UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1150

September Term, 2015

JAMES TUCKER

v.

JOHNS HOPKINS UNIVERSITY

Wright,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 10, 2017

The appellant, James Tucker, had been an employee of Johns Hopkins University ("the University") for approximately thirty years when, in November 2011, he was informed that his employment was being terminated for alleged misconduct. After receiving notice of his termination, the appellant utilized the University's internal appeal process. That three-step process concluded when the University's Vice President for Human Resources followed the recommendation of a three-member panel and upheld the appellant's termination. The appellant then filed suit against the University in the Circuit Court for Baltimore City, alleging that the University committed a breach of contract by violating its own appeal procedures during step three of his appeal. The circuit court, however, entered summary judgment in favor of the University. The appellant presents a single question for our review, which we have rephrased as follows:[1]

> 1. Did the circuit court err where it granted the University's motion for summary judgment?

For the following reasons, we answer this question in the affirmative and, therefore, reverse the judgment below.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant was hired by the University in September 1982. On November 11, 2011, after he had been an employee of the University for almost thirty (30) years,[2] the

[1] The appellant presented the following question in his brief:

> 1. Does Section 1 of the HR Policy Manual clearly and conspicuously disclaim, as a matter of law, contractual intent relative to the Appeal Process?

[2] The appellant's termination letter indicates that the appellant had been employed within the University's William H. Welch Medical Library.

appellant received a letter notifying him that his employment was being terminated for alleged misconduct.[3] The letter informed the appellant that "[t]he [U]niversity has an appeal process that is designed to address complaints during the course of employment." It went on to say that "[g]rievances involving termination must be submitted in writing directly to the department head within five working days following notice of termination."

The appeal process referenced in the termination letter is set forth in Section 8 of the University's Human Resources Policy Manual ("HR Policy Manual" or "the Manual"). The process, the description of which spans four (4) pages of the Manual, involves the following three (3) steps:

> 1. Step One: Supervisor – Eligible staff members have the right to present an appeal in writing to the supervisor within ten (10) work days of the issue or within ten (10) work days of the staff member having reasonable knowledge of the issue. An appeal involving a suspension or termination must be submitted to the department head or designee within five (5) work days of the staff member receiving notice of the discipline.
>
> Note: In those instances where an issue results from the decision of the supervisor, the staff member has the option of waiving Step One of the Appeal Process and proceeding to Step Two. When the staff member elects to waive Step One, the appeal is to be presented in writing to the department head or designee within ten (10) work days of the issue or within ten (10) work days of the staff member having reasonable knowledge of the issue. For issues involving disciplinary action taken by the supervisor, the option of waiving Step One applies only to oral and written warnings. The issue is to be

[3] The termination letter also indicates that the appellant's employment was terminated "follow[ing] review of [his] alleged conduct during a workplace incident on Tuesday, October 4, 2011."

presented in writing to the department head or designee within 10 work days of receipt of the warning.

Within five (5) work days after receipt of the written appeal, the supervisor will provide the staff member a written response to the appeal with a copy to the divisional human resources office. If the issue involves an alleged violation of law or University policy, the supervisor must discuss the matter with a representative of the divisional human resources office before responding in writing to the staff member. Should the supervisor need additional time to investigate the issue, the staff member must be advised in writing of the date the written decision will be provided. If the supervisor does not respond within five (5) work days and does not inform the staff member that additional time is needed to investigate, the staff member can present the appeal in writing to the department head or designee or to the divisional human resources office within five (5) work days from the date the decision was due. If the staff member is not satisfied with the supervisor's decision, the appeal can be submitted to [the] department head or designee, Step Two, within five (5) work days of the date of the supervisor's decision. Should the staff member fail to present the appeal within five (5) work days, the case will be considered settled.

2. Step Two: Department Head or Designee – If the staff member is dissatisfied with the written response received from the supervisor, the staff member may request, in writing, review of the matter by the department head or designee. The appeal to Step Two must be submitted within five (5) work days of the supervisor's decision. Within ten (10) work days after receipt of the written appeal, the department head or designee will provide the staff member a written response with a copy to the divisional human resources office. Any proposed response from the department head or designee at this step should be discussed with a representative of the human resources office or human resources manager before a written response is made to the staff member. Should the department head or designee need additional time to investigate the issue, the staff member must be advised in writing of the date the written response will be provided. If the department head or designee does not respond within ten (10) work days and does not inform the staff member that additional time is needed to

investigate the appeal, the staff member can present the appeal in writing to the Vice President for Human Resources or to the divisional human resources office within five (5) work days from the date on which the response was due. If the staff member is not satisfied with the department head's or designee's decision, the appeal can be submitted to the Vice President for Human Resources within five (5) work days of the department head's or designee's decision. Should the staff member fail to present the appeal within five (5) work days, it will be considered settled.

