

COURT OF APPEALS OF THE STATE OF NEW YORK

In the Matter of Reynold N. Mason

100 N.Y.2d 56, 790 N.E.2d 769, 760 N.Y.S.2d 394 (N.Y. 2003) · Decided May 1, 2003

SUMMARY

The New York Court of Appeals accepted a judicial conduct sanction removing Supreme Court Justice Reynold N. Mason from office. The Court sustained findings that Mason commingled rent proceeds with client or escrow funds, used the escrow account for personal expenses, failed to cooperate with the Commission's investigation, and provided inconsistent explanations. The Court conducted its own review and concluded that removal was the appropriate sanction.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Per Curiam; Chief Judge Kaye; Judge Smith; Judge Ciparick; Judge Wesley; Judge Rosenblatt; Judge Graffeo; Judge Read
JURISDICTION	New York
DECIDED	May 1, 2003
DISPOSITION	approved
PROCEDURAL POSTURE	The State Commission on Judicial Conduct sustained five charges of misconduct against petitioner, a Supreme Court Justice, and determined that he should be removed from office. The Court of Appeals conducted its own plenary review and accepted the determined sanction.
STANDARD OF REVIEW	The Court of Appeals conducts its own plenary review of the facts and law to determine whether misconduct should be sustained and whether the sanction should be upheld, reviewing the record as it existed before the Commission at the time of its original determination.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Reynold N. Mason v. State Commission on Judicial Conduct

TOPICS

- administrative law
- judicial review of agency action
- appellate procedure
- landlord tenant
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a federal district court decision invalidating Rules Governing Judicial Conduct sections 100.1 and 100.2 required dismissal of the disciplinary proceeding and vacatur of the Commission's determination.
2. Whether Mason's commingling and personal use of funds deposited in his attorney escrow account constituted misconduct warranting removal.
3. Whether Mason's failure to cooperate with the Commission's investigation and his inconsistent explanations compounded the misconduct.
4. Whether the Court could review allegations and materials presented only in a postdetermination motion alleging prejudice by a Commission member.
5. Whether removal was an appropriate sanction based on the record.

HOLDINGS

1. The federal district court's decision invalidating Rules Governing Judicial Conduct sections 100.1 and 100.2 did not require dismissal of the proceeding or vacatur of the Commission's determination, particularly because petitioner did not raise a constitutional challenge before the Commission or in his brief to the Court of Appeals.
2. An attorney may not commingle personal funds with funds held in trust for clients or others or use an attorney escrow account to pay personal expenses; Mason's prolonged commingling and repeated personal disbursements constituted serious misconduct.
3. Persistent failure to cooperate with the Commission's investigation and inconsistent or evasive explanations materially compounded the escrow-account misconduct.
4. A Commission decision denying reconsideration is not reviewable by the Court of Appeals, and the Court may not review materials submitted with a postdetermination motion that were not considered by the Commission; review is limited to the record before the Commission at the time of its original determination.
5. Removal from office was the appropriate sanction for Mason's prolonged and repeated escrow-account misuse, continuation of the conduct after taking the bench, failure to cooperate, and lack of candor.

KEY QUOTATIONS

"Misuse of an attorney escrow account constitutes serious misconduct that may, in some instances, result in disbarment" (60)

"Judges must be held to a higher standard of conduct than the public at large" (60-61)

"this Court does not merely echo the Commission's analysis but conducts its own plenary review of the facts and law to determine whether a finding of misconduct should be sustained and sanction upheld" (61)

FACTUAL BACKGROUND

While practicing law and later while serving as a Civil Court Judge, Mason received rent payments from his brother-in-law, who occupied a rent-stabilized apartment Mason had vacated. Mason deposited at least \$7,000 of those payments into his attorney escrow account and repeatedly used the account to pay personal expenses. During the Commission's investigation, he failed to respond to six written requests for information and later gave explanations that contradicted his earlier statements. The misconduct and lack of candor continued or were compounded after he became a judge.

PROCEDURAL HISTORY

The Commission sustained charges arising from petitioner's misuse of an attorney escrow account, failure to cooperate with the Commission's investigation, and lack of candor. Petitioner challenged the Commission's determination, arguing in part that a federal district court decision invalidating two judicial-conduct rules required dismissal and that alleged prejudgment by a Commission member tainted the proceeding. The Court of Appeals rejected those arguments, limited review of the postdetermination materials, independently reviewed the record, and accepted removal as the appropriate sanction.

