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Panel affirms Brodsky sanction over 'egregious' behavior

By Patricia Manson
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A judge did not overstep her bounds when she sanctioned Chicago attorney Joel A. Brodsky for engaging in “egregious” behavior while representing a client in a civil case, a federal appeals court held.

In a nonprecedential order last week, the 7th U.S. Circuit Court of Appeals affirmed the \$50,000 fine U.S. District Judge Virginia M. Kendall imposed on Brodsky, owner of the Law Office of Joel A. Brodsky.

Kendall acted under her inherent power “to fashion an appropriate sanction for conduct which abuses the judicial process,” the panel wrote in its per curiam order, quoting *Chambers v. NASCO Inc.*, 501 U.S. 32 (1991).

The exercise of such power, the panel continued, citing *Salmeron v. Enterprise Recovery Systems Inc.*, 579 F.3d 787 (7th Cir. 2009), “is appropriate against offenders who willfully abuse the judicial process or otherwise conduct litigation in bad faith.”

Brodsky’s misconduct included repeatedly accusing opposing counsel in the case of engaging in “unprofessional, unethical and even criminal behavior,” the panel wrote.

The opposing counsel was Peter S. Lubin, an attorney at the time with DiTommaso Lubin P.C. who is now a partner at Lubin Austermuehle P.C.

Lubin said his client filed his own sanctions motion, which the parties settled earlier in the case for a confidential amount.

The panel wrote Brodsky’s misconduct also included attacking the integrity of an expert witness.

“We affirm the district court’s judgment because the fine was justified in light of Brodsky’s extreme and repeated misbehavior,” the panel wrote.

Ryan T. Brown of Gordon & Rees Scully Mansukhani LLP, who argued the case before the 7th Circuit on behalf of Brodsky, declined to comment.

On Tuesday, Brodsky said he has fired Brown and that he will ask the 7th Circuit to reconsider its decision.

"I'm going to be seeking a rehearing because of his gross mishandling of my case," Brodsky said.

Noting the panel issued a nonprecedential order rather than an opinion in the case, Brodsky insisted the 7th Circuit made no finding one way or the other concerning the appropriateness of his actions.

Lubin said he is pleased with the decision.

"The 7th Circuit correctly observed that Brodsky engaged in outlandish and fraudulent behavior," Lubin said.

He said Brodsky was not well served by the approach he took before the appeals court.

"He didn't learn his lesson in his appeal," Lubin said. "He and his lawyers doubled down and repeated many of Brodsky's outlandish and fraudulent statements in their briefs."

Thomas L. Shriner Jr. of Foley & Lardner LLP's Milwaukee office, who argued before the 7th Circuit in support of Kendall's decision, declined to comment.

The appeals court appointed Shriner as amicus curiae to defend Kendall's decision after the U.S. Attorney's Office declined an invitation to file a brief in response to Brodsky's.

In March 2018, Kendall sanctioned Brodsky for his actions in defending an auto dealership accused in a civil suit of selling a used sports utility vehicle whose odometer had been rolled back.

In a written opinion, Kendall found Brodsky repeatedly leveled false accusations of lying, extortion and other criminal activity against Lubin, the plaintiff's attorney.

Kendall also found Brodsky kept seeking sanctions against Lubin without a good-faith basis.

And Kendall found Brodsky attacked the integrity of the plaintiff's expert witness, Donald Szczesniak.

Brodsky falsely alleged Szczesniak fabricated a report in an unrelated matter and then tried to intimidate a party in that unrelated matter, Kendall found.

In addition to imposing the \$50,000 fine, Kendall ordered Brodsky to take an ethics course and to get anger-management treatment.

Kendall also wrote she would ask the U.S. District Court's Executive Committee to consider whether Brodsky should be barred or suspended from practicing law in the Northern District of Illinois.

Kendall in her opinion did note that Brodsky ultimately withdrew his accusations of wrongdoing against the expert witness.

But Brodsky denied any of his filings were submitted for an improper purpose, Kendall wrote.

And she wrote the apology Brodsky gave for his actions during a court hearing was an apology “in name only.”

Brodsky appealed to the 7th Circuit in April 2018.

In its order Friday, the panel held Kendall did not abuse her discretion in sanctioning Brodsky.

“While it would have been preferable for the court to state expressly the basis for the size of its fine, Brodsky’s egregious behavior, obvious on the face of the record and emphasized at length by the court, more than justified the court’s choice of sanction,” the panel wrote.

“Brodsky’s rhetoric was inappropriate and outlandish, and his attempt to implicate the court in his fraud — and to use legal process as a tool to intimidate a witness — was beyond the pale.”

Panel members were Judges Ilana Diamond Rovner, Diane S. Sykes and Amy Coney Barrett. *Donaldson Twyman v. A&M Auto Brokers Inc.; Appeal of Joel Alan Brodsky*, No. 18-1811.

Brodsky, 61, earned his J.D. in 1982 at DePaul University College of Law and was admitted to the Illinois bar that year.

In August, the Illinois Attorney Registration & Disciplinary Commission filed a complaint accusing Brodsky of misconduct in the case before Kendall and two other cases. In the matter of *Joel Alan Brodsky*, No. 2018 PR 64.

Brodsky denies the allegations.

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