United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7160 **September Term, 2019**

FILED ON: DECEMBER 3, 2019

WILLIAM LOVELAND COLLEGE,
APPELLANT

v.

DISTANCE EDUCATION ACCREDITING COMMISSION,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-02037)

Before: SRINIVASAN and RAO, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral arguments of the parties. The Court has accorded the issues full consideration and determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the decisions of the district court be **AFFIRMED.**

In 2016, William Loveland College, an educational non-profit institution offering an online MBA program, had applied for reaccreditation with Distance Education Accrediting Commission (DEAC). The U.S. Department of Education has authorized DEAC to accredit institutions like the College that offer distance or online post-secondary degree programs. In February 2017, in the course of the College's effort to obtain reaccreditation, DEAC issued a letter advising the College of concerns about the College's ability to meet DEAC's accreditation standards and ordering the College to show cause why its accreditation should not be withdrawn.

Rather than continue its efforts to obtain reaccreditation and follow the procedures set out in the show-cause letter for addressing DEAC's concerns, the College filed a lawsuit against DEAC. The College alleged that DEAC had denied the College due process and also asserted claims under D.C. law for breach of contract, defamation, tortious interference with prospective business, and negligence. The district court granted a motion to dismiss all the College's claims. *William Loveland Coll. v. Distance Educ. Accreditation Comm'n*, 347 F. Supp. 3d 1, 25 (D.D.C.

2018). The College now appeals.

We first consider the College's claim that DEAC denied the College due process. The district court construed the College's due process claim as alleging breach of a "common law duty on the part of 'quasi-public' private professional organizations or accreditation associations to employ fair procedures when making decisions affecting their members." *Id.* at 12 n.11 (citing *Prof'l Massage Training Ctr., Inc. v. Accreditation All. of Career Schs. & Colls.*, 781 F.3d 161, 169 (4th Cir. 2015)). The district court then applied principles of federal administrative law in resolving the claim. The court ruled against the College on the ground that the College had failed to exhaust administrative processes available to it, namely, the available DEAC processes for addressing the concerns raised in the show-cause letter and for obtaining a final decision on its application for reaccreditation. *See id.* at 14–16. The court further held that the College had failed to allege facts showing that exhaustion would have been futile under the circumstances. *See id.* at 16–17.

On appeal, the College accepts the applicability of principles of federal administrative law to its due process claim, including the general obligation to exhaust administrative remedies—i.e., the procedures made available by DEAC. We therefore need not address the threshold question of whether principles of federal administrative law do, in fact, apply to common law "due process" claims against accreditation agencies, such that exhaustion of administrative remedies is required as a prudential matter. The College contends only that exhaustion of those remedies would have been futile in this case and that its failure to exhaust therefore should be excused. The sole issue before us thus is whether the district court abused its discretion by rejecting the College's assertion that exhaustion of administrative remedies would have been futile. *See Avocados Plus Inc. v. Veneman*, 370 F.3d 1243, 1250–51 (D.C. Cir. 2004); *Koch v. White*, 744 F.3d 162, 164–65 (D.C. Cir. 2014).

We find no abuse of discretion. As the district court determined, the College fails to show that it is "certain that their claim [would have been] denied on appeal," as would be required to implicate the futility exception to the exhaustion doctrine. *Commc'ns Workers v. AT&T*, 40 F.3d 426, 432 (D.C. Cir. 1994) (quoting *Smith v. Blue Cross & Blue Shield United of Wis.*, 959 F.2d 655, 659 (7th Cir. 1992)). The College relies entirely on a contention that DEAC is biased against the College, as demonstrated, the College says, by DEAC's alleged failures to abide by its own procedures. Apart from that assertion of bias, the College alleges no facts that could support a finding that, at each step of DEAC's administrative appeals process, the College would have received an adverse decision. The College's bare assertion of bias does not suffice to make out a plausible entitlement to relief on its contention that exhaustion would have been futile. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

We next consider the College's four claims under D.C. law: for breach of contract, defamation, tortious interference with prospective business, and negligence. Causation is a necessary element of each of the College's claims under D.C. law. *See, e.g.*, *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009) (breach of contract); *Bean v. Gutierrez*, 980 A.2d 1090, 1093 n.2 (D.C. 2009) (defamation); *Newmyer v. Sidwell Friends Sch.*, 128 A.3d 1023, 1038–39

(D.C. 2015) (tortious interference); *Dist. of Columbia v. Zukerberg*, 880 A.2d 276, 281–82 (D.C. 2005) (negligence). The district court found, among other things, that the College's complaint failed to plausibly allege that DEAC's action in issuing (or publicizing) its show-cause letter proximately caused the College any harm. *See William Loveland Coll.*, 347 F. Supp. 3d at 21–22 & n.20. The court reasoned that any harm to the College would flow from a loss of its accreditation, but that DEAC never had an opportunity to reach a final decision about the College's accreditation because the College elected to withdraw from the accreditation process and instead bring a lawsuit. *Id.* at 22.

On appeal, the College fails to make any meaningful argument that the district court erred in denying relief on causation grounds. Rather, the College simply asserts that questions of causation are ordinarily issues of fact for the jury. But even if questions of causation ordinarily go to the jury if there is a genuine issue of material fact, the College does not dispute that it must plausibly allege causation to avoid dismissal of its D.C. law claims. The College presents no argument on appeal that it satisfied that requirement.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk