

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

In re Manger

110 A.D.3d 150 (1st Dep't 2013) · Decided August 13, 2013

SUMMARY

The New York Appellate Division, First Department accepted attorney Philip M. Manger's resignation from the practice of law and struck his name from the roll of attorneys nunc pro tunc to April 24, 2013. The court's decision followed findings of deceptive consumer-credit practices and unauthorized practice of law, and it denied as moot a collateral-estoppel petition concerning those findings.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Mazzarelli, J.E.; Sweeny, J.; Moskowitz, J.; Manzanet-Daniels, J.; Gische, J.
JURISDICTION	New York
DECIDED	August 13, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The Departmental Disciplinary Committee moved under 22 NYCRR 603.11 to accept respondent's affidavit of resignation from the practice of law and strike his name from the roll of attorneys. The Committee also pursued a collateral-estoppel petition based on federal and state decisions concerning respondent's misconduct.
PRECEDENTIAL VALUE	published
PARTIES	Departmental Disciplinary Committee v. Philip M. Manger

TOPICS

consumer protection deceptive trade practices mootness appellate procedure

PRACTICE AREAS

attorney discipline consumer protection appellate procedure

QUESTIONS PRESENTED

1. Whether respondent's affidavit of resignation conformed to 22 NYCRR 603.11 and should be accepted.
2. Whether respondent's name should be stricken from the roll of attorneys nunc pro tunc to the date of his sworn resignation.
3. Whether the Committee's collateral-estoppel petition should be decided after respondent's resignation was accepted.

HOLDINGS

1. Because respondent's affidavit of resignation conformed to 22 NYCRR 603.11, the court accepted his resignation from the practice of law.
2. Respondent's name was stricken from the roll of attorneys and counselors-at-law in New York, effective nunc pro tunc to April 24, 2013, the date his affidavit was sworn.
3. The Committee's petition seeking collateral-estoppel effect for the federal and West Virginia decisions was denied as moot.

KEY QUOTATIONS

“Petition deemed withdrawn; respondent’s name stricken from the roll of attorneys and counselors-at-law in the State of New York, nunc pro tunc to April 24, 2013.” (152)

FACTUAL BACKGROUND

Philip M. Manger co-founded and operated Credit Collections Defense Network, which purported to offer debt-relief services and legal assistance to consumers dealing with credit-card debt and collection matters. The United States District Court for the Northern District of Illinois found that Manger made false and deceptive statements in violation of the federal Credit Repair Organizations Act and the Illinois Credit Service Organizations Act. A West Virginia court found that CCDN repeatedly engaged in unfair and deceptive practices and that Manger engaged in the unauthorized practice of law. Manger submitted an affidavit of resignation acknowledging the Committee's misconduct allegations and stating that he could not defend against them.

PROCEDURAL HISTORY

Respondent was admitted to practice in New York in 1978. Federal and West Virginia proceedings found misconduct involving deceptive debt-relief and credit-repair practices and the unauthorized practice of law. While the Committee's collateral-estoppel petition was pending, respondent submitted an affidavit stating that he could not defend himself against the alleged misconduct; the Appellate Division accepted the resignation and denied the collateral-estoppel petition as moot.

DISPOSITION

other

CASES CITED

- Matter of Thillet, 100 A.D.3d 223 (1st Dep't 2012)

- Matter of Bristol, 94 A.D.3d 85 (1st Dep't 2012)

OPINION

PER CURIAM.

OPINION OF THE COURT Per Curiam. Respondent Philip M. Manger was admitted to the practice of law in the State of New York by the First Judicial Department on June 19, 1978. He does not maintain an office in New York.

The Departmental Disciplinary Committee (Committee) now seeks an order pursuant to Rules of the Appellate Division, First Department (22 NYCRR) § 603.11, accepting respondent's affidavit of resignation from the practice of law and striking his name from the roll of attorneys. Respondent co-founded and operated Credit Collections Defense Network (CCDN), an entity which purportedly offered debt relief services and legal assistance to consumers in connection with credit card debt and collection matters.

By decision dated March 25, 2011, respondent was found by the United States District Court for the Northern District of Illinois, Eastern Division, to have made false and deceptive statements in violation of the federal Credit Repair Organizations Act (15 USC § 1679b), and the Illinois Credit Service Organizations Act (815 ILCS 605/5). By decision dated March 7, 2011, CCDN was found to have repeatedly violated West Virginia Consumer Credit and Protection Act (W Va Code § 46A-6-101 et seq.) by, inter alia, engaging in unfair and deceptive practices by failing to disclose material information about their services and misleading consumers into entering into contracts.

Respondent was also found to have engaged in the unauthorized practice of law in West Virginia. Respondent acknowledges, in his affidavit of resignation, that he is aware that the Committee has alleged in its pending collateral estoppel petition that he has engaged in fraudulent or deceptive business practices and the unauthorized practice of law, in violation of Code of Professional Responsibility DR 1-102 (a) (4), (5) and (7) (22 NYCRR 1200.3 [a] [4], [5], [7]),* and states that he cannot defend himself against the allegations of misconduct described in the petition (see Matter of Thillet, 100 AD3d 223 [1st Dept 2012]; Matter of Bristol, 94 AD3d 85 [1st Dept 2012]).

Inasmuch as respondent's affidavit of resignation conforms with 22 NYCRR 603.11, the Committee's motion should be *152granted to the extent of accepting respondent's resignation from the practice of law, and striking his name from the roll of attorneys nunc pro tunc to April 24, 2013, the date the affidavit was sworn to.

The Committee's petition to accord collateral estoppel effect to certain decisions of the Northern District of Illinois, Eastern Division, and the West Virginia Circuit Court of Kanawha County, finding respondent guilty of professional misconduct, should be denied as moot.

Accordingly, the Committee's motion should be granted, respondent's resignation from the practice of law accepted, and respondent's name stricken from the roll of attorneys, effective nunc pro tunc to April 24, 2013. Mazzairelli, J.E, Sweeny, Moskowitz, Manzanet-Daniels and Gische, JJ., concur. Petition deemed withdrawn; respondent's name stricken from the roll of attorneys and counselors-at-law in the State of New York, nunc pro tunc to April 24, 2013.

Respondent's misconduct occurred prior to April 1, 2009 and is therefore evaluated under the former Code of Professional Responsibility.