021, she continued her campaign of harassment by publicizing her complaint to the school community in an effort to hurt Nikitinsky and his business, and to discourage community organizations from having anything to do with him or his business. (R-1, ¶ 7)

Aziz's motives aside, the evidence in support of her charges rested on a shaky foundation from the start. She had no first-hand knowledge of any of the events alleged in her complaint. She filed it based entirely on her reading of emails between Nikitinsky and the Middle School staff she obtained in response to an OPRA request, and from Nikitinsky's financial disclosure forms filed with the Commission. She testified that these documents convinced her that Nikitinsky acted unethically, but the testimony from every other witness, including those called on the prosecution's case, refuted the charges.

The fundamental premise of the complaint was that Nikitinsky used his position as a Board member to pressure the Middle School staff to leverage his access as PSA President to generate revenue for his private business. No evidence was introduced at the hearing to support the claim that he profited by selling goods on the PSA website, and the PSA's bank records (P-1) unmistakably confirmed that

Nikitinsky and his company donated all goods sold by the PSA during his tenure as President and were paid nothing, not even reimbursement for costs.¹³

The sole support for the allegation that Nikitinsky pressured Chanley and were staff was a series of emails in the fall of 2020. *See* P-4, P-5, P-6. Even on their face, these emails did not support the Commission's claim, and the testimony from the Commission's own witnesses affirmatively disproved it.

To begin with, Aziz assumed -- incorrectly -- that Nikitinsky emailed the Middle School staff from his business address. However, the undisputed evidence was that "[REDACTED]," the email account Nikitinsky used in those communications, was his *personal* email address, the same one he used for years before he ran for the Board to communicate with his children's schools as a parent. His *business* email address was info@dotdesigning.com.

The substance of those emails was all entirely appropriate to his role as PSA President which, by all accounts, required him to interact with school staff to coordinate announcements about PSA activities and fundraisers. For proof of this,

¹³It was undisputed that earlier in 2020, the PSA did purchase some goods from Nikitinsky's company, but for several reasons this was irrelevant to the case before the Court. First, the allegations of the complaint dealt exclusively with Nikitinsky's actions as President of the PSA commencing in September 2020. There were no allegations of any prior misconduct. Second, even if there were any allegations of prior misconduct, they were beyond the 180-day limitations period of *N.J.A.C.* 6A:28-6.5(a)(1). Finally, and most importantly, there would have been nothing unethical about Nikitinsky selling goods to the PSA, a private 501(c)(3) organization not run or controlled by the Board, as long as he did not use his Board position to pressure the PSA to buy from him.

one need look no further than the numerous emails from Facciponti, the PTO's President, to school staff dealing with similar issues on behalf of her own organization.¹⁴

As the testimony established, the district's schools used various email platforms to send mass communications to parents about school-related events. By all accounts, the Middle School's procedure for sending out those emails was constantly evolving. Whenever one of its parent organizations got new leadership, there also was a learning curve as those new officers got up to speed on the school's protocols.

Prior to the 2020-2021 school year when Nikitinsky took over as President of the PSA, the Middle School would sometimes reach out to the leaders of the PSA and the PTO to advise them how and when emails would be sent out to parents that school year. For example, as the 2019-2020 school year was getting underway, the school wrote to leaders of both organizations informing them that emails from their organizations would be sent out to parents once per week. (P-3)

Normal routines at the district's schools were significantly disrupted in March 2020, when the COVID-19 pandemic closed schools down for in-person instruction. By the start of the 2020-2021 school year in September 2020, the pandemic was still raging. The Middle School was gradually returning to normal

¹⁴See R-2 at 56-81, 118, 120-22, 127-29, 137-42, 144, 151-52.

but families who did not feel comfortable sending their children to school were afforded a remote option, and some staff continued to work remotely as well. The PSA and the PTO were not allowed to access the building that school year and had to conduct all of their activities off campus or remotely.

Nikitinsky's eldest child was entering sixth grade at the Middle School that September. He had no prior involvement with the parent organizations at his children's elementary school but recalled receiving emails promoting fundraisers sometimes as often as twice a day. When he took over as President of the PSA in September 2020, the Middle School staff did not inform him of the protocols for communicating with parents as they had done in September 2019, so he had no advance guidance on the ground rules.

Since the PSA was not permitted entry to the school for its fundraisers that year, Nikitinsky devised a website for the PSA to conduct fundraisers through an online store. When the website went live in mid-November, Nikitinsky emailed Lonczak requesting that an announcement be sent out alerting parents to the "Black Friday" fundraising sale at the online store. (P-4) Nothing in that announcement mentioned, much less promoted, Nikitinsky's business. There was a follow-up email exchange (P-5) addressing the format and timing of the announcement, which did not mention Nikitinsky's business either.

