

# Judge Tosses Hazing Claims Against Penn State, Fraternity

Max Mitchell, The Legal Intelligencer

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A judge has tossed numerous claims against Penn State and a fraternity over allegations that it allegedly allowed extreme hazing practices on its campus.

Dauphin County Court of Common Pleas Judge Andrew Dowling, who is overseeing *Vivenzio v. Pennsylvania State University*, granted summary judgment motions dismissing all claims against Penn State and all but one against the fraternity that were brought. The judge also allowed the plaintiff to replead claims on one count related to all the defendants.

The claims stem from allegations that they allowed hazing practices, such as "force-feeding [fraternity pledges] bucketfuls of liquor mixed with urine," to occur.

Dowling's three-page order tossed claims of battery, unlawful furnishing of alcohol to a minor, furnishing liquor to an obviously intoxicated person, false imprisonment, conversion and fraud against all defendants. It also dismissed negligence claims against Penn State, and negligence per se against all defendants.

"This court finds the proper defendants for this claim would be the individual(s) within the fraternity who hazed plaintiff," Dowling said. "These claims shall be stricken from the amended complaint."

Dowling, however, allowed a negligence count to go forward against the fraternity, and denied the fraternity's request to toss the possibility of punitive damages from the case. He also gave the plaintiff, James Vivenzio, 30 days to replead his fraud allegations, which have been lodged against all defendants.

"This court finds plaintiff fails to establish whether the statements made by defendants regarding anti-hazing procedures were false, and, if such statements were false, whether any of the defendants knew the statements were false or made such statements recklessly with regard to their falsity," the order said.

Klehr Harrison Harvey Branzburg attorney Gaetano Piccirilli, who is handling the case for the National Fraternity of Kappa Delta Rho, said he is confident the claims against his client won't survive a motion for summary judgment.

"The plaintiff's starting point was condemning a school and a system, and after the first round of pleadings it appears the court disagrees with the plaintiff's theory," Piccirilli said. "The case is about what if anything happened to the plaintiff, and my clients are optimistic it will not survive summary judgment."

Vivenzio sued the university, along with Kappa Delta Rho, last year making numerous allegations against the university and fraternity, including a claim that the school failed to act after he told an official about the creation of a Facebook page showing sexual assaults and misconduct perpetrated at the fraternity.

According to Vivenzio's complaint, he disclosed the fraternity's secret Facebook page to local police and a senior investigator from the Penn State Office of Student Conduct in April 2014. He also told the Penn State investigator that he had evidence of sexual assaults at the fraternity, the complaint said.

"In fact, Penn State recklessly and unconscionably sat on the information whistleblower Vivenzio had first brought [to] Penn State's attention, causing further harm to Mr. Vivenzio and to untold numbers of students whose injuries and damages from hazing and sexual misconduct could have been prevented had Penn State acted quickly, responsibly and decisively," the complaint, filed by attorney Aaron J. Freiwald, said.

A spokeswoman for the university has denied those claims, saying the school offered "extraordinary assistance on numerous occasions."

Vivenzio, the complaint said, joined Penn State for the fall semester in 2012, and he became a pledge of Kappa Delta Rho soon after. However, he contended that, because of the hazing, he failed out of the school by the spring semester of 2013.

The university was represented by James A. Keller of Saul Ewing.

Freiwald did not immediately return a call seeking comment.

Neither Keller nor a spokeswoman for Penn State immediately responded to requests for comment.

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