

Radford v. Department of Rehabilitation and Correction (July 9, 1985), Court of Claims No. 84-09071-AD, unreported (copy attached). The Plaintiff has set forth a claim upon which no relief can be granted by this Court.

{¶ 4} "In addition, Plaintiff's action should be dismissed for lack of subject matter jurisdiction because an inmate's appeal of a hearing officer's decision does not relate to civil law. In the present case, the hearing officer, with the affirmance of the Rules Infraction Board Chairman, decided to confiscate and destroy the four *Maxim* magazines (Exhibits B and C). The Defendant's Institutional Inspector determined that security personnel acted appropriately in the confiscation of this contraband items (Exhibit D, E, and F). This Court has previously held that it has no jurisdiction over decisions of the Rules Infraction Board and hearing officers. *Coman v. Department of Rehabilitation and Correction*, (July 2, 1987), Court of Claims Case No. 86-04018-AD, unreported (copy attached). Lack of subject matter jurisdiction is, therefore, applicable in this case."

{¶ 5} On January 23, 2006, plaintiff filed a memorandum contra in opposition to defendant's motion to dismiss. Plaintiff contends that defendant is utilizing evidence beyond his pleadings to request a dismissal of his pleadings. He asserts he had a subscription to the magazine in question, so the copies of the same magazines confiscated by defendant must be his. Plaintiff contends that if evidence outside the pleadings is not relied on defendant's motion to dismiss must be denied.

{¶ 6} However, a review of this case reveals the main issue involves whether this court has jurisdiction over this matter. A motion to dismiss is procedural and tests the sufficiency of the complaint. *State ex. rel. Hanson v. Guernsey Cty. Bd. of Comms.* (1992), 65 Ohio St. 3d 545. Dismissal is appropriate if all factual allegations of the complaint are presumed true and all reasonable inferences are made in favor of the non-moving party can prove no set of facts entitling him to relief requested. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St. 2d 242.

{¶ 7} The evidence reflects that a hearing was held on plaintiff's property on February 17, 2003, and it was determined by a hearing officer that plaintiff's property was contraband and he violated class II rule 8. Accordingly, the property was ordered to be destroyed. On February 18, 2003, the ruling of the hearing officer was affirmed by the Rules Infraction Board.

{¶ 8} The Court of Claims does not have jurisdiction over decisions rendered by the Rules Infraction Board. *Sears v. Department of Rehabilitation and Correction* (1975), 75-0170-AD; *Maynard v. Jago* (1977), 76-0581-AD.

{¶ 9} Therefore, the court has no jurisdiction to review decisions rendered by the Rules Infraction Board. Accordingly, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. The court shall assess court costs against plaintiff. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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