3. Step Three: Vice President for Human Resources – If the staff member is dissatisfied with the written response received from the department head or designee, a written request for review of the appeal may be submitted to the Vice President for Human Resources. The request must be submitted to the Vice President for Human Resources within five (5) work days from the date on which the department head's or designee's decision was due.

An Appeal Panel will be convened to consider the issue. Membership will include three university staff members, including a panel chairperson, who is designated by the Vice President for Human Resources, and two individuals from the University community. *The staff member has the right to choose one panel member from the available pool of eligible participants and the Chair of the panel will choose the other participant.* The members of the Appeal Panel will interview the staff member and management representative(s), review the documentation and speak with any other individuals the panel deems necessary to investigate the appeal. Following the panel's review, a recommendation will be submitted to the Vice President for Human Resources, who will issue the final decision of the University. Note, while an objective of the appeal process at Step Three is to investigate the issue and provide a timely response from the Vice President for Human Resources, it should be understood that each case is reviewed on its own merits, and the time it takes to complete a thorough and objective review will vary based on the complexities and issues presented by the appeal. As a general principle, the goal will be for the panel to present a report and recommendation to the Vice President for Human Resources within approximately ten (10) work days from the date of their final deliberation. The

> Vice President for Human Resources will communicate a final decision to the Panel Chair within the next seven (7) work days, and the Panel Chair will communicate this decision to the parties involved within three (3) work days from receiving the decision from the Vice President for Human Resources.

HR POLICY MANUAL at § 8(C).

Section 1 of the HR Policy Manual contains the following disclaimer:

> This manual does not constitute an express or implied contract and its provisions are not intended to be contractually binding. Each staff member has the right to end employment with the University at any time for any reason and the University reserves this same right.
>
> The University retains all managerial and administrative rights and prerogatives entrusted to it and conferred on employers inherently and by law. These include, but are not limited to: the right to exercise judgment in establishing and administering policies, practices and procedures, and to make changes in them without notice; the right to take whatever action is necessary in the University's judgment to achieve Hopkins' goals; and the right to set the standards of productivity and services to be rendered, etc. Failure of the University to exercise any such prerogative or function in a particular way shall not be considered a waiver of the University's right to exercise that prerogative or function in the future or to preclude it from exercising that prerogative or function in some other way.

Id. at § 1.5

The Manual can be found online at http://hrnt.jhu.edu/policies/index.cfm. On the left side of that webpage one will find a topical outline with the heading "Policies/Resources" and various hyperlinked subheadings, which include but are not limited to "Forms," "Appeal Process," and "Human Resources Policy Manual."[4] The

[4] The outline looks something like the following:

"Forms" subheading link resolves to a page with hyperlinks to various forms, one of which being the "Appeal Process Form." The "Appeal Process" subheading link resolves to a page that contains a detailed description of the University's appeal process. Unlike the HR Policy Manual itself, neither the "Appeal Process Form" nor the webpage resolved to by the "Appeal Process" subheading contains a disclaimer.

The University concedes that "[the appellant] utilized the aforementioned Section 8 Appeal Process through all its three stages, culminating in the decision by the decision maker at the final stage of review, the Vice President for Human Resources, who upheld [the appellant]'s termination from employment with the University." Appellee's Br. at 1. In fact, when the appellant's appeal was forwarded to Step Three of the appeal process, the appellant was notified by a letter dated November 29, 2011, and signed by Patricia A. Day, Senior Director of Human Resources, that "[Step Three of t]he Appeal Process provides that you can select one of the Panel members from the pool of eligible participants." Accordingly, Ms. Day enclosed a list of eligible participants from which the appellant

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Policies/Resources
Compliance Line
Employment Eligibility Verification
Forms
Appeal Process
Human Resources Policy Manual
Required Notices
Randstad Staffing Services
Internal HR Resources

Policies/Resources, JOHNS HOPKINS UNIV. HUMAN RES. (2010), http://hrnt.jhu.edu/policies/index.cfm.

could make his selection for the Panel. On December 13, 2011, the appellant notified the University via email that his selection for the Panel was Ms. Cherita Hobbs. According to the appellant, he selected Ms. Hobbs "after considering the list and background information which Ms. Day had sent him and consulting with persons he trusted about which of the listed individuals he should select[.]" Appellant's Br. at 6.

