

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Matter of Cardillo

123 A.D.3d 147 (1st Dep't 2014) · No. M-2841 · Decided October 14, 2014

SUMMARY

The New York Supreme Court, Appellate Division, First Department considered reciprocal discipline against Cathy C. Cardillo based on a public reprimand imposed by the Supreme Court of New Jersey. The misconduct involved entering into an agreement restricting her practice of law as part of settling a landlord-tenant dispute, in violation of New Jersey RPC 5.6(b), a rule substantially equivalent to New York rules. The court granted the disciplinary petition and publicly censured respondent.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Luis A. Gonzalez, Presiding Justice; Rolando T. Acosta; Leland G. DeGrasse; Helen E. Freedman; Rosalyn H. Richter
JURISDICTION	New York
DECIDED	October 14, 2014
DOCKET	M-2841
DISPOSITION	other
PROCEDURAL POSTURE	The Departmental Disciplinary Committee petitioned for reciprocal discipline based on a public reprimand imposed on respondent by the Supreme Court of New Jersey.
STANDARD OF REVIEW	In reciprocal disciplinary proceedings, the respondent may defend only on the grounds of lack of notice and opportunity to be heard, infirmity of proof, or that the foreign misconduct would not constitute misconduct in New York. The court gives significant weight to the discipline imposed by the originating jurisdiction.
PRECEDENTIAL VALUE	Published intermediate appellate opinion; precedential within the First Department subject to ordinary New York appellate authority rules.
PARTIES	Departmental Disciplinary Committee for the First Judicial Department v. Cathy C. Cardillo

TOPICS

landlord tenant contracts appellate procedure

PRACTICE AREAS

attorney discipline professional responsibility reciprocal discipline landlord-tenant law
settlement agreements

QUESTIONS PRESENTED

1. Whether reciprocal discipline should be imposed based on the public reprimand entered by the Supreme Court of New Jersey.
2. Whether respondent's conduct in agreeing to restrict her right to practice law as part of a settlement constituted professional misconduct in New York.
3. Whether New York should impose a sanction different from the New Jersey public reprimand.

HOLDINGS

1. Reciprocal discipline was warranted because respondent received notice and an opportunity to be heard in New Jersey, the record established her misconduct, and she did not establish any permissible defense to reciprocal discipline.
2. Entering into an agreement restricting a lawyer's right to practice law as part of settling a private controversy constitutes professional misconduct in New York.
3. The New Jersey public reprimand warranted equivalent discipline in New York, namely public censure.

KEY QUOTATIONS

*"In reciprocal disciplinary matters "this Court accords significant weight to the discipline imposed by the jurisdiction where the charges were originally brought" (*2)*

*"a lawyer is prohibited from "offering or making ... an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties." (*2)*

FACTUAL BACKGROUND

Respondent represented tenants in a New Jersey rent-control dispute and negotiated a settlement that provided the tenants with cash and rent credits totaling \$150,000. Contemporaneously, she entered into an agreement with opposing counsel and the opposing parties' principals restricting her from representing clients adverse to them or their affiliates. New Jersey disciplinary authorities found that the practice restriction was part of the settlement and violated New Jersey RPC 5.6(b), resulting in a public reprimand.

PROCEDURAL HISTORY

Respondent was reprimanded in New Jersey after disciplinary bodies found that she entered into an agreement restricting her right to practice law as part of settling a landlord-tenant dispute. The New York Committee served

a reciprocal-discipline petition, but respondent did not respond. The Appellate Division reviewed the record, found due process and sufficient proof, determined that the conduct constituted misconduct in New York, and imposed public censure.

DISPOSITION

other

CASES CITED

- In re Cardillo, 212 N.J. 486, 57 A.3d 1098 (2012)
- Matter of Jaffe, 78 A.D.3d 152, 158 (1st Dep't 2010)
- Matter of Jarblum, 51 A.D.3d 68, 71 (1st Dep't 2008)
- Matter of Power, 3 A.D.3d 21, 24 (1st Dep't 2003)
- Matter of Maiorino, 301 A.D.2d 53, 56 (1st Dep't 2002)
- Matter of Rogge, 51 A.D.3d 367 (1st Dep't 2008)
- Matter of Hoffman, 34 A.D.3d 1 (1st Dep't 2006)

OPINION

PER CURIAM.