On December 1st, Nikitinsky emailed Lonczak asking if the office could send the announcement out again. Initially, Lonczak agreed, but then replied further that the school was only sending out announcements every other week due to concerns about inundating parents with communications from the school. (R-12) (This was a change from the once-a-week schedule during the 2019-2020 school year, *see* P-3, but Nikitinsky would not have known that.) As is clear from Nikitinsky 's response -- "ok no problem" -- he accepted these instructions without any objection or pushback. Both Lonczak and Chanley testified, without rebuttal, that Nikitinsky never attempted to pressure them to promote his business, or to deviate in any way from their procedures for emailing parents on behalf of the PSA.

The complainant presented no evidence that Nikitinsky's business name or logo were mentioned in any of the PSA's announcement regarding its online store, on any of the products sold in its fundraisers, or in any other manner. Instead, the complainant testified that customers were directed to pick up their merchandise from a location that happened to be Nikitinsky's business. For reasons apparent from the record, that was entirely reasonable under the circumstances and not an ethical violation.

Since the PSA was barred from the school building that year due to the COVID restrictions, Nikitinsky was informed that purchases would have to be

picked up at his business address instead of at school. On cross-examination, the Deputy Attorney General unsuccessfully attempted to show Nikitinsky attempted to parlay these pick-up encounters into marketing opportunities for his business. As Nikitinsky testified, however, customers merely showed up to retrieve their merchandise and left. He and his staff did not engage in any marketing activities, he had no access to their contact information, and he secured no benefit from this pick-up arrangement.

The complainant relied on another email from February 2021 to prove that Chanley was showing favoritism to the PSA over the PTO, but that claim rang hollow as well. The complaint alleged:

[T]he MTMS PSA is not the only parent organization at this middle school. The middle school also has the MTMS PTO, which is another parent organization with the same mission as the MTMS PSA. However, Principal Chari Chanley has given preference to Mr. Nikitinsky's MTMS PSA. In fact, after the last election, the middle school administration has asked the MTMS PTO to work with the MTMS PSA so both organizations can use the same vendor -- Dot Designing. In fact, Mr. Nikitinsky has offered to sell merchandise, at cost, to the MTMS PTO so no other printing business could compete with his. . . . [Complaint, at 2.]

The sole evidence in support of this allegation was a February 9, 2021 mail from Facciponti, President of the PTO, claiming that "Adi's printing business was able to print the tiles for us at no cost." (P-7)

Facciponti did not testify at the hearing so her email was hearsay, but Chanley and Nikitinsky both gave un rebutted first-hand testimony about what occurred. The PSA and the PTO were competing organizations and there was friction between them. The Superintendent asked Chanley to de-escalate this tension so she suggested that Nikitinsky's company provide goods at cost for a PTO fundraiser as a goodwill gesture. It was not Nikitinsky's idea, he never volunteered to do so, and, as he testified, it never happened.

A charge under *N.J.S.A.* 18A:12-24(a) requires proof that the Board member was involved in some organization that conflicted with his duties as a Board member. Past Commission rulings make clear that there is nothing unethical about a school board member serving as the leader of a parent organization such as MTMS PSA. *See, e.g.,* Advisory Opinion A07-00. The Board's own former General Counsel affirmed these ground rules in a 2015 letter. (R-1, Ex. A) Additionally, as part of respondent's New Board Member Training, he met with the Board's then-General Counsel who outlined what would and would not be a conflict regarding his business and volunteering in the district while serving on the Board. There is no evidence that respondent violated any of the Commission's guidelines in those respects. (R-1, ¶¶ 14, 15)

Compare, for example, *I/M/O Ardie Walser, Teaneck Board of Education*, OAL Dkt. No. EEC 10572-19, Agency Dkt. No. C75-18 (June 27, 2023),

<http://tinyurl.com/5y2xwday>. where a board president violated *N.J.S.A. 18A:12-24(a)* by using his official board position to promote his private tutoring business, apparently with the backing of the board itself. These efforts included emails from the district with a link to his business, directing anyone interested to contact him via email or telephone, as well as a flyer posted on the board's website promoting his business by name.

Nothing of the sort occurred here. Nikitinsky had no contracts with the district itself. Any business dealings he had were solely with the PSA, a private 501(c)(3) organization that was neither run nor controlled by the district. There was no evidence of any interplay between his involvement with the PSA online store fundraisers and his Board position.

