Matter of Giorgini

2018 NY Slip Op 06708

Decided on September 25, 2018

Appellate Division, First Department

Per Curiam

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Decided on September 25, 2018 SUPREME COURT, APPELLATE DIVISION First Judicial Department

David Friedman, Justice Presiding,
Rosalyn H. Richter
Richard T. Andrias
Barbara R. Kapnick
Troy K. Webber, Justices.

M-2305 M-3087 Motion No. 2305, Cross

[*1]In the Matter of Gino L. Giorgini, III, (admitted as Gino Louis Giorgini, III), an attorney and counselor-at-law: Attorney Grievance Committee for the First Judicial Department, Petitioner, Gino L. Giorgini, III, Respondent.

Disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department. Respondent, Gino L. Giorgini, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the Second Judicial Department on January 9, 1991.

Jorge Dopico, Chief Attorney, Attorney Grievance Committee, New York (Kevin M. Doyle, of counsel), for petitioner.

Respondent pro se.

PER CURIAM

Respondent Gino L. Giorgini, III was admitted to the practice of law in the State of New York by the Second Judicial Department on January 9, 1991, under the name Gino Louis Giorgini, III. At all times relevant herein, respondent has maintained an office within the Second Department.

In September 2011, the Second Department transferred a disciplinary matter involving respondent to the First Judicial Department. In 2015, the Attorney Grievance Committee (AGC) brought six charges against respondent alleging violations of former Code of Professional Responsibility DR 7-106(c)(6) (22 NYCRR 1200.37[c][6]) [undignified or discourteous conduct which is degrading to a tribunal], DR 1-102(a)(5) (22 NYCRR 1200.2[a][5]) [conduct prejudicial to the administration of justice], and DR 1-102(A)(7) (22 NYCRR 1200.3[a][7]) [other conduct that adversely reflects on fitness as a lawyer]). In his answer, respondent denied all the charges and asserted affirmative defenses. Between December 2015 and September 2016, respondent brought two motions in which he requested that the charges be dismissed, or, in the alternative, that this matter be transferred back to the Second Department or the Referee removed. This Court denied the motions.

Charges 1-3 pertain to an affirmation respondent submitted in Supreme Court, Suffolk County in 2005 in support of a motion for reargument on behalf of his client W.C., after the court granted the defendants summary judgment dismissing the complaint. By way of example, addressing certain of the court's factual findings, respondent asserted that:

"I find it hard to believe that after the Court had the motion for 5 months to decide, that it could make up facts to support a finding . . . . But then ... if you do not read plaintiff's papers maybe it is possible. Close your eyes and wish for facts to grant a defendant's summary judgment. I am sure it is not the first time it has happened in Suffolk County."

* * *

"WHERE DID THE COURT GET THIS? THIS IS STATED NO WHERE IN [Plaintiff's Expert's] REPORT. LA LA LAND, I COULD NOT MAKE THIS UP IF I TRIED...."

* * *

"THIS IS LA LA LAND ON STEROIDS.... I CAN NOT COMPREHEND THE #%*%#$^%* THAT IS THIS DECISION.... This is so bizzaro land that it is hard to type. What is even more

pathetic is the case I cited (citation omitted) has been ignored."

In a February 2, 2006 order and decision, Justice Thomas Whelan granted reargument and reinstated W.C.'s complaint. However, he strongly criticized respondent, stating that his "vituperative criticism directed toward this Court . . . is totally unwarranted, completely unprofessional and [] disrespectful to this Court." Justice Whelan also cautioned respondent that "[s]hould there be a recurrence of this type of unprofessional conduct, the Court may consider the imposition of sanctions under 22 NYCRR § 130-1.1(c)(1) and referral to the Grievance Committee."

Charges 4-6 pertain to an affirmation respondent submitted in Supreme Court, Suffolk County in 2008 in connection with a motion to reargue in *Gemellis Fine Food, Inc. v Hoerning*, where the plaintiff sued to block termination of a commercial lease. In that affirmation, respondent demeaned the court and accused it and the Appellate Division of corruption, stating, among other things:

"Nice Joke. DISGUSTING. . . . . Can anyone say hello Department of Justice, where is someone suppose to turn when plaintiff's counsel openly puts forth that the court is on their side? And this was clearly stated in defendants papers. No sense appealing it, the attached Newsday article has [an] Appellate Judge [] hoping he is granted a meeting with the party leaders' so that he can be placed on the ballot to save his job. I'm sure we will get the same fair treatment there as well as with a party leader on the opposing side. Every judge in Suffolk County should recuse them self after that article from this case. No way to argue no bias."

* * *

"This is outrageous!!!!!!! How dare this court disrespect my elderly client for the benefit of some political contributors. I guess my reply/sur-reply was not read. I pointed this out in my first paragraphs Let me see ... perjury... no problem ... fraud ... no problem .... what a joke. I guess if you hire the right politically active lawyers like [opposing counsels] anything is excusable with this court. . . . I spent countless hours proving plaintiff's fraud; putting forth case law so on point that there is no issue of defendants prevailing and the Court doesn't read my papers. Do you know how angering that is. To me someone is stealing from my client and from me."

* * *

"Defendants took the effort to point out in detail how almost each and every one of [plaintiff's] receipts' were fake and manufactured in the days before the papers were filed.... The Court does not care about this? Fake evidence is ok? Lying is ok? Is this a Suffolk County rule? Does the office of Judicial Conduct and the Department of Justice know about this rule?"

Justice Arthur Pitts, who had granted the plaintiff injunctive relief, recused himself and

the matter was assigned to Justice Ralph F. Costello, who denied the motion.

The Referee sustained charges 4-6, dismissed charges 1-3 and recommended that respondent be publicly censured. The AGC now moves to disaffirm the Referee's liability findings as to charges 1-3, confirm the Referee's liability findings as to charges 4-6, and disaffirm the Referee's sanction recommendation of a public censure and, instead, impose a six-month suspension. Respondent cross-moves to, among other things, disaffirm the Referee's findings and dismiss all charges.

Based on the evidence adduced, we find that all six charges against respondent alleging violations of former DR 7-106(c)(6), 1-102(a)(5), and 1-102(a)(7) have been established by a fair preponderance of the credible evidence and should be sustained. The record reflects that comments made by respondent which are the subject matter of this disciplinary proceeding went beyond the bounds of zealous advocacy and were derogatory, undignified and inexcusable. Respondent has evinced a flagrant disrespect for the judiciary and a fundamental disregard for the judicial process which he has been sworn to uphold. Far from expressing genuine remorse for his disrespectful conduct, respondent has consistently sought to justify his improper conduct by blaming the Justices before whom he was trying cases.

Further, as to charges 1-3, the Referee erred in not sustaining them because, as found by Justice Whelan, respondent's "vituperative criticism" was "totally unwarranted, completely unprofessional and . . . disrespectful to [the] Court." While Justice Whelan decided to caution respondent rather than sanction him or refer him to the AGC, he did note that respondent's manner was degrading to the profession and without reflection as to its effect on the integrity and dignity of the court. The Second Department's transfer order, which issued upon respondent's [*2]motion, in no way limited the AGC's prosecutorial discretion to incorporate the affirmation in the W.C. case into the charges, notwithstanding that the Second Department Grievance Committee chose not to do so.

As to charges 4-6, respondent accused the court of blatant political bias and corruption and disparaged his adversaries. As the Referee found, "[n]either the Code nor the Rules obligates,' much less permits, a lawyer to chastise a judge for what the lawyer speculates is corrupt political behavior on that judge's part in presiding over a matter or to effectively threaten the judge that he would be investigated by the Office of Judicial Conduct and the Department of Justice unless he reversed his opinion. Yet Respondent did so repeatedly. . . ."

In view of respondent's submission of a second offensive affirmation in *Gemellis*, in the face of Justice Whelan's prior, unheeded warning in the earlier case, a three-month suspension is appropriate (*see e.g. Matter of Teague*, 131 AD3d 268 [1st Dept 2015], *appeal dismissed* 26 NY3d 959 [2015], *lv denied* 26 NY3d 912 [2015]; *Matter of Dinhofer*, 257 AD2d 326 [1st Dept 1999]; *Matter of Giampa*, 211 AD2d 212, 213—216 [2d Dept 1995], *appeal dismissed* 86 NY2d 731 [1995], *cert denied* 516 US 1009 [1995]).

Accordingly, the AGC's motion to confirm in part and disaffirm in part is granted to the extent of affirming the Referee's liability findings sustaining charges 4-6, disaffirming the liability findings as to charges 1-3 and sustaining these charges, disaffirming the sanction recommendation of a public censure, and suspending respondent from the practice of law in the State of New York for a period of three months and until further order of this Court. Respondent's cross motion is denied in its entirety.

All concur.

Order filed. [September 25, 2018]

Ordered that the Committee's motion (M-2305) is granted to the extent of affirming the Referee's liability findings sustaining charges 4-6; disaffirming the liability findings as to charges 1-3, and instead, sustaining those charges; disaffirming the sanction recommendation of a public censure; and suspending respondent from the practice of law in the State of New York for a period of three months, effective October 25, 2018, and until further order of this Court. Respondent's cross motion is denied in its entirety (M-3087)

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