DISPOSITION

approved

CASES CITED

- Spargo v New York State Commn. on Jud. Conduct, 244 F Supp 2d 72 (US Dist Ct, ND NY 2003)
- People v Kin Kan, 78 NY2d 54, 59-60 (1991)
- New York R.T. Corp. v City of New York, 275 NY 258, 265 (1937), affd 303 US 573 (1938)
- Matter of Kadish, 299 AD2d 78 (2d Dept 2002)
- Matter of Land, 299 AD2d 83 (1st Dept 2002)
- Matter of Lasher, 296 AD2d 163 (2d Dept 2002)
- Matter of Stevens, 294 AD2d 1 (1st Dept 2002), lv denied 98 NY2d 611 (2002)
- Matter of Croak, 277 AD2d 871 (3d Dept 2000)
- Matter of Summer, 238 AD2d 86 (4th Dept 1997)
- Matter of Fitzgerald, 100 NY2d 52 (2003)
- Matter of Intemann, 73 NY2d 580 (1989)
- Matter of Cooley, 53 NY2d 64 (1981)
- Matter of Shaw, 96 NY2d 7, 12 (2001)
- Matter of Going, 97 NY2d 121, 127 (2001)
- New York Constitution, article VI, § 22

OPINION

PER CURIAM.

100 N.Y.2d 56 (2003) 790 N.E.2d 769 760 N.Y.S.2d 394 In the Matter of REYNOLD N. MASON, a Justice of the Supreme Court, Kings County, Petitioner. STATE COMMISSION ON JUDICIAL CONDUCT, Respondent. Court of Appeals of the State of New York. Argued April 3, 2003. Decided May 1, 2003. *57 Gentile & Dickler, New York City (Paul T. Gentile and Kevin P. Claffey of counsel), for petitioner. *58 Gerald Stern, New York City, and Alan W. Friedberg for respondent.

Chief Judge KAYE and Judges SMITH, CIPARICK, WESLEY, ROSENBLATT, GRAFFEO and READ concur in per curiam opinion. OPINION OF THE COURT Per Curiam. The Commission on Judicial Conduct sustained five charges of misconduct and determined that petitioner, a Justice of the Supreme Court, should be removed from office (see NY Const, art VI, § 22; Judiciary Law § 44).

Based on our review of the evidence, we conclude petitioner has engaged in misconduct warranting removal. As a preliminary matter, we reject petitioner's argument that this proceeding must be dismissed and the Commission determination vacated due to a decision of the United States District Court for the Northern District of New York that invalidated two of the rules petitioner was determined to have violated in this case, sections 100.1 and 100.2 of the Rules Governing Judicial Conduct (22 NYCRR) (see *Spargo v New York State Commn. on Jud.*

Conduct, 244 F Supp 2d 72 [US Dist Ct, ND NY 2003]). Petitioner did not raise a constitutional challenge to the validity of the Rules either before the Commission or in his brief to this Court. In any event, we are not bound by the Federal District Court's decision (see *People v Kin Kan*, 78 NY2d 54, 59-60 [1991]; *New York R.T. Corp. v City of New York*, 275 NY 258, 265 [1937], *affd* 303 US 573 [1938]).

Petitioner was elected Judge of the Civil Court of the City of New York and served in that capacity from January 1995 through December 1997. In November 1997, he was elected to Supreme Court in the Second Judicial District for a term commencing January 1, 1998.

The five charges of misconduct sustained by the Commission centered on petitioner's misuse of his attorney escrow account while he was a practicing attorney and after he became a Civil Court Judge. Evidence received at the hearing established that petitioner vacated a rent-stabilized apartment in 1992 and installed his brother-in-law *59 in the apartment over the objection of the landlord.

After the brother-in-law's attempts to pay rent directly to the landlord failed, he forwarded his rental payments to petitioner, making all but two of the checks payable to petitioner "as attorney." This continued each month for several years resulting in petitioner receiving more than \$15,000 in rent from his brother-in-law. Petitioner deposited at least \$7,000 of the rent money in his attorney escrow account.