The complainant attempted to make the case that Nikitinsky was in a position to pressure Chanley and Lonczak to promote his business because, in his capacity as a Board member, he could approve renewal of their employment and their annual salary. But the evidence proved otherwise since both of them were tenured employees with lifetime employment requiring no annual renewal, and their salaries were predetermined by union contracts negotiated in advance.

As for *N.J.S.A. 18A:12-24(b)*, the evidence in this case focused on Nikitinsky's actions as President of the PSA. The only reference to actions in his official capacity as a Board member was complainant's unpersuasive attempt to

prove he could subtly pressure Chanley and Lonczak by votes affecting their employment relationship.

Nor was there any evidence that Nikitinsky attempted to secure “unwarranted” privileges or advantages. In *Mondsini v. Local Finance Board*, 458 N.J. Super. 290 (App. Div. 2019), the Appellate Division addressed the meaning of “unwarranted” in the Local Government Ethics Law, the statute upon which the School Ethics Act was modeled:

Pursuant to rules of statutory construction, we accord words “their generally accepted meaning.” *N.J.S.A.* 1:1-1. “Unwarranted” is defined as “[h]aving no justification.” Webster’s II New College Dictionary 1240 (3rd ed. 2005). The legislative history of the LGEL provides no further guidance on what is an “unwarranted privilege or advantage,” nor does our review of decisions under the ethics laws of some of our sister states that use identical language. See, e.g., N.Y. Pub. Off. Law § 74 (Consol. 2019); Mass. Ann. Laws ch. 268A, § 23. (2018). In [*In re Zisa*, 385 N.J. Super. 188 (App. Div. 2006)] we defined “unwarranted” consistently with its plain meaning, as a privilege or advantage “that is unjustified or unauthorized, one that would permit the municipal official to obtain something otherwise not available to the public at large.” [385 *N.J. Super.* at 196] (emphasis added).

Mondsini, 458 N.J. Super. at 305-306.

We are unaware of any Commission precedents rejecting the *Mondsini* court’s interpretation of the phrase “unwarranted privileges or advantages.”

Applying it here, there is no evidence that respondent secured any

“unwarranted” privileges or benefits by virtue of his activities as PSA

President. He secured no financial benefit for himself or his business. Nor

was he given preferential treatment over Facciponte, the PTO President, as the evidence showed he was treated the same as her in all respects and received no preferential access or privileges due to his position as a Board member.

We anticipate the complainant will argue that even if no financial gain was sought or secured, respondent's donations to PSA still were unethical because they elevated his business's standing in the community which, in the long run, might enhance its bottom line. There is no support for this legal theory in the School Ethics Act or any of the Commission's decisions, and it would have dangerous implications if accepted.

Board members are highly visible community leaders. By virtue of their countless hours of volunteer service, they might well enjoy heightened respect and admiration from the public they serve. If the complainant's legal theory were accepted by the Commission, one can well imagine the chilling effect it would have on prospective school board candidates who legitimately would fear charges of unethical behavior if their business prospects happen to improve due to their elevated stature in the community.

The evidence in this case establishes that Nikitinsky and his printing business already enjoyed high visibility, respect and appreciation in the community

since well before he ever ran for the Board. This further undercuts any inference that he would have had any reason to exploit his official position.

Like *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c) also requires proof that Nikitinsky “act[d] in his official capacity” as a Board member but, again, there was on such evidence in this case.

With respect to *N.J.S.A.* 18A:12-24.1(f), the complainant produced no evidence that Nikitinsky surrendered his independent judgment to any special interest group or partisan political group or used the schools for personal gain for himself or friends. For the reasons expressed above regarding the other charges, this provision of the Act was not violated either.

Conclusion

The Commission has presented zero evidence to support any of the allegations in Aziz’s precipitously filed complaint. In a recent decision dismissing baseless charges against another Monroe Township Board of Education member, prospective complainants were reminded that the Commission

is not a medium through which vendettas, quarrels, grudges, and sour grapes are to be filed. The filing of Complaints which are designed solely to ‘settle the score’ unnecessarily delay the processing of other Complaints which concern behavior and conduct that may actually violate the Act.

[*Fabiano v. Skurbe*, C50-22 (August 23, 2022), <http://tinyurl.com/uhkmt2av>]

Aziz failed to heed that warning, and as a result Nikitinsky has been forced to endure three years of needless litigation. For other reasons presented above, the complaint should be dismissed.

Respectfully submitted,

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BY: 

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Date: February 2, 2024