

MASSACHUSETTS SUPREME JUDICIAL COURT

Gorbatova v. Semuels

462 Mass. 1012 (2012) · Decided May 23, 2012

SUMMARY

The Massachusetts Supreme Judicial Court affirmed dismissal of a petition seeking disciplinary action against an attorney who had acted as an administrative hearing officer. The court held that private individuals do not have a private right of action to commence a court proceeding seeking attorney discipline; such complaints are ordinarily prosecuted by the Board of Bar Overseers. The petitioner's recourse was to file a complaint with the Board of Bar Overseers.

OPINION

PER CURIAM.

The petitioner, Valentina P. Gorbatova, as the guardian for her husband, Gennadiy Gorbatov, filed a petition in the county court entitled "Petition for Disciplinary Action against Joel M. Semuels, an Attorney at Law of the Commonwealth of Massachusetts," and numerous related motions. Semuels, acting in his capacity as a hearing officer for the Executive Office of Elder Affairs, had conducted an administrative hearing and issued a final decision reducing home care services to the petitioner's husband.

The petitioner sought disciplinary action against Semuels for his conduct during the administrative hearing, claiming that in the course of acting as the hearing officer he had violated numerous provisions of the Rules of Professional Conduct, S.J.C. Rule 3:07, as appearing in 426 Mass. 1303 (1998). Treating the petition as one filed pursuant to G. L. c. 211, § 3, the single justice determined that the petitioner did not establish that she was entitled to extraordinary relief under the statute and dismissed her petition.

The single justice ruled, among other things, that the petitioner did not have a private right of action. On appeal, the petitioner does not challenge the single justice's decision in this regard. Because the decision that there is no private right to commence a court action to seek disciplinary action against an attorney was correct as a matter of law, we affirm.

This case is controlled by *Slotnick v. Pike*, 374 Mass. 822, 822 (1977), where the court affirmed a single justice's order dismissing a similar petition, and stated: "In seeking disciplinary action against the defendant, the plaintiff is not properly before the court.

Under S.J.C. Rule 4:01, [as amended] (promulgated pursuant to the court's power to supervise attorneys, *Binns v. Board of Bar Overseers*, 369 Mass. 975 [1976]; [Matter of] *Keenan*, 313 Mass.

186, 204 [1943]), it is the Board of Bar Overseers and not private individuals, which is ordinarily responsible for prosecuting complaints against attorneys. ‘A citizen filing a complaint... is not a party to any action taken against the attorney, nor are the citizen’s rights jeopardized.

As in the case of a criminal prosecution, the complainant may be a witness, but he may not appeal or participate as a party to the litigation.’ *Binns v. Board of Bar Overseers*, supra. Cf. [Matter of] *Keenan*, [supra at 198]; *Boston Bar Ass’n v. Casey*, 211 Mass. 187, 191-192 (1912).” Because the petitioner did not have a private right of action, the single justice did not err in dismissing the petition.

It is irrelevant whether the single justice treated it as a G. L. c. 211, § 3, petition or otherwise. “No matter how the petition was framed or how it was treated by the single justice, the critical point is that the petitioner, as a private individual, sought to invoke this court’s power of general superintendence of the bar by commencing a court action [seeking attorney discipline],...

There simply is no such private right of action.” *Matter of a Request for an Investigation of an Attorney*, 449 *1013Mass. 1013, 1014 (2007). The petitioner’s recourse in these circumstances is to file a complaint with the Board of Bar Overseers.² *Valentina P. Gorbatova, pro se. Arlene Beth Marcus for Joel M. Semuels. Judgment affirmed.*

The petitioner might first contact the Attorney and Consumer Assistance Program within the Board of Bar Overseers.