

**JAMS ARBITRATION CASE REFERENCE NO. 1240021879**

VINCENT MARTIN,

Claimant,

and

SAN DIEGO STATE UNIVERSITY,

Respondent.

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**ARBITRATOR'S DECISION AFFIRMING DISCIPLINE**

1. Parties and Counsel. The parties to this arbitration are identified in the caption and are represented as follows:

Mark S. Stiffler, Esq.  
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*Counsel for Claimant*

Dr. Edith Benkov  
San Diego State University  
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Tel: 629-594-5901

*Representative for Respondent*

2. Arbitrator:

Hon. J. Richard Haden (Ret.)  
JAMS  
401 "B" Street, Suite 2100  
San Diego, CA 92101  
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3. Case Manager:

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Place of Arbitration: San Diego, California

The undersigned Arbitrator, having been selected by stipulation of the parties, and having been duly sworn and examined the submissions, proof and allegations of the parties, finds, concludes, and issues this Decision as follows:

### **I. INTRODUCTION AND PROCEDURAL STATEMENT**

This matter concerns an investigation by San Diego State University (SDSU) into complaints of unprofessional conduct including sexual harassment against Professor Vincent Martin. Following an investigation, the Provost determined Professor Martin violated both the Education Code and SDSU policies and suspended him thirty working days. Professor Martin denies the alleged incidents constitute unprofessional conduct including sexual harassment and seeks a dismissal of all discipline resulting from the investigation. SDSU maintains the discipline imposed was appropriate.

Arbitration clause is contained in the Disciplinary Action Procedure §19.13 dated June 30, 2014. The arbitration is pursuant to the stipulation of the parties. The claims are stated in the Demand for Arbitration dated February 3, 2015. The claims are arbitrable. The substantive law of California and the California Arbitration Act together with the rules of the American Arbitration Association ("Rules") shall apply in this proceeding.

The evidentiary hearing took place July 8-9 and 24, 2015, in the JAMS offices, 401 B Street, Suite 2100, San Diego, California. Each side offered documentary evidence (Exh. 1-21). The following witnesses testified: Dr. Edith Benkov; [REDACTED]; [REDACTED]; Thom Harpole; Vincent Martin; [REDACTED] and [REDACTED]. Witness affidavits (Exh. 12-17) were also admitted. The hearing was reported.

At the conclusion of the testimony each party presented argument and the matter was submitted for decision.

## **II. FACTS**

The following is a statement of those facts found by the Arbitrator to be necessary to the Award. To the extent that this recitation differs from any party's position, that is the result of determinations as to credibility and relevance, burden of proof, and the weighing of evidence.

Professor Martin holds a Ph.D. in Spanish Literature from New York University. He resigned his prior post at the University of Delaware after he was accused of sexually harassing a female student. In August 2011 SDSU hired him as a tenured professor in the Department of Spanish and Portuguese.

In Fall 2011 [REDACTED] a student of Professor Martin, alleged he sexually harassed her. The Professor accused her of plagiarism on her final exam, then invited her to take an incomplete which she could satisfy by working as his assistant. Professor Martin then invited her to out-of-state conferences and sent her text messages which made her uncomfortable. These included:

"btw this is where I'm staying in Seattle in case u want to do ur asst hours there (plus they have awesome in-room spa services!) :)"

Professor Martin also suggested a costume for Ms. [REDACTED]

"French maid outfit? :)"

Dr. Edith Benkov, Associate Vice President of Faculty Affairs, met with Professor Martin. She advised him his text messages to Ms. [REDACTED] were inappropriate and his treatment of the plagiarism allegation was a violation of University policy. Because Professor Martin was new to the faculty, this was an initial incident, and Professor Martin appeared to take the counseling seriously, the matter concluded with an informal warning. At this hearing Professor Martin acknowledged that in hindsight he realized he probably should not have sent the "French maid" text.

In March 2013 Professor Martin invited student [REDACTED] to attend

a symposium in El Paso, Texas. Six other students also attended the conference with Professor Martin. At the conference the group congregated in the lobby one night after a play. Because the public rooms were unavailable to them, Professor Martin invited everyone to his room. Various students brought food and drinks, both alcoholic and nonalcoholic.

Professor Martin asked Ms. [REDACTED] to accompany him to the hospitality suite to get additional wine. Because the suite was closed, a security officer with a key accompanied them. Once inside, Ms. [REDACTED] put a box of wine in her purse. She claimed Professor Martin moved within inches of her face. She twice stepped back, but each time he stepped forward as if he were about to kiss her. This made her extremely uncomfortable. She moved toward the security officer at the door, then accompanied Professor Martin back to his room where she used Professor Martin's computer to play music for the group which sat in a large circle on the floor.

Although she denies it, other students recall Ms. [REDACTED] later stated she'd like to grab Professor Martin's butt. After the symposium, Professor Martin and other students noticed Ms. [REDACTED] demeanor changed toward them. She never spoke to Professor Martin again, although she received an A in his class. Ms. [REDACTED] waited about five months before filing a complaint. She finally did complain because she was convinced Professor Martin had sent her a series of threatening emails. Professor Martin adamantly denies invading Ms. [REDACTED] personal space or sending the threatening emails.

[REDACTED] age nineteen, enrolled in Professor Martin's class in Summer 2013. Because he brought his daughter to class, Ms. [REDACTED] gave him her phone number in the event he needed a babysitter. Although Professor Martin never sought Ms. [REDACTED] babysitting services, he began an intensive text message correspondence with her from June through September 2013 that included an invitation to go to Tijuana with him, multiple invitations to lunch, dinner or "happy hour beer," an offer of employment as his student assistant, and numerous invitations to his home when he would be alone for wine, dinner



and a movie.

Discussing dinner at Gordon Biersch, he asked, "do u enjoy beer? ...if it's not up ur alley there are many other choices around there!! but also a full bar and soft drinks if u don't like beer, obviously!!!" Professor Martin added "ur easy to carry if you do pass out!! LOL!!!" When Ms. [REDACTED] replied, "I'll just try to remain conscious at all times..." he responded, "u sound like a fun date!!! HAHAAHAHAHAHAHAHAHA!!!" At 11:02 p.m. the same night, Professor Martin inquired, "i hope u don't think it's super creepy to go for food/drinks with me...!\$" Ms. [REDACTED] replied, "Of course not! If I had a problem I would say something."

In July Ms. [REDACTED] in reply to another invitation from Professor Martin for dinner, replied, "...unfortunately I haven't hit the 21 mark yet..." Professor Martin responded, "not 21???? but ur SOOOOOO MATURE!!! Wow!!! very impressed!!!!"

When talk returned to the job offer, Ms. [REDACTED] asked if he needed references. Professor Martin replied, "ha ha ha ha!!!! NO REFERENCES!!! I'm mostly interested in knkwng (sic) ur skills."

When Ms. [REDACTED] said she planned to become a lawyer and closed with "...lawyer friends can be useful," Professor Martin replied, "but that's not my interest in you!!! ;) LOL"

When Ms. [REDACTED] told him she planned on taking his class, Professor Martin replied, "...you're really a dream come true!! :)" He further suggested, "...you can come over next week to talk about the job, etc. and I can make Spanish food..." The Professor continued to extend invitations to come to his home where Ms. [REDACTED] could drink or go out to dinner.

When Ms. [REDACTED] asked for help on her homework, Professor Martin responded, "...everything's negotiable...whenever you want to come over for a glass of nice Spanish wine...and discuss the difficulties, etc, I'd love to have you! :)" During another exchange, he offered "in case you do drop by for Spanish wine sometime, I'll have mimosas ready as 'plan B' now that I know your poison!!"

Three days later he texted, "...let me know when and if u want to meet up. i'll have wine and mimosas ready, just in case... :)" When Ms. [REDACTED] inquired, "...your family wouldn't mind me coming over?" He replied, "...i'm alone now ... ur more than welcome anytime..."

After repeated invitations, Professor Martin suggested, "...i have a fun Spanish movie u might like to watch with some mimosas..."

When Professor Martin again invited Ms. [REDACTED] to discuss the job, she suggested time before class. He responded, "BEFORE class??? wouldn't AFTER class be better??? drinks and dinner??"

This above summarized dialogue consists of over 200 texts from Professor Martin and 158 from Ms. [REDACTED]. Essentially Ms. [REDACTED] initially agreed to whatever Professor Martin suggested, then backed out with a scheduling conflict. They never met for lunch or dinner, she never went to his home for Spanish wine or mimosas, and she ultimately declined his offer of employment as his student assistant.

Ms. [REDACTED] did take another class with Professor Martin. When she indicated she was unprepared for the midterm, he led her to believe he postponed it especially for her. When she thanked him, he replied, "anything 4 u ;)" In fact, other students recalled he postponed the test because the entire class was not yet prepared for it.

Ms. [REDACTED] felt her midterm grade was unfair, so she dropped the class and ultimately complained about Professor Martin. She testified the texts were unwelcome from the start but became more concerning over time. However, because he had authority over her both as her professor and member of the department of her major, she reluctantly went along with the texts. She thought as she continually pushed things off he would take the hint. In sum, she testified, "Any time a man repeatedly invites me to lunch, Tijuana, dinner, his home for drinks, he's not interested in my views on the Middle East."

