

seems to have evolved from likely poor judgment, and self-serving motivations. The telltale trail grew out of an economic development plan, to control of the Commonwealth School of Law Board of Trustees, to the Board of Regents of the Commonwealth of Massachusetts. The welfare of the individual students appeared incidental and did not seem to place high on the roster of priorities, thus the students' rights were neglected and abandoned.

It would appear that Mr. Tsongas has a statutory and fiduciary obligation and responsibility to the students as a member of the Board of Regents and a civil professional responsibility in contract due to gross negligence in which the students were harmed by reliance on his promises, resulting in loss of their property interests.

4. *Are there other responsible persons who may have interfered with contract performance, been contributorily negligent, and caused the denial of due process rights to the detriment of the students and against whom action may be taken?*

Yes, the following played a role for which they may have liability:

Honorable Michael Dukakis—In appointing Paul Tsongas to the Board of Regents, was undoubtedly aware of the Commonwealth School of Law accreditation agenda and Mr. Tsongas' role therein.

Dr. Allen E. Koenig, former president of Emerson College, for gross negligence, breach of contract, and denying due process rights to the students because of his representations that led to the absorption of Commonwealth School of Law, the closing of Emerson Law School, and denial of educational opportunity earlier guaranteed and Juris Doctor degree conferral expected by the students.

Mr. Michael Boland, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning his contractual responsibility to provide the legal education promised.

Ms. Margaret Talkington, former president of Commonwealth School of Law, for innocent misrepresentation, nondisclosure, and breach of contract for abandoning her contractual responsibility to provide the legal education promised.

Mr. Donald Berman, Acting Dean, Emerson Law School and member of the Board of Trustees of Commonwealth School of Law, for negligent misrepresentation, conflict of interest, concealment, breach of contract, contract performance interference and denial of due process rights to the students because of the events and his positions previously stated.

Ms. Judy Jackson, Commonwealth School of Law Dean and Associate Dean of Emerson Law School, for misrepresentation, conflict of interest, concealment, contract performance interference and denial of due process rights to the students because of opportunism and likely self-serving motivations.

Ms. Regina Faticanti, student representative to the Board of Trustees, Commonwealth School of Law, and agent for Emerson Law School, for negligent misrepresentation, conflict of interest, concealment, and contract performance interference. Ms. Faticanti, because of perceived self-interest and personal ambitions, is seen as not having fulfilled her responsibilities in adequately representing the students.

Mr. Roland Hughes, president of the Student Bar Association of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important information and events affecting Commonwealth School of Law and abandoning responsibility as an elected student representative.

Mr. Stephen Moses, president of the Senior Graduating Class of Commonwealth School of Law for innocent misrepresentation, concealment and contract performance interference for failing to properly apprise the students of important events and information affecting their status and abandoning responsibility as an elected student representative.

Applicable Statutes

U.S. Const. amend. 1
U.S. Const. amend. 14 Section 1
42 U.S.C. Section 1983 (1976)

Annotated Laws of Massachusetts

Chapter 15A, "Board of Regents of Higher Education."

Section 1. Board of Regents; Purpose and Responsibility.

Section 3. Institutions under Board of Regents.

Section 4. Officers and Employees.

Section 5. Powers and Duties.

Section 9. Boards of Trustees of Individual Institutions.

Section 10. Powers and Duties of Boards of Trustees.

Chapter 93A, "Consumer Law."

Chapter 151A, "Fair Educational Practices."

Section 3. Petition Alleging Unfair Practice.

Discussion

Students at institutions of higher education were not afforded meaningful legal protection until *Frank v. Marquette University*, 245 N.W. 125, (1932), (one of the first cases to hold that a private university could not act arbitrarily or unreasonably with regard to its students). Two leading cases removing immunity and allowing students to take action against schools are *Dixon v. Alabama*, 294 F.2d 150, (1961) *Healy v. James*, 408 U.S. 169, (1972). In the latter

Healy case, the Supreme Court, in a commentary by Justice Powell proffered "At the outset we note that state colleges and universities are not enclaves immune from the sweep of the First Amendment." Justice Douglas, in support of the same opinion, advocated the students' need for first amendment protection. Both decisions, *Dixon* and *Healy*, indicate that school authorities no longer have unilateral authority to take arbitrary actions against students, especially when these actions violate the constitutional or legal rights of the students. In *Baldwin v. Zoradi*, 123 Cal. App.3d 175, (1981), a California court removed the perceived legal assumption that colleges and universities exercises power over student's rights.

1. *Mandatory legal precedents have been established recognizing that students are protected by contract theory as consumers of educational services.*

Courts have held that because of their expenditure of time and money, students are entitled to the same protection afforded in other consumer situations, such as consumers of commercial products. See Cahn, "Law in the Consumer Perspective," 122 U.L. Rev. 1 (1963), and Chapter 93A, *Massachusetts General Laws Annotated*. Students expect to be treated reasonably: when these expectations are not met, they seek protection from the judicial and legislative systems. See "Consumer Protection and Higher Education—Student Suits Against Schools," 37 *Ohio St. L.J.* 608, (1976). Students bringing actions are seen as relying upon contract theory, which the courts seem to favor when finding for students. This contract theory suggests an express or implied contract exists between the students and the school. In *Anderson v. Regents of Univ. of Cal.*, 22 Cal. App. 3d 1, (1972), the court ruled that by the act of matriculation and payment of fees, a contract between the student and the state is created. While *Anderson* may have limited the ruling for state schools, *Zumbrin v. Univ. of So. Cal.*, 25 Cal. App. 3d 1, (1972), held that a private university was contractually liable to students. Oral representations of school agents become terms of the contract and were held binding on the school in *Healy and Blank v. Board of Higher Education*, 273 N.Y.S.2d 796, (1966) and see generally Calamari & Perillo, "Law of Contracts," 16-1 to -6, at 581-88 showing specific enforcement of the contract will be permitted where a student can show that damages resulting from the breach are inadequate to compensate for the loss and what was bargained for was unique. [Where this is shown] courts have required that degrees be awarded to students.

In *Zumbrun*, *supra*, and *Lowenthal v. Vanderbilt Univ.*, 7 J. Coll. & U.L. 191, (1981), the obligations of a higher educational institution is seen as contractual to provide the curriculum promised and that the essence of the implied contract is good faith and reasonableness, see also *Olsson v. Board of Higher Education*, 402 N.E.2d 1150, (1980).

Students, in some cases and in order to prevent a school from withholding degrees, have used the estoppel theory, see *Olsson*,