

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**NICHOLAS TROMBETTA,
Respondent.**

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DOCKET NO. DI-19-183

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Summary Judgment. For the reasons set forth below, the Motion is granted.

On October 10, 2019, the Department filed a Notice of Charges alleging that Respondent has been convicted of a crime involving moral turpitude, namely the federal crime of Conspiracy to Commit Offense or to Defraud United States (18 U.S.C. § 371). Simultaneous with the filing of the Notice of Charges, the Department filed a Motion for Summary Judgment requesting the Commission to immediately revoke Respondent’s Pennsylvania educator certification¹ and employment eligibility pursuant to section 9b(a)(2) of the Educator Discipline Act (“Act”). Section 9b(a)(2) of the Act requires the Commission to direct the Department to revoke the certification and employment eligibility of an educator convicted of a crime involving moral turpitude upon the filing of a certified copy of the verdict, judgment or sentence of the court with the Commission.

1. Respondent holds an Instructional I Pennsylvania teaching certificate in the area of Social Studies 7-12, an Administrative I certificate in the areas of Secondary Principal 7-12 and Elementary Principal K-6, and a Superintendent PK-12 Letter of Eligibility.

24 P.S. § 2070.9b(a)(2). In support of its motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction.

On November 22, 2019, Respondent filed a response to the Motion for Summary Judgment, wherein he admits his conviction but denies that the crime to which he pleaded guilty involves moral turpitude. He requests that the Commission deny the Motion for Summary Judgment.

We can grant summary judgment only when, after examining the whole record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Snyder v. Department of Environmental Resources, 588 A.2d 1001 (Pa. Cmwlth. 1991). In the instant case, there is no dispute that Respondent has been convicted of Conspiracy to Commit Offense or to Defraud United States. Therefore, the only question before the Commission is whether this crime involves moral turpitude.² The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code § 237.9(b); Startzel v. Commonwealth, Department of Education, 652 A.2d

2. The Commission has defined moral turpitude as follows:

- (1) That element and personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness or depravity, and contrary to the accepted and customary rule of right and duty between two human beings.
- (2) Conduct done knowingly contrary to justice, honesty or good morals.
- (3) Intentional, knowing or reckless conduct causing bodily injury to another or intentional, knowing or reckless conduct which, by physical menace, puts another in fear of imminent serious bodily injury.

22 Pa. Code § 237.9(a).

1005, 1007 (Pa. Cmwlth.1989).

The federal crime of Conspiracy to Commit Offense or to Defraud United States is defined as follows:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

...

18 U.S.C. § 371. In order to charge a violation under § 371, the government must show that the defendant conspired to commit one or more substantive offenses against the United States, or that the defendant conspired to defraud the government in any manner or for any purpose. The statute is written in the disjunctive and should be interpreted as establishing two alternative means of committing a violation. U.S. v. Harmas, 974 F.2d 1262, 1266 (11th Cir. 1992) (citations omitted); *See also* U.S. v. Vasquez, 319 F.2d 381, 384 (3d. Cir. 1963) (§ 371 condemns two types of conspiracies: one, to commit a substantive offense against the United States specified under other statutes, and the other to defraud the United States). Respondent concedes that the charge to which he pleaded guilty was made solely under the defraud clause of § 371. Still, he argues that it is impossible to determine whether on its face this crime involves moral turpitude because the statute “can apply to many different issues, several of which do not constitute crimes of moral turpitude.” We disagree.

To "defraud" the United States means to cheat the Government out of property or money, or to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. Hammerschmidt v. U.S., 265

U.S. 182, 188-9 (1924); Vasquez, 319 F.2d at 384. It seems axiomatic that one who performs an act with the intent to defraud the government is guilty of an act contrary to justice, honesty, or good morals. Moreover, while § 371 includes the words "in any manner or for any purpose," those words only modify the underlying act – fraud. Fraud is an essential ingredient of the offense. Id. Crimes of which fraud is an ingredient have always been regarded as involving moral turpitude. Moretti v. State Board of Pharmacy, 277 A.2d 516 (Pa. Cmwlth.1971); *citing* Jordan v. DeGeorge, 341 U.S. 223, 71 S.Ct. 703 (1951) (fraud is the touchstone of moral turpitude). Therefore, the Commission has no difficulty determining that the concept of moral turpitude embraces the crime to which Respondent pleaded guilty. Having thus determined that Respondent has been convicted of a crime involving moral turpitude, there is no genuine issue as to any material fact and the Department is entitled to judgment in its favor as a matter of law as the Act mandates revocation. 24 P.S. § 2070.9b(a)(2); See *also* Bowalick v. Dep't of Educ., 840 A.2d 519 (Pa. Cmwlth. 2004)(revocation of a teaching certificate on summary judgment is appropriate upon proof of a conviction of a crime of moral turpitude).

Finally, our General Assembly has determined that in those cases where an educator is convicted of an offense compelling revocation under section 9b of the Act, an appeal from the Commission's adjudication will not delay the imposition of discipline. 24 P.S. § 2070.15. Therefore, the revocation of Respondent's certification and employment eligibility will be effective immediately.

Accordingly, we enter the following:

ORDER

AND NOW, this 10th day of February 2020, upon consideration of the Motion for Summary Judgment filed by the Department of Education, and the response thereto, it is hereby ORDERED that the educator certification and eligibility to be employed as a charter or cyber charter school staff member or a contracted educational provider staff member of Respondent NICHOLAS TROMBETTA shall be REVOKED by the Department pursuant to 24 P.S. § 2070.9b(a)(2). This Order is effective IMMEDIATELY.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

By:



Myron Yoder
Chairperson Pro Tempore

Attest:



Shane F. Crosby
Executive Director

Date Mailed: February 10, 2020