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Boards of Appeal

Chambres de recours

Case Number: D 0013/95

D E C I S I O N
of the Disciplinary Board of Appeal
of 31 January 1996

Appellant: N.N.

Decision under appeal: Decision of the Examining Board for the European
Qualifying Examination dated 13 October 1994.

Composition of the Board:

Chairman: J.-C. Saisset
Members: J. Stephens-Ofner
L. C. Mancini
E. Klausner
J. Neukom

Summary of Facts and Submissions

- I. The Appellant sat the European Qualifying Examination for Professional Representatives on 13/15 April 1994.
- II. By letter dated 13 October 1994 the candidate was informed by the Examination Board (hereinafter referred to as the "Board") that he had not been successful in the examination. The Board's decision had been taken in accordance with the implementing provisions to the Regulation on the European Qualifying Examination published in OJ EPO 1994, pages 595 to 598.

The grades obtained by the Appellant were as follows:-

Paper A:5
B:6
C:7
D:5

- III. By letter dated 22 December 1994, received on 30 December 1994, the candidate appealed against the above decision requesting that the decision be rescinded in its entirety, and, in particular, requesting the remarking of all the examination papers, as well as the appointment of oral proceedings in case the Disciplinary Board was inclined to dismiss the appeal.
- IV. On the 18 January 1995 the Appellant filed his grounds of appeal. Those grounds, in essence amounted to a lengthy and detailed critique of the marking by the Board of the candidate's answers.
- V. The President of the Council of the Institute of Professional Representatives for the EPO and the

President of the EPO were consulted under Article 12 of the Regulation on Discipline for Professional Representatives, and have made no comment within the prescribed period.

VI. By communication dated 22 May 1995 the candidate was informed by the Disciplinary Board of the law relevant to the circumstances of the candidate's appeal namely:

(1) that Article 12 (V) REE (OJ 1993, p. 73) was peremptory and absolute: so that a grade 7 in any one of the papers meant that in no circumstances could the candidate pass the examination. Thus any attempt to sever from the overall consideration of the appeal the paper on which such a grade had been awarded from the other papers must fail **in limine**.

(2) that the appeal was to be heard and decided by the Disciplinary Board of Appeal and not, as the Appellant appeared to believe, by the Examination Board itself. The jurisdiction of the Disciplinary Board was, in accordance with established law and practice of that Board, restricted to deciding whether the appealed decision was based on an infringement of the REE or of a higher ranking law. Therefore, allegations that the candidate's answers should have been evaluated more favourably by the Examination Board, did not fall within the Disciplinary Board's jurisdiction, for value judgments of the above kind were not open to judicial review. In short, the remarking of the paper on its merits lay outside the Disciplinary Board's purview. The candidate was therefore asked whether or not he still wished to continue with his appeal.

- VII. On 15 September 1995 the candidate, by telephone conversation, confirmed that he had received the above communication and indicated his intention to continue with his appeal.
- VIII. By communication dated 19 September 1995 the Disciplinary Board informed the candidate that in the light of his second attempt (made earlier in the year) to pass the EQE the Board, in order to save unnecessary costs, was prepared to delay the proceedings pending the announcement of the results of the candidate's second attempt.
- IX. On 18 October 1995 the Disciplinary Board, having been informed of the candidate's failure for the second time to pass the EQE, informed him once more that the Disciplinary Board's jurisdiction did not extend to the remarking of papers, and again urged him to reconsider his request for oral proceedings, particularly in the light of the immutable legal effect under Article 12 (V) REE previously referred to, of his having obtained a grade 7 in one of his papers.
- X. By letter dated 2 November 1995 received on 3 November 1995 the candidate expressly withdrew his request for oral proceedings and asked for a written decision to be handed down instead. At the same time, he again asked, in effect, for some degree of remarking of at least one paper (Paper A) by the Disciplinary Board.

Reasons for the Decision

1. The appeal is admissible.
2. The candidate's grounds of appeal are entirely directed to the merits of the way in which the Board had marked his papers in the EQE. Such matters clearly lie outside the Disciplinary Board's jurisdiction for the reasons already communicated to the candidate. As this law and practice has been established for a long time, there is no need to rehearse, in this decision, the details of the decisions upon which this law and practice is based.
3. Further and in the alternative, Article 12 (V) REE clearly provides that the only possible outcome of a candidate's having obtained a grade '7' in any one of his papers is failure: "Grade 7 means that under no circumstances can the candidate pass the examination."
5. For all the reasons previously stated this appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Beer

J.-C. Saisset