

Appellate Court rules that for-profit technical school is not automatically exempt from New Jersey Consumer Fraud Act under learned professional exception

By Ruth A. Rauls and David C. Apy

SUMMARY

The New Jersey Appellate Court holds that a for-profit technical school cannot invoke the “learned professional” exception to the New Jersey Consumer Fraud Act. This decision exemplifies that career training schools are not immune from liability under the NJ CFA.

The New Jersey Appellate Division holds that the learned professional exception to the New Jersey Consumer Fraud Act (“NJ CFA”) cannot bar a for-profit technical school graduate from suing over allegedly misrepresented job prospects. In *Suarez v. Eastern International College*, A-2705-10 (August 23, 2012), the Appellate Division reversed the lower court’s grant of summary judgment dismissing plaintiff’s complaint, and reinstated plaintiff’s suit against the technical school for violations of the NJ CFA.

The lawsuit was brought by a plaintiff who had enrolled in the school’s diagnostic medical ultrasound technician program after an admissions representative told her that upon graduation she would be able to perform ultrasounds on patients in hospitals and clinics and earn \$65,000 per year. The plaintiff alleges that these representations were false because in order to obtain employment in this field, it was necessary to obtain an additional certification. Plaintiff was not eligible upon graduation to take the examination required to obtain the necessary certification because the for-profit technical school lacked the required accreditation. Thus, plaintiff cannot, as a practical matter, either attain the credentials necessary to be eligible to take the certification examination or obtain employment as an entry level sonographer.

Although the trial court rejected defendant’s argument that the school fell within the “learned professionals” exception of the NJ CFA on procedural grounds, namely it was not pleaded as an affirmative defense and no motion to amend had been sought, the Appellate Court addressed the merits of the argument. The Appellate Court first explained the reasoning underlying the judicially-crafted “learned professional” rule, specifically that certain professionals are subject to regulation specifically applicable to their profession, which might conflict with the regulation of activities under the NJ CFA. If the “professional” is not subject to regulation, then the rationale for the exception no longer applies. The Appellate Court found that in this case, the for-profit technical school identified no regulatory body that defines uniform standards for the services it provides or its activities as a for-profit training school. Accordingly, there was no basis to apply the exception.

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Accordingly, in actions involving the NJ CFA, if a defendant seeks to invoke the learned professional exception, the defendant must identify the particular regulatory body that defines uniform standards. With regard to for-profit technical or training schools, if there is no identified regulatory body, these institutions could face a variety of potential NJ CFA claims for alleged misrepresentations contained on their websites, as well as other information provided to students in brochures and by school representatives. As the Appellate Court reiterated, unlike a common law fraud claim, claims for misrepresentations under the NJ CFA do not require proof of reliance or intent. Thus, this decision exemplifies that career training schools are not immune from liability under the CFA and must carefully review all representations made to potential students.

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