

IN THE SUPREME COURT OF OHIO

Mohamed Bassem Rayess,
Plaintiff-Appellee,

v.

Educational Commission for Foreign
Medical Graduates,
Defendant-Appellant.

Case No. 2011-1933

On Appeal from the Montgomery
County Court of Appeals, Second
Appellate District

Court of Appeals
Case No. CA 24125

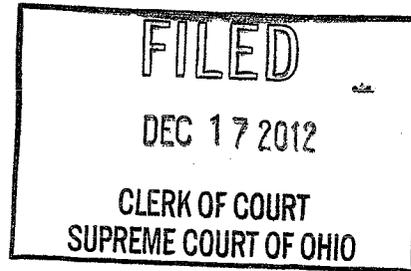
MOTION FOR RECONSIDERATION

Mohamed Bassem Rayess,
P.O. Box 293166
Kettering, Ohio 45429
(937) 439-9425
bassemrayess@aol.com

Pro Se, Plaintiff-Appellee

Steven G. Janik (0021934)
Audrey K. Bentz (0081361) (COUNSEL OF RECORD)
Janik L.L.P.
9200 South Hills Blvd., Suite 300
Cleveland, Ohio 44147
(440) 838-7600- Phone
(440) 838-7601- Fax
Steven.Janik@Janiklaw.com
Audrey.Bentz@Janiklaw.com

Counsel For Defendant-Appellant.



MOTION FOR RECONSIDERATION

Pursuant to S.Ct. Prac. R. 11.2. (B)(4), Plaintiff-Appellee moves the Court for an Order to reconsider its Decision that was entered on December 6, 2012. A Memorandum in Support is attached.

MEMORANDUM IN SUPPORT

A. The Court Erred In Determining That USMLE Pamphlet Did Not Contain Any Promise That The ECFMG Will Provide Four Three-hour Test Books:

The Court stated in its Slip Opinion that the ECFMG-USMLE Pamphlet contains no language that encompasses a promise from the ECFMG to its candidates that each one of them while taking the exam will have four three-hour books.

If this Court returns to Plaintiff-Appellee Brief on page 1, Appellee stated that the ECFMG administers the USMLE part 1 and part 2 under contract with the United States Medical Licensing Examiners. Exhibit 1 of his Brief, Supp.1 states that the USMLE is a joint program of the federation of state medical boards of the U.S., Inc., and the National Board of Medical Examiners. Among them of course, the Ohio State Medical Board. On the same Exhibit, Supp. 10 it says: "*Testing Conditions.....Policies and Procedures to govern administration of the examinations have been established to ensure that no examinee or group of examinees receives unfair advantage on the examination, inadvertently or otherwise. ***** on page 23 and 24.*" This paragraph if it means anything it means that in the contract between the USMLE and the ECFMG, the USMLE imposed on the ECFMG that it should promise that every candidate should the same amount of time which is three hours for each of the four books. The contract that Appellee is alleging here that was established between him and the ECFMG is dependant

contract. In other words, Appellee's contract is dependant on the contract between the USMLE and the ECFMG. One might not see the enforceable language in the brochure but it is discernable because if the USMLE did not impose on the ECFMG that it should provide or promise all its candidates to provide the said time for the said books, there will be no way to provide the candidates with equal time, and consequently, they will be not treated equally. Having not all the candidates treated equally, especially on the basis of race, religion, national origin.....etc will lead to the conclusion that the contract between the ECFMG and the USMLE is unconstitutional, illegal and by necessity it will be invalid. See, e.g. *State v. Executor of Buttles (1854)*, 3 Ohio St. 309, paragraph seven of the syllabus. That is not possible because that would render the entire certification process by the ECFMG illegal.

On the other hand, assuming that happened, what the Court can do the illegal components can be served from another legal contract that complies with the constitution of the United States and the constitution of Ohio, to make the contract between the USMLE and the ECFMG legal in a way that force the ECFMG to promise its candidates that they will get all the same amount of time for all the said books of the exam. See *Toledo Police Patrolmen's Assn., Local 10 v. City of Toledo*, 94 Ohio App. 3d 734; 641 N.E.2d 799 (1994).

In conclusion the Court will conclude that it is imperative that there is a promise from the ECFMG to its examinees to provide them with equal and even time for the four books for the said exams.

The English language is a live language and like any other language is not abstractive.

Take for example the word "OK", it could have several meanings depending on the facial

expression of the person who said it. In French language, the mother of the English language, the word "Ça Va" which means "Ok" might have several meanings depending on the facial expression of the person who said it. Likewise, the statement that was put in the ECFMG's Pamphlet that the USMLE part 1 consists of four books, each is a three hour book exam can be interpreted according to the constitutionality of the USMLE contract with the ECFMG as a promise.

Further, if the Court examines Exhibit 6, Supp. 39, the Appellee used the word "agreement" that reflects the occurrence of an agreement after the initial agreement which indicated that all these documents are all stemming from the same transaction and reflecting one agreement according to which Appellee agreed to pay money (issuing checks for the amount of \$ 435.00) for the ECFMG's service. *The Sunday Creek Coal Co. v. The Big Baily Coal Company*, 26 Ohio N.P. (n.s) 117, 1922 Ohio Misc. LEXIS 293, 6*-*7 (C.P. 1922). It is very clearly that these documents form one written contract. In fact the Application and the brochure are one document, because there were sent in the same envelope which Appellee is still having and on the last page of the application, it is been written that the signer should read and agree the information contained in the brochure before signing the Application "Contract" in front of notary public.

One of the most common examples of dependant contract is the Section 8 contract for leasing. If one reads the contract between the lessor and the lessee, and all it says that the two parties agree on the tenancy addendum and to comply with the laws of the United States and each State depending on the location. Then, the tenancy addendum and the entire terms of the said contract are contained in the "HAP" agreement between the landlord and the Section 8 agency, likewise, the contract between the ECFMG's

examinees and the ECFMG is dependant wholly on the contract between the ECFMG and the USMLE.

B. THE COURT ERRED IN COMPARING THE CASE AT BAR WITH OTHER CASES INVOLVING SCHOOLS OF ANY KIND OR WITH LICENSING EXAMS LIKE THE BAR ASSOCIATION EXAMS:

Unlike USMLE part 3, or other licensing exams, timing for the USMLE part 1 and part 2 exams has a fundamental importance. After medical students/examinees complete their passage of the USMLE part 1 and part 2, they forge forward to apply for medical residency facing wide array of possibilities. Each specialty has a different preference from the medical students according to the conditions that put such specialty the candidate in. For example, Ophthalmology is one of the most preferred specialties among the medical students because the income of an ophthalmologist as it could be twice as much as a family practitioner. When medical students petitioned and apply for specialty, their scores on the USMLE part 1 and 2 is something that the program director will look at in evaluating their candidacy. So, few more scores or less on the USMLE part 1 and 2 could change dramatically the life of the medical student by rendering him/her acceptable or not acceptable for the specialty of his/her dreams.

While for USMLE part 3, Bar exam, and other licensing exams the result is reported on pass/fail basis, the time is important for the candidate just for him to pass the exam and nothing else. For example, an examinee could lose a half hour from his exam and still be able to pass, so at the end, one can say that he was not injured, while an examinee for the USMLE part 1 and part 2, based on the explanation above, if he loses any time, he is

injured even if he passes the exam as this will degrade his candidacy towards the specialty of his dreams.

The contract in this case cannot be compared to a contract between a student and his school whereas the student most likely has to agree on taking prolonged courses that cannot be mentioned in its entirety in a brochure. Unlike this case you have one single event an exam book to be completed in three hours, and to be repeated four times in two days.

Not only that some schools have exams with an open time limits for their exams, like some French schools.

C. RAMIFICATIONS OF THE COURT'S DECISION.

The Court's decision could negatively affects the teaching process in the medical field and the enthusiasm to get education in general as it disarms students from a way to get compensated after being in debt for thousands of dollars.

D. CONCLUSION.

The judgment that was entered in this case on December 6, 2012, should be vacated, reversed to affirm the judgment of the court of appeal on the same case.

Respectfully submitted,



M. Bassem Rayess
Appellee,
P.O. box 293166
Kettering, Ohio 45429

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument has been served via first class U.S. mail, postage prepaid, upon Audrey K. Bentz, JANIK L.L.P., counsel of record for Defendant-Appellant, 9200 South Hills Blvd, Suite 300, Cleveland, Ohio 44147-3521, this December 17, 2012.

A handwritten signature in black ink, appearing to read 'M. Bassem Rayess', written over a horizontal line.

**Mohamed Bassem Rayess
Plaintiff-Appellee, Pro Se**