

**People v Lower E. Side Intl. Community School**

2001 NY Slip Op 30075(U)

August 8, 2001

Supreme Court, New York County

Docket Number: 401703/01

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB  
*Justice*

PART 15

*State of NY*  
*Lower East Side International*  
*Community School*

INDEX NO. 401703/01  
MOTION DATE 8/3/01  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

Dated: 8/8/01

**WALTER B. TOLUB**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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PEOPLE OF THE STATE OF NEW YORK, by  
ELIOT SPITZER, Attorney General of the  
State of New York

Petitioners,

**Index No. 401703/01**

-against-

**Mtn. Seq. No. 001**

LOWER EAST SIDE INTERNATIONAL COMMUNITY  
SCHOOL d/b/a HARLEM INTERNATIONAL  
COMMUNITY SCHOOL, WALLIE C. SIMPSON,  
Principal, CEO, President of the Board  
of Trustees

Respondents.

-----X

**WALTER B. TOLUB, J.**

This special proceeding concerns the charter and registration of a school and allegations that the school fraudulently and deceptively represents its credentials to the general public. It is alleged by the petitioners that the respondents have misled and continue to mislead the public by advertising and operating a nonpublic high school without disclosing the school's inability to issue diplomas, offer Regents examinations, or provide certain educational services to its students.

The petitioners move for an order and judgment, pursuant to Executive Law section 63(12) and General Business Law sections 349 and 350-d, enjoining the respondents from engaging in any fraudulent, deceptive, and unlawful acts arising out of the operation of the Lower East Side International Community School d/b/a Harlem International Community School ("LESICS"). The

petitioners further seek an order (1) directing the respondents to disclose to consumers that LESICS is not chartered or registered by the Board of Regents to operate a high school; (2) enjoining the respondents from making any statements that give the impression the school is licensed or accredited; (3) directing the respondents to pay restitution and costs; and (4) requiring the respondents to post \$25,000 should they apply for an amendment to their charter.

### Background

According to the verified petition, the respondents began to operate "The Lower East Community School" in 1977 after they applied for and were granted a provisional charter from the Board of Regents. The provisional charter permitted the respondents to operate a nonpublic school for pre-k through sixth grade.

The provisional charter was amended twice. The first amendment, in November 1984, changed the school's address to West 22<sup>nd</sup> Street and the name to "The Lower East Side International Community School." The second amendment, in June 1988, authorized the addition of grades seven and eight. At that time, the provisional charter was made permanent.

The petitioners allege that soon thereafter, the respondents began to violate their charter by changing the location of the school and using the corporate name the "Harlem International Community School" without first obtaining an amendment of their

charter. The school closed from 1993 until 1997.

According to the petition, in the summer of 1997, the respondents opened the current school and began to advertise that the school would be offering instruction for pre-k through twelfth grades. It is alleged that the respondents' advertisements failed to indicate that the high school was not chartered or registered by the Board of Regents and that the high school was without authority to issue diplomas or administer Regents examinations. Rather, the petitioners maintain, the respondents continue to deceive consumers by making false claims that the school is "licensed" or "accredited," and falsely advertise that its faculty members have sufficient training to teach specialized courses. For example, it is alleged by the petitioners that a math teacher has no math degree and is in fact a janitor. The petitioners claim that as a result of the respondents' practices, students receive a poor quality of instruction, do not receive valid high school diplomas, and must complete a General Equivalency Diploma program to obtain credit.

The petition further alleges that the respondents have engaged in deceptive acts and practices in violation of General Business Law section 349 and false advertising in violation of General Business Law section 350.

In their answer, the respondents assert two cross claims:  
(1) the New York State Education Department ("SED") has

wrongfully refused to register LESICS with the Board of Regents or amend its charter to reflect its name change and change of address and (2) the SED and the Board of Education of District 6 have failed to issue a decision in connection with a request for a "determination of substantial equivalency" as to LESICS' qualifications. The respondent Wallie C. Simpson, the principal of LESICS, contends that the petitioners' allegations were in fact isolated instances, as the word licensed was mistakenly used to describe LESICS, and the phrase "full accreditation" was based on the accreditation LESICS obtained from the National Private Schools Association Group.

The respondents further maintain that since the investigation of LESICS by the Attorney General's Office has commenced, the respondents have advised parents that it cannot issue a Board of Regents diploma. The respondents dispute that they have engaged in persistent fraud or repeated fraudulent acts, and contend that they are committed educators intent on improving the educational experience for New York City's children.

