

1 STATE OF MICHIGAN
2 IN THE COURT OF CLAIMS

3 PETER J. HAMMER,

4 Plaintiff,

5 vs.

Case No.: 04-241 MK

6 THE BOARD OF REGENTS OF THE
7 UNIVERSITY OF MICHIGAN, a body politic,
8 Defendant.

9 _____/
10 The Deposition of JEFFERY FRUMKIN, taken
11 pursuant to Notice in the above-captioned cause at
12 900 Victors Way, in the City of Ann Arbor, Michigan, on
13 September 20, 2005, commencing at or about 9:36 a.m.,
14 before Jacqueline D. Afifi, CSR-4182, a Notary Public,
15 in and for the County of Washtenaw, acting in
16 Washtenaw.

17 APPEARANCES: GREEN, GREEN & ADAMS, P.C.
18 By: Philip Green (P14316)
19 900 Victors Way
20 Suite 240
21 Ann Arbor, MI 48108
22 (734) 665-4036

23 Appearing on behalf of Plaintiff.

24 MILLER, CANFIELD, PADDOCK AND STONE
25 BY: Richard J. Seryak (P26152)
150 W. Jefferson Avenue
Site 2500
Ann Arbor, MI 48226
(313) 963-6420

Appearing on behalf of Defendant.

ALSO PRESENT: Steven Croley

1 Essentially the academic year.
 2 Q Right.
 3 A Right.
 4 Q As I understand it, there is -- is it an AAUP rule, by
 5 the way?
 6 A Not that I'm --
 7 Q It's a --
 8 A It's the University rule. I don't know it's an AAUP
 9 rule.
 10 Q And is the topic that we're talking about generally
 11 referring to as de facto tenure?
 12 A That's generally the topic that people use to describe
 13 it, yes.
 14 Q And as I understand it, if you have taught for eight
 15 years without having received the requisite nine months
 16 notice prior to the end of your eighth year of service
 17 that that eighth year was going to be a terminal year,
 18 you are granted tenure as a result of a procedure at the
 19 University?
 20 MR. SERYAK: I'm going to object. Let me --
 21 THE WITNESS: Uh-huh.
 22 MR. SERYAK: Please let me object, get my
 23 objection in to the form of the question and lack of
 24 foundation.
 25

1 A You have the same procedural protection.
 2 Q Right. While you continue to be paid. Right?
 3 A That's correct.
 4 Q Theoretically you can only be terminated for cause?
 5 A Correct.
 6 Q You receive the same salary increments that a tenured
 7 professor would receive, do you not?
 8 A You're subject to the same salary program as a tenured
 9 faculty member, that's correct.
 10 Q You receive the same prerequisites of employment that a
 11 tenured professor would receive?
 12 MR. SERYAK: I'm going to object for lack of
 13 foundation.
 14 BY MR. GREEN:
 15 Q You can answer.
 16 A I'm not absolutely sure about that as to what
 17 prerequisites might enter into someone who is tenured or
 18 someone who is continuing in an appointment without
 19 tenure.
 20 Q Do they receive sabbatical leave?
 21 A I don't know.
 22 Q Okay. Did Evan Caminker in the course of your
 23 conversation with him -- by the way, was there more than
 24 one conversation on this topic? I'm sorry.
 25 A There was a subsequent conversation the following fall

1 BY MR. GREEN:
 2 Q You can answer.
 3 A Oh, okay. Sorry. I didn't --
 4 Q I thought more was coming, too.
 5 A The answer is no, you are not granted tenure. Okay.
 6 That --
 7 MR. SERYAK: Well, you've answered the
 8 question.
 9 MR. GREEN: Okay.
 10 THE WITNESS: Okay.
 11 BY MR. GREEN:
 12 Q Well, what does the rule require, then, or provide?
 13 A What the rule requires, then, is -- what happens then at
 14 that point is that the individual is then granted the
 15 protections of what's known as Regents bylaw 5.09, and
 16 so at that point termination of the appointment is
 17 subject to the same procedures that are in effect for a
 18 tenured faculty member, or for any faculty member under
 19 a current appointment if you want to terminate the
 20 appointment during the term of the appointment. So but
 21 tenure is only granted by the Board of Regents.
 22 Q All right. And that's why they refer to as de facto
 23 tenure because the -- while you're not granted tenure
 24 you have the same benefits as a tenured professor would
 25 have?

1 as I recall.
 2 Q And that would have been the fall of 2002?
 3 A I believe so.
 4 Q Why don't we go to that conversation. Who initiated
 5 that conversation?
 6 A That would have been Evan Caminker.
 7 Q Okay. And did he tell you why he was initiating the
 8 conversation?
 9 A Yes, he did.
 10 Q What did he tell you?
 11 A He indicated that he had not met the time line with
 12 respect to the -- the rules of the Standard Practice
 13 Guide, and we discussed where we were at with respect to
 14 that -- to that issue. We sought advice and counsel
 15 from general counsel's office about that and reached a
 16 determination about where we stood with respect to the
 17 procedures of the University.
 18 Q Did you in your conversation with him before you sought
 19 counsel with the University general counsel's office
 20 conclude that he had not provided the requisite nine
 21 months preliminary notice of termination to
 22 Professor Hammer?
 23 A It was clear that he had not sent the letter by
 24 September 15th. I hadn't concluded anything beyond
 25 that.

1 Q All right. And as you understood the application of the
 2 rule that we've been discussing, the notice of terminal
 3 year had to be sent in the case of Professor Hammer by
 4 September 15th?
 5 A The -- the Standard Practice Guide is specific with
 6 respect to the date of September 15th, that's right.
 7 Q And did you conclude, therefore, that Professor Hammer,
 8 and this is before consulting with the general counsel's
 9 office, did you conclude in your own mind that
 10 Professor Hammer was eligible to the protection of
 11 Regent bylaw 5.09 with respect to his continuing
 12 employment with the University?
 13 A I reached no conclusion separate from the consultative
 14 process that included general counsel.
 15 Q You must have had some notion in your mind as to the
 16 import of that, didn't you?
 17 A I -- I knew that we had an issue to resolve and became
 18 aware of, and I do not recall whether it was in
 19 conversation with Evan first; I don't recall whether, as
 20 I think back on it, I don't even recall at this point
 21 whether or not the initial conversation might have
 22 included Mr. Sharphorn and myself with Evan. I'm --
 23 those sequences I don't recall. I know that we reviewed
 24 the employment, much of the employment history,
 25 including the communications from then Dean Layman to

1 Professor Hammer, and concluded that adequate notice had
 2 been provided. But as I sit here right now I'm not sure
 3 whether there was two separate meetings or whether it
 4 involved -- the initial meeting involved Dan Sharphorn
 5 from general counsel's office, Evan and myself.
 6 Q Does the Standard Practice Guide require that the notice
 7 be in a certain specified form, this Notice of
 8 Nonreappointment?
 9 A The Standard Practice Guide does have a template, yes.
 10 Q In addition to having a template, it requires that the
 11 notice be sent on that template, does it not?
 12 A The guide says what the guide says.
 13 Q All right.
 14 A I don't know that one way or the other.
 15 Q Fair enough. Did you communicate with Evan Caminker by
 16 e-mail regarding that topic?
 17 A I'm sure that I did.
 18 Q Do you recall being consulted by Evan Caminker regarding
 19 whether or not you could act as an ombudsman in
 20 resolving the problem, an ombudsman to be available
 21 apparently for Peter Hammer for consultation?
 22 A I don't recall being characterized as being an ombudsman
 23 for Peter Hammer. And that would be an inappropriate
 24 label given my position. And we have ombuds in the
 25 various schools and colleges, but I do believe that

1 someone suggested it, it might have been Evan, that
 2 Professor Hammer could come talk to me. And that's not
 3 an unusual -- it's not a typical kind of thing, but it
 4 is -- it is, in fact, my office can act as a resource
 5 for individual faculty members, and have.
 6 Q I'm going to be a little more specific. Do you recall
 7 being asked to serve or if you could serve as an ombuds
 8 for Professor Hammer and indicating to Evan Caminker
 9 that you did not think it would be appropriate inasmuch
 10 as both you and Dan Gamble administered the grievance
 11 process for the University?
 12 A I don't recall it in specificity, but I certainly agree
 13 with the conclusion.
 14 Q Okay. And -- and do you recall in communicating in this
 15 fashion with him that Evan Caminker then responded
 16 something to the effect, by the way, we have a problem
 17 with the issue that he's already been offered a contract
 18 for the following year and we understand that there may
 19 be a rule that gives him de facto tenure if we haven't
 20 given him notice of his final appointment? Do you
 21 remember --
 22 A I have a -- I have a general recollection that that was
 23 precipitating the spring conversation.
 24 Q Okay. So that in the spring of 2002 --
 25 A Winter or spring, I don't recall.

1 Q Okay. In the first four or five months of 2002?
 2 A That's correct.
 3 Q You had a conversation precipitated by a -- some
 4 communication from Evan Caminker on the topic of what
 5 notice was appropriate to give to Peter Hammer so as to
 6 avoid the implications of the protection of Regent bylaw
 7 5.09?
 8 A Yes, I had that conversation.
 9 Q And the cutoff for giving the formal notice whether on
 10 the template provided by the Standard Practice Guide or
 11 not as you understood it was September 15th of 2002?
 12 A The cutoff for the notice in the policy is
 13 September 15th of the final year.
 14 Q Well, what year would that have been?
 15 A That would have been 2002.
 16 Q Okay. So that the conversation that was precipitated by
 17 Evan Caminker on that topic occurred at least a few
 18 months before the cutoff for the formal letters?
 19 A That's correct.
 20 Q As you sit here today, is there any doubt in your mind
 21 that Evan Caminker at least understood that a formal
 22 notice of final year of appointment had to be given to
 23 Professor Hammer by September 15th of 2002?
 24 MR. SERIYAK: Well, let me object for the lack
 25 of foundation to that question. You're asking the

1 Q And what is the purpose of the non -- of a Notice of
2 Nonreappointment?

3 A The purpose of Notice of Nonreappointment is --
4 MR. GREEN: I'm going to object to lack of
5 foundation, but go ahead. I'm sorry to interrupt.

6 THE WITNESS: Okay. The purpose of notice of
7 nonreappointment is to provide adequate notice to the
8 eligible faculty members covered by the policy that
9 their appointment at the University is going to
10 terminate at a date specific.

11 BY MR. SERYAK:

12 Q And the template or the -- the form that is attached to
13 that Standard Practice Guide you're familiar with that?

14 A I know that there is --

15 Q Form letter?

16 A I know that there's one there, yes, I'm familiar with
17 it.

18 Q Is it mandatory that the notice be provided only in the
19 form of that letter?

20 A No.

21 Q In your testimony you stated that after reviewing
22 communications to Peter Hammer from then Dean Layman
23 that you along with others concluded that Peter Hammer
24 had received adequate notice. Did I -- did I summarize
25 your -- Notice of Nonreappointment. Did I summarize

1 going to be extended and what will occur if he's not
2 awarded tenure and given specific notice of when his
3 contract or appointment with the University will be
4 terminated if not given tenure.

5 Q Okay. Now, were you aware that Peter Hammer received
6 two tenure reviews?

7 A I am aware of that, yes.

8 Q Is that customary at the University?

9 A No.

10 Q Do you know or were you informed at all as to whether
11 Peter Hammer was advised of the results of those
12 reviews? And by that I mean the faculty votes.

13 A Yes.

14 MR. SERYAK: Okay. Thank you. That's all I
15 have.

16 MR. GREEN: Can I take a quick look at this
17 document that you just showed him, please?

18 MR. SERYAK: (Complied).

19 RE-EXAMINATION

20 BY MR. GREEN:

21 Q Mr. Frumkin, I'm looking at the document that you just
22 examined a moment ago, Deposition Exhibit Number 1 from
23 Hammer deposition. You indicated that the language on
24 the bottom of the first page and top of the second page
25 was the language that you relied upon for your

1 your testimony accurately?

2 A Yes, you did.

3 Q And I'm going to show you what is Exhibit 1 from the
4 Hammer deposition and ask if that is one of the
5 particular -- take a moment and look at it. And my
6 question is that one of the communications you were
7 referring to in your answer?

8 MR. GREEN: For the record, it's a letter
9 dated February 28th of 2000?

10 MR. SERYAK: Correct.

11 THE WITNESS: Okay. I've reviewed it. You
12 want to ask me the question again, please?

13 BY MR. SERYAK:

14 Q And the question is, is this one of the communications
15 that you were referring to in your prior answer?

16 A That's correct.

17 Q And in your opinion did this letter satisfy the notice
18 requirement of the Standard Practice Guide?

19 A Yes, it does.

20 Q And why?

21 A The language that is at the end of the first page and
22 going forward to the -- continuing on to the second page
23 is very specific with respect to what will occur
24 regarding his current appointment, current to the date
25 of the letter, and how -- how long his appointment is

1 conclusion that he had been given appropriate notice of
2 his final year of appointment. Correct?

3 A That's correct.

4 Q Let me read the language so that we're clear, and you
5 tell me if I'm reading more or less than you were
6 relying on.

7 Quote, your current employment contract
8 expires May 31, 2001. Because the faculty has deferred
9 consideration of your tenure, your contract will be
10 extended to May 31, 2002. If you are awarded tenure,
11 you will receive a new contract. If not, the academic
12 year 2001-2002 will be your terminal year.