On December 16, 2011, the appellant was notified that his meeting with the Panel would be held on January 11, 2012, at 9:00 a.m. in room N-614 of the University's Wyman Park Building. He was also notified that his appeal would be heard by Cherita Hobbs, John Kunz, and chairperson Patricia Day. However, when the appellant was escorted into the hearing room on the morning of January 11th, he was informed that Ms. Hobbs was sick and, therefore, that his appeal would be heard by a three-member panel consisting of Ms. Day, Mr. Kunz, and Holly Schmittle, who was filling in for Ms. Hobbs. Based on their meeting with the appellant, the panel recommended to the University's Vice President for Human Resources that his termination be upheld. Subsequently, on February 12, 2012, the Vice President for Human Resources accepted the panel's recommendation.

On October 16, 2014, the appellant filed a Complaint against the University in the Circuit Court for Baltimore City. The Complaint alleged that the University violated a contractual obligation where it did not allow the appellant to select one of the members of his appeal panel. On May 13, 2015, the University filed a Motion for Summary Judgment on the grounds that the HR Policy Manual contained a disclaimer that did not constitute a contract as a matter of law. On June 23, 2015, the circuit court entered summary judgment in favor of the University. On July 16, 2015, the appellant noted a timely appeal.

DISCUSSION

I. ENTRY OF SUMMARY JUDGMENT

A. The Contentions of the Parties

The appellant argues the disclaimer in Section 1 of the HR Policy Manual is ineffective for purposes of disclaiming contractual intent relative to the appeal process. The appellant points to the website discussed above (http://hrnt.jhu.edu/policies/index.cfm), wherein "the Forms subheading and the Appeal Process subheading appear above the HR Policy Manual [sub]heading . . . [and are thus] shown as being ***outside*** the HR Policy Manual." Appellant's Br. at 3 (emphasis in original). The appellant asserts that by "publish[ing] the appeal process in two places outside its HR Policy Manual" without a disclaimer, the University has entered into an enforceable contract with its employees with respect to appeals. *Id*. The appellant contends "[a] reasonable employee reviewing the descriptions of the very detailed Appeals Process which appear on [the University]'s website without any disclaimer could easily conclude that no disclaimer applies to the Appeals Process." Appellant's Br. at 13 (internal citation omitted).

In addition, the appellant argues the Section 1 disclaimer would be ineffective even if the appeal process were not shown in two places outside the Manual on the website. "Under Maryland law," the appellant asserts, "a disclaimer is not effective . . . unless it is clear and conspicuous." *Id.* Therefore, the disclaimer that appears in Section 1 of the Manual ineffectively negates contractual intent relative to the Section 8 of the same because "[i]t is not boldfaced, capitalized, or otherwise highlighted in a[ny] manner[.]" Appellant's Br. at 13-14. The appellant relies heavily on *Haselrig v. Pub. Storage, Inc.*, 86

Md. App. 1116 (1991), a case in which we held that the placement and language of the disclaimer at issue were such that contractual liability was ineffectively disclaimed.

Finally, citing *Dearden v. Liberty Med. Ctr., Inc.*, 75 Md. App. 528 (1988), the appellant contends that under Maryland law, "where an employer makes an internal grievance procedure available to a terminated employee, that employee cannot go straight to court to challenge that termination, but rather must exhaust that internal procedure." Appellant's Br. at 14. The appellant therefore argues that because he was legally required to use the University's appeal process, the disclaimer was invalid.

The University, on the other hand, asserts the circuit court correctly applied *Castiglione v. Johns Hopkins Hosp.*, 69 Md. App. 325 (1987)—a case that the appellant ignored altogether in his brief—where it entered summary judgment in its favor. The University points out that in *Castiglione*, our Court upheld the validity of "disclaimer language virtually identical to the language at issue in the case at bar." Appellee's Br. at 4. The University contends that like *Castiglione* and unlike *Haselrig*, where the disclaimer was placed at the end of the probationary period section of the handbook, its disclaimer is "prominently placed in the opening section of the [HR Policy Manual]." Appellee's Br. at 5. Furthermore, the disclaimer in *Haselrig* differed from the disclaimer in *Castiglione* and the present case in that it did not "retain[] the employer's ability to make changes in the policies, practices and procedures at any time without notice." Appellee's Br. at 7. The University further argues that its disclaimer is stated in clear and express terms.

Regarding the appellant's argument that the appeal process is not disclaimed in the two places in which it appears outside the HR Policy Manual on the website, the University

asserts there should be no confusion for two reasons. First, "[t]he HR Policy Manual itself . . . appears in close proximity on the same webpage as the touted 'Forms' and 'Appeal Process' subheadings, making the complete . . . Manual available to employees in an open, obvious and visible manner." Appellee's Br. at 8. Second, "there is no internal appeal process but the Section 8 Appeal Process, [of which] . . . 'reasonable notification, not actual notification, [was] sufficient to put the [appellant] on notice.'" *Id.* (quoting *Elliott v. Bd. of Trustees of Montgomery Cty. Cmty. Coll.*, 104 Md. App. 93, 105 (1995)).

Lastly, the University counters the appellant's *Dearden* argument with the assertion that in that case "there was no question that there was an employment contract between the plaintiff and the employer . . . [and] no discussion of a contractual disclaimer." Appellee's Br. at 9. Therefore, the University contends that *Dearden* has no application to the present case.

B. Standard of Review

Maryland Rule 2-501, which governs motions for summary judgment in the circuit court, provides that

> [t]he court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Id. at § 2-501(f).

The Court of Appeals has explained that appellate review of an entry of summary judgment

> "begins with the determination [of] whether a genuine dispute of material fact exists; only in the absence of such a dispute will [an appellate court] review questions of law." *D'Aoust v. Diamond*, 424 Md. 549, 574, 36 A.3d 941, 955 (2012) (quoting *Appiah v. Hall*, 416 Md. 533, 546, 7 A.3d 536, 544 (2010)); *O'Connor v. Balt. Cnty.*, 382 Md. 102, 110, 854 A.2d 1191, 1196 (2004). If no genuine dispute of material fact exists, [the appellate court] determines "whether the Circuit Court correctly entered summary judgment as a matter of law." *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo.*, 404 Md. 560, 571, 948 A.2d 11, 18 (2008) (citations omitted). Thus, "[t]he standard of review of a trial court's grant of a motion for summary judgment on the law is de novo, that is, whether the trial court's legal conclusions were legally correct." *D'Aoust*, 424 Md. at 574, 36 A.3d at 955.

Koste v. Town of Oxford, 431 Md. 14, 24-25 (2013).

C. Analysis

We begin our analysis by recognizing that "[i]n Maryland, an employment contract of indefinite duration is considered employment 'at will' which . . . may be terminated without cause by either party at any time." *Castiglione*, 69 Md. App. at 338. The appellant's employment with the University constituted such an "at will" relationship. Therefore, entry of summary judgment in favor of the University was proper unless the appellant was "discharged for exercising constitutionally protected rights," *id.*, or the provisions of the HR Policy Manual "that set forth a required procedure for termination of . . . employment . . . [had] become contractual undertakings by the [University] that are enforceable by the [appellant]." *Id.* at 339 (quoting *Staggs v. Blue Cross of Maryland, Inc.*, 61 Md. App. 381, 392, *cert. denied*, 303 Md. 295 (1985)). Because the appellant was not discharged for exercising constitutionally protected rights, the issue we must resolve is whether the

University's appeal process constitutes a contract enforceable by the appellant. If the answer to this question is "yes," then the University may have breached its contract with the appellant where it substituted Ms. Schmittle for Ms. Hobbs on the appellant's appeal panel.

Our resolution of this case requires us to analyze our previous holdings in *Haselrig*, *supra*, upon which the appellant primarily relies, and *Castiglione*, *supra*, which the University states is "*remarkably* absent from the Appellant's Brief even[] though it was the *cornerstone* of the lower court's ruling."[5] Appellee's Br. at 5. Taking both of these cases into account, we shall hold that the circuit court erred where it granted the University's Motion for Summary Judgment. We explain.

