

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

DR. TRUDY BOND)

v.)

LOUISIANA STATE BOARD OF)
EXAMINERS OF PSYCHOLOGISTS)

NUMBER: 2009-CA-1735

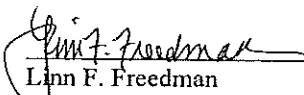
BRIEF OF APPELLANT DR. TRUDY BOND

IN SUPPORT OF HER

**APPEAL FROM A DECISION OF THE
EAST BATON ROUGE DISTRICT COURT**

The Honorable R. Michael Caldwell, Presiding

Appellant, Dr. Trudy Bond
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APPELLANT, DR. TRUDY BOND'S BRIEF

Dr. Trudy Bond, through undersigned counsel, hereby appeals the decision of the Nineteenth Judicial District Court for the Parish of East Baton Rouge (the "District Court") granting the peremptory exception of the Louisiana State Board of Examiners of Psychologists (the "Board").

I. JURISDICTION

This Court has jurisdiction over this appeal pursuant to LSA-Const. Art. 5, § 10(A)(1), as this is an appeal from a decision of a district court in a civil matter .

II. STATEMENT OF THE CASE

The District Court committed legal error when it granted the Board's peremptory exception based on an incomplete and improperly narrow view of both the Louisiana Administrative Procedures Act ("LAPA") and the Court's own constitutional authority to review the Board's actions.

III. RULING OF TRIAL COURT

The District Court granted the Board's peremptory exception of no right of action.

IV. SPECIFICATION OF ERRORS

1. The District Court erred when it failed to exercise its appellate jurisdiction to review – and reverse – the Board's determination that it lacked jurisdiction to entertain Dr. Bond's complaint based upon an erroneous legal determination that the applicable statute of limitation had expired. See Transcript of Peremptory Exception Hearing, July 13, 2009 ("Transcript") at 18.

2. The District Court erred when it failed to exercise its original jurisdiction to render a declaratory judgment. See Transcript at 18.

V. ISSUES FOR REVIEW

1. Whether the District Court's determination that the Board's summary dismissal of Dr. Bond's complaint was "not an appealable decision" was erroneous

in view of the LAPA's express provision that it does not limit judicial review under other means.

2. Whether the District Court erred when it failed to exercise its original jurisdiction to render a declaratory judgment. Transcript at 18.

VI. SUMMARY OF RELEVANT FACTS AND PROCEDURE

Dr. Trudy Bond is a licensed psychologist who practices in Ohio. See Petition for Judicial Review of Administrative Action and Declaratory Judgment ("Petition") at p.1. In August 2006, Dr. Bond first learned that military psychologist Dr. Larry C. James held a position in the American military in Guantanamo Bay, Cuba. Petition at ¶ 26. She first learned of Dr. James's position in Abu Ghraib, Iraq in August 2007. Id. On February 29, 2008, Dr. Bond filed an administrative complaint with the Board, pursuant to Louisiana Administrative Code 46: LXIII, Section 1503 (2008). Id. at ¶ 3. Under Section 1503(A) of the Louisiana Administrative Code, a complaint is defined as the receipt of any information by the board indicating that there may be grounds for disciplinary action against a psychologist . . ." LAC 46:LXIII 1503. Louisiana Administrative Code 46: LXIII, Section 1503 (B) provides that complaints to the Board may be initiated by any licensed psychologist or by any other person.

In the complaint to the Board, Dr. Bond alleged that Dr. James violated his professional and ethical obligations by mistreating detainees at the United States military detention facility in Guantanamo Bay, Cuba during January to mid-May 2003 and by repeating this mistreatment subsequently at the military detention center at Abu Ghraib, Iraq. See Petition at ¶¶ 4-5. On April 15, 2008, the Board, without making any factual findings whatsoever, ruled that Dr. Bond's complaint was not timely filed. Id. at ¶ 12 . In its letter to Dr. Bond, Executive Director Monic stated that "the Board takes seriously all allegations of wrongdoing against psychologists licensed in Louisiana, as well as the unlawful practice of psychology

in this state.” Id. Summarily dismissing Dr. Bond’s complaint, the Board stated that it could not proceed in the matter because the statute of limitations provided under LA R.S. 37:21A(2) had expired. Id. Despite the fact that Dr. Bond alleged that Dr. James’ unethical conduct occurred as late as May 2003, the Board’s letter informed Dr. Bond that her complaint against Dr. James was closed on March 28, 2008. Id. There were no findings of fact or conclusions of law upon which the Board based its decision. Id. In a letter dated April 23, 2008, former counsel for Dr. Bond requested a re-hearing. See Petition at ¶ 13.

On June 19, 2008, Dr. Bond, through counsel, submitted additional information and allegations regarding Dr. James’ involvement with interrogation tactics designed to cause detainees physical and mental harm. See Petition at ¶ 13. Dr. Bond again alleged that Dr. James was ethically and professionally responsible for the illegal and improper conduct, that the conduct caused serious harm and facilitated abuse and ill-treatment of detainees, and that psychologists under the command and supervision of Dr. James provided confidential medical information about detainees to interrogators. Id. at ¶¶ 16-17. In the letter, Dr. Bond also provided the Board with additional allegations that Dr. James may have been involved in abusive interrogation techniques at the Abu Ghraib detention facility in 2004. Id. at ¶ 14. On June 20, 2008, the LSBEP held a closed-door meeting to reconsider its decision not to investigate Dr. James. See Petition at ¶ 20. On June 25, 2008, the LSBEP informed Plaintiff that her request for an investigation was time-barred under La. R.S. 37:21(A)(2). Id. at ¶ 21.

On July 24, 2008, Dr. Bond petitioned the Nineteenth Judicial District Court for the Parish of East Baton Rouge for judicial review of the Board’s action and for a declaratory judgment pursuant to Louisiana Code of Civil Procedure, Articles 1871 et seq. See generally, Petition. Dr. Bond requested that the district court find that the complaint against Dr. James was timely filed within the statute of

limitations enunciated in La. R.S. 37:21 (A)(2). See Petition at p. 10. Dr. Bond further petitioned the Court to remand the case to the Board for a full and complete investigation and hearing, or, in the alternative, to order discovery regarding the issue of timeliness in conformity with the Louisiana Constitution, the Code of Civil Procedure and La. R.S. 49:964. Id. The Board filed an answer to the Petition on August 25, 2008, which answer was replete with denials of the allegations against Dr. James. See Answer to Petition.

On May 5, 2009, the Board filed its Peremptory Exception of No Right of Action (the "Peremptory Exception"). See Peremptory Exception at p. 1. In the Peremptory Exception, the Board asserted that Dr. Bond's Petition failed to state a right of action because she lacked standing. Id. at ¶ 2. Dr. Bond filed an Opposition to the Board's Peremptory Exception on June 12, 2009. Dr. Bond argued that she established standing to seek judicial review of the Board's decision not to investigate the claims against Dr. James pursuant to La. R.S. 37:2353(E). See Pl. Opp. To Peremptory Exception. La. R.S. 37:2353(e) provides that "[a]ny person aggrieved by an action of the board may seek judicial review in the district court for the parish of East Baton Rouge in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq." On June 25, 2009, the Board then filed a reply memorandum in support of its Peremptory Exception. In its reply, the Board asserted that Dr. Bond could not seek judicial review pursuant to La. R.S. 49:964(A)(1). See Def. Reply Mem. in Support of Peremptory Exception. In a sur-reply memorandum in opposition to the Board's Peremptory Exception, filed on July 8, 2009, Dr. Bond asserted that her right to judicial review was statutory under La. R.S. 37:2353(E).

The district court heard oral argument on the Board's Peremptory Exception on July 13, 2009. Counsel for the Board asserted that the Board reviewed Dr. Bond's complaint against Dr. James and determined no investigation should occur.

See Tr. Exception Hearing at p. 2. The Board's counsel further asserted that Dr. Bond had no right to judicial review pursuant to La. R.S. 49:964 and La. R.S. 37:2353(E) because Dr. Bond was not an aggrieved party and the Board issued no final decision or order in an adjudication proceeding. Id. at pp. 3-6. At oral argument, undersigned counsel reasserted Dr. Bond's request for a declaratory judgment that Dr. Bond's Petition was filed within the statute of limitations. Id. at pp. 13-14. Counsel for Dr. Bond also argued that proper process of Dr. Bond's statutory right to bring a complaint before the Board mandated a remand to the Board for an investigation of Dr. Bond's complaint. Id.

Following the argument of counsel, the District Court granted the Board's Peremptory Exception and held that La. R.S. 37:2353(c) "gives the Board discretion on whether or not to conduct a hearing upon a complaint." See Tr. Exception Hearing at p. 17. The district court further held that a person's right to appeal the Board's actions, in accordance with the Louisiana Administrative Procedures Act, arises only when there has been an adjudication. Id. The district court sustained the Board's Peremptory Exception "on the basis that the Board's decision not to conduct a hearing into any disciplinary proceedings, whether based on an issue of law or an issue of fact, is not an appealable decision." Id. at p. 18 (stating that La. R.S. 37:2353 envisions judicial review only in circumstances where the disciplinary council or judicial commission make a decision regarding discipline and not where the Board decides not to conduct a hearing. Id. at pp. 17-18). The court entered judgment on the Peremptory Exception on July 24, 2009. On August 6, 2009, Dr. Bond timely filed an appeal in the district court. Dr. Bond hereby appeals the district court's decision to sustain the Board's Peremptory Exception.

VII. ARGUMENT

A. Standard of Review

This Court should review the decision of the District Court to grant the Board's peremptory exception of no right of action on a de novo basis. See Bunge N. Am., Inc. v. Board of Commerce & Ind., 991 So.2d 511, 519 (La. App. 1st Cir. 2008); McPherson v. Foster, 889 So. 2d 282, 291 (La. App. 1st Cir. 2004). This is so because the District Court's ruling was purely legal. Bunge, 991 So.2d at 519; McPherson, 889 So.2d at 291.

In bringing its peremptory exception of no right of action, the burden was on the Board to establish that Dr. Bond did not have the right or legal capacity to proceed with her suit. McPherson, 889 So. 2d at 291; Morris v. Rental Tools, Inc., 435 So. 2d 528, 531 (La. App. 5th Cir. 1983). A peremptory exception is "triable on the face of the papers, and for the purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. A petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim." Bunge, 991 So.2d at 519-20.

B. The District Court Erred by Granting the Board's Peremptory Exception Because the Court was Empowered to Hear Dr. Bond's Petition Under the Louisiana Administrative Procedure Act and its Own Constitutional Authority.

The District Court was empowered to review Dr. Bond's Petition under both the Louisiana Administrative Procedure Act ("LAPA") and its own original, constitutional authority, yet the District Court failed to properly consider either of these grounds. Dr. Bond brought suit pursuant to Sections 37:2353(E) (generally, "Section 37:2353") and 49:964 ("Section 49:964") of the Louisiana Revised Statutes and the Louisiana Declaratory Judgments Act, La. C.C.P. Art. 1871 et seq. Petition at ¶ 2. Section 37:2353(E) provides that "any person aggrieved by an

action of the Board may seek judicial review in the district court for the parish of East Baton Rouge in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.” The Declaratory Judgment Act, Art. 1871, provides, “Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

At oral argument, the District Court focused on the Board’s argument that because the Board had not held a hearing in connection with Dr. Bond’s complaint it had never rendered a “final decision or order in an adjudication proceeding” within the meaning of the LAPA and that, hence, the Board’s decision was completely unreviewable. See Transcript at 17-18. Apparently misled by the Board’s selective parsing of the LAPA, the Court simply failed to consider the full scope of review provided by the Legislature. Section 49:964A(1) reads, in full:

Except as provided in R.S. 15:1171 through 1177 [addressing prisons and corrections activities], a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(emphasis supplied).

