



The Group v. Bureau of Consumer Protection

2002 | Cited 0 times | Supreme Court of Pennsylvania | April 18, 2002

Submitted: March 28, 2002

OPINION NOT REPORTED

MEMORANDUM OPINION

"The Group" has filed a pro se petition for review requesting this Court to order the Commonwealth of Pennsylvania, Bureau of Consumer Protection, Office of Attorney General (collectively, the Bureau) to comply with its request under the Right-to-Know Act ¹ to produce documents pertaining to a matter it complained about to the Bureau.

On July 23, 2001, the Group, consisting of various individuals but only two who are parties to this appeal - William Blando (Blando) and Jay Simmons (Simmons) ² - complained to the Bureau regarding a matter concerning the Allfirst-Dauphin Deposit Bank (Bank) and requested the agency to represent them. ³ The nature of their complaint was that the Bank had illegally terminated their 18-month variable rate IRA accounts that were set up in employee-sponsored programs in 1982. ⁴ The Bureau designated the complaint as A-002881-2001 and made Richard Lebo (Lebo) the agent-supervisor in charge of the case. According to the Group, the Bank was notified of the complaint and given ten days in which to respond. The Bank requested and was given a two-week extension moving the response date to August 31, 2001. Ignoring that date, the Bank submitted its response on September 10, 2001.

Blando requested the Bureau to provide him with a copy of the Bank's response and was advised by Lebo over the phone that a copy would not be made available to him. The Group then sent Lebo a letter dated September 24, 2001, requesting a copy of the Bank's response but received no response from the Bureau. After several other futile attempts at obtaining the Bank's response to its complaint, on November 13, 2001, the Group sent the Bureau a formal request for a copy of the Bank's September 10, 2001 response under the Right-to-Know Act, as well as any other documents it received relative to the complaint, arguing that those documents were public records. The Office of Attorney General then responded by letter dated December 7, 2001, stating that the Bureau was unable to take any further action on the complaint filed because it had attempted resolving the Groups' complaint through mediation unsuccessfully. The letter further stated that the Group could still consult with a private attorney to discuss pursuing the matter in a private legal action.

Finally, on December 12, 2001, the Office of Attorney General sent the Group another letter



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indicating that its November 21, 2001 letter had been referred to its office. It stated that under the Right-to-Know Act, an investigative file was not considered a public record and denied its request stating: "[u]nder the law the term public records shall not mean 'any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties...' " The Group then filed a petition for review in our appellate jurisdiction from the Bureau's denial of its request.

The Group contends that the Bureau was required to provide it with a copy of the Bank's response to its complaint pursuant to the Right-to-Know Act because it was a public record. Under Section 1 of the Right-to-Know Act, a public record is defined in pertinent part as:

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties.... (Emphasis added.) 65 P.S. §66.1.

At the outset, it should be noted that even though "The Group" brought its concerns to the Bureau, it is not a party. The alleged violation of the Unfair Trade Practices and Consumer Protection Law is being investigated on behalf of the public, not private individuals.⁵ With that in mind, we agree with the Bureau that the Bank's answer to its complaint is not a public record as defined under the Right-to-Know Act. It is not an account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property, and it is not an order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. Even if the Bank's response fell into one of those categories, it would still not be a public record because it is a communication that would disclose the progress of an investigation undertaken by the Bureau at the request of the Group.

Because the Bureau is not required to provide any communication that discloses the progress of an investigation to the Group, it did not err in refusing to do so. Accordingly, the final adjudication of the Bureau is affirmed.

DAN PELLEGRINI, JUDGE

ORDER

AND NOW, this 18th day of April, 2002, the final adjudication of the Bureau of Consumer Protection, Commonwealth of Pennsylvania, Office of Attorney General, dated December 12, 2001, is



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affirmed.

DAN PELLEGRINI, JUDGE

1. Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§66.1-66.4.
2. Blando is listed on the docketing statement as the lead complainant and Simmons is listed as the consultant to the Group.
3. Pursuant to Section 4 of the Unfair Trade Practices and Consumer Protection Law Act of December 17, 1968, P.L. 1224, as amended, 73 P.S. §§201-4, the Bureau may bring an action in the name of the Group regarding an alleged unlawful practice of the Bank. That section provides: Whenever the Attorney General or a District Attorney has reason to believe that any person is using or is about to use any method or act or practice declared by section 3 of this act to be unlawful, and that proceeding would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The Act defines "person" under Section 2, 73 P.S. §201-2, to mean "natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities."
4. The Group opted out of the October 1999 settlement of the lawsuit with the Bank and chose to pursue litigation.
5. The Group may file a private action under Section 4 of the Unfair Trade Practice and Consumer Protection Law, 73 P.S. §201-9.2(a), which provides in relevant part that: (a) Any person who purchases or leases good or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater.

