

IN THE SUPREME COURT OF THE STATE OF DELAWARE

APPLICANT NO. 009 to the 2002 §
DELAWARE BAR EXAMINATION, §
§ No. 61, 2003
Applicant Below- §
Appellant, §
v. §
BOARD OF BAR EXAMINERS of §
the DELAWARE SUPREME COURT, §
Examiner Below- §
Appellee. §

Submitted: September 9, 2003
Decided: October 20, 2003

Before **VEASEY**, Chief Justice, **HOLLAND**, **BERGER**, **STEELE**, and **JACOBS**, Justices, constituting the Court en Banc.

ORDER

This 20th day of October 2003, upon consideration of the parties' briefs and oral argument, it appears to the Court that:

(1) The applicant was Applicant No. 9 taking the 2002 Delaware Bar Examination. The Board of Bar Examiners informed the applicant on October 17, 2002, that he had failed the examination. A total scaled score of 145 is required to pass the examination. The applicant's total scaled score on the examination was 138.12. In accordance with Board of Bar Examiners Rule 19, the applicant requested and received copies of two of the Delaware law essay questions, the

applicant's answers, and two representative answers for each question. Thereafter, the applicant requested the Board to re-grade his response to essay question number two.¹ The Board notified the applicant that the score was final and not subject to re-grading or other review.² This petition followed.

(2) In the opening brief in support of the applicant's petition, his sole argument is that the score awarded for question 2 was arbitrary. The applicant asserts that this arbitrary score constituted an abuse of the Board of Bar Examiners' discretion and resulted in manifest injustice to him. The Board responds that this Court approved the procedures for grading and scaling the scores of the bar examination. By following the approved procedures, the Board asserts that it did not act in a fraudulent, arbitrary or unfair manner.

(3) The Board further asserts that: (a) because the applicant's substantial rights have not been affected, since he may apply to sit for the bar examination again, the applicant is not entitled to review;³ (b) Supreme Court Rule 52(f) precludes review of the Board's grading determinations and is not manifestly unfair; and (c) even if the applicant were to receive an additional 50 points for question two, he would nevertheless not receive a passing bar examination grade.

¹ The applicant received a raw score of 20 on question two.

² DEL. BD. BAR EXAMINERS' R. 29 (2003) (providing that "any decisions of the Board with respect to a specific grade or grades assigned to any individual applicant, once posted according to Rule 16, are final and not subject to review by the Board.").

³ *See id.* R. 28 ("There shall be no limitations on the number of times an applicant may apply to take the Bar Examination.").

(4) Having carefully considered the parties' respective positions, we find it manifest that the petition must be dismissed. Supreme Court Rule 52(f) is clear: "Any person aggrieved by final action of the Board may appeal to the Court for relief if such action affects the substantial rights of the person claimed to be aggrieved, except that decisions of the Board with respect to a specific grade or grades assigned to any individual applicant are final and shall not be subject to review by the Court."

(5) It is not necessary in this case to reexamine the validity of the provisions of Supreme Court Rule 52(f). The applicant's substantial rights have not been violated because the additional 50 points to which he claims entitlement would not have been sufficient for applicant to pass. Moreover, the applicant has the right to apply to sit for the bar examination again.⁴ In addition, there is nothing

⁴ See *In re Rubenstein*, 637 A.2d 1131, 1134 (Del. 1994) (holding that petitioner's substantial rights were affected because the Board's action precluded petitioner from "ever gaining admission to the Delaware Bar.").

to support a finding that the Board acted in a fraudulent, arbitrary or unfair manner.⁵

NOW, THEREFORE, IT IS ORDERED that the petition is DISMISSED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

⁵ *No. 26 v. Board of Bar Examiners*, 780 A.2d 252, 253 (Del. 2001) (holding that an unsuccessful applicant to the Delaware Bar has no right to review of a Board decision “absent a claim that the Board acted in an arbitrary, fraudulent or unfair manner.”)