Professor Martin testified in hindsight he regretted sending Ms. [REDACTED] so many text messages mentioning alcohol, given she was a minor. He

recognizes he should not have offered alcohol to a minor. He exempted Ms. [REDACTED] from his final exam solely because of her academic performance. He never felt his texts made Ms. [REDACTED] uncomfortable. However, in hindsight he recognizes the texts demonstrate "poor judgment."

Thom Harpole, Human Resources Director at SDSU, investigated the allegations and complaints concerning Professor Martin. He personally conducted nineteen interviews and prepared a 62 page report. In addition to the three student complaints previously discussed, he heard from three others. [REDACTED] claimed Professor Martin made her uncomfortable because he walked too close to her. [REDACTED] disapproved of Professor Martin's jokes about Mexicans. [REDACTED] (a friend of Ms. [REDACTED]) claimed Professor Martin made a comment to her about her boyfriend: "Stop going to the sofa with this man."

Mr. Harpole concluded Professor Martin's conduct constituted sexual harassment and a pattern of conduct toward a number of female students that was "unprofessional and highly inappropriate."

### **III. ANALYSIS**

Based on the facts identified above and additional facts included here relevant to the analysis, SDSU has proved by a preponderance of the evidence that Professor Martin's conduct constitutes unprofessional conduct and failure to perform the duties of his position.

Unprofessional conduct in the education context is conduct which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing. *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 (overruled on other grounds 6 Cal.3d 575). In the education context, the standard for unprofessional conduct is that which produces serious friction in the school and shows insubordination and refusal to conform to instructions and rules.

CSU Executive Order 1097 defines harassment as unwelcome conduct



that is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the student as limiting the student's ability to participate in or benefit from the services, activities, or opportunities of the university.

Given his previous experience at the University of Delaware, Professor Martin should have redoubled his efforts at professionalism. Instead, within a few months of his arrival at SDSU strikingly similar behavior reemerged. He violated university policy on plagiarism by offering Ms. [REDACTED] a job rather than report her as required. During her work for him he then engaged in inappropriate text messages with her, including the "French maid" text. He was informally counseled by Dr. Benkov and acknowledged the texts were a mistake.

In 2013, while representing SDSU at the Texas symposium, Professor Martin invited students to his room where alcohol was served, then brought Ms. [REDACTED] with him to obtain more wine from the closed hospitality suite. Although the testimony conflicts about his alleged attempts to get too close to her, all agree various inappropriate remarks were made in his room and Ms. [REDACTED] never related in the same way to him or other attendees after the symposium. While attending a university sponsored event, drinking with students in the Professor's room after hours reflects poor judgment. At least one student felt harassed.

Professor Martin's intensive text message dialogue with Ms. [REDACTED] from June through September 2013 constitutes both subtle sexual harassment and severe unprofessional conduct. This behavior, given his prior counseling by Dr. Benkov on this very topic, demonstrates a reckless disregard for SDSU policy and standards of conduct expected of faculty.

Invitations to Tijuana including one for a weekend, multiple almost incessant invitations for lunch, dinner in restaurants, and dinner alone with him in his home, numerous offers of beer, wine, mimosas – even after Ms. [REDACTED] advised him she was a minor – demonstrate a conscious disregard of standards of conduct expected of a SDSU professor. The fact he interspersed these invitations with a job offer make the behavior even more inappropriate. The fact



Ms. [REDACTED] replied to his texts is no mitigation, given their completely disparate ages and roles at the university. The replies represent her attempts to fend off inappropriate advances by a professor toward a young student.

The other complaints standing along, as Mr. Harpole acknowledged, would be insufficient cause for discipline. However, taken in context, the totality of evidence of unprofessional conduct here is overwhelming.

#### **IV. CONCLUSION**

1. SDSU has proved by a preponderance of the evidence that Professor Martin's conduct constitutes unprofessional conduct and failure to perform the duties of his position.

2. The cause for disciplinary action clearly exists here and the thirty day suspension imposed is affirmed.

Dated: July 31, 2015.

  
Hon. J. Richard Haden (Ret.),  
Arbitrator

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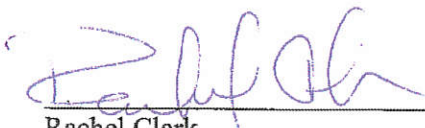
Re: Martin, Vincent vs. San Diego State University  
Reference No. 1240021879

I, Rachel Clark, not a party to the within action, hereby declare that on August 14, 2015 I served the attached Arbitrator's Decision Affirming Discipline on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Diego, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Diego, CALIFORNIA on August 14, 2015.

  
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Rachel Clark  
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