The respondents claim that registration with the Board of Regents is voluntary, schools that are not registered with the Board of Regents may still issue "local diplomas" as an alternative to a Regents diploma, and that there is a presumption that a school chartered by the Board of Regents is providing an

education substantially equivalent to that of a public school.

### Discussion

An application by the attorney general for relief under Executive Law section 63(12) "is addressed to the sound judicial discretion of the court" (State of New York v Princess Prestige Co., Inc., 42 NY2d 104, 108 [1977]). As a special proceeding, the issues raised in the petition are to be summarily determined on the papers "to the extent that no triable issues of fact are raised" (CPLR 409[b]).

Pursuant to Executive Law section 63(12), the attorney general may seek an order enjoining fraudulent or illegal acts and directing restitution and damages "[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." The statute defines fraud "broadly" (People of the State of New York v Apple Health & Sports Clubs, Ltd., Inc., 80 NY2d 803, 807 [1992]) to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions" (Executive Law § 63[12]).

It is undisputed that the respondents, on a number of occasions, have misrepresented LESICS' accreditation and licensing status. Although these occasions may have been few,

the attorney general is not required to establish a large percentage of violations under the statute, only repeated illegal or fraudulent acts (Id., at 107).

The respondents' reply to the petition and affirmative defenses are wholly inadequate to raise a triable issue. The applicable law is clear, as "[o]nly those public and nonpublic schools which are registered by the Board of Regents upon recommendation of the commissioner, may issue diplomas and administer Regents examinations" (8 NYCRR § 100.2[p]).

Although the respondents cite to the SED's Manual for New Administrators of Nonpublic Schools ("Manual") and Guidelines for Determining Equivalency of Instruction in Nonpublic Schools ("Guidelines") in support of their arguments, both of these booklets support the petitioners. For example, although the respondents contend that LESICS may award diplomas, the Manual provides, "[o]nly a registered secondary school may administer Regents examinations and award diplomas" (Manual, at 8); (see, also, Guidelines, at 7 ["a school which is not registered may not administer Regents examinations or award diplomas"]). Similarly, the Guidelines states, "[n]onpublic school authorities have a serious responsibility to notify parents of its pupils that the school is not registered by the Board of Regents and is not authorized to issue diplomas" (Guidelines, at 13). Accordingly, neither the Guidelines nor the Manual supports the respondents.

The Court recognizes that by letter dated February 11, 2000, the respondents notified its students' parents and guardians that the school does not have the authority to operate a secondary school or issue high school diplomas (Petition, Exh. M). This notification is appropriate. What is not appropriate, however, is the fact that the respondents sent a second letter on the same day stating that the first letter was sent at the direction of the petitioners, that the petitioners' complaints are "unfounded," and that the request to send the letter "is tantamount to a totalitarian state" (Id., Exh. N). Such mixed messages hardly complies with the claim that the respondents have ceased making deceptive statements.

The petitioners seek restitution for all consumers who have been injured as a result of respondents' misrepresentations. Although the petitioners make reference to numerous parents who have been injured, only two affidavits from parents of students have been submitted to the Court, totaling \$4,125.00 (see, Petition, Exh. K, L).

As for the two cross-claims asserted by the respondents, the cross-claims are procedurally defective and are stricken. The cross-claims seek relief from the SED, District 6, and the Superintendent, none of whom are parties in this proceeding. The cross-claims are therefore stricken (see, CPLR 401).

Accordingly, it is ordered that the respondents are


permanently enjoined from engaging in any fraudulent, deceptive, and unlawful acts arising out of the operation of the Lower East Side International Community School d/b/a Harlem International Community School. It is further ordered that within 10 days of service of a copy of this order with notice of entry, the respondents are to disclose to the parents or guardians of all students currently enrolled in LESICS that LESICS is not chartered or registered by the Board of Regents to operate a high school. It is further ordered that the respondents are enjoined from making any statements, verbal or written, that give the impression that LESICS is licensed or accredited by any governmental body until such time, if ever, that LESICS is licensed or accredited by a governmental body. It is further ordered that the petitioners are awarded \$2,000.00 in costs.

It is ordered that the respondents are directed to pay restitution in the amount of \$4,125.00 to the parents who have submitted affidavits to the Court. It is further ordered that in the event the respondents apply for an amendment to their charter, the respondents are to post a performance bond in the amount of \$10,000.00, guaranteeing that respondents comply with this decision.

This constitutes the decision and judgment of the Court.

Dated:

8/8/01

  
HON. WALTER B. TOLUB, J.S.C.