As is facially clear from this statutory section, and in direct contravention of the Board’s argument, the LAPA does not completely preclude judicial review of an agency’s decision absent a final “decision or order” as defined in 49:951. On the contrary, it specifically preserves an avenue of review through “other means of review, redress, relief or trial de novo provided by law.” The District Court committed error when it ignored this language.

The District Court likewise neglected to exercise its original jurisdiction via the Declaratory Judgment Act. It did so notwithstanding that: (1) Dr. Bond

requested such review both in her Petition and again at oral argument; and (2) Dr. Bond presented a justiciable controversy. The District Court committed error when it failed to exercise its original jurisdiction via the Declaratory Judgment Act.

1. The District Court erred when it ruled that Dr. Bond could not appeal from the Board's dismissal because the District Court possessed the authority to review the Board's actions under the Louisiana Administrative Procedure Act.

Although the District Court in the instant case apparently believed that it was completely constrained by the Board's erroneous interpretation of the LAPA, such was not the case. As noted, the LAPA expressly preserves a claimant's right to other forms of judicial review "provided by law." La. R.S. 49:964A(1). As Louisiana courts have long recognized, in situations where the requirements of the LAPA are not met – for instance where no hearing has been conducted because none was required – judicial review is still available to determine whether an agency's discretionary action "can be deemed to have been unreasonable, arbitrary or capricious, or whether it amounted to an abuse of power." See Delta Bank & Trust Co. v. Lassiter, 383 So.2d 330, 335 (La. 1980); Henning v. Carrier, 430 So.2d 1310, 1315 (La. App. 1st Cir. 1983); Zeringue v. Lafourche Parish Office of Eligibility Determination, 597 So.2d 1142, 1143 n.2 (La. App. 1st Cir. 1992) ("Even if the [LAPA] did not provide for judicial review this right exists independently of the statute.").

Indeed, "the right of judicial review of administrative proceedings is presumed to exist. It has been held that such review is necessary to the validity of administrative proceedings under [Louisiana's] legal system and traditions." Delta Bank, 383 So. 2d at 335 (emphasis added); Henning, 430 So. 2d at 1315, citing La. Const. (1974), Art. I., Sec. 22 ("All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property,

reputation, or other rights.”); see also La. Const. Art. V, Sec. 16A(1) (“a district court shall have original jurisdiction of all civil and criminal matters”); The Boeing Co. v. La. Dept. of Economic Dev., 94-0971 (La. App. 1 Cir. 06/23/95), 657 So. 2d 652, 657 (La. App. 1 Cir. 1995) (“In matters involving constitutional questions or excess of authority claims, a court is not reviewing the merits vel non of an adjudication or quasi-adjudication. The court would be exercising its original jurisdiction over civil matters.”).

The facts – and the Louisiana Supreme Court’s disposition – of Delta Bank could hardly be more instructive here. In that case, the plaintiff Delta Bank & Trust Company (“Delta Bank”) was the sole existing bank in a certain parish. Delta Bank, 383 So. 2d. at 332. Without a hearing, the Commissioner of Financial Institutions granted its conditional approval of the application of a competitor bank for a certificate of authority to organize a bank in the same parish. Id. Delta Bank sought writs of mandamus “directing the commissioner to hold a hearing on the application.” Id.

