

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

Matter of Richter v. Cardozo

130 A.D.3d 459 (N.Y. App. Div. 2015) · No. 15638 · Decided July 7, 2015

SUMMARY

The Appellate Division, First Department, upheld the Corporation Counsel's authority to provide statutory interpretation and legal guidance to the New York City Police Pension Fund Medical Board regarding the safeguards statute. The court held that the communication was not barred by attorney-client privilege. It modified the judgment to clarify that the Board of Trustees may independently interpret statutes and disagree with its counsel, subject to judicial review.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Tom, J.P.; Andrias, J.; Feinman, J.; Gische, J.; Kapnick, J.
JURISDICTION	New York
DECIDED	July 7, 2015
DOCKET	15638
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a judgment of Supreme Court, New York County, denying his CPLR article 78 petition and dismissing the proceeding.
STANDARD OF REVIEW	Review of the article 78 proceeding and correction of an error of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Roy T. Richter v. Michael A. Cardozo, Respondents-Respondents

TOPICS

- statutory interpretation
- administrative law
- municipal law
- appellate procedure

PRACTICE AREAS

- administrative law
- municipal law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Corporation Counsel could provide the Police Pension Fund Medical Board with legal advice and statutory interpretation concerning Administrative Code § 13-254.
2. Whether attorney-client privilege barred the Corporation Counsel's communication with the Medical Board.
3. Whether the Police Pension Fund Board of Trustees was prohibited from disagreeing with the Corporation Counsel and engaging in its own statutory interpretation.

HOLDINGS

1. The Corporation Counsel was authorized to communicate with and provide legal direction to the Medical Board because the Medical Board was his client and the communication fell within his statutory duty to conduct the legal business of the City and its agencies.
2. The communication was not barred by attorney-client privilege attaching to either the Police Pension Fund Board of Trustees or Richter individually.
3. The Board of Trustees is empowered to disagree with the Corporation Counsel on statutory interpretation and to reach its own position, subject to appropriate judicial review.

KEY QUOTATIONS

*“Of course the trustees should weigh the advice of the City's Law Department in deciding the question, but the decision is theirs, subject to appropriate judicial review.” (*1)*

*“the proposition that respondent's interpretation of any statute always trumps the interpretation of an agency is untenable and inconsistent with the basic role of counsel.” (*2)*

FACTUAL BACKGROUND

The Corporation Counsel provided the Police Pension Fund Medical Board with a memorandum interpreting the standard applicable under Administrative Code § 13-254, the safeguards statute governing reexamination of disabled police retirees for possible return to City employment. Richter, a trustee on the Police Pension Fund Board of Trustees, contended that the communication was impermissible and barred by attorney-client privilege. The Appellate Division concluded that the Medical Board was the Corporation Counsel's client for this purpose, but that the Board of Trustees retained authority to reach its own statutory interpretation.

PROCEDURAL HISTORY

Roy T. Richter, a trustee on the New York City Police Pension Fund Board of Trustees, commenced an article 78 proceeding seeking to prohibit the New York City Corporation Counsel from providing statutory interpretation and legal direction to the Police Pension Fund Medical Board concerning Administrative Code § 13-254. Supreme Court denied the petition and dismissed the proceeding, while also concluding that the Board of Trustees could not engage in statutory interpretation. The Appellate Division unanimously modified the judgment to vacate that conclusion and otherwise affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Seiferheld v. Kelly, 16 N.Y.3d 561, 568 (2011)

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