Haselrig, like the case *sub judice*, involved an employee who, after being terminated, sued on the grounds that he was not afforded the specific termination procedures set forth in the handbook. *See* 86 Md. App. at 125 ("In particular, appellant alleged that the involuntary dismissal section of the "Termination" provision set forth a specific procedure which appellee agreed to follow before terminating a non-probationary employee. When appellee terminated him, a non-probationary employee, without

[5] In fact, the University relies so heavily on *Castiglione* that it framed the issue as follows in its brief:

> Should this Court follow its own precedent in *Castiglione v. Johns Hopkins Hospital*, (which interpreted virtually identical contract disclaimer language) in determining that the JHU HR Policy Manual's contract disclaimer language is legally effective, and that the provisions of the HR Policy Manual cannot form the basis of a breach of contract action as a matter of law?

following that procedure, appellant alleged that it, thereby, breached its employment contract with him."). The handbook in *Haselrig*, however, contained no express disclaimer of contractual liability. *Id.* at 128. Instead, we noted that the closest provision to a disclaimer was in "the last paragraph of the Probationary Period [section]," and simply provided that "[i]t should be understood that employment and compensation can be terminated, with or without cause and with or without notice at any time, at the option of the Company or the Employee." *Id.* at 127. Because this alleged disclaimer was not express, we framed this issue as "whether appellant could justifiably have relied upon the handbook and the employer/employee relationship it reflected, as modifying his employment relationship with appellee." *Id.* at 126.

We explained in *Haselrig* that "[t]he clarity with which a provision in the employee handbook disclaims contractual intent will determine the viability of an employee's claim that he or she justifiably relied on provisions in the handbook. Therefore, we review the provisions to determine whether they are clear and unequivocal or ambiguous and equivocal." *Id.* at 127-28. Furthermore, we noted that

> [a]lthough the provisions themselves are not contracts, the determination must be approached in a fashion similar to that utilized in interpreting contracts: we must consider the nature of the provision, its apparent purpose and any facts and circumstances that bear on its meaning. If we determine that the language of the provisions is ambiguous-an ambiguity exists when the language in the provision is, to a reasonably prudent layman, susceptible of more than one meaning, *Truck Insurance Exchange v. Marks Rentals, Inc.*, 288 Md. 428, 433, 418 A.2d 1187 (1980), or where the placement of the provisions in the handbook has that effect-and/or equivocal, then the issue of appellant's justification in relying on the other provisions is for the fact finder. Where the issue is, as it is here,

> the justifiability of an employee's reliance on a handbook, we must consider both the placement of the provisions in the handbook and the language of the provisions.

Haselrig, 86 Md. App. at 128.

We then turned to the application of these legal standards. In doing so, we held that "the Probationary Period provision . . . is ambiguous . . . when one considers its location at the end of the Probationary Period section of the handbook." *Id.* at 129. Thus, the placement of the provision in the handbook, combined with "[t]he delivery [of the handbook] to appellant[] at or about the time he began employment with appellee," led us to conclude that "[t]he issue is, at least, one for resolution by the finder of fact." *Id.* at 132.

However, although we reversed the entry of summary judgment in *Haselrig*, we did so while cautioning that

> [o]f course, where the document containing the provision relied upon by the employee also contains "a clear disclaimer stating that the policies and procedures described therein are 'subject to change . . . unilaterally and at any time'," hence, that it is not to be interpreted as a contract of employment, it is "quite clear that the [employer] is promising nothing."

Id. at 131 (quoting *Anders v. Mobil Chemical Company*, 201 Ill. App. 3d 1088, 147 Ill. Dec. 779, 782, 559 N.E.2d 1119, 1122 (Ill. App. 1990)). The handbook in *Castiglione*, like the HR Policy Manual in the case at bar, contained such a disclaimer. Therefore, it is to that case that we now turn our attention.

As we previously noted, *Castiglione* involved a disclaimer virtually identical in both language and placement to one in the case *sub judice*.[6] 69 Md. App. at 329-30. In that case, we explained that "provisions in personnel policy statements . . . 'that set forth a required procedure for termination of . . . employment may, if properly expressed and communicated to the employee, become contractual undertakings by the employer that are enforceable by the employee.'" *Id.* at 339 (quoting *Staggs*, 61 Md. App. at 392). Ultimately, because "the appellee expressly negated, in a clear and conspicuous manner, any contract based upon the handbook for a definite term and reserved the right to discharge its employees at any time," *id.* at 340, we held that justifiable reliance by the appellant was precluded. *Id.* at 341.

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[6] In *Castiglione*, we noted that the handbook contained the following provisions in its opening section:

> "Finally, this handbook does not constitute an express or implied contract. The employee may separate from his/her employment at any time; the Hospital reserves the right to do the same."
>
> * * *
>
> "All managerial and administrative functions, responsibilities, and prerogatives entrusted to and conferred upon employers inherently and by law are retained and vested exclusively with [the Defendant Hospital], including but not limited to the right to exercise our judgement to establish and administer policies, practices, and procedures and change them, to direct and discipline our workforce and increase its efficiency, and to take whatever action is necessary in our judgement to operate [the Defendant Hospital]."

