

NEW YORK COURT OF APPEALS

In the Matter of Joel R. Brandes v. Robert H. Cabble

28 N.Y.3d 1041 (2016) · No. No. 162 · Decided November 1, 2016

SUMMARY

The New York Court of Appeals affirmed the denial of Joel R. Brandes's third application for reinstatement following disbarment. The court held that the Appellate Division did not abuse its discretion in finding that Brandes had engaged in the unauthorized practice of law by providing legal advice and drafting litigation papers while disbarred. The decision was affirmed without costs.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Pigott; Judge Abdus-Salaam; Judge Fahey; Judge Garcia; Judge Rivera; Judge Stein
JURISDICTION	New York
DECIDED	November 1, 2016
DOCKET	No. 162
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brandes appealed to the New York Court of Appeals from an order of the Appellate Division, Second Department denying his third application for reinstatement after disbarment.
STANDARD OF REVIEW	Abuse of discretion; the Court of Appeals reviews whether the Appellate Division abused its discretion, recognizing that the Appellate Division is the fact finder on character-and-fitness issues and that its discretion is inclusive.
PRECEDENTIAL VALUE	published Court of Appeals memorandum decision
PARTIES	Joel R. Brandes v. Robert H. Cabble, New York State Grievance Committee for the Tenth Judicial District

TOPICS

appellate procedure

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Appellate Division abused its discretion in denying Brandes's third application for reinstatement.
2. Whether the record supported the Appellate Division's finding that Brandes engaged in unauthorized practice of law during his disbarment.

HOLDINGS

1. The Appellate Division did not abuse its discretion in denying Brandes's third application for reinstatement because the record supported its finding that he engaged in unauthorized practice of law during his disbarment.
2. Brandes failed to establish by clear and convincing evidence that he had fully complied with the disbarment order and possessed the character and general fitness required for reinstatement.

KEY QUOTATIONS

“Just as the Appellate Division has control over an attorney's disbarment, it too has control over an attorney's reinstatement.” (at 2)

“Here, because there was record support for the court's decision, there was no abuse of discretion in denying the reinstatement application.” (at 3)

FACTUAL BACKGROUND

Brandes was disbarred by the Appellate Division, Second Department in 2002. During the period of his disbarment, he provided paralegal services over the internet, including communicating with attorneys about particular clients' legal problems, rendering legal advice or opinions, and contracting to draft briefs and other litigation papers. The Appellate Division found that this conduct constituted unauthorized practice of law and denied his third application for reinstatement.

PROCEDURAL HISTORY

The Appellate Division, Second Department disbarred Brandes in 2002 and directed him to cease practicing law and providing legal advice. After the applicable seven-year period, Brandes applied for reinstatement three times, and each application was denied. The Court of Appeals reviewed the denial of the third application and affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Brandes, 292 A.D.2d 129, 137 (2d Dep't 2002), leave denied, 99 N.Y.2d 506

- Matter of Brandes, 2015 N.Y. Slip Op. 81096(U)
- Matter of Anonymous, 79 N.Y.2d 782, 783

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