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DISTRICT II

November 19, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2013AP2690

Amerstate University, Ltd. v. State of Wisconsin Educational
Approval Board (L.C. #2012CV2017)

Before Brown, C.J., Reilly and Gundrum, JJ.

Amerstate University, Ltd., appeals from an order affirming the Wisconsin Educational Approval Board's (EAB or Board) decision revoking Amerstate's authority to operate as a school and to offer a masters degree in martial arts. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ Because we conclude that the Board's action did not run afoul of Amerstate's due process rights and that its decision to revoke approval was neither arbitrary nor capricious, we affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 2007, the EAB² approved Amerstate's application to operate in Racine, Wisconsin, as a private school offering a Master of Science-Martial Arts degree program. While investigating a student complaint, an administrative consultant, operating on the Board's behalf, discovered several violations of the administrative code. After further investigation, the Board notified Amerstate that it intended to revoke board approval of the school's operation based on six alleged code violations. Following a nearly nine-hour hearing, the administrative law judge found that the Board's allegations were established³ and that given their number, magnitude and nature, the violations warranted revocation of the school's authority to operate. The circuit court affirmed the Board's final decision and this appeal follows.

When an appeal is taken from a circuit court order on administrative review, we review the decision of the agency, not the circuit court. *Zip Sort, Inc. v. DOR*, 2001 WI App 185, ¶11, 247 Wis. 2d 295, 634 N.W.2d 99. We will accept the Board's factual findings if they are supported by substantial evidence. *Clean Wis., Inc. v. PSC*, 2005 WI 93, ¶46, 282 Wis. 2d 250, 700 N.W.2d 768. In reviewing the Board's discretionary decision, we may not substitute our judgment for that of the administrative decision maker. *Wisconsin Prof'l Police Ass'n v. PSC*,

² The EAB is statutorily charged with investigating and approving or disapproving certain private schools not regulated by the Department of Public Instruction. See WIS. STAT. § 38.50. The Board is directed to "protect students, prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction, and encourage schools to maintain courses and courses of instruction consistent in quality, content, and length with generally accepted educational standards." Sec. 38.50(7).

³ The established violations include Amerstate's use of an unauthorized teaching location in New York; conducting unauthorized solicitations of students and attempting to recover on those contracts; failing to report significant changes in the program, facilities, finances, and personnel; using an unapproved enrollment agreement; offering an unapproved distance learning program after being explicitly advised that it could not offer such a program; and offering an unapproved course of instruction which failed to correspond with the description in Amerstate's catalog, lacked the proper ratio of in-class to out-of-class hours and required far fewer hours than accepted standards per credit hour.

205 Wis. 2d 60, 73-74, 555 N.W.2d 179 (Ct. App. 1996). We review the Board’s decision to determine whether it is arbitrary or capricious. *Id.* at 74. “Arbitrary or capricious conduct lacks a rational basis and is the result of an unconsidered, willful or irrational choice rather than a ‘sifting and winnowing’ process.” *Id.* (citation omitted).

On appeal, Amerstate first contends that its procedural due process rights were violated by the Board’s inadequate investigation, its combined investigative and adjudicative functions, and the investigator’s reference to the school as a “diploma mill.”⁴ “The requirement of procedural due process is met if a state provides adequate post-deprivation remedies.” *See Thorp v. Town of Lebanon*, 2000 WI 60, ¶53, 235 Wis. 2d 610, 612 N.W.2d 59. “A state post-deprivation remedy is considered adequate unless it can ‘readily be characterized as inadequate to the point that it is meaningless or nonexistent and thus, in no way can be said to provide the due process relief guaranteed under the fourteenth amendment.’” *Brown v. DCF*, 2012 WI App 61, ¶32, 341 Wis. 2d 449, 819 N.W.2d 827 (citations omitted).

We reject Amerstate’s due process claims. Amerstate was afforded a full opportunity to challenge the Board’s allegations at a lengthy administrative hearing and to appeal. Its postdeprivation remedies were therefore meaningful and adequate. Further, that the EAB is

⁴ Amerstate characterizes its claim as an assertion under WIS. STAT. § 227.57(4), “that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.” Whether a party received a fair hearing presents a question of law subject to de novo review. *See Bunker v. LIRC*, 2002 WI App 216, ¶18, 257 Wis. 2d 255, 650 N.W.2d 864.

charged with both enforcing and adjudicating code violations does not in itself violate principles of due process. See *Kruczek v. DWD*, 2005 WI App 12, ¶¶34-36, 278 Wis. 2d 563, 692 N.W.2d 286 (2004). Here, the consultant assigned to investigate Amerstate's violations was not part of the decision-making process and nothing in the record suggests that the Board prejudged the case or merely rubber-stamped the investigator's allegations.⁵ Similarly, Amerstate fails to demonstrate that any reference to false credentials or "diploma mills" impaired the Board's ability to issue a fair decision. As Amerstate concedes, the Board did not make a finding that the school was in violation of the statute governing false credentials, and we are not persuaded that any testimony concerning this dismissed charge affected the adjudicator's impartiality.

Next, Amerstate argues that the Board erroneously exercised its discretion by ordering revocation as a sanction. We disagree. After considering its statutory responsibilities along with the nature and number of Amerstate's violations,⁶ the Board determined that

because lesser sanctions are unlikely to bring Amerstate into compliance with the statutes and administrative rules that govern its operation without the commitment of staff resources that would unduly burden EAB's ability to achieve its statutory mandate to protect the public, revocation of EAB's approval to offer Master's Degree in Martial Arts is the only effective remedy for Amerstate's offering of a master's degree program that conflicts in fundamental

⁵ Amerstate contends that the administrative investigator prejudged the case and conducted an inadequate investigation. We reject Amerstate's theory that the investigator's bias, if any, should be imputed to the Board. As detailed in the final decision, most of the Board's findings were based on stipulated facts. Amerstate has not pointed to and we are unable to discern any findings by the Board that evidence bias, prejudgment, or improper influence.

⁶ Amerstate takes issue with the Board's determination that in the past, the school was noncompliant with the EAB's directives. Where more than one inference is supported by the evidence, the agency's determination is conclusive. *Abbyland Processing v. LIRC*, 206 Wis. 2d 309, 318-19, 557 N.W.2d 419 (Ct. App. 1996). Here, the Board's findings, including its determination that Amerstate misrepresented to the EAB the discontinuation of its distance learning program, are supported by substantial evidence.

ways from the program that EAB approved in 2007. In addition, the Board determines that Amerstate's deceptive past interactions with the state agency charged with regulation of its operations and programs, and its failure to voluntarily comply with the school's duty to notify EAB of the significant changes it made in its program, facilities, finances, and personnel, makes revocation of EAB's approval of the school to operate in the State of Wisconsin the only effective remedy for the serious violations found by the Board.

Because the Board engaged in a process of deliberation and made a rational choice based on the facts of record, we conclude that its revocation decision was neither arbitrary nor capricious.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals