



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

February 4, 2004

David L. Finger, Esquire
David L. Finger, P.A.
1201 Orange Street, Suite 725
Wilmington, DE 19801-1155

C. Drue Chichi, Esquire
Deputy Attorney General
Department of Justice
820 N. King Street
Wilmington, DE 19801

***RE: Kimberly R. Bristow v. Delaware Board of Examiners in Optometry
C.A. No. 20241***

Dear Counsel:

By her complaint, Kimberly R. Bristow, O.D., seeks a declaration that the conditions of her employment do not violate the rules and regulations of the Delaware Board of Examiners in Optometry (the "Board"). Alternatively, Dr. Bristow contends that those rules and regulations, if construed to prohibit her employment, are facially invalid as being in excess of the authority granted to the Board by statute. Dr. Bristow initially sought a ruling from the Board but filed her complaint after the Board was unable to muster a quorum of disinterested members to consider her request.¹

¹ Because Dr. Bristow had no adequate remedy at law at the time of filing she was not obliged to exhaust available administrative remedies before pursuing an action in this court. *Levinson v. Delaware Compensation Rating Bureau, Inc.*, 616 A.2d 1182, 1187 (Del. 1992) (doctrine of exhaustion of administrative remedies applies where an administrative agency has exclusive jurisdiction over a matter and is able to provide an adequate remedy). Nor did the later reconstitution of the Board give rise to a duty to exhaust. *American Life Insurance Co. v. Stewart*, 300 U.S. 203 (1937) (existing

The Board has since been reconstituted so that a disinterested quorum is now available. The newly reconstituted Board has moved to stay this action and has asked the court to refer Dr. Bristow's complaint to it for an initial decision about the application of its rules and regulations to the terms and conditions of Dr. Bristow's employment. The rationale for this motion is found in the doctrine of primary administrative jurisdiction, which provides that the court may, in its discretion, refer a matter to the appropriate agency for decision in order to avail itself of the agency's expertise.²

Dr. Bristow contends that the issue involved in this dispute does not require the special expertise of the Board. Rather, she argues that it is a simple and straightforward matter for the court to construe the Board's rules to permit her employment. Alternatively, if those rules are construed to prohibit her employment, she argues that the rules are unenforceable as being beyond that scope of the power given by the General Assembly to the Board.

There is no doubt that this case was properly brought in this court and that the issue of referral only arises as a result of the Board's recent reconstitution. Nevertheless,

equitable jurisdiction is not destroyed because an adequate remedy at law becomes available).

² *Eastern Shore Natural Gas Co. v. Stauffer Chemical Co.*, 298 A.2d 322, 325 (Del. 1972).

Delaware law recognizes that the decision to refer a matter such as this for initial agency action lies within the sound discretion of the court.³

In the circumstances presented, the court is persuaded that it should stay this action for a brief period of time in order to permit the Board the opportunity to conduct a hearing and render a decision about the scope of its own rules. If, as may very well be the case, the Board concludes that Dr. Bristow's employment does not run afoul of its rules, the matter will be at an end. If, on the contrary, the Board concludes that the arrangements surrounding that employment are impermissible, then the court will be in a position promptly to decide the issue of authority raised by the complaint and to exercise its equitable powers as may be necessary to prevent irreparable harm to Dr. Bristow.

For these reasons, this court concludes that the Board's motion to stay the complaint and refer it to the Board should be granted. The Board is directed to conduct a hearing and render its decision within 45 days from the date of this letter. An order implementing this opinion is enclosed.

/s/ Stephen P. Lamb
Vice Chancellor

Enclosure (Order)

³ See, *Matter of Marta*, 672 A.2d 984, 987 (Del. 1996) ("a court may stay an action and refer the issue before it to the appropriate administrative body"); *Eastern Shore Natural Gas Co.*, 298 A.2d at 325 (doctrine of primary administrative jurisdiction permits a court to avail itself of the expertise of an administrative agency having special competence in the matter at hand).