The record reveals that petitioner used a portion of the funds to pay personal expenses, writing checks directly from his escrow account to "cash," to himself, and to various creditors. As of December 1994, shortly before petitioner took the bench, his attorney escrow account had a balance of approximately \$1,900. While a sitting judge, petitioner continued using the account for personal purposes, including writing checks to cash, his wife, an automotive finance company, a support collection unit, a church, an extermination firm and a political club.

During the Commission investigation, petitioner stated he had no legal right to retain the rent money. Rather, he claimed he was holding the rent for the landlord with the intent to deliver it at a future time. At the hearing, however, petitioner contended he had lawfully sublet the apartment to his brother-in-law and therefore had a right to personally collect rent on the apartment and to use the rent proceeds to pay personal expenses.

This explanation contradicted petitioner's earlier statement that he was holding the money for the landlord and was not consistent with petitioner's decision to deposit the money in his attorney escrow account. In addition to offering contradictory statements, petitioner failed to respond to six written requests for information forwarded to him by Commission attorneys, which delayed and impeded the investigation.

It is well settled that an attorney may not commingle personal funds with those held in trust for clients or others, nor may an attorney use an escrow account to pay personal expenses (see *Matter of Kadish*, 299 AD2d 78 [2d Dept 2002]; *Matter of Land*, 299 AD2d 83 [1st Dept 2002]; *Matter of Lasher*, 296 AD2d 163 [2d Dept 2002]; *Matter of Stevens*, 294 AD2d 1 [1st Dept 2002], lv denied 98 NY2d 611 [2002]; *Matter of Croak*, 277 AD2d 871 [3d Dept 2000]; *Matter of Summer*, 238 AD2d 86 [4th Dept 1997]).

Indeed, as this case demonstrates, confusion regarding the legal interests of an attorney and third parties ensues when an attorney fails strictly to segregate personal or business funds from trust funds or to identify and properly *60 safeguard funds deposited in an escrow account. Whether petitioner was holding the funds in trust for the landlord (as he maintained during the investigation) or collecting the rent under a sublease (as he contended during the hearing), the fact remains that petitioner deposited a significant portion of the rent proceeds in his attorney escrow account.

He then commingled those monies with his clients' funds and improperly made disbursements directly from the escrow account to satisfy myriad personal obligations. Misuse of an attorney escrow account constitutes serious misconduct that may, in some instances, result in disbarment (see generally *Matter of Fitzgerald*, 100 NY2d 52 [2003]).

Here, petitioner commingled funds over a substantial period of time and repeatedly used his attorney escrow account to pay personal expensesconduct that continued after petitioner was

elected to the bench. This misconduct was significantly compounded by petitioner's persistent failure to cooperate with the Commission investigation and his marked lack of candor as evidenced by the inconsistent and evasive explanations he offered at different points in the proceeding (see *Matter of Intemann*, 73 NY2d 580 [1989]; *Matter of Cooley*, 53 NY2d 64 [1981]).

Upon our review of the record, giving "due regard to the fact that Judges must be held to a higher standard of conduct than the public at large" (*Matter of Going*, 97 NY2d 121, 127 [2001]), we conclude that removal is the appropriate sanction. Petitioner claims that the Commission determination is tainted based on his triple-hearsay allegation that a Commission member made statements to a third party indicating prejudice of petitioner's case.

Although petitioner apparently learned of the allegations prior to his appearance before the full Commission, he chose not to timely raise the issue but instead moved to reopen the proceeding after the determination had been issued.

The Commission denied petitioner's motion. A Commission decision denying a motion for reconsideration is not reviewable by this Court, nor may we review materials submitted in connection with a postdetermination motion that were not considered by the Commission (see *Matter of Shaw*, 96 NY2d 7, 12 [2001]).

Thus, our review is limited to assessing "the record as it was before the Commission at the time of the original determination" (*id.*). In this regard, however, we note that this Court does not merely echo the Commission's analysis but conducts its own plenary review of *61 the facts and law to determine whether a finding of misconduct should be sustained and sanction upheld (see *Judiciary Law* § 44 [9]).

The evidentiary record on which we rely in this case was developed at the hearing conducted by a referee prior to petitioner's appearance before the members of the Commission. Accordingly, the determined sanction should be accepted, without costs, and Reynold N. Mason removed from his office as Justice of the Supreme Court. Determined sanction accepted, without costs, and Reynold N. Mason removed from the office of Justice of the Supreme Court, Kings County.