

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

SCOTT THOMAS

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2008-09422-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Scott Thomas, filed this action against defendant, Cleveland State University (CSU), seeking to recover a tuition refund in the amount of \$1,700.00 for funds allegedly collected as payment for a course offered in the 2008 Summer Term. Plaintiff enrolled at CSU in the Executive Masters of Business Administration (EMBA) program (class of 2009) at the James J. Nance College of Business. Plaintiff's enrollment began during the 2007 Fall Term. According to CSU records, plaintiff "paid \$13,390 in tuition and fees based on the installment billing schedule." The tuition paid covered the 2007 Fall Term and the 2008 Spring Term. Defendant related the entire EMBA program was to be completed in a 19-month period with a complete cost of \$32,500.00 which included, "tuition, books, business periodicals, food and refreshments, a 5-night, 6 day Opening Week residency, parking, and the international business study tour."

{¶ 2} On July 19, 2007, plaintiff was charged \$7,020.00 tuition for the Fall 2007 Semester in the EMBA program. According to submitted CSU records, payments totaling \$10,850.00, mostly through student loans, were paid to plaintiff's tuition

account. On August 21, 2007, defendant issued a check (copy submitted) to plaintiff in the amount of \$3,830.00 representing the difference between tuition charged and funds forwarded to plaintiff's tuition account. On December 25, 2007, plaintiff was charged tuition in the amount of \$6,370.00 for the Spring 2008 Semester in the EMBA Program. Records note CSU received on January 3, 2008, \$10,250.00 from student loans to pay for plaintiff's tuition. A check (copy submitted) in the amount of \$3,880.00 representing the difference between tuition charged and loan funds received was issued by defendant to plaintiff on January 8, 2008. Evidence has been submitted to establish plaintiff negotiated both checks from CSU. Submitted schedule records for the EMBA program indicated the Fall 2007 Term included 13 credits for a total charge of \$7,000.00 and the 2008 Spring Term comprised of 7 credits at a charge of \$6,300.00.

{¶ 3} The 2008 Spring Term duration lasted from January 5 to April 5, 2008 and included the courses "Accounting for Managers" and "International Business Strategy." Plaintiff was enrolled in both classes. The 2008 Summer Term began on March 22, 2008 and apparently overlapped the 2008 Spring Term. Curriculum of the 2008 Summer Term comprised a course schedule of "Marketing Strategy," "Finance For Managers," and "International Study Tour."

{¶ 4} On March 24, 2008, during the course of the 2008 Spring Term, plaintiff sent e-mails to CSU employees Dian K. Goga and Patricia A. Hite giving notice of his intention to drop out of the EMBA program. In his e-mail to Goga, plaintiff wrote "I have decided that I am going to end my enrollment at CSU and am not sure about what I should be doing from here on out as far as ending the semester/term so as not to get any grades that will be detrimental to my transcript." Plaintiff also advised that he intended to complete "the classes that I have already paid for (Accounting and International Business) but I am not sure what I should be doing about Marketing." In the e-mail to Hite, plaintiff advised that he intended to finish all group-work he was involved in with fellow classmates before leaving the EMBA program and expressed his reason for leaving the program.

{¶ 5} Plaintiff asserted he is entitled to receive reimbursement of \$1,700.00 tuition he paid to CSU for a course he did not take that was apparently offered after he had resigned from the EMBA program. Plaintiff related \$1,700.00 of tuition he paid was "allocated" for a class he designated "The International Experience;" presumably the

“International Study Tour” course offered from May 17 to May 30, 2008 during the 2008 Summer Term. Plaintiff explained “The International Experience” involved a trip to Turkey and Greece and collected funds were used to pay for “an all inclusive bundle of airfare, hotel fares, domestic and international transfers.” Plaintiff pointed out the trip was to take place during the 10th month of the EMBA program, which coincides with the timetable for the “International Study Tour” course offered by CSU during the 2008 Summer Term. Plaintiff recalled the specific funding mechanism for the “International Study Tour” was described to him by CSU Associate Dean, Dr. Benoy Joseph. Plaintiff asserted Dr. Joseph told him that funding for “The International Tour” consisted of a pool where a portion of tuition funds received were deposited and then disbursed as expenses such as airplane tickets for the trip were incurred. Essentially, plaintiff contended \$1,700.00 in tuition he paid for the 2008 Spring Term was deposited into a pool to pay certain expenses of the “International Study Tour” offered during the 2008 Summer Term; a required class plaintiff did not take. Plaintiff did not provide any evidence to support his assertion that tuition monies he paid were used to fund a class he did not take.

{¶ 6} Defendant submitted an affidavit from W. Benoy Joseph, Ph.D., the Associate Dean for Academic Affairs, Nance College of Business Administration at CSU, who offered an explanation of the fee structure for the EMBA program. Dr. Joseph reported:

{¶ 7} “It has been the EMBA program’s practice over the past twenty-eight years not to permit refunds for students who drop out midway through the program. This is because the cost of the trip and the other extra cost features (e.g., Opening Week residency) are bundled into the total fee, which was to be paid in five installments as follows: \$7,020 (includes \$650 deposit) followed by four installments of \$6,370 each.”

{¶ 8} Dr. Joseph acknowledged plaintiff withdrew from the EMBA program at the end of the 2008 Spring Term and therefore, did not register for any 2008 Summer Term courses, “which included the May 2008 study tour to Turkey and Greece.” Particularly, Dr. Joseph offered the following explanation of the CSU billing process in regard to plaintiff’s situation. Dr. Joseph noted:

{¶ 9} “(plaintiff) attended twenty credit hours in the fall 2007 and spring 2008,

and was billed \$13,390 for the two semesters. The cost per credit hour for the 45-credit hour program is \$722.22 based on the total program cost of \$32,500. Accordingly (plaintiff) should have been billed \$14,444.44 for the twenty credit hours. He was not billed in this manner due to the bundling of costs as the installment plan for the EMBA defers payments for some credits in order to make the installments more even in amount in order to accommodate students' corporate reimbursement programs. Because the installment plan billed him for only \$13,390, he owes (CSU) the difference of \$1,054.44 for all twenty credit hours. In addition, the last minute cancellation cost the program cancellation fees of \$201 (in quantity discounts for land travel and air fares) in addition to an undetermined amount in administrative costs. If billed according to actual costs and credit hours, (plaintiff) would owe (CSU) a total sum of \$1,255.44 (\$1,054.44 plus \$210.00)."

{¶ 10} Conversely, plaintiff insisted defendant improperly collected and withheld \$1,700.00 from him after he resigned from the EMBA program in March 2008. Plaintiff agreed the total cost of the entire EMBA program for the class of 2009 was \$32,500.00, which is billed over the course of semesters (Fall Term, Spring Term, Summer Term). Plaintiff asserted all tuition money received from EMBA program students is deposited into a pool. Plaintiff stated "I had paid \$14,400 (20 credit hours @ \$722 per credit hours)" by the time he resigned from the program. Submitted documents establish plaintiff actually paid \$13,390.00 in tuition for the time he was enrolled in the EMBA program at CSU. Plaintiff related he had paid 44% of the entire tuition cost when he left the EMBA program (submitted records establish plaintiff paid a little over 41% of the total tuition). Plaintiff reasoned part of the tuition costs he actually paid were used to pay for the costs of a course he did not take ("International Study Tour"). This course was offered in the 2008 Summer Term (May 17-May 30, 2008) and by the time the course began plaintiff had been voluntarily absent from the EMBA program for almost two months. Plaintiff contended he actually paid for part of the course with funds used to pay tuition for classes completed during the 2007 Fall Term and 2008 Spring Term.

{¶ 11} Plaintiff recalled he sent an e-mail to EMBA program director, Patricia Hite, notifying her of his intention to withdraw from the program during the 2008 Spring Term. Plaintiff explained that in this e-mail to Hite he also addressed the issue of whether or not he could make arrangements to travel with his soon to be former

classmates to Greece and Turkey and be enrolled in the “International Study Tour” course to receive one additional hour of classroom credit. Plaintiff stated, “I was initially told that if I wanted to go on the trip, I would need to enroll for the entire next semester and pay \$6,370 for Summer 2008 tuition.” In response, plaintiff contacted Dr. Oya Tukul, the CSU professor in charge of the “International Study Tour” to mitigate the situation due to the fact plaintiff did not have any interest in paying full term tuition to attend one class. In an April 7, 2008 e-mail (copy submitted) to plaintiff, Dr. Tukul wrote: “You are coming with us. We had a meeting with Dr. Scherer and Dr. Joseph and all agreed that you attend the tour. I e-mailed final lists to the travel agent.” Patricia Hite, who received a copy of the April 7, 2008 e-mail from Dr. Tukul to plaintiff responded that same day with an e-mail (copy submitted) notifying plaintiff that he would have to pay \$1,444 to attend the “International Study Tour.” Plaintiff related that upon receiving this e-mail he “alerted both Dr. Tukul and Patricia Hite that I was not interested in paying an additional \$1,444 to attend this trip.” On April 22, 2008, Patricia Hite sent an e-mail (copy submitted) to plaintiff noting: “Since you will be getting a grade, the lowest cost we can offer is \$1,000.00.” On May 6, 2008, plaintiff sent an e-mail to Patricia Hite advising her that he would not “be attending the trip and that I would be seeking a refund.”

{¶ 12} Subsequently, plaintiff filed this complaint contending defendant violated policy in regard to trying to charge him for taking the “International Study Tour” course. Plaintiff insisted defendant wrongfully collected tuition funds from him in the amount of \$1,770.00 and has requested a refund of that amount. The \$25.00 filing fee was paid.

{¶ 13} Defendant denied any liability in this matter asserting that “[t]he EMBA program’s practice over the past 28 years is not to permit refunds for students who drop out midway through the program.” Defendant observed plaintiff withdrew from the EMBA program at the end of the 2008 Spring Term, did not register for classes in the 2008 Summer Term, which included the “International Study Tour” course, and consequently did not pay any tuition for any course offered in the 2008 Summer Term. Defendant denied plaintiff is eligible for or is owed any refund of tuition or that he was billed for a class he did not take. Defendant asserted plaintiff has failed to state a claim cognizable in this court.

{¶ 14} Plaintiff filed a response contending defendant does “not have a strict

policy regarding credit hours, billing, and actual education.” Plaintiff acknowledged he left the EMBA program on March 24, 2008 and the “International Study Tour” did not commence until May 17, 2008 well after he withdrew from school. Plaintiff did not offer any evidence to prove he actually paid tuition for the “International Study Tour” or that the tuition he did pay was used to pay for any course offered during the 2008 Summer Term. Plaintiff insisted a portion of the tuition he paid for the 2007 Fall Term and the 2008 Spring Term was used to purchase a ticket in his name to travel to the “International Study Tour” course being held abroad after he had ceased to be a student at CSU.

{¶ 15} The facts of the instant action show plaintiff’s claim is solely based on the contention that CSU wrongfully collected tuition funds and failed to return the funds on demand. Since this particular action is for the recovery of an alleged wrongful collection, the claim is grounded solely in equity. *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St. 3d 97, 579 N.E. 2d 695. “The reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages.” *Ohio Hosp. Assn.* at 105. “Thus, for restitution to lie in equity, the action generally must seek not to impose liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession.” *Great-West Life & Annuity Co. v. Knudson* (2002), 534 U.S. 204, at 214, 122 S. Ct. 708, 151 L. Ed 2d 635.

{¶ 16} “A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity.” *Santos et al. v. Ohio Bureau of Workers’ Compensation*, 101 Ohio St. 3d 74, 2004-Ohio-28 at paragraph one of the syllabus. R.C. 2743.03(A)(1) and (2) states:

{¶ 17} “(A)(1) There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code, exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the court of claims, and jurisdiction to hear appeals from the decisions of the court of claims commissioners. The court shall have full equity powers in all actions within its jurisdiction and may entertain and determine all counterclaims, cross-claims, and third-party claims.

{¶ 18} “(2) If the claimant in a civil action as described in division (A)(1) of this

section also files a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances that gave rise to the civil action described in division (A)(1) of this section, the court of claims has exclusive, original jurisdiction to hear and determine that claim in that civil action. This division does not affect, and shall not be construed as affecting, the original jurisdiction of another court of this state to hear and determine a civil action in which the sole relief that the claimant seeks against the state is a declaratory judgment, injunctive relief, or other equitable relief.”

{¶ 19} Additionally, 2743.10(A) states in pertinent part: “Civil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claims . . .” R.C. 2743.10 does not confer equity jurisdiction at the Administrative Determination level of this court. Administrative Determination actions are solely for money damages. Equity jurisdiction in matters involving the state are reserved for judicial review. Although plaintiff in the instant claim is seeking to recover funds he asserted were wrongfully withheld, the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity. Plaintiff’s remedy in seeking return of wrongfully collected funds lies in mandamus. See *State v. Brown*, 156 Ohio App. 3d 120, 2004-Ohio-558. This court is without jurisdiction to grant such relief. *State ex rel. Washington v. v. Ohio Adult Parole Auth.*, 87 Ohio St. 3d 258, 1999-Ohio-53.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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