69 Md. App. at 329-30.

The University argues that we should affirm the entry of summary judgment by the circuit court because the present disclaimer is virtually identical to the one in *Castiglione*. However, the facts and circumstances of the present case are such that it can be distinguished from *Castiglione*.

There are two primary grounds on which the present case and *Castiglione* differ. The first, which was pointed out by the appellant in his brief, is that on the University's Human Resources website, the appeal process is outlined in detail, without a disclaimer, in two places outside the HR Policy Manual. The second relates to the level of detail of the Section 8 appeal process.

Our holding in *Castiglione* was based in part on the fact that the handbook provision that was allegedly violated when the appellant was terminated lacked any significant amount of detail. *Id.* at 340. *See also Id.* at 338 (explaining that "Appellant was discharged after an evaluation hearing without being afforded an evaluation review in accordance with the provisions of a published handbook distributed to employees."). Indeed, we made it a priority to note that

> [o]ther decisions finding in favor of discharged employees have generally involved reliance by employees on policy manuals or oral promises that limited the discretion of the employer to fire except for cause or that contained job security provisions and pre-dismissal reprimand procedures more detailed than in the case *sub judice. See, e.g., Toussaint v. Blue Cross & Blue Shield of Michigan,* 408 Mich. 579, 292 N.W.2d 880, 884 (1980) (policy manual allowed discharge "for just cause only"); *Pine River State Bank v. Mettille,* 333 N.W.2d at 626 n. 3 (multiple stage reprimand procedures required before job termination).

Castiglione, 69 Md. App. at 340. *Pine River*, which is one of the cases we cited as involving "job security provisions and pre-dismissal reprimand procedures more detailed than in the case *sub judice*,"*Castiglione*, 69 Md. App. at 340, specifically involved a "three-stage procedure consisting of reprimands for the first and second 'offense' and thereafter suspension or discharge, but discharge only 'for an employee whose conduct does not improve as a result of the previous action taken.'" *Pine River*, 333 M.W.2d at 626. In other words, we made it a point in *Castiglione* to indicate that the level of detail of a handbook provision is one of the facts and circumstances that bear on whether it has been effectively disclaimed.

Section 8 of the University's HR Policy Manual, *supra*, contains a great amount of detail and specificity. Like the handbook provision in *Pine River*, it contains a three-stage procedure. Furthermore, that three-stage procedure—which we have referred to throughout this opinion as the "appeal process"—is replete with time requirements, writing requirements, exceptions, and technical legal expressions. It even contains a provision which states: "Should the staff member fail to present the appeal [to Step Two] within five (5) work days, the case will be considered settled." HR POLICY MANUAL at § 8(C)(1). *See also Id.* at § 8(C)(2) ("Should the staff member fail to present the appeal [to Step Three] within five (5) work days, it will be considered settled."). The University would undoubtedly want to retain at least the ability to enforce these time requirements against an employee who, for example, presents an appeal to Step Two of the process outside the five-day window. In other words, even though a virtually identical disclaimer was sufficient in *Castiglione* to preclude liability relating to a handbook provision lacking in

significant detail, the highly sophisticated nature of the Section 8 appeal process has a bearing on whether the disclaimer contained in Section 1 of the Manual was sufficiently conspicuous to preclude liability for violations of the Section 8 appeal panel provisions.

CONCLUSION

In order for a handbook disclaimer to effectively preclude contractual liability, it must be both clear and conspicuous. *See Castiglione*, 69 Md. App. at 340 (holding that the disclaimer at issue was sufficient because it "expressly negated, *in a clear and conspicuous manner*, any contract based upon the handbook[.]" (emphasis added)). In the case at bar, the disclaimer clearly states that "[t]his manual does not constitute an express or implied contract and its provisions are not intended to be contractually binding." HR POLICY MANUAL at § 1.5. However, it is not so obvious whether the disclaimer is conspicuous, at least with respect to the appeal process. The disclaimer, although express, is not presented in boldfaced or capitalized type or in an otherwise highlighted manner, and is not shown in the two places where the appeal process appears outside the Manual on the University's Human Resources website. Therefore, whether such a disclaimer is sufficiently conspicuous to preclude liability relating to the University's appeal process, which contains a highly detailed, three-step procedure, is an issue which requires resolution by a trier of fact rather than through entry of summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLEE.