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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2436-22

IN THE MATTER OF THE
CERTIFICATES OF THERESA
GUERRIERE, STATE BOARD
OF EXAMINERS, NEW JERSEY
DEPARTMENT OF EDUCATION.

Argued May 21, 2024 – Decided June 13, 2024

Before Judges Smith and Perez Friscia.

On appeal from the New Jersey Commissioner of
Education, Docket No. 10-12/22A.

Oded Weinstock argued the cause for appellant Theresa
Guerriere (Weinstock Levin, attorneys; Oded
Weinstock and Kirsten Leven, on the briefs).

Sadia Ahsanuddin, Deputy Attorney General, argued
the cause for respondent New Jersey Department of
Education, State Board of Examiners (Matthew J.
Platkin, Attorney General, attorney; Janet Greenberg
Cohen, Assistant Attorney General, of counsel; Sadia
Ahsanuddin, on the brief).

PER CURIAM

Theresa Guerriere appeals from the final agency decision (FAD) of the Acting Commissioner of Education (Commissioner) upholding the New Jersey Department of Education State Board of Examiners' (Board) decision revoking her teaching certificates. Having reviewed the record, the parties' arguments, and the applicable legal principles, we affirm in part, reverse in part, and remand.

I.

Guerriere was a teacher with over thirty years of experience working in Jersey City. She held teaching certificates in "Health and Physical Education," "Handicapped [Education]", and "Driver's Education." Guerriere and her husband owned homes in Jersey City and Brigantine. After Superstorm Sandy damaged Guerriere's Brigantine home in October 2012, she applied to the Department of Community Affairs (DCA), Sandy Recovery Division, for relief funds. She requested funds from the "Resettlement Program [(RSP)]" and "the Renovation, Reconstruction, Elevation and Mitigation Program (RREM)." To be eligible for relief funds, the applicant's home had to be a primary residence.

In the applications, Guerriere represented the Brigantine home was her primary residence. Guerriere's RSP application was accepted, and she received \$10,000. During an investigation, the DCA determined the Brigantine home

was not Guerriere's primary residence and required repayment of the funds. Guerriere appealed the DCA's determinations, and the matter was transferred to the Office of Administrative Law (OAL) as a contested matter.

On February 17, 2016, an Administrative Law Judge (first ALJ) issued an initial decision, which the DCA Commissioner adopted, affirming the DCA's \$10,000 recoupment of the RSP funds. The first ALJ determined "[t]he sole issue in th[e] matter [wa]s whether [Guerriere] occupied the [Brigantine home] on or before the date of the storm as a primary residence." He took judicial notice that "Brigantine [wa]s about 100 miles or about two hours from Jersey City." He found "[e]very vital document [driver's license and vehicle registration, tax filings, disability placard, voter registration, and employment] . . . stated that Jersey City was [Guerriere and her husband's] residence, prior to the storm." He also found "it was not until 2013[] that they changed [the address on] most of their vital documents to Brigantine," and those "post-Sandy" changes "were too convenient and self-serving." "Based upon [his] findings of fact and credibility determinations," the first ALJ determined that Guerriere "[wa]s ineligible for the . . . programs because she did not occupy the [Brigantine] property on the date of the storm as her primary residence."

The DCA referred the matter for potential fraud to the Atlantic County Prosecutor's Office. In August 2018, Guerriere was indicted on charges of: third-degree theft by deception, N.J.S.A. 2C:20-4(a); third-degree conspiracy to engage in theft by deception, N.J.S.A. 2C:5-2(a)(1), :20-4(a); and fourth-degree unsworn falsification to authorities, N.J.S.A. 2C:28-3(a). On July 11, 2019, Guerriere was admitted into the pretrial intervention program (PTI) for twelve months. Guerriere's enrollment in PTI was not conditioned on an admission of guilt. After completing community service and paying restitution, she was thereafter terminated early from the program.

On December 19, the Board filed an order to show cause seeking to revoke "all certificates and credentials [Guerriere] h[eld]." In January 2020, Guerriere answered, "request[ing] that either her certificates and credentials remain in good standing and not be revoked or, in the alternative, . . . a hearing." The matter was subsequently transferred to the OAL as a contested case for a hearing, and the parties cross-motivated for a summary decision.

On January 26, 2022, a different ALJ (second ALJ) rendered an initial decision granting the Board's motion and denying Guerriere's cross-motion for summary decision. The second ALJ found Guerriere was collaterally estopped from relitigating "the issue of her primary residenc[e] and misrepresentation of

the same." Further, the second ALJ reasoned the issues were: "central" to the first ALJ's decision and the Board's revocation proceeding; "fully litigated by [Guerriere] to a final decision on the merits"; and "was not appealed." The second ALJ found Guerriere "engaged in conduct unbecoming a teacher" and revocation of her teaching certificates was warranted.

Thereafter, Guerriere filed exceptions to the second ALJ's decision, and the Board replied. On December 9, the Board adopted the second ALJ's findings and recommendations, issuing an order of revocation. The Board found collateral estoppel applied, stating "[the first ALJ] found that Guerriere received Sandy funds after she falsely claimed Brigantine was her primary residence."

On April 5, 2023, following Guerriere's appeal, the Commissioner rendered an FAD upholding the Board's decision. The Commissioner determined "[the second ALJ] and the Board correctly applied the doctrines of res judicata and collateral estoppel with respect to all conclusions of law, findings of fact, and credibility determinations made by [the first ALJ] in the DCA matter." Based on the first ALJ's findings, the Commissioner determined Guerriere was collaterally estopped from relitigating the issues of Brigantine as her primary residence and "[her] assertion on her applications . . . was a material misrepresentation." The Commissioner further found "sufficient evidence in the

record to conclude that [Guerriere] misrepresented her primary residence for the purpose of obtaining relief funds she was not entitled to receive" and the misrepresentation was material.

Guerriere's representation that the Brigantine home was her primary residence was found "not credible" by the Commissioner because Guerriere changed her address to the Brigantine home on documents after the storm. The Commissioner also noted Guerriere had changed her driver's license address back to Jersey City after submitting the applications. Further, the Commissioner found "[t]he record clearly and unequivocally demonstrate[d] that [she] was intentionally creating documents after the fact to support a claim for relief that she knew she was not entitled to receive." Finally, the revocation of Guerriere's teaching certificates was found appropriate.

On appeal, Guerriere presents the following points for our consideration:

POINT I

RES JUDICATA AND COLLATERAL ESTOPPEL WERE INAPPLICABLE TO THE CASE BEFORE [THE SECOND ALJ], THE BOARD, AND THE COMMISSIONER, AS THE ISSUES BEFORE [THE SECOND ALJ], THE BOARD, AND THE COMMISSIONER WERE MARKEDLY DIFFERENT THAN THE ISSUE PREVIOUSLY ADDRESSED AND DECIDED BY THE [FIRST ALJ] AND THE [DCA] COMMISSIONER. AS SUCH, THE GRANT AND AFFIRMANCE OF SUMMARY DECISION

WAS ERROR AND SHOULD BE REVERSED AND REMANDED FOR A FULL TESTIMONIAL HEARING BEFORE A DIFFERENT [ALJ.]

POINT II

[THE SECOND ALJ,] THE BOARD, AND THE COMMISSIONER INCORRECTLY STATED THAT . . . GUERRIERE WAS ATTEMPTING TO IMPOSE A HIGHER BURDEN OF PROOF ON THE BOARD, WHEN . . . GUERRIERE NEVER ATTEMPTED TO DO SO IN ANY OF HER FILINGS.

POINT III

[THE SECOND ALJ,] THE BOARD, AND THE COMMISSIONER IGNORED THAT THERE WAS NEW EVIDENCE PRESENTED BY . . . GUERRIERE, WHICH HAD A MATERIAL BEARING ON HER STATE OF MIND.

POINT IV

[THE SECOND ALJ] ERRED IN GRANTING SUMMARY DISPOSITION WITH RESPECT TO THE ISSUE OF THE REVOCATION OF . . . GUERRIERE'S CERTIFICATES IN THIS CASE AND THE BOARD AND [THE] COMMISSIONER ERRED IN ADOPTING THE REVOCATION.

POINT V

[THE SECOND ALJ,] THE BOARD, AND THE COMMISSION[ER] ERRED IN GRANTING [A] SUMMARY DECISION AND IN REVOKING . . . GUERRIERE'S CERTIFICATES WITHOUT PROVIDING . . . GUERRIERE THE

OPPORTUNITY TO PRESENT CHARACTER AND MITIGATION EVIDENCE.

II.

Our scope of review of an FAD is limited. In re M.M., 463 N.J. Super. 128, 136 (App. Div. 2020); see also Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). A reviewing "court ordinarily should not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). In determining if an agency's decision is arbitrary, capricious or unreasonable, we examine "(1) whether the agency's action violates express or implied legislative policies," (2) whether there is substantial evidence in the record to support the agency's decision, and (3) whether in applying the law to the facts, the agency reached a conclusion "that could not reasonably have been made on a showing of the relevant factors." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. 182, 194 (2011)).

"While we must defer to the agency's expertise, we need not surrender to it." In re Thomas Orban/Square Props., LLC, 461 N.J. Super. 57, 72 (App. Div.

2019) (quoting N.J. Chapter of Nat'l Ass'n of Indus. & Off. Parks v. N.J. Dep't of Env't Prot., 241 N.J. Super. 145, 165 (App. Div. 1990)). The party challenging the FAD has the burden to demonstrate grounds for reversal. See Lavezzi v. State, 219 N.J. 163, 171 (2014).

We "afford[] a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Ibid. (quoting City of Newark v. Nat. Res. Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Stallworth, 208 N.J. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). An appellate court does not automatically accept an agency's interpretation of a statute or a regulation, and reviews strictly legal questions de novo. See Bowser v. Bd. of Trs., Police & Fireman's Ret. Sys., 455 N.J. Super. 165, 170-71 (App. Div. 2018).

III.

We first address Guerriere's contention that the Commissioner's decision, which adopted the second ALJ's findings, erroneously determined that collateral estoppel barred relitigating her alleged material misrepresentations regarding her primary residence. Guerriere argues collateral estoppel was wrongly applied

to find she made material misrepresentations, which were unbecoming of a teacher and cause to revoke her teaching certifications. Specifically, Guerriere posits that the first ALJ did not address the issue of her conduct, which was the central dispositive issue before the Board. Further, as her conduct was not adjudicated, Guerriere argues the Commissioner wrongly determined her "state of mind and whether [she] acted in an intentional or purposeful manner in filing the application[s] or made an honest mistake."

Arguing the relevancy and prejudice of the collateral estoppel state of mind determination, Guerriere references the Commissioner's reliance on two administrative decisions supporting revocation of her certifications, State Bd. of Exam'rs v. David Toler, No. EDE 5946-02, 2004 WL 2282009, at *1 (Sept. 23, 2004), and In re Certificates of Shauna E. Morgan, No. EDE 11193-14, 2019 WL 2998767, at *1 (May 23, 2019), which specifically involved findings of intentional conduct. Thus, Guerriere contends her state of mind when making the representations regarding her primary residence was highly relevant. She argues the application of collateral estoppel was arbitrary, capricious, and unreasonable because the proceedings addressed different issues, and her preclusion from refuting the alleged unbecoming conduct deprived her of a fair hearing.

Collateral estoppel is an equitable principle which provides "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, [then] the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 85 (2012) (first alteration in original) (quoting Restatement (Second) of Judgments § 27 (Am. L. Inst. 1982)). The doctrine facilitates the public policy interest in "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness." Ibid. (quoting Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 522 (2006)). "[C]ollateral estoppel applies to the [FADs] of administrative agencies." Mansoldo v. State, 187 N.J. 50, 60 (2006) (quoting Hennessey v. Winslow Twp., 183 N.J. 593, 599 (2005)).

The collateral estoppel doctrine applies if:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Winters, 212 N.J. at 85 (quoting Olivieri, 186 N.J. at 521) (emphasis added).]

"The doctrine will not be applied, however, where it is unfair to do so." Fama v. Yi, 359 N.J. Super. 353, 359 (App. Div. 2003).

Relevantly, the action before the first ALJ was Guerriere's appeal of the DCA's recoupment of relief funds, as she argued the Brigantine home was her primary residence. The first ALJ framed the appeal as follows: "The sole issue in this matter is whether [Guerriere] occupied the [Brigantine home] on or before the date of the storm as a primary residence." Further, the first ALJ's initial decision, as upheld by the DCA Commissioner, found Guerriere "did not meet her burden of proof" and "[c]onversely, the DCA met it burden of proof in the [r]esettlement-refund action." The record does not support that Guerriere's misrepresentations were litigated before the first ALJ. Further, the first ALJ's decision included no specific findings regarding Guerriere's state of mind or the nature of her misrepresentations.

Therefore, the issue before the Commissioner cannot fairly be discerned as "identical to the issue decided in the prior proceeding" before the first ALJ. Winters, 212 N.J. at 85. The Board concedes the Commissioner's decision relied on the "determin[ation] that collateral estoppel should be applied to preclude

relitigation of the issues of Guerriere's primary residence at the time of [Superstorm] Sandy and her misrepresentations regarding [her primary residence.]" Our review of the record does not support the Commissioner's findings that "[i]n the DCA matter, [the first ALJ] found" Guerriere's "assertion on her applications that the Brigantine property was her primary residence was a material misrepresentation." Relevantly, because collateral estoppel was found, Guerriere was foreclosed from disputing the facts surrounding the alleged misrepresentation and presenting mitigating evidence. Thus, we conclude the Commissioner's finding of collateral estoppel to sustain the underlying foundation of unbecoming conduct was arbitrary, capricious, and unreasonable.

For the sake of completeness, we also conclude that res judicata did not apply to bar litigation of the issue of Guerriere's alleged misrepresentation because the proceedings before the first and second ALJs did not involve the requisite "substantially similar or identical causes of action and issues, parties, and relief sought." See Walker v. Choudhary, 425 N.J. Super. 135, 151 (App. Div. 2012).

Next, Guerriere argues a hearing was required as a factual dispute regarding her state of mind exists and she was foreclosed from introducing evidence. We agree. Plainly stated, the issue of Guerriere's state of mind in

allegedly misrepresenting her primary residence was at the heart of the determination that her conduct was sufficiently unbecoming of a teacher to revoke her teaching certificates. We note Guerriere posits the Commissioner failed to consider a letter dated January 7, 2019 by her accountant which stated he "inadvertently[] neglected to change the address from Jersey City to Brigantine" in her tax returns during the relevant years. Nor was she permitted to "present character and mitigation evidence . . . [after] an unblemished thirty-year teaching career." Here, because there exists a material dispute regarding Guerriere's misrepresentations and conduct, which served as the basis of the revocation of her teaching certificates, a hearing is required. See N.J.A.C. 1:1-12.5(b). For these reasons, we part ways with the Commissioner's finding that substantiated material misrepresentations constituted unbecoming conduct under N.J.A.C. 6A:9B-4.4(a).

Finally, we conclude the Commissioner correctly found collateral estoppel applied to the determination that Guerriere's Brigantine home was not her primary residence. As Guerriere concedes, "[t]he Commissioner was correct that [the first ALJ] settled the legal issue of whether the Brigantine residence constituted . . . Guerriere's primary residence and thereby [was not] entitled . . . to disaster relief funds." Therefore, collateral estoppel was correctly


applied to preclude relitigation of her primary residence. Further, we note Guerriere does not dispute an intentional misrepresentation would qualify as conduct unbecoming of a teacher, but argues she made an "honest mistake." Additionally, the Commissioner correctly found "the Board is not required to demonstrate that [Guerriere] violated any specific statute or engaged in criminal activity; rather, the Board must show that [Guerriere] engaged in conduct that violated the . . . standard of conduct for teachers." See Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 13-14 (2017) (noting that "a finding of unbecoming conduct need not be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior" (quoting Karins v. Atl. City, 152 N.J. 532, 555 (1998)) (internal quotation marks omitted)).

We therefore reverse the Commissioner's decision that collateral estoppel applied to conclusively determine Guerriere made material misrepresentations supporting conduct unbecoming of a teacher warranting revocation of her teaching certificates and affirm that she was collaterally estopped from relitigating her primary residence was not the Brigantine home. In remanding the matter for further proceedings consistent with this opinion, we express no opinion as to the ultimate outcome.

To the extent not addressed, the parties' remaining arguments lack sufficient merit to warrant discussion in our written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELATE DIVISION