

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)

OPINION

PER CURIAM.

Matter of Richter v Cardozo (2015 NY Slip Op 05887) Matter of Richter v Cardozo 2015 NY Slip Op 05887 Decided on July 7, 2015 Appellate Division, First Department 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 July 7, 2015 Tom, J.P., Andrias, Feinman, Gische, Kapnick, JJ. 15638 101447/13 [*1] In re Roy T. Richter, etc., Petitioner-Appellant, vMichael A. Cardozo, etc., et al., Respondents-Respondents.

Ungaro & Cifuni, LLP, New York (Nicholas Cifuni of counsel), for appellant. Zachary W. Carter, Corporation Counsel, New York (Deborah A. Brenner of counsel), for respondent. Judgment, Supreme Court, New York County (Margaret A. Chan, J.), entered November 12, 2014, denying petitioner's article 78 petition seeking, inter alia, an order prohibiting respondent Corporation Counsel of the City of New York from providing statutory interpretation and legal direction to the New York City Police Pension Fund Medical Board regarding the application of Administrative Code of City of NY § 13-254, and dismissing the proceeding, unanimously modified, on the law, to vacate so much of the judgment as indicates that the Board of Trustees may not engage in statutory interpretation, and otherwise affirmed, without costs.

In his article 78 petition, petitioner, a trustee on the Police Pension Fund (PPF) Board of Trustees, sought an order prohibiting respondent Corporation Counsel from conveying to the PPF's Medical Board a memorandum outlining his interpretation of the applicable standard under the so-called "safeguards statute" (Administrative Code § 13-254).

The statute provides a mechanism for a police officer retired on disability to be reexamined by the Medical Board with an eye toward returning to City employment, either at the retiree's own request or by application of the Board of Trustees.

We agree with respondent that the Medical Board is his client and that such a communication falls well within his broad duty to "conduct [] all the law business of the city and its agencies" (New York City Charter § 394[a]), and PPF in particular (see Administrative Code § 13-216[e][5][ii]). Contrary to petitioner's argument, the communication is not barred by attorney-client privilege attaching to either the Board of Trustees or petitioner individually.

However, the court erred in concluding that the Board of Trustees is not empowered to differ with its counsel on matters of statutory interpretation and reach its own position on such questions (see *Matter of Seiferheld v Kelly*, 16 NY3d 561, 568 [2011] ["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."])).

Indeed, the Board implicitly interprets the governing statute with each of its individual determinations in the regular course of business. While the Trustees' autonomy in this regard has limited value in the circumstances of this case, in that they are bound by the determinations of the Medical Board under the safeguards statute, the proposition that respondent's interpretation of any statute always trumps the interpretation of [*2]an agency is untenable and inconsistent with the basic role of counsel.

Accordingly, the court's decision is modified to the extent of vacating the holding that the Board of Trustees is prohibited from engaging in statutory interpretation. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: JULY 7, 2015 CLERK