

CASE NO. 575404

ASSIGNED JUDGE E.T. Gallagher

Ohio Attorney General, et al vs The International Preparatory School et al

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NO. JURORS _____

COURT REPORTER _____

START DATE ___/___/___

START DATE ___/___/___

END DATE ___/___/___

END DATE ___/___/___

- PARTIAL
- FINAL
- POST CARD

DATE 1/6/12 (NUNC PRO TUNC ENTRY AS OF & FOR ___/___/___)

CLERK OF COURT

Journal Entry and Opinion.
Costs to Defendants equally. Final.

OST

JUDGE

JOURNAL

CIVIL



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

OHIO ATTORNEY
GENERAL, et al

Plaintiffs

vs.

THE INTERNATIONAL
PREPARATORY SCHOOL

Defendants

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Case No. CV 05 575404

JUDGE EILEEN T. GALLAGHER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

1. This is an action brought to reduce a finding for recovery made under R.C. 117.27 to judgment. The amount of the finding is \$1,407,983. This Court therefore has jurisdiction under R.C. 117.36 and R.C. 2305.01. Amended Complaint at ¶¶ 1, 9 and Ex. 1 thereto at p. 8; Answer to First Amended Complaint at ¶¶ 1, 9.

Findings of Fact

2. The International Preparatory School ("TIPS") was a community school founded and operated under R.C. Chapter 3314. Pursuant to R.C. 3314.01(B) it was a public school. Amended Complaint at ¶ 5 and Ex. 1 thereto; Answer to First Amended Complaint at ¶ 5; *State ex rel Cordray v. The International Preparatory School* (8th Dist.), 2009-Ohio-2364 ("*Cordray P*"), ¶ 2; *State ex rel Cordray v. The International Preparatory School*, 128 Ohio St. 3d 50, 2010-Ohio-6236, ("*Cordray IP*"), ¶24.

3. A community school receives state funding pursuant to R.C. 3314.08. That funding is calculated on a fixed, per student, basis based on data submitted by the community school and is disbursed monthly to each school. That funding is drawn from the state funding otherwise allocated to the traditional school districts where the community school's students reside. That funding is disbursed to the community school on a monthly basis throughout the calendar year. The Ohio Department of Education ("ODE") tracks and reports that funding via "Community School Payment Reports" posted on its website. Amended Complaint at ¶ 5 and Ex. 1 thereto; Answer to First Amended Complaint at ¶ 5 9; *Cordray II* at ¶ 2; Testimony of Eric Bode.
4. TIPS received state funding pursuant to R.C. 3314.08 over several years, including the period of time from July of 2004 through September of 2005. The months and amounts of that funding were:

Month	Amount
July, 2004	\$624,991.20
August, 2005	\$419,523.17
Sept., 2004	\$519,699.47
Oct., 2004	\$599,504.79
Nov., 2004	\$523,180.17
Dec., 2004	\$612,570.94
Jan., 2005	\$591,271.35
Feb., 2005	\$584,414.18
March, 2005	\$575,858.17
April, 2005	\$573,271.89
May, 2005	\$138,900.37
June, 2005	\$61,663.32
July, 2005	\$526,802.65

August, 2005	\$525,759.04
Sept., 2005	\$543,945.65

Plaintiffs' exhibit 2 at pp. 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42, 45;
 Testimony of Eric Bode.

5. From at least July of 2004 through at least February of 2005 account number 57-4800-1466 at First Merit Bank was maintained on TIPS behalf. Hasina Shabazz was a signatory on that account and wrote numerous checks on that account during that time. Testimony of Judy Taliercio; Plaintiffs' exhibits 3, 4, and 5; Testimony of Jessica Toms.
6. From at least March of 2005 through at least September of 2005 account number 350151006045 at Key Bank was maintained on TIPS behalf. Hasina Shabazz was a signatory on that account and wrote numerous checks on that account during that time. Testimony of Allison Perry; Plaintiffs' exhibits 7, 8, 9; Testimony of Jessica Toms.
7. The records of the accounts for the First Merit and Key Bank accounts described in paragraphs 5 and 6 above indicate that the payments were made into those accounts on the following dates and in the following amounts:

Date	Amount	Bank	Account No.
7-12-04	\$624,991.20	First Merit	57-4800-1466
8-10-04	\$419,523.17	First Merit	57-4800-1466
9-9-04	\$519,699.47	First Merit	57-4800-1466
10-6-04	\$599,504.79	First Merit	57-4800-1466
11-5-04	\$523,180.17	First Merit	57-4800-1466
12-6-04	\$612,570.94	First Merit	57-4800-1466
1-7-05	\$591,271.35	First Merit	57-4800-1466

2-4-05	\$584,414.18	First Merit	57-4800-1466
3-7-05	\$575,858.17	Key Bank	350151006045
4-6-05	\$573,271.89	Key Bank	350151006045
5-5-05	\$138,900.37	Key Bank	350151006045
6-6-05	\$61,663.32	Key Bank	350151006045
7-12-05	\$526,802.65	Key Bank	350151006045
8-3-05	\$525,759.04	Key Bank	350151006045

Plaintiffs' exhibit 3 at pp. 18, 22, 24, 29, 32, 35, 40, 43; Plaintiffs' exhibit 6 at pp. 3, 10, 22, 27, 31, 35. With the exception of the September, 2005, payment, those deposits correspond perfectly to the payments of state funding made by ODE, as described in paragraph 4 above. The Court therefore finds that those accounts were the accounts through which TIPS received the state funding provided it pursuant to R.C. 3314.08.

8. TIPS ceased operations in October of 2005. This case was originally commenced by the Ohio Attorney General ("AG") and ODE to secure TIPS' assets and to wrap up its affairs through a receivership. A receiver was appointed and did in fact wrap up TIPS affairs. Amended Complaint at ¶ 7 and Ex. 1 thereto; Answer to First Amended Complaint at ¶ 7; Order Accepting Receiver's Final Report, entered Jan. 26, 2011; *Cordray II* at ¶ 3.
9. On January 30, 2007, Ohio's Auditor of State ("AOS") issued an audit report on TIPS covering the period from July 1, 2004, through October 18, 2005. That report made a finding for recovery under that TIPS received \$1,407,983 more in state funding than it was entitled to and that said overpayments were made into the schools' accounts. That was made in favor of ODE and was made jointly and severally against TIPS, Da'ud Shabazz, and Hasina Shabazz. Amended Complaint

at ¶ 11 and Ex. 1 thereto at p. 8; Answer to First Amended Complaint at ¶ 11; Plaintiffs' Ex. 1; *Cordray II* at ¶¶ 4-6.

10. The AG and ODE amended their complaint in this case to assert a claim to reduce the findings described in paragraph 10 above to judgment pursuant to R.C. 117.28 and R.C. 117.36. A certified copy of the AOS' January 30, 2007 audit report was filed with the amended complaint. Amended Complaint and Ex. 1 thereto.
11. Plaintiffs later sought summary judgment on the claim asserted in the Amended Complaint. That motion was supported by the certified copy of the AOS' January 30, 2007, audit report filed with the amended complaint and affidavit testimony independently setting forth the basis of ODE's claim. Motion for Summary Judgment, filed April 21, 2008.
12. TIPS never opposed the Plaintiffs' motion for summary judgment. Defendants Da'ud Shabazz, and Hasina Shabazz responded with legal arguments that they were not liable because they had insufficient personal involvement in the overpayments and that they were protected from any liability by R.C. 3314.071 and R.C. 1702.55. Neither Da'ud Shabazz nor Hasina Shabazz challenged the admissibility of the AOS' January 30, 2007, audit report or the affidavit testimony supporting Plaintiffs' motion for summary judgment. Neither Da'ud Shabazz nor Hasina Shabazz offered any evidence or argument rebutting the AOS' January 30, 2007, audit report or the affidavit testimony concerning the fact or the amount of the overpayment to TIPS. Defendants' Cross Motion for Summary Judgment and Memoranda Opposing Summary Judgment filed May 23, 2008.

13. This Court granted the Plaintiffs' motion for summary judgment on July 11, 2008. It entered judgment in the amount of \$1,407,983, plus costs and interest from the date of judgment. *Journal Entry*, entered July 11, 2008.
14. Defendants Da'ud Shabazz and Hasina Shabazz appealed that summary judgment, again arguing that they were not liable because they had insufficient personal involvement in the overpayments and that they were protected from any liability by R.C. 3314.071 and R.C. 1702.55. Their appeal did not challenge the amount of the AOS' finding, the amount of the summary judgment, or its basis as to TIPS. *Cordray I* at ¶ 13.
15. The Court of Appeals affirmed this Court's holding that R.C. 3314.071 provided Da'ud Shabazz and Hasina Shabazz with no defense to Plaintiffs' claims. *Cordray I* at ¶¶25-28. It reversed the judgment against those defendants because it concluded there were questions of fact about their involvement in the overpayments underlying Plaintiffs' claims and whether that claim would pierce the corporate veil otherwise erected by R.C. 1702.55. *Cordray I* at ¶¶ 29-51. The Court of Appeals did not disturb the amount of the judgment against TIPS.
16. Plaintiffs appealed to the Ohio Supreme Court. The Supreme Court rejected the two legal defenses accepted by the Court of Appeals. The Supreme Court first held personal involvement is not necessary to hold public officials strictly liable under R.C. 9.39 for funds paid to public offices under their supervision if those funds were paid under color of state law. It held that community schools are public offices, that the overpayments giving rise to the AOS' finding were paid under color of state law, and that Hasina Shabazz is liable on that finding if her

“responsibilities at TIPS included the receipt or collection of public money[.]” *Cordray II* at ¶¶ 12-29. It also held that R.C. 1702.55 provided no defense to any liability under R.C. 9.39. *Cordray II* at ¶ 30. It remanded the case to this Court for a determination of whether Hasina Shabazz’ responsibilities at TIPS included the receipt or collection of public money, or whether she supervised employees who received or collected public money under color of office.

Conclusions of Law

17. The Supreme Court’s decision in *Cordray II* established that an authorized representative of a community school is subject to strict liability under R.C. 9.39 for funds a community school receives under R.C. 3314.08 if that representative’s responsibilities include “the receipt or collection” of such funds. That tracks the statutory text’s focus on those involved with money “received or collected” by the public office.
18. “Receipt” is commonly understood as the act of receiving, and it is commonly understood that to “receive” is to “take in or hold.” *Websters II New Riverside University Dictionary* (1988), 981. “Collection” is commonly understood as the “collecting of money,” “to receive payment,” and to “deposit” funds. *Websters II New College Dictionary* (1986), p. 220; *Websters II New Riverside University Dictionary* (1988), 281; *Random House College Dictionary* (2001), p. 261.
19. The supervision of bank accounts used as receptors of payments made under R.C. 3314.08 easily fits within those definitions. Such accounts are used by schools to “take in or hold” funds, for “collecting [such] money,” “to receive payment,” and to “deposit” those funds. One who controls such accounts is therefore involved

with funds that are “received or collected” within the meaning of R.C. 9.39. She also has “responsibilities [that] include[] the receipt or collection of public money” within the meaning of ¶ 29 of *Cordray II*.

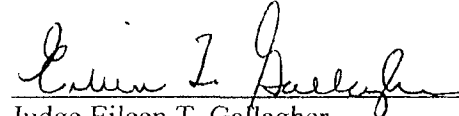
20. Hasina Shabazz had control over the bank accounts used for the receipt and collection of public funds. Those are the accounts at First Merit and Key Bank described at paragraphs 5 through 7 above. She was one of the signatories on those accounts, and was therefore “authorized ... for the transaction of any business for the account in connection with funds belonging to” TIPS. Plaintiffs’ Ex. 7. She used that authority, writing scores of checks on those accounts. Plaintiffs’ Ex. 5; Plaintiffs’ Ex. 8. She was therefore involved with public funds “received or collected” within the meaning of R.C. 9.39 and her “responsibilities included the receipt or collection of public money” within the meaning of *Cordray II*. She is therefore strictly liable for funds paid into that account, including the overpayment giving rise to the finding for recovery underlying this case.
21. That is not changed by Shabazz’ assertion that she was not TIPS’ treasurer. *Cordray II* established that “[t]he label ‘treasurer’ is less important than the character of the position she held.” It further held that the dispositive question is whether her “responsibilities ... included the receipt or collection of public moneys[.]” *Cordray II* at ¶ 29. That question has been answered in the affirmative, so she is liable regardless of whether she was TIPS’ treasurer.
22. Nor is it changed by Shanazz’ newly asserted denial of the fact and amounts of the overpayments underlying the AOS’ finding. That defense could have been raised in opposition to Plaintiffs’ original motion for summary judgment or on

appeal from the judgment that resulted from that motion, but was not. Shabazz is therefore barred by the doctrines of res judicata and the law of the case from raising it now. See *Evanich v. Bridge* (9th Dist.), 170 Ohio App.3d 653, 2007-Ohio-653, ¶¶25-27 (res judicata); *Federal Financial Co. v. Turner* (7th Dist.), 2006-Ohio-7072, ¶¶ 2, 11-16 (law of the case).

23. The Court therefore ORDERS that judgment be and hereby is entered against Hasina Shabazz and in favor of the Ohio Department of Education in the amount of \$1,407.983, plus costs and interest at the statutory rate from January 30, 2007, the date of the AOS' finding underlying this judgment. See R.C. 131.02(A)(5) and (6), (D).

IT IS SO ORDERED

1-6-12
Date


Judge Eileen T. Gallagher

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A copy of the foregoing Opinion and Journal Entry was served upon the following counsel via regular mail, on this 6th day of January, 2012:

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