



EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board (CBE) of Tilburg University

in the case between

X, appellant

and

The Vice Dean of Education of the Tilburg School of Economics and Management, **appellee**

1. Course of the proceedings

In a decision of August 28, 2017, the appellee issued a negative recommendation on continuation of studies (hereinafter: "BSA") and attached a rejection to it (hereinafter: "contested decision").

The appellant filed a notice of appeal against this decision in good time.

The Examination Appeals Board of Tilburg University (hereinafter: "the Board") invited the Examination Committee of the Tilburg School of Economics and Management (hereinafter: "the Examination Committee") to consult with the appellant to see whether an amicable settlement of the case is possible. Settlement consultations were held. The parties did not reach an amicable settlement.

The appellee filed a written defense.

The Board handled the appeal at the hearing on September 28, 2017. The appellant was present at the hearing. Y and Z appeared on behalf of the appellee.

2. Facts and circumstances

2.1 The Board will proceed on the basis of the following facts and circumstances. The appellant has been enrolled in the Bachelor's Degree program Economics since September 1, 2016.

Students of this program receive a positive recommendation to continue their studies if they have obtained 42 ECTS at the end of the first year of enrollment.

2.2 To date, the appellant has obtained 30 ECTS in this program.

3. The appellant's viewpoints

- 3.1 In summary, the appellant asserts on appeal that he had difficulty during his first semester at Tilburg University. The appellant moved from Bangkok to Tilburg in order to study here and has been living completely independently for the first time. This is in stark contrast to living together with his parents in Thailand. The appellant also had to become accustomed to European and Dutch culture, which is different from Asian culture. The appellant felt very lonely and miserable during the first semester.
- 3.2 The appellant was aware that he was supposed to contact the student counselor if he had problems which would prevent him from achieving the standard for a positive BSA. The appellant contacted a therapist who knows his family. The appellant submitted a statement by the therapist to support his notice of appeal. In the second semester at Tilburg University, however, the appellant found his niche, after the appellant's parents had come to visit him and he had made friends. This made the appellant feel more supported in organizing his studies better and the appellant had faith in the fact that he would achieve the standard. It was for this reason that the appellant did not contact the student counselor.
- 3.3 The appellant ultimately did not achieve the standard, but this was mainly due to the bad start of the first semester. His study results in the second semester improved substantially. The appellant ultimately obtained a 5 for two courses, owing to which he ended up two and a half points short of achieving the BSA standard. The appellant now feels better organized and trusts that he can now overcome all obstacles. In view of the above, the appellant disagrees with the contested decision.

4. The appellee's position

- 4.1 The appellee asserts that the appellant was informed on August 2, 2017 of the intention to issue a negative BSA. It was stated as well that the appellant could submit his views within ten workdays. The appellant submitted his views too late, whereupon he was informed that he would receive a final BSA against which he could file an appeal.
- 4.2 The appellee made the contested decision on August 28, 2017. In doing so, it took into consideration that there were no special circumstances that would have to lead to postponement of the issuance of the BSA.
- 4.3 The appellee asserts that postponement of the BSA is possible only pursuant to the provisions of Article 4.3, paragraph 3 of the Teaching and Examination Regulations for the Bachelor's Degree program Economics (hereinafter: "TER"). Personal circumstances can be taken into consideration only insofar as they have resulted in failure to obtain the required ECTS *and* if the these circumstances were reported to the student counselor by or on behalf of the student. As the appellant's special circumstances are not mentioned in Art. 4.3, paragraph 3 TER, and the appellant has not reported them to the student counselor, either, the appellee sees no cause to revise the contested decision.
- 4.4 At the hearing, the appellee asserted not to have seen such an improvement in the appellant's study results that no negative BSA should be issued to the appellant.

5. Findings of the Board

5.1 Section 7.61 subsection 2 of the Higher Education and Research Act (hereinafter: WHW) provides that appeal can be brought against a decision that is in conflict with the law. It ensues from this that review by the Board must remain limited to lawfulness criteria, such as the question whether the appellee acted with due care, or the question whether it would have to be said that the appellee could not reasonably have arrived at the contested decision

Under Section 7.8b, subsection 1 in conjunction with Section 9.15, subsection 1 under f. of the WHW, the Dean must make a recommendation to each student at the end of his or her first year of enrollment on enrolling in the propaedeutic phase of a Bachelor's Degree program on the continuation of his or her studies in or outside the Bachelor's Degree program.

Under Section 7.8b, subsection 3 WHW, a rejection can be attached to the recommendation on continuation of studies.

Under Section 7.8b, subsection 6 in conjunction with Section 7.13, subsection 2 under f. of the WHW, more detailed rules are to be set out in the Teaching and Examination regulations on the recommendation on continuation of studies.

Under Article 4.3, paragraph 9 of the Teaching and Examination Regulations of the Bachelor's Degree program Economics 2016-2017 the recommendation on continuation of studies is given by the Examination Committee in the name of the Dean.

Under Article 2.4 paragraph 1 under f. of the Faculty Regulations of the Tilburg School of Economics and Management 2017 (hereinafter "Faculty Regulations"), the Dean is charged with the implementation of Section 7.8b of the WHW.

Under Article 2.7, paragraph 1 of the Faculty Regulations, the Faculty Board is composed of the Dean and the co-directors appointed by the dean.

Under Article 2.7, paragraph 2 of the Faculty Regulations, the co-directors referred to in paragraph 1 include in any case the Vice Dean of Education, and a TiSEM professor to whom the Dean assigns the pursuit of educational policy.

5.2 The Board finds that, according to the WHW, the Dean has the authority and duty to issue the BSA. This is also explicitly evident from the Faculty Regulations. The Board finds that the more detailed rules in the TER state explicitly that the Examination Committee is mandated to issue the BSA on behalf of the Dean. The Board ascertains, however, that the contested decision was not made in the name of the Dean, but in the name of the appellee (the Vice Dean of Education).

5.3 The Board finds that, for a legally valid granting of a mandate, it is required, inter alia, that the mandate must be sufficiently specifically formulated, and that it must be clearly described when the mandatary is and is not authorized.

5.4 In the opinion of the Board, Article 2.7, paragraph 2 of the Faculty Regulations is so broadly and vaguely described that it cannot be concluded on the basis of it that the appellee was authorized to make the contested decision.

5.5 In view of the foregoing, the appellee was not authorized to make the contested decision. For that reason alone, the appeal should be declared well-founded, and the Board will not proceed to a substantive hearing of the appeal.

Without prejudice to the foregoing, and therefore totally unnecessarily, the Board notes that the appellee has completely disregarded the statement by his therapist which the appellant submitted. It had been up to the appellee to give reasons for whether or not this statement gave cause to revise the contested decision.

6. Decision

The Examination Appeals Board declares the appeal well-founded and nullifies the contested decision.

Decided on September 28, 2017 by the Examination Appeals Board.

You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CvBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see www.cbho.nl.