

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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MONTGOMERY COUNTY, MARYLAND, :   
:   
Plaintiff, :   
:   
v. : Civil No. 328021  
:   
APPLIED SCIENCES FOR :   
PUBLIC SAFETY, LLC, et al., :   
:   
Defendants. :   
:   
-----x

JUDGE'S RULING

Rockville, Maryland

June 9, 2010

DEPOSITION SERVICES, INC.  
6245 Executive Boulevard  
Rockville, MD 20852  
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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: MONTGOMERY COUNTY, MARYLAND, :  
: Plaintiff, :  
: v. : Civil No. 328021  
: APPLIED SCIENCES FOR :  
: PUBLIC SAFETY, LLC, et al., :  
: Defendants. :  
: -----x

Rockville, Maryland

June 9, 2010

WHEREUPON, the proceedings in the above-entitled  
matter commenced

BEFORE: THE HONORABLE TERRENCE J. MCGANN, JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER A. HINRICHS, Esq.  
County Attorney's Office  
101 Monroe Street, 3rd floor  
Rockville, Maryland 20850

FOR THE DEFENDANT:

CHARLES S. RAND, Esq.  
McKernon & Rand, P.A.  
200-A Monroe Street, Suite 104  
Rockville, Maryland 20850

P R O C E E D I N G S

1  
2 THE COURT: This matter comes before the Court on the  
3 defendants' motion to dismiss.

4 The Court has read all the pleadings, and has looked  
5 at the exhibits that have been filed in this case, and does not  
6 find that there is any genuine dispute as to any material  
7 facts.

8 The parties agree that the defendants offered a,  
9 tactical training courses. And I'm going to call it, for  
10 purposes of this hearing, law enforcement people. And that the  
11 County agreed to send certain individuals and pay for the  
12 course. And that the County, when they received the bills or  
13 the invoices, paid the, paid for the course. They're in the  
14 exhibits, and the County paid a great deal, a great number of  
15 the tuition costs for these individuals.

16 The defendants, Applied Sciences for Public Safety,  
17 advertised this course and got customers to come, the law  
18 enforcement men and women. There is no dispute that the  
19 training was in fact conducted, and there's no dispute that the  
20 training was conducted over the dates as it was represented.  
21 There's no dispute that the training was quality training, and  
22 that it --

23 MR. HINRICHS: Your Honor, I would object to that.  
24 We haven't made any stipulation or conceded as to the nature  
25 and extent of the training.

1 THE COURT: You may not have to.

2 MR. HINRICHS: Yes.

3 THE COURT: I looked at your complaint, counsel, and  
4 it's not in there. So if you want to do a new complaint,  
5 that's, be my guest. But I'm looking at your complaint. You  
6 do not allege that anywhere in there. So to try and say Judge,  
7 well, there might be something else that comes up, I'm not  
8 going to consider that. That's not a safety valve. That's not  
9 a life preserver for your complaint, the fact that you may add  
10 a new complaint at some point. There is nothing in that  
11 complaint, and I asked you to find it for me, Mr. Hinrichs,  
12 where you say that the course wasn't conducted, that the  
13 instruction wasn't given according to the advertisement, and in  
14 fact according to, that was represented to the individuals that  
15 went.

16 The Court finds that there was no privity of contract  
17 between the County and the defendant. There was no contract at  
18 any time between the defendant and the County. The County made  
19 a decision on its own, based on whatever information it had, or  
20 lack of information that it had, that it was going to reimburse  
21 the law enforcement folks for attending this, these courses.

22 Now, whether the County did enough investigation to  
23 determine whether or not this course was going to be  
24 appropriate or not, it's really insignificant, because they  
25 made a decision, a unilateral decision that they were going to

1 reimburse, not reimburse but actually pay for the course. In  
2 fact, it was, it had to have been made known to the defendants,  
3 because the invoices went to the County from the defendant, and  
4 the County paid it.

5           The Court finds that the Applied Sciences for Public  
6 Safety had no duty to represent anything to the County.

7 Furthermore, the Court finds that the Applied Sciences for  
8 Public Safety did not misrepresent anything that they did.

9           In fact, what's admitted here is that the County was  
10 on notice with a flyer of, the tactical training flyer, which  
11 emphasized, by putting it in a box with a line around it, that  
12 a Glock 9 millimeter, 40 caliber pistol would be, upon  
13 completion, a successful completion qualifies for the Glock  
14 model, which a reasonable man would conclude that it was some  
15 type of a benefit.

16           But even if it wasn't in the flyer, it would not be,  
17 it wouldn't make a difference. Even if that wasn't put in the  
18 flyer, it would be, it wouldn't matter. The defendants had  
19 absolutely no duty to convince the County that it was a good  
20 course, or to explain to the County where each dollar was  
21 going, or who was getting paid.

22           The defendants were free to take that tuition money  
23 and pay any salaries that they wanted. The fact that they were  
24 going to offer a gun as an incentive is their determination.  
25 What they spend on advertising, what they spend on overhead,

1 was their decision. It was freedom of contract. It was their  
2 money. It was their tuition money that they got, and they  
3 could use it any way they wanted. They could buy them  
4 breakfast, lunch, and dinner if they wanted. They could take  
5 them to a Nationals game at night, and get them box seats, and  
6 buy them hot dogs if they wanted, with the overhead with the  
7 money.

8           They didn't tell the County, "Look, no extra dollars  
9 are going to go to any entertainment costs." They could have  
10 advertised or not advertised that Rush Limbaugh was going to  
11 speak at every lunch, and pay him \$500, or \$1,000, or \$500,000,  
12 or \$1 million. The defendants had that opportunity and had  
13 that right to do whatever they wanted with that money, as long  
14 as it was legal.

15           No one is questioning, nor is there anything in the  
16 pleadings, that indicates what the defendant did was illegal or  
17 against public policy. That is, they offered law enforcement  
18 officers an opportunity to get a gun under retail value. It  
19 wouldn't have mattered whether it was a gun, or it was  
20 something for their wives or husbands. They could have given  
21 the women a bouquet, and the men a pen. It wouldn't have  
22 mattered. If it was an incentive to get them to go there, that  
23 was their decision.

24           The County didn't have to pay for anyone. They  
25 didn't have to pay for anyone's course. Nobody forced the

1 County to make this payment. Nobody precluded the County.

2 MR. HINRICHS: Your Honor, I would object, actually.

3 The contractual language --

4 THE COURT: Sir, sir.

5 MR. HINRICHS: Okay.

6 THE COURT: I object to your interrupting the Court.

7 I gave you ample time to give me your argument. I didn't cut

8 you off. I'm going to conclude with my decision and the

9 reasons for it.

10 Nobody, nobody ordered the County or forced the  
11 County to make these payments. Nobody impeded the County, and  
12 no one prevented the County from asking for a detailed syllabus  
13 and a cost analysis of where every nickel and dime was going as  
14 the tuition of the program.

15 I can only conclude, from looking at the pleadings,  
16 that there was an amount of embarrassment at some point that  
17 caused the County to bring this action, because I'm looking at  
18 the legality of this. There was an offer made in contract by  
19 the defendants. There was an acceptance by those that went to  
20 the training program, those being the law enforcement people.  
21 The consideration for the program was the payment. The service  
22 was provided.

23 The only thing the County is saying is we don't like  
24 the fact that you gave them a discount on buying a gun. What  
25 legal authority does the County have to complain? What legal

1 standing do they have? None. None whatsoever. There was no  
2 misrepresentation to the County. There was no fraud to the,  
3 given to the County. And there was no fraud to the  
4 individuals.

5           If the County decided at some point they didn't want  
6 to pay for anyone else to go to the training program, they  
7 simply had to notify the individuals, but not the defendants,  
8 that they weren't going to foot the bill. If the County  
9 doesn't like what the defendants did, they may, and I'm not  
10 saying they do, their cause of action would be against the  
11 employees, that you got a bigger benefit than we thought you  
12 were going to get. We want our \$99 back, or we want whatever  
13 that is. I'm not saying there's merit to that or not.

14           But the proper defendants are not the Applied  
15 Sciences for Public Safety. Not only did they supply what they  
16 contracted for, but they also supplied everything they  
17 advertised in their training session.

18           I hear the County talk about misrepresentation, yet  
19 they can't articulate the basis for it. There is absolutely,  
20 the cases that the County cites are distinguishable in the  
21 sense that there we are dealing buyer to seller. If the County  
22 feels they got duped, or they feel embarrassed, or they feel  
23 they shouldn't have to pay it, well, that's their fault.  
24 That's not the defendants' fault. I'm not suggesting that they  
25 should feel that way. For purposes of this hearing, I'm going

1 to assume that these men got quality courses and are better law  
2 enforcement officers for it, and that our County is safer now  
3 for having gone to this course.

4 And I'm also going to assume that they got a discount  
5 on a gun, and we want law enforcement officers to have guns.  
6 It helps to fight bad guys.

7 So there was no privity of contract between the  
8 defendants and the plaintiff. There was no duty to represent,  
9 and there was no liability for any misrepresentation.

10 Even if these defendants had said to the County, on a  
11 separate occasion, that we're not going to give these guys any  
12 discounts on anything, and that wasn't the case, they still had  
13 no, the County would then be put on notice to check or to look  
14 into it.

15 The fact that somebody authorized this and paid for  
16 it in the County, that didn't know anything about guns or that  
17 this was a discount, is a weak excuse. This seems to me as an  
18 internal matter within the County, as to what steps they're  
19 going to take in the future when they pay for a particular  
20 program.

21 It would be no different if they paid for an  
22 individual or officers to go to a training program, a physical  
23 fitness program in the Rockies, and they learned later that  
24 these guys, they let them sleep late and they let them, they  
25 only had to run like a couple of miles in a week, and they

1 really didn't do much.

2           And they figured, well, gosh, these officers didn't  
3 get their money's worth. Well, the officers could sue, but  
4 there would only be misrepresentation to them, if in fact they  
5 didn't get the benefit of the bargain.

6           In this particular case, these individuals got the  
7 benefit of the bargain. And the fact, I agree with Mr. Rand  
8 completely, if the defendants want to take that money for  
9 advertisement, or for incentives, or for souvenirs, they can do  
10 that.

11           It'd be no different than a basketball camp. You pay  
12 to send your son to a basketball camp, and you pay \$150 for a  
13 week of day camp, say at the Damatha basketball camp. And at  
14 the end of the camp they raffle off a bunch of basketballs.  
15 Does the parent then have a right to say to the camp, "Look, I  
16 want my pro rata share of my camp money back because you didn't  
17 tell me you were going to give away basketballs, I thought  
18 every nickel of that tuition was going to go to instruction?"  
19 No.

20           However, if before they agree to send their kid  
21 there, they could go to the great legend Morgan Wootten and say  
22 Mr. Wootten, I want an exact itinerary of every minute of what  
23 my son's going to do. And I want to know what your camp  
24 counselors are getting paid. And I want to know how much your  
25 advertising bills costs. And I want to know what the

1 qualifications are of your counselors. That's fine. Don't go  
2 if it doesn't meet the approval.

3 But here everything was done above board. Everything  
4 was complied with.

5 So I'm going to grant the defendants' motion that  
6 the, on the grounds that the complaints fail to state a cause  
7 of action upon which relief can be granted. I see absolutely,  
8 as I said, no contract between the defendant and the  
9 plaintiffs, and certainly no breach.

10 Anything else that needs to be addressed? If not, I  
11 appreciate the argument. Good luck. And I'll sign an order.  
12 We'll stand in recess. Is that our last case?

13 THE CLERK: I still have three.

14 THE COURT: Is there anyone else whose case hasn't  
15 been heard? All right, I'm not, I'll stay here.

16 MR. RAND: Thank you, Your Honor.

17 THE COURT: You're welcome. Thank you.

18 MR. HINRICHS: Thank you, Your Honor.

19 THE COURT: Nice argument.

20 (End of requested portion of the proceeding.)

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√ Digitally signed by Margaret V. Bierwirth

DIGITALLY SIGNED CERTIFICATE

**DEPOSITION SERVICES, INC.** hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. 328021

MONTGOMERY COUNTY, MARYLAND

v.

APPLIED SCIENCES FOR PUBLIC SAFETY, LLC, ET AL.

By:

*Margaret V. Bierwirth*

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Margaret V. Bierwirth  
Transcriber

