

New York Judge Dismisses Test-Taker Lawsuit Against Conference

A New York state court judge has dismissed a lawsuit filed against the International Conference of Funeral Service Examining Boards by a graduate of the American Academy McAllister Institute of Funeral Service challenging The Conference's invalidation of his scores on the National Board Examination, according to a news release issued by The Conference.

The case is *Kurbatsky v. The International Conference of Funeral Service Examining Boards, et al.*, Index No. 8821-15, State of New York Supreme Court, Columbia County.

In December 2015, the plaintiff filed suit against The Conference, 11 members of its previous and current board of directors, and its executive director, after The Conference invalidated the plaintiff's NBE scores following discovery of his involvement in the examination security breach at AAMI. The plaintiff alleged that the invalidation of his NBE scores violated his constitutional rights and breached his test-taker agreement, among other claims. On Jan. 23, Judge Richard M. Koweek of the New York Supreme Court (Columbia County) granted The Conference's motion to dismiss all of the plaintiff test taker's claims.

Koweek's order dismissed the lawsuit in its entirety. Among other things, the judge ruled that The Conference is not a government actor subject to constitutional claims by disgruntled test takers and that the plaintiff had failed to show that he had sustained damages sufficient to claim breach of contract. The plaintiff has notified the court of his intent to appeal this ruling.

In response to the ruling, George R. Kelder Jr., CEO and executive director of the New Jersey State Funeral Directors Association (which has been a vocal critic of The Conference invalidating scores), says while the news is disappointing, he understands why the lawsuit was dismissed.

"The invalidation by The Conference of a NBE test score typically in and of itself would not be considered harm that could support a damage claim in court," Kelder says. "However, should the New York Bureau of Funeral Directing view The Conference's invalidation as enough information to ultimately strip the license away from the plaintiff, or any other licensee for that matter, then harm will occur when a livelihood is taken away and the ability to earn a living as a licensed funeral director eliminated. It is then that an appeal (or class action) may be viewed by another judge in a completely different light with a decision potentially more favorable to the plaintiff(s)."

Kelder continues, "I would propose in lieu of focusing on the resolution of its outstanding litigation, that it consider pursuing more amicable and open efforts to dialogue and reasonably settle its claims against the hundreds of implicated licensees across the country, in a process that permits full access to the information being used against them and the ability for these licensees to present their defense to an impartial panel of their peers."

The NJSFDA remains open to bringing together representatives of all the parties: The Conference, student representatives, AAMI and the American Board of Funeral Service Education in order to broker a satisfactory and amicable resolution, Kelder says.

The Conference notes in its news release that as a result of the ruling, only three of the 17 lawsuits filed by AAMI graduates whose NBE scores were invalidated are pending. The remainder of the lawsuits have been dismissed or settled. The Conference continues to pursue efforts to settle the remaining lawsuits.