

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

MICHELE M. BERLINERBLAU, M.D.	:	APRIL TERM, 2005
	:	
Plaintiff,	:	NO. 2406
	:	
v.	:	COMMERCE PROGRAM
	:	
THE PSYCHOANALYTIC CENTER OF	:	Control Nos. 060434, 060669
PHILADELPHIA f/k/a THE PHILADELPHIA	:	
PSYCHOANALYTIC INSTITUTE, and	:	
ERIC LAGER, M.D.,	:	
	:	
Defendants.	:	

**ORDER**

**AND NOW**, this 11<sup>TH</sup> day of October 2005, upon consideration of the Preliminary Objections of defendants, The Psychoanalytic Center of Philadelphia and Eric Lager, M.D., the respective responses and the briefs in support and opposition, all other matters of record, and after hearing the arguments of counsel on September 12, 2005, and in accord with the court's Opinion being issued contemporaneously, it is **ORDERED** that said Objections are **Sustained** and the Complaint is **Dismissed**.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

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v. : COMMERCE PROGRAM  
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PSYCHOANALYTIC INSTITUTE, and :  
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Defendants.

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**OPINION**

**Albert W. Sheppard, Jr., J. .... October 11, 2005**

Plaintiff, Michele M. Berlinerblau, M.D., and defendant, Eric Lager, M.D., were both members of The Philadelphia Psychoanalytic Institute (the “Institute”), which subsequently merged into and became part of the Psychoanalytic Center of Philadelphia (the “Center”). Plaintiff filed an ethics complaint against Dr. Lager with the Institute. The Institute’s Ethics Committee heard the complaint even though the Institute had merged into the Center and ceased to exist. The Institute’s Executive Committee ultimately found against Dr. Lager, but the Center claimed that the Institute’s post-merger proceedings were *ultra vires* and refused to enforce the Institute’s decision.

Plaintiff makes her claims against the Center in the alternative. Either the Institute’s decision regarding Dr. Lager was valid and binding and the Center should have adopted it (the “First Theory of Relief”), or the Institute’s decision was invalid due to the merger, and plaintiff

should not have been misled into participating in the proceedings that resulted in the invalid decision (the “Second Theory of Relief”). This court submits that plaintiff has not set forth a viable cause of action against the Center based on either theory.<sup>1</sup>

**I. Plaintiff’s Claims Based On The First Theory of Relief Must Be Dismissed.**

Plaintiff asks this court to force the Center to adopt the Institute’s decision with regards to Dr. Lager. However, the court has only limited power to review the decisions of a private, voluntary, organization with respect to its own members. At most, the court may determine whether the organization complied with its own procedural rules, but only after the complaining member has exhausted the process provided for in those rules. *See* Murphy v. Duquesne Univ. of the Holy Ghost, 565 Pa. 571, 596, 777 A.2d 418, 433 (2001) (“while [plaintiff] is free to assert in a court of law that the process . . . that was afforded to him did not comply with the Contract’s terms, he is not free to demand that a jury re-consider and re-decide the merits of his termination.”); Baker v. Lafayette College, 516 Pa. 291, 299-300, 532 A.2d 399, 403 (1987) (“This court has no jurisdiction to review the factual determinations of a college’s governing body unless it can be clearly demonstrated that that body violated its own procedures.”); Lodge No. 19, Svete Ime Isusovo v. Svi Sveti, 323 Pa. 292, 295, 185 A. 650, 651 (1936) (court determined that “the rights of appellants were properly decided by the supreme board of directors and the convention [under the laws of the society], which tribunals had jurisdiction over the dispute, according [appellants] a fair and impartial hearing, and exercising their discretionary

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<sup>1</sup> In addition, several of her claims have no basis in law. For instance, specific performance is not in itself a cause of action, but is instead an extraordinary remedy that may be requested where no adequate remedy at law exists with respect to a cause of action. *See* Clark v. Penna. State Police, 496 Pa. 310, 313, 436 A.2d 1383, 1385 (1981). Similarly, the implied covenant of good faith and fair dealing does not allow for a claim separate and distinct from a breach of contract claim; instead, a claim arising from a breach of the covenant of good faith must be prosecuted as a breach of contract claim, as the covenant does nothing more than imply certain obligations into the contract itself. *See* Murphy v. Duquesne Univ. of the Holy Ghost, 565 Pa. 571, 598, 777 A.2d 418, 434 (2001) (“This obligation of good faith is tied specifically to and is not separate from the duties a contract imposes on the parties.”); Toy v. Metro. Life Ins. Co., 863 A.2d 1, 14 (Pa. Super. 2004) (Pennsylvania “has not recognized a private cause of action, in tort, for alleged breaches of the duty of good faith and fair dealing.”)

power in a reasonable and just manner.”); Maloney v. United Mine Workers of America, 308 Pa. 251, 256, 162 A. 225, 226 (1932) (“the jurisdiction of the court ended when it found the secretary-treasurer and board acted in accordance with the provisions of the constitution and by-laws of their organization.”).

In this case, plaintiff does not ask the court to determine whether the Center complied with its own by-laws, but, instead, she asks the court to compel the Center to approve and adopt the results of the Institute’s processes. To do so would be inappropriate. Furthermore, plaintiff has applied to this court for affirmative relief against the Center without having first availed herself of the remedy of a new hearing, to be conducted in accordance with the Center’s rules, which the Center proffered to her. If, after such a hearing, she continues to believe that she did not receive the process due to her under the Center’s by-laws, she may then refile a court action.

## **II. Plaintiff’s Claims Based on the Second Theory of Relief Must Be Dismissed.**

Plaintiff conceded at oral argument that the Center did not mislead her into taking part in the Institute’s hearing after the merger took place, but rather that it was representatives of the Institute who assured her that the proceedings were valid. Therefore, her claims to recover the fees and expenses she incurred as a result of those alleged misrepresentations are properly directed to the persons who made them, not to the Center.

## **III. Plaintiff’s Claims Against Dr. Lager Must Be Dismissed.**

Plaintiff has asserted a claim for estoppel against Dr. Lager, although he is not alleged to have promised anything to, or otherwise misled, plaintiff regarding the validity of the Institute’s proceedings. Therefore, plaintiff’s claims against him must be dismissed. Furthermore, since the claims against the Center are being dismissed, there is no need to keep Dr. Lager in this case as a nominal defendant whose rights could be affected by the outcome of this litigation.

## **CONCLUSION**

For all the foregoing reasons, defendants' Preliminary Objections are **sustained**, and the Complaint is **dismissed**.

This court will issue a contemporaneous Order consistent with this Opinion.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**