

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMIE AMBROSE, et al.,)
)
 Plaintiffs)
)
 v.) Civil No. 99-0292-B
)
 NEW ENGLAND ASSOCIATION OF)
 SCHOOLS AND COLLEGES,)
)
 Defendant)

***ORDER ON PLAINTIFFS' MOTION TO STRIKE
AND RECOMMENDED DECISION ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT***

This is an action brought by seven former students of Thomas College, located in Waterville, Maine. Each of the Plaintiffs holds an associate of science degree from the College in the field of medical assisting. Plaintiffs claim that they are nevertheless unqualified for employment in the field of medical assisting by virtue of the inadequate education and training provided by the College.

Defendant New England Association of Schools and Colleges (“NEASC”) is an accrediting organization that accredited the College throughout the time these Plaintiffs attended the College. Plaintiffs allege that Defendant’s accreditation of the College amounted to a misrepresentation of the College’s ability to provide Plaintiffs with the educational benefit described in the College’s catalog. Plaintiffs assert claims of intentional and negligent misrepresentation, as well as a claim under the Maine Unfair Trade Practices Act, 10 M.R.S.A. §§ 1211-1216. They also seek punitive damages.

Pending before the Court is Defendant’s Motion for Summary Judgment on the entirety of Plaintiffs’ Complaint.

I. Motion to Strike.

As a preliminary matter, Defendant has filed a document entitled “Consolidated Statements of the Parties Relating to Material Facts Submitted by Defendant in support of its Motion for Summary Judgment.” Plaintiffs have filed a Motion seeking to strike both Defendant’s Reply Statement of Facts and this “Consolidated Statements of the Parties.” The Motion to Strike, [Docket Number 31], is DENIED. Defendant’s argument that the Court should deem Defendant’s own Statement of Facts admitted for Plaintiffs’ failure to “admit, deny or qualify the facts by reference to each numbered paragraph . . . and unless a fact is admitted, shall support each denial or qualification by a record citation,” is no different from Plaintiffs’ argument in their Motion to Strike that Defendant has failed to comply with the Local Rules. To the extent either party has failed to comply with the Local Rules regarding Statements of Fact by presenting argument or facts that neither controvert nor qualify factual averments contained in opposing Statements, I will not base my recommended resolution of this Motion on those arguments or facts.¹

II. Summary Judgment.

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the

¹ For example, Plaintiffs’ response to Defendant’s first statement of fact includes five separate quotes from the Code of Federal Regulations. These quotes are not factual averments at all, and will therefore be disregarded. The one factual averment contained in the response, regarding Defendant being "the nation's oldest regional accrediting association," is included without an explanation of how it controverts or qualifies the statement that Defendant is an accreditor of institutions, rather than programs. It does not reference, for example, a statement on Defendant’s web site to the effect that Defendant does accredit programs. Local Rule 56(c) requires the parties to clearly indicate to the Court their position with respect to each factual averment.

light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Statement of Facts

Defendant is an institutional accrediting agency and has never been an accreditor of programs. (Def. Stmt. at ¶ 1). The Department of Education publishes a list of nationally recognized accrediting agencies that it determines to be reliable authorities as to the quality of the education or programs offered by a school. Defendant has always been on that list. (Def. Stmt. at ¶¶ 4, 6).

Defendant has promulgated Standards for Accreditation. Defendant has been accrediting the College since December 1969 on the basis of those Standards. The most recent accreditation renewal of the College occurred in 1993-1994. Following a comprehensive self-study by the College, Defendant's Commission on Institutions of Higher Education ["CIHE"] sent an eight person evaluation team to the campus for three days. Based upon the team's assessment of the

self-study report and their interviews and meetings on campus, the Commission voted to renew the accreditation of the College for another ten years, but required an interim evaluation in five years with respect to concerns raised in the evaluation report concerning finances and off-campus programs. None of the issues slated to be reviewed in the fifth year evaluation related to the College's medical assisting program. (Def. Stmt. at ¶ 7).

Plaintiffs are graduates of the College's medical assisting program. Plaintiffs Heather Cool and Kim Higgins enrolled in the fall of 1994. Plaintiffs Jamie Ambrose, Lorna Goodwin, and Brenda Tracy enrolled in the fall of 1996. Plaintiffs Monica Bryant and Laurie Pelletier enrolled in the fall of 1997. (Def. Stmt. at ¶ 8).

Prior to enrolling in the College, Plaintiffs Cool, Higgins, Bryant, Ambrose, Goodwin, and Tracy reviewed a Thomas College Course Catalog, either from the 1993-94 school year, or the 1995-96 school year, which contained the following statement regarding accreditation:

Thomas College is accredited by the New England Association of Schools and Colleges, Inc., a non-governmental, nationally recognized organization whose affiliated institutions include elementary schools through collegiate institutions offering post-graduate instruction. Accreditation of an institution by the New England Association indicates that it meets or exceeds criteria for the assessment of institutional quality periodically applied through a peer group review process. An accredited school or college is one that has available the necessary resources to achieve its stated purposes through appropriate educational programs, is substantially doing so, and gives reasonable evidence that it will

continue doing so in the foreseeable future. Institutional integrity is also addressed through accreditation. Accreditation by the New England Association is not partial but applies to the institution as a whole. As such, it is not a guarantee of the quality of every course or program offered or the competence of individual graduates. Rather, it provides reasonable assurance about the quality of opportunities available to students who attend the institution. Inquiries regarding the status of an institution's accreditation by the New England Association should be directed to the administrative staff of the school or college. Individuals may also contact the Association: New England Association of Schools and colleges [sic] The Sanborn House, 15 High Street, Winchester, Massachusetts – 01890 617-729-6762.

(Def. Stmt. at ¶¶ 17, 18).

Plaintiff Pelletier reviewed the 1996-97 course catalog, which contains the following statement regarding accreditation:

Thomas College is accredited by the New England Association of Schools and College[s], Inc., a non-governmental, nationally recognized organization whose affiliated institutions include elementary schools through collegiate institutions offering post-graduate instruction. Inquiries regarding the status of an institution's accreditation by the New England Association may be directed to the Dean of Academic Affairs office at Thomas College

or directly to the Association at the following address: New England Association of Schools and Colleges, 209 Burlington Road, Bedford, Massachusetts 01730-1433, 617-271-0022.

(Def. Stmt. at ¶ 19).

The parties dispute whether Plaintiffs have proffered sufficient evidence that they in fact relied upon these accreditation statements in deciding to attend the College. The evidence in the light most favorable to Plaintiffs is Plaintiffs' separate statements, all to the effect that they 'enrolled at Thomas College because it was accredited and was a legitimate college as opposed to a vocational school,' but that they 'had no special knowledge about the meaning of accreditation.' (Pltf. Resp. Stmt. of Mat. Facts at pp. 26-32).

Discussion

Plaintiffs assert three separate causes of action on the basis of these statements. The first two are both misrepresentation claims; one intentional (fraud) and one negligent. Plaintiffs' third claim arises under the Maine Uniform Deceptive Trade Practices Act, 10 M.R.S.A. § 1212(1)(E). All of these claims require Plaintiffs to prove a false representation. The misrepresentation claims, in particular, require Plaintiffs to prove that Defendant "(1) made a false representation (2) of a material fact (3) with knowledge or reckless disregard of its falsity (intentional fraud) or lack of reasonable care in obtaining the information (negligent fraud) (4) for the purpose of inducing [them] to act in reliance on it and (5) that [Plaintiffs] justifiably relied upon the representation and acted upon it to [their] damage." *McGuire v. Sunday River Skiway Corp.*, No. 93-248-P-H, 1994 WL 505035 at *2 (D. Me. 1994) (citing *Diversified Foods, Inc. v. First Nat'l Bank of Boston*, 605 A.2d 609, 615 (Me. 1992) (intentional misrepresentation); *Chapman v. Rideout*, 568 A.2d 829, 830 (Me. 1990) (negligent misrepresentation)). The

statutory claim provides that “[a] person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he . . . [r]epresents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have”²

In order to prevail on each of these claims, Plaintiffs must prove by at least a preponderance of the evidence³ that Defendant’s representation to them was untrue.⁴ On this prong, they fail. The statements assert nothing more than that Defendant accredited the College because the school met or exceeded criteria for the assessment of institutional quality applied through a peer group review process. Those statements are true. There are no disputed facts concerning whether or not the peer group review process took place.

Plaintiffs’ claims are necessarily based not on what the statements say on their face, but rather on Plaintiffs’ claims regarding the inadequacy of the peer group review process. Specifically, Plaintiffs argue that the “NEASC’s statement was false and *was known to be false*; i.e., the College did not meet or exceed criteria for the assessment of institutional quality periodically applied through a peer group review process. *The [accreditation] standards were not applied.*” Pltf. Memo. at 15 (emphasis added). The fact is, however, that there is no factual support for the contention that peer group review process did not apply the criteria; what

² Defendant reasonably questions whether the Deceptive Trade Practices Act, typically invoked in cases of trademark infringement, even applies to the accreditation of an educational institution. That issue need not be resolved in this case, in light of my conclusion that there was no false representation.

³ The burden of proof on the claim of intentional misrepresentation is higher. Plaintiffs must prove this claim by clear and convincing evidence. *McGuire v. Sunday River Skiway Corp.*, No. 93-248-P-H, 1994 WL 505035 at *3 (D. Me. 1994) (citation omitted). Because I find Plaintiffs do not satisfy the lesser burden, there is no need to separately analyze these claims.

⁴ There is also no need to address whether the statements the College elected to place in its promotional literature constitute “representations” by Defendant, as opposed to representations by the College itself.

Plaintiffs argue is that the Defendant *improperly* applied the standards and therefore accredited the College when they ought not to have done so. To the extent the Court is asked to look further into whether Defendant *should have* accredited the College in light of its knowledge regarding specific courses or programs, the claim begins to sound like one for 'negligent accreditation.' Negligent accreditation is exactly the cause of action Defendant correctly asserts is analogous to a claim of "educational malpractice." Such claims are not recognized by courts because they would require "the factfinder to enter the classroom and determine whether or not the judgments and conduct of professional educators were deficient." *Paladino v. Adelphi Univ.*, 454 N.Y.S.2d 868, 873 (1982), *quoted in* Pltf. Memo. at 9. Courts have recognized that claims of educational malpractice would "involve the judiciary in the awkward tasks of defining what constitutes a reasonable educational program and of deciding whether that standard has been breached." *Vogel v. Maimonides Acad. of West. Conn.*, No. 18908, 2000 WL 870815 at *2 (Conn. App. July 11, 2000) (citation omitted); *accord, Bittle v. Oklahoma City Univ.*, No. 93684, 2000 WL 714582 at *3 (Okla. App. June 2, 2000) (collecting cases); *Page v. Klein Tools*, 610 N.W.2d 900 (Mich. 2000). That concern is only magnified in this case, where Plaintiffs would have the Court determine, having no special expertise in the provision of educational services, what constitutes a reasonable *review* of an educational institution for purposes of accreditation and whether Defendant breached that standard. Plaintiffs' attempt to label the cause of action "misrepresentation" simply would not relieve the Court of that burden.

Furthermore, as Defendant points out, the Federal government has enacted a comprehensive statutory scheme involving institutional accreditors. *See* The Federal Higher Education Assistance Act, 20 U.S.C. §§ 1001-1155. It is undisputed that the NEASC is an approved private accrediting agency. The complex regulations that accrediting agencies must

comply with are designed to ensure that the agencies can provide reasonable evaluations of institutions such as Thomas College. For this Court to try to parse the manner in which the criteria were applied in this case would result in the Court's interpretation of accrediting standards being substituted for the federal regulations. While the proper scope of judicial monitoring of accrediting associations has not been conclusively established, *see Marlboro Corp. v. Association of Indep. Colleges & Sch., Inc.*, 556 F.2d 78, 80 n.2 (1st Cir. 1977), the facts of this case do not present a situation where judicial intervention would involve anything other than an assessment of how well the accrediting agency had performed. Engaging in the process of "grading" an accrediting agency is entirely inconsistent with established case law and the federal statutory scheme.

Finally, to the extent Plaintiffs argue that they are "not directly concerned with whether or not Thomas College was accredited or not, . . . [but] with the representations made by [Defendant] in its authorized statement about the meaning to be drawn from the fact of accreditation," Pltf. Memo. at 16, they have offered no evidence that they relied in any way on the "authorized statement." Plaintiffs' only evidence of reliance is the statements offered separately by each of them that they "enrolled at Thomas College because it was accredited and was a legitimate college as opposed to a vocational school," but that they "had no special knowledge about the meaning of accreditation." While each Plaintiff relied up accreditation as a "statement of quality," none of them sought any information regarding the scope or meaning of the peer group review process referenced in at least one version of the authorized statement. (Pltf. Resp. Stmt. of Mat. Facts at pp. 26-32). For purposes of the misrepresentation claims, the Plaintiffs have failed to show any justifiable reliance upon the "authorized statement."

Conclusion

Plaintiffs' Motion to Strike is DENIED. Further, because I conclude that Plaintiffs have failed to place at least one material fact in dispute regarding whether they reasonably relied upon false representations, I recommend that Defendant's Motion for Summary Judgment on the entirety of Plaintiff's Complaint be GRANTED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: August 7, 2000

TRLIST STNDRD

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 99-CV-292

AMBROSE, et al v. NEW ENGLAND ASSOC
Assigned to: JUDGE GENE CARTER
Demand: \$0,000
Lead Docket: None
Dkt # in Kennebec Superior : is CV99-261

Filed: 12/22/99
Jury demand: Plaintiff
Nature of Suit: 890
Jurisdiction: Federal Question

Cause: 28:1441 Notice of Removal

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