13 Is that the language you were relying on?

14 A Yes, it is.

15 Q And did Professor Hammer teach for the academic year
16 2003-2004 at the University of Michigan do you know?

17 A 2003-2004?

18 Q (Indicating).

19 A No, I don't know what was his last year.

20 Q You indicated that a grievance review board was
21 empaneled to consider the grievance of Professor Hammer?

22 A Yes, I did.

23 Q How were you advised of that?

24 A I was informed by someone.

25 Q Didn't you indicate earlier that Ms. Castle was the

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1 person that was involved in reviewing the actions of the
 2 grievance review board?
 3 A That's correct.
 4 Q All right. So you were not directly involved in the
 5 appointment of the review board or the review of their
 6 decision. Correct?
 7 A That's correct.
 8 Q Do you know what process was used by that board?
 9 A No, I do not.
 10 Q Do you know what process was used to select that board?
 11 A No, I do not.
 12 Q Do you know what the membership of that board consisted
 13 of?
 14 A No, I do not.
 15 Q And you said a written decision was issued by the
 16 provost. Have you seen that decision?
 17 A I may have.
 18 Q Do you recall as you sit here today?
 19 A No, I don't recall it.
 20 Q Whether you saw it or not, do you recall the substance
 21 of it today?
 22 A I recall the conclusion.
 23 Q And that was that?
 24 A The grievance was denied.
 25 Q All right.

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1 A The appeal was denied.
 2 MR. GREEN: As we say, everything beyond that
 3 is dicta.
 4 MR. SERYAK: Is what? I'm sorry.
 5 MR. GREEN: Dicta.
 6 THE WITNESS: Dicta.
 7 BY MR. GREEN:
 8 Q Now, you indicated that the template that is connected
 9 to SPG 201.88 is not mandatory. Correct?
 10 A That's correct.
 11 Q All right. The template has certain basic information
 12 on it that the University wants imparted to the effected
 13 faculty member, does it not?
 14 A The template existed before I came, and I don't know
 15 that I've ever had a conversation with anybody about the
 16 structure of the template.
 17 Q The template you know has certain information that is to
 18 be filled in before it's delivered to the faculty
 19 member?
 20 A That's the way the template is designed, yes.
 21 Q All right. And is it your understanding that any part
 22 of that notice is superfluous?
 23 A I don't have an understanding one way or the other.
 24 Q Okay. Do you know whether or not all of the information
 25 contained in that template was imparted to Professor

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1 Hammer in the letter of February 28th, 2000 authored by
 2 Jeff Layman?
 3 A No, I do not.
 4 MR. GREEN: Okay. I have nothing further.
 5 RE-EXAMINATION
 6 BY MR. SERYAK:
 7 Q Well, let's look at the template. I'm going to show
 8 you -- we don't have it marked. We can -- we can mark
 9 it. I'll just represent to you that's the Exhibit A or
 10 attachment, the attachment to the Standard Practice
 11 Guide.
 12 A Okay.
 13 Q Is there any -- my question to you looking at the
 14 letter, Jeff Layman's letter of February 28, 2000, is
 15 there any information that's alluded to in the template
 16 that's not set forth in --
 17 A Not in my mind.
 18 Q -- in the paragraph that you read from the letter?
 19 A I think it's pretty clear that it's -- that your
 20 appointment as whatever your appointment as and I think
 21 the, you know, it's addressed to Professor Peter Hammer
 22 in the school, in the law school, will not be renewed
 23 upon completion of the appointment which ends such date,
 24 and that's given end date to his appointment if certain
 25 conditions didn't exist, which means you get tenured.

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1 Q Did -- are you saying that, just for the record, so that
 2 we're clear --
 3 A Uh-huh.
 4 Q -- is that Exhibit 1 of the Hammer deposition contains
 5 the information that's suggested in the template?
 6 A Yes.
 7 MR. GREEN: Can I take a peek at that?
 8 THE WITNESS: Uh-huh.
 9 MR. GREEN: Thanks. Okay.
 10 MR. SERYAK: Okay. That's all I have.
 11 MR. GREEN: I have nothing further.
 12 THE WITNESS: Can we caucus for a moment?
 13 MR. SERYAK: Yes. Before we're done?
 14 THE WITNESS: Yes.
 15 MR. SERYAK: All right. Do you mind if we
 16 take a short break?
 17 MR. GREEN: No.
 18 (Recess taken 10:57 a.m.)
 19 MR. SERYAK: Yeah, we're done.
 20 (Consistent with off-the-record discussion and
 21 agreement between counsel, Deposition Exhibit
 22 No. 1 was marked and attached.)
 23
 24 (Deposition concluded at about 10:58 a.m.)
 25

1 STATE OF MICHIGAN)
 2
 3 COUNTY OF WASHTENAW)

4 CERTIFICATE OF NOTARY PUBLIC

5
 6
 7 I certify that this transcript is a
 8 complete, true and correct record of the testimony of
 9 the deponent to the best of my ability taken on
 10 September 20, 2005.

11
 12 I also certify that prior to taking this
 13 deposition the witness was duly sworn by me to tell the
 14 truth.

15
 16 I also certify that I am not a relative
 17 or employee of a party, or a relative or employee of an
 18 attorney for a party, have a contract with a party, or
 19 am financially interested.

20
 21
 22 _____
 23 Jacqueline D. Afifi, CSR-4182
 24 Notary Public, Washtenaw County
 25 State of Michigan
 Commission Expires: 12/15/05