Matter of Cardillo (2014 NY Slip Op 06928) Matter of Cardillo 2014 NY Slip Op 06928 Decided on October 14, 2014 Appellate Division, First Department Per Curiam Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on October 14, 2014 SUPREME COURT, APPELLATE DIVISION First Judicial Department Luis A. Gonzalez, Presiding Justice, Rolando T. Acosta Leland G. DeGrasse Helen E. Freedman Rosalyn H. Richter, Justices.

M-2841 [*1] In the Matter of Cathy C. Cardillo (admitted as Cathy Christina Cardillo), an attorney and counselor-at-law: Departmental Disciplinary Committee for the First Judicial Department, Petitioner, Cathy C. Cardillo, Respondent. Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Cathy C. Cardillo, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on March 2 1998.

Jorge Dopico, Chief Counsel, Departmental Disciplinary Committee, New York (Kaylin L. Whittingham, of counsel), for petitioner. No appearance for respondent. PER CURIAM Respondent Cathy C. Cardillo was admitted to the practice of law in the State of New York by the First Judicial Department on March 2, 1998, under the name Cathy Christina Cardillo. At all times relevant to this proceeding, respondent maintained an office for the practice of law in New Jersey.

By order entered November 20, 2013, this Court suspended respondent for failure to register with the Office of Court Administration and pay the requisite registration fees since the 2006/07 biennial period (Judiciary Law § 468-a).

The Departmental Disciplinary Committee now seeks an order pursuant to Judiciary Law § 90(2) and the Rules of the Appellate Division, First Department (22 NYCRR) § 603.3 censuring respondent, predicated upon similar discipline imposed by the Supreme Court of New Jersey or, in the alternative, sanctioning respondent as this Court deems appropriate.

On May 29, 2014, the Committee served respondent with the instant petition by first-class and certified mail, return receipt requested, to her registered address in Hoboken, New Jersey. Both mailings were returned to the Committee marked "Not Deliverable."

On June 3, 2014, the Committee also mailed the petition to an address in Jersey City, obtained via an internet search. Although those mailings were not returned, respondent has not submitted a response to this motion. By order entered December 19, 2012, the Supreme Court of New Jersey reprimanded respondent for engaging in unethical conduct, in violation of rule 5.6(b) of the New Jersey Rules of Professional Conduct (RPC).

Respondent's misconduct is predicated upon her actions in connection with the settlement of a landlord-tenant dispute on behalf of her clients. On February 15, 2007, following a determination by the New Jersey Rent Control Board that rents charged to Jay Rubinstein and Gary Rubinstein were too high, respondent filed a civil action on behalf of the Rubinsteins and other tenants in the matter of *Rubinstein v Bloomfield 206 Corp.*, (Docket No. HUD-L-921-07)(the Rubinstein litigation).

Thereafter, counsel for Bloomfield 206 Corp. (Bloomfield) filed a motion to disqualify respondent from representing the Rubinsteins on the ground that her representation of Liberty Realty, LLC (Liberty) in 2000 presented a conflict of interest given that two of the three principals of Liberty, James Stathis and Steven Silverman, owned Bloomfield. While the motion was pending, respondent and counsel for Bloomfield negotiated a settlement of the Rubinstein litigation pursuant to which the plaintiffs received cash and rent credits totaling \$150,000.

Contemporaneously with the negotiation of the settlement, respondent entered into an agreement with counsel for Bloomfield and its principals, Stathis and Silverman, whereby respondent agreed to refrain from representing clients adverse to Bloomfield, Stathis and Silverman, or their affiliates (the Cardillo Agreement).

In September 2010, the District Ethics Committee (DEC) filed a disciplinary complaint against respondent which alleged that she violated RPC rule 5.6(b) by entering into the Cardillo Agreement. Respondent filed an answer and supplemental answer in which she admitted to the

facts and accepted responsibility for her conduct, but denied having engaged in a conflict of interest.

A hearing was held before a DEC Hearing Panel on January 6, 2011, at which respondent appeared and gave testimony. By a report dated February 22, 2011, the DEC found that there was clear and convincing evidence that "the Rubinstein Settlement Agreement and [*2]Release and the Cardillo Agreement restricting [respondent's] practice were both part and parcel of the same agreement."

As such, the DEC determined that the restriction on respondent's practice "was unethical under RPC 5.6(b)," and recommended that she be reprimanded. After a de novo review of the record, the Disciplinary Review Board (DRB) issued a decision, dated November 23, 2011, agreeing with the DEC's factual findings and the recommended sanction of reprimand. By order entered December 19, 2012, the Supreme Court of New Jersey confirmed the DRB's recommendation and reprimanded respondent, with one Justice dissenting (*In re Cardillo*, 212 NJ 486, 57 A3d 1098 [2012]).

In this proceeding seeking reciprocal discipline pursuant to 22 NYCRR 603.3(c), respondent is precluded from raising any defenses except: (1) a lack of notice and opportunity to be heard in the foreign jurisdiction; (2) an infirmity of the proof establishing the misconduct; and (3) that the misconduct at issue in the foreign jurisdiction would not constitute misconduct in New York.

Since respondent has not submitted a response to this petition, she has not raised any of the aforementioned defenses. In any event, a review of the record establishes that respondent was afforded due process and that sufficient evidence established her misconduct. Indeed, respondent testified before the DEC Hearing Panel, and in her answer to the disciplinary complaint she accepted responsibility and the resulting discipline for her actions.

Moreover, the conduct for which respondent was disciplined in New Jersey constitutes misconduct in New York. The provision under which respondent was censured in New Jersey, RPC 5.6(b), provides that a lawyer is prohibited from "offering or making... an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties."

That rule is essentially identical to the language of former New York Code of Professional Responsibility DR 2-108(b) (22 NYCRR 1200.13[b]), which states that "[i]n connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts the right of a lawyer to practice law." [FN1] Such conduct is also sanctionable under rule 5.6(a)(2) of the current New York Rules of Professional Conduct (22 NYCRR 1200.0). [FN2] With regard to the appropriate sanction, in reciprocal disciplinary matters "this Court accords significant weight to the discipline imposed by the jurisdiction where the charges were originally brought" (*Matter of Jaffe*, 78 AD3d 152, 158 [1st Dept 2010]; see *Matter of Jarblum*, 51 AD3d 68, 71 [1st Dept 2008]).

In this matter, the Supreme Court of New Jersey imposed a public reprimand upon respondent which is the equivalent of a public censure in this state (see *Matter of Power*, 3 AD3d 21, 24 [1st Dept 2003]; *Matter of Maiorino*, 301 AD2d 53, 56 [1st Dept 2002]), and no reason is offered to depart from the sanction imposed by New Jersey.

Although [*3]there are no disciplinary cases related to violations of DR 2-108(b) (22 NYCRR 1200.13[b]) or its replacement rule 5.6(a)(2) (22 NYCRR 1200.0), censure is in accord with this Court's precedent for matters involving unethical conduct (see e.g. *Matter of Rogge*, 51 AD3d 367 [1st Dept 2008] [attorney reciprocally censured for settling a matter without client's consent, failing to advise client of settlement and that he was holding settlement monies, and neglecting to promptly inform other party that client had rejected the settlement]; *Matter of Hoffman*, 34 AD3d 1 [1st Dept 2006] [attorney reciprocally censured for failing to provide adequate representation to his client and adhere to the rules of practice]).

Accordingly, the Committee's petition for reciprocal discipline should be granted and respondent publicly censured pursuant to 22 NYCRR 603.3. All concur. Order filed. [October 14, 2014]Gonzalez,P.J., Acosta, DeGrasse, Freedman, and Richter, JJ. Respondent publicly censured. Opinion Per Curiam. All concur. Footnotes Footnote 1:DR 2-108(b) was the disciplinary rule in effect in 2007 when respondent entered into the Cardillo Agreement at issue.

Footnote 2:Effective April 1, 2009, the New York Rules of Professional Conduct replaced the New York Code of Professional Responsibility. Rule 5.6(a)(2) provides that "[a] lawyer shall not participate in offering or making... an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a client controversy."