The Supreme Court ultimately ruled that although there was “no statutory or constitutional requirement that the commissioner hold a hearing,” it was nonetheless “well settled that the right of judicial review of administrative proceedings is presumed to exist” and that, moreover, “such review is necessary to the validity of administrative proceedings under [Louisiana’s] legal system and traditions.” Id. at 335. The Court continued, explaining, “[T]o state a cause of action for review of an administrative action, the aggrieved party must allege facts on which the reviewing court can conclude that the administrative agency abused its discretion.” Id. at 336.¹

¹ The Louisiana Supreme Court’s decision in Metro Riverboat Associates, Inc. v. La. Gaming Control Board does not suggest the contrary. 01-0185 (La. 10/16/01), 797 So.2d 656 (La. 2001). In Metro Riverboat, a 2001 decision interpreting the judicial review provisions of Louisiana’s Gaming Control Law, the *(Footnote continued on next page)*

2. The District Court erred when it failed to exercise its appellate jurisdiction to review for plain error – and reverse – the Board’s determination that it lacked jurisdiction to investigate Dr. Bond’s complaint.

Under the Delta Bank analysis, the District Court here was empowered to review the Board’s purely procedural determination that it lacked jurisdiction to investigate Dr. Bond’s complaint. The standard that the District Court should have applied to the Board’s erroneous jurisdiction determination was the “plain error” standard. Although factual determinations of an administrative agency should be given considerable weight and should not be reversed unless they are clearly

(Footnote continued from previous page)

Louisiana Supreme Court endorsed the view that judicial review under the LAPA is available only when there has been a “final decision or order in an adjudication proceeding.” Metro Riverboat, 797 So. 2d at 660. The complainant in the case sought appellate review by the district court of the gaming board’s conditional approval of a license-transfer. Id. at 662. Even after this conditional approval, the would-be transferee was required to submit an application and be found suitable. Id. The Supreme Court concluded that because of these conditions, the “court of appeal was therefore correct in concluding that the board’s action was not final.” Id.

These facts of Metro Riverboat are eminently distinguishable from those here. Unlike in Metro Riverboat, where the appellant sought review of a genuinely interlocutory decision, Dr. Bond sought review in the District Court for the dismissal of her complaint. Whereas the disputed decision of the board in Metro Riverboat was not final at all, the disputed decision here could not have been more final.

This distinction is by no means merely academic. Inasmuch as the Supreme Court based its decision in Metro Riverboat on concerns that “piecemeal appeals” would threaten “constitutional separation of powers,” see Metro Riverboat, 797 So. 2d at 661, that concern was simply not present in Dr. Bond’s appeal. (Moreover, as developed in the next section, unlike the appellant in Metro Riverboat, Dr. Bond did invoke the District Court’s original jurisdiction.)

Finally, inasmuch as the Supreme Court’s decision in Metro Riverboat could be construed to imply that, as the Board argued here, actions of administrative agencies that fall outside of the “adjudication” provisions of the LAPA are not subject to judicial review at all, such a holding would be contrary to the provisions of the LAPA itself, which specifically preserves “other means of review . . . provided by law.” La. R.S. 49:964A(1). The Court in Metro Riverboat did not address this aspect of the LAPA. Nor did the Court address the Delta Bank line of cases that expressly provides for judicial review outside of the LAPA. Accordingly, if Metro Riverboat is to be read this expansively – which it should not be – its holding should be confined to the facts of the case and to the Gaming Control Law. See, e.g., Carter v. State of La., 897 So.2d 149, 153 (La. App. 1st Cir. 2004) (Downing J., concurring in part and dissenting in part).

wrong, judicial review of an administrative agency's "decisions as to jurisdiction, procedure, and interpretation of laws and regulations . . . is not so limited."

Marcantel v. Dep't of Transportation and Dev., 590 So. 2d 1253, 1256 (La. App. 1 Cir. 1991). Rather, this Court has recognized that administrative decisions based on legal interpretation require a reviewing court to perform its traditional plenary functions and apply the "error of law standard." Morehouse v. Southern Univ., Baton Rouge Campus, 961 So. 2d 473, 477 (La. App. 1 Cir. 1990).

Here, the Board ruled – clearly erroneously – that: (1) the statute of limitation set forth in La. R.S. 37:21A(2) (the "Statute of Limitation") prevented it from proceeding to investigate this case, and (2) that Dr. Bond lacked standing to bring her complaint because she was not "aggrieved." See Board's Peremptory Exception of No Right of Action, throughout. The Statute of Limitation provides that "no proceeding may be initiated after two years from discovery by the complainant. However, under no circumstances shall such a proceeding be initiated more than five years from the date of the act or omission." La. R.S. 37:21A(2). As she noted in her Petition to the District Court, Dr. Bond filed her complaint against Dr. James with the Board on February 29, 2008. Petition at ¶ 3. She first learned of Dr. James' position at Guantanamo in August 2007. Petition ¶ 26. She accordingly filed well within the two-year limitation-period.

Dr. Bond likewise filed within the five-year prescriptive period. Dr. Bond's Petition to the District Court noted that Dr. James did not leave the American military base in Guantanamo Bay, Cuba until mid-May, 2003. Petition at ¶ 4. The petition alleged further that Dr. James, during his tenure, "participated in, supervised, condoned, authorized and was aware or should have been aware of interrogation protocols and techniques used at Guantanamo . . . [that] constituted a violation of his ethical and professional responsibilities and which resulted in serious harm, abuse and ill-treatment of persons detained therein." Petition at ¶5.

These allegations manifestly “state[d] a cause of action for review of an administrative action” under the rubric established by the Supreme Court in Delta Bank. 383 So. 2d at 336. What is more, the Board has never presented any facts, or even argument, to the contrary.

The Board’s determination that it lacked jurisdiction to investigate Dr. Bond’s complaint was entitled only to a plain-error review. As the preceding demonstrates, the decision was clearly erroneous. Based on the LAPA’s plain statement that nothing in it “limit[s] . . . utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law,” as well as the Supreme Court’s holding in Delta Bank, the District Court should have reached the Board’s determination and reversed it.²

3. The District Court erred when it failed to exercise its original jurisdiction pursuant to the Declaratory Judgment Act.

Dr. Bond also invoked the District Court’s original jurisdiction by requesting a declaratory judgment regarding the inapplicability of 37:21A(2) to her complaint.

² This statute-of-limitations based rationale for the Board’s dismissal of Dr. Bond’s complaint is the only rationale in the record for the dismissal. Although the Board advanced a standing-based argument in its peremptory exception, the Board unequivocally conceded that argument in its reply to Dr. Bond’s opposition to the Board’s peremptory exception (the “Board’s Reply”). See Board’s Reply at 1.

Through counsel, Dr. Bond opposed the Board’s peremptory exception by highlighting that Section 1503(B) of the Louisiana Administrative Code unambiguously authorizes “any licensed psychologist” or “any other person” to initiate complaints. See Dr. Bond’s Opposition to the Board’s Peremptory Exception of No Right of Action at 3-6. The Board, in its reply, conceded that Dr. Bond was “correct in stating that [] Section 1503 provides that any person can file a complaint with the [Board].” Reply at 1. The Board argued, however, that Section 1503 “does not confer the right to judicial review of the Board’s dismissal of a complaint” and that “[a]ny right to judicial review is conferred by La. R.S. 49:964(A)(1)” Reply at 1.

The Board would, thus, have it be the case that a complainant could bring a complaint that she had standing to bring, receive a dismissal from an administrative body that is based on a plainly legally erroneous conclusion, and have no recourse under the LAPA. Thankfully, such an unjust, unaccountable, and formalistic regime is not the law of Louisiana. See Delta Bank, 383 So. 2d. at 335-336.

See, e.g., Wooley v. State Farm Fire & Cas. Ins. Co., 04-0882 (La. 01/19/05), 893 So.2d 746, 770 (La. 2005) (recognizing availability of declaratory relief action for review of legal issue under District Court's original jurisdiction as alternative to LAPA). Dr. Bond, through counsel, specifically renewed this request at the hearing on the Board's peremptory exception. See Transcript at 13.

Pursuant to the Declaratory Judgment Act, District Courts are empowered to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." La. C.C.P. Art. 1871. The basic requirement for a declaratory judgment action is that it present a "justiciable controversy," defined as "a real and substantial controversy admitting of specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Am. Waste & Pollution Control Co. v. St. Martin Parish Police Jury, 627 So. 2d 158, 161 (La. 1993). Additionally, "the dispute at issue must involve the legal relations of the parties who have adverse interests, which can be determined in a conclusive factor at that stage of the proceedings." City of Kenner v. Kyle, 2002-1262 (La. App. 5 Cir. 04/08/03), 846 So. 2d 34, 37-38 (La. App. 5th Cir. 2003).

Notwithstanding that Dr. Bond presented just such a "justiciable controversy" in her Petition, the District Court failed to consider this jurisdictional basis in granting the Board's peremptory exception. Although the proceedings below took a number of diversions, based primarily on the Board's shifting arguments, it is crucial to remember why Dr. Bond first filed for review. It was not because the Board failed to afford her a hearing; rather, it was because the Board determined that it was "not able to proceed in this matter" because it believed the statute of limitations expired. See Petition at ¶ 21. However, as demonstrated by Dr. Bond's letters to the Board, in the uncontroverted allegations of her Petition,

and in the previous section of this brief, the Board's determination was simply legally wrong.

Accordingly, Dr. Bond filed suit with the District Court requesting, inter alia, that the Court render a declaratory judgment that "the complaint against Dr. James was filed timely within the statute of limitations" Petition at Sec. V.A. This request fell squarely within the scope of the Declaratory Judgment Act, and the Court's original jurisdiction, and could have – and should have – been easily determined on the basis of the uncontroverted facts of record. In addition, counsel reiterated during oral argument that Dr. Bond was seeking a declaratory judgment, requesting that the District Court invoke its original jurisdiction.

In sum, because the District Court had clear constitutional authority to review the Board's decision – either under the Declaratory Judgment Act or its own plenary authority to review agency action – its holding that the Board's decision was "unreviewable" was legally erroneous and should be reversed.

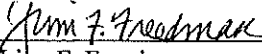
VIII. CONCLUSION

As previously stated by the Louisiana Supreme Court, "[w]here the power of the government or an agency is to be used against an individual there is a right to a fair procedure to determine the basis for, and the legality of, such action." Bell v. Dept. of Health & Human Resources, 483 So.2d 945, 950 (La. 1986), citing Nowak, J., et al., Handbook on Constitutional Law, Ch. 15, p. 477 (1978). Similarly, "[t]he right of judicial review in administrative law has been said to be 'an important safeguard of due process and the availability of judicial review may be critical in determining whether a party has been denied due process.'" Wooley v. State Farm Fire & Cas. Ins. Co., 893 So. 2d 746, 769 (La. 2005), quoting Force, R. & Griffith, L., The Louisiana Administrative Procedure Act, 42 LA. L. REV.

1227, 1270 (1982). Manifestly, the Board's position – as adopted by the District Court – is contrary to these well-established maxims.

If the Board's argument were correct, then it could simply eliminate judicial oversight altogether by refusing to ever provide for an adjudicatory hearing or a "final decision or order" to contravene the requirements of the LAPA. It could, as here, simply issue a letter denying a claimant's request for review based on closed-door determinations, or no determinations at all, confident that no court could ever question its actions. Fortunately, this is not the law in Louisiana.

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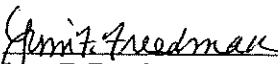
Counsel for Trudy Bond, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day mailed via United States Mail, properly addressed and first-class postage pre-paid to:

Amy Groves Lowe
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Providence, Rhode Island, this 15th day of October, 2009.


Linn F. Freedman