NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2553-13T3

IN RE: DECEMBER 3, 2013 DENIAL OF SHARLENE HARRIS'S REQUEST TO VACATE SEPTEMBER 6, 2007 CONSENT ORDER AND REMOVE IT FROM THE PROFESSIONAL COUNSELOR EXAMINERS COMMITTEE'S WEBSITE.

Argued April 28, 2015 – Decided June 12, 2015

Before Judges Hayden and Tassini.

On appeal from the New Jersey Division of Consumer Affairs, State Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee.

David J. Libowsky argued the cause for appellant Sharlene Harris (Bressler, Amery & Ross, attorneys; Mr. Libowsky, on the brief).

Carmen A. Rodriguez, Deputy Attorney General, argued the cause for respondent State Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee (John J. Hoffman, Acting Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Rodriguez, on the brief).

PER CURIAM

Appellant Sharlene Margulis Harris seeks to vacate a consent order she entered into with respondent Professional Counselor Examiners Committee (Committee), part of the State

Department of Law & Public Safety, Division of Consumer Affairs. See N.J.S.A. 45:8B-36, -37, -38. Appellant, by entering into the consent order, acknowledged that she had unlawfully engaged in the unlicensed practice of professional counseling. See N.J.S.A. 45:8B-39(a). After entry into the consent order, the Committee approved appellant as a licensed associate counselor (LAC) and, thereafter, as a licensed professional counselor (LPC). See N.J.S.A. 45:8B-36 ("Licensed associate counselor," "Licensed professional counselor" defined). The consent order is on the Committee's website, making it accessible via the internet. Appellant alleges that accessibility via the internet has interfered with her ability to gain employment and she seeks to have the Committee remove the consent order from its website.

The Committee points out that appellant voluntarily entered into the consent order. Under the Open Public Records Act (OPRA), the Committee is a "[p]ublic agency" and the consent order is a "[g]overnment record" and the Committee submits that accessibility of the consent order is consistent with public policy as declared in OPRA. N.J.S.A. 47:1A-1.1. See N.J.S.A. 47:1A-1 to -13. Accordingly, the Committee rejected appellant's demand and it submits that appellant cannot show that its action was unfounded in law or in fact. We agree with the Committee, find no basis to grant relief, and affirm.

The Professional Counselor Licensing Act (PCL Act) states that no person shall engage in regulated counseling unless licensed to do so pursuant to the PCL Act. See N.J.S.A. 45:8B-36, N.J.S.A. 45:8B-39(a). The PCL Act authorizes the Committee to review applicants' qualifications for licensure and sets forth standards for licensure as an LAC and LPC. N.J.S.A. 45:8B-40, -41, -42. An applicant for licensure as an LPC, among other requirements, shall submit to the committee evidence that she has had "at least three years of supervised full-time counseling experience in a professional counseling setting acceptable to the Committee." N.J.S.A. 45:8B-40(d). N.J.A.C. 13:34-10.2 defines the professional counseling experience. The PCL Act does not apply to persons who are unlicensed, but who provide or volunteer counseling "for public or private nonprofit organizations or charities." N.J.S.A. 45:8B-48(f).

Between 2004 and 2006, appellant, then unlicensed, worked for Mentor Network, a for-profit entity, counseling children pursuant to a contract with the Division of Youth and Family Services (DYFS, now the Division of Child Protection and Permanency). Appellant alleges that a licensed psychiatrist and licensed psychologist supervised her at Mentor and that Mentor advised her that, because she was working with DYFS clients, she did not need to be licensed. However, this advice is contrary

to the above-cited statutes, so appellant could not have reasonably relied on it.

In 2006, appellant's employment with Mentor ended, she applied for licensure, and on June 26, 2006, the Committee mistakenly advised her that her 2250 hours with Mentor were approved for purposes of her application. N.J.S.A. 45:8B-40, -41. In 2007, appellant submitted to the Committee her application for licensure as an LAC, showing her hours worked for Mentor. By letter dated March 23, 2007, the Committee notified appellant that it had mistakenly advised her that her hours with Mentor were approved and it appeared that she had engaged in unlicensed counseling at Mentor. Thereafter, appellant and a Deputy Attorney General negotiated to avoid the Committee's issuance of a formal complaint. On August 16, 2007, the Committee approved appellant as an LAC.

On September 6, 2007, appellant and the Committee entered into the consent order wherein appellant acknowledged that she had unlawfully engaged in the unlicensed practice of professional counseling. The consent order required appellant to immediately cease and desist from offering or engaging in professional counseling in violation of N.J.S.A. 45:8B-39(a) unless and until licensed or certified in the State of New Jersey to provide mental health counseling or engage in

professional counseling practice pursuant to N.J.S.A. 45:8B-48, and further ordered that none of the supervised hours performed by appellant in any for-profit setting would count toward the mandatory hours of supervised experience required for approval as a LPC. Appellant completed the requirements for licensure and on February 10, 2009, the Committee approved her as a LPC.

By letter dated September 12, 2013, appellant requested that the Committee vacate the consent order and remove it from its website. Appellant alleges that the consent order undercuts her credentials, makes it appear that she is not licensed and that she is fraudulently holding herself out as an LPC, and has affected her ability to seek employment. Appellant also argues that the consent order and its presence on the internet no longer serve the public interest.

In OPRA, the Legislature declared "the public policy of this State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, . . . and any limitations on the right of access accorded by [N.J.S.A. 47:1A-1 to -13] . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1.

In Burnett v. County of Gloucester, 415 N.J. Super. 506, 512 (App. Div. 2010), we held that, consistent with the intent

of OPRA, agreements settling claims between claimants and governmental entities are government records. Consistent with public policy declared in OPRA, the Committee made the consent order accessible to the public via the internet.

New Jersey's Supreme Court has set forth standards for judicial review of administrative agency decisions:

> The judicial capacity to review administrative agency decisions is limited. Public Serv. Elec. v. N.J. Dep't of Envtl. Protec., 101 N.J. 95, 103 (1985) (citation omitted). Moreover, "[i]n reviewing the factual findings made in an unemployment compensation proceeding, the test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Charatan v. Board of Review, 200 N.J. Super. 74, 79 (App. Div. 1985) (citations omitted).
>
> . . . .
>
> Unless a Court finds that the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed. See In re Warren, 117 N.J. 295, 296 (1989). The Court "can intervene only in those rare circumstances in which an agency action is clearly inconsistent with its statutory mission or with other State policy." George Harms Constr. v. Turnpike Auth., 137 N.J. 8, 27 (1994). Under that standard, the scope of review of judicial review of an agency's action is restricted to four inquiries:
>
> (1) whether the agency's decision offends the State of Federal Constitution;

> (2) whether the agency's action violates express or implied legislative policies;
> (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
> (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
>
> [George Harms Constr., supra, 137 N.J. at 27 (citing Campbell v. Department of Civil Serv., 39 N.J. 556, 562 (1963); In re Larsen, 17 N.J. Super. 564, 570 (App. Div.1952)).]

[Brady v. Board of Review, 152 N.J. 197, 218 (1997).]

The consent order is well-founded in law and in fact and the appellant voluntarily entered into it. The Committee is a public agency, the consent order is a government record, and accessibility of the consent order via the internet is consistent with public policy as declared in the Open Public Records Act. Appellant has not presented competent and credible evidence that accessibility of the consent order via the internet has wrongfully interfered with her obtaining employment. In any event, appellant has not shown that the Committee's actions are arbitrary, capricious or unreasonable or lacking support in the law.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION