

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

In re Cardona

75 A.D.3d 54 (N.Y. App. Div. 2d Dep't 2010) · Decided May 18, 2010

SUMMARY

The court accepted Cesar G. Cardona’s voluntary resignation from the New York bar after he acknowledged allegations that he converted fiduciary funds and failed to maintain required bookkeeping records. The resignation was effective immediately, resulting in his disbarment and removal from the roll of attorneys, and the related disciplinary proceeding was discontinued.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Per Curiam; Prudenti, P.J.; Mastro, J.; Rivera, J.; Skelos, J.; Dillon, J.
JURISDICTION	New York
DECIDED	May 18, 2010
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the respondent submitted a resignation while disciplinary charges were pending, and the Grievance Committee recommended acceptance.
PRECEDENTIAL VALUE	published

TOPICS

civil procedure

PRACTICE AREAS

attorney discipline professional responsibility

QUESTIONS PRESENTED

1. Whether the respondent's resignation from the practice of law complied with the requirements of 22 NYCRR 691.9 and should be accepted.
2. Whether acceptance of the resignation required immediate disbarment and striking the respondent's name from the roll of attorneys.

3. Whether the pending disciplinary proceeding should be discontinued in light of the accepted resignation.

HOLDINGS

1. A resignation from the practice of law should be accepted when it complies with the requirements of 22 NYCRR 691.9; the respondent's resignation satisfied those requirements.
2. Upon acceptance of the respondent's resignation, the court immediately disbarred him and struck his name from the roll of attorneys and counselors-at-law.
3. The pending disciplinary proceeding was discontinued in light of the respondent's accepted resignation.

KEY QUOTATIONS

“Inasmuch as the proffered resignation complies with the requirements of 22 NYCRR 691.9, it is accepted, and, effective immediately, the respondent is disbarred and his name is stricken from the roll of attorneys and counselors-at-law.” (56)

“The disciplinary proceeding authorized by order of this Court dated September 30, 2009 is discontinued in light of the respondent’s resignation.” (56)

FACTUAL BACKGROUND

The respondent acknowledged that his resignation was free and voluntary, that he understood the consequences of resignation, and that he could not successfully defend against pending disciplinary charges. The charges alleged that he converted funds entrusted to him as a fiduciary in connection with his law practice and failed to maintain required bookkeeping records. He also consented to the court's continuing jurisdiction to order restitution and reimbursement to the Lawyers' Fund for Client Protection and waived the opportunity to oppose such an order.

PROCEDURAL HISTORY

The Grievance Committee served the respondent with a petition alleging three charges of professional misconduct, including conversion of fiduciary funds and failure to maintain required bookkeeping records. After acknowledging that he could not successfully defend against the charges, the respondent submitted a resignation subject to possible restitution and reimbursement proceedings. The Appellate Division accepted the resignation, immediately disbarred the respondent, struck his name from the roll of attorneys, and discontinued the disciplinary proceeding.

DISPOSITION

other

OPINION

PER CURIAM.

OPINION OF THE COURT Per Curiam. The respondent avers that his resignation is submitted freely and voluntarily and that he is not being subjected to coercion or duress. He is fully aware of the implications of its submission, including being barred by Judiciary Law § 90 from seeking reinstatement for a period of at least seven years.

The respondent is aware that the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts (hereinafter the Grievance Committee) has commenced a disciplinary proceeding against him. He acknowledges that the Grievance Committee served him with a petition dated June 9, 2009, containing three charges of professional misconduct against him, alleging that he converted funds entrusted to him as a fiduciary, incident to his practice of law, and that he failed to maintain required bookkeeping records.

The respondent acknowledges that he cannot successfully defend himself on the merits against these charges. The respondent's resignation is submitted subject to any application which could be made by the Grievance Committee for an order directing that he make restitution and that he reimburse the Lawyers' Fund for Client Protection, pursuant to Judiciary Law § 90 (6-a).

He acknowledges the continuing jurisdiction of the Court to make such an order. He is aware that any order issued pursuant to that statute could be entered as a civil judgment against him. He specifically waives the opportunity afforded by Judiciary Law § 90 (6-a) (f) to be heard in opposition thereto.

The Grievance Committee recommends acceptance of the respondent's resignation. Inasmuch as the proffered resignation complies with the requirements of 22 NYCRR 691.9, it is accepted, and, effective immediately, the respondent is disbarred and his name is stricken from the roll of attorneys and counselors-at-law.

The disciplinary proceeding authorized by order of this Court dated September 30, 2009 is discontinued in light of the respondent's resignation. Prudenti, PJ., Mastro, Rivera, Skelos and Dillon, JJ., concur. Ordered that the resignation of Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., is accepted and directed to be filed; and it is further, Ordered that pursuant to Judiciary Law § 90, effective immediately, Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., is disbarred, and his name is stricken from the roll of attorneys and counselors-at-law; and it is further, Ordered that Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., shall continue to comply with this Court's rules governing the conduct of disbarred, suspended, and resigned attorneys (22 NYCRR 691.10); and it is further, Ordered that pursuant to Judiciary Law § 90, effective immediately, Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., is commanded to continue to desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way

as an attorney and counselor-at-law; and it is further, Ordered that if Cesar G. Cardona, admitted as Cesar G. Cardona, Jr., has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10 (f); and it is further, Ordered that the disciplinary proceeding authorized by decision and order on application of this Court dated September 30, 2009 is discontinued.