

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: July 2, 2013)

PHYLLIS A. STAFFORD,
LYNN DICRISTOFARO

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v.

P.C. No. 12-5913

ROBERT LEVINE and
BENJAMIN PUSHNER

DECISION

LANPHEAR, J. This matter came on for hearing on Defendants’ Motion to Dismiss Count Three of the Complaint. Ms. Stafford and Ms. DiCristofaro allege that as former clients of Attorney Levine and Attorney Pushner, they were misled by the attorneys’ advertising. They further allege that the attorneys advertised they were “the lawyers for the injured and disabled,” and that Mr. Levine was a “heavy hitter” and “the way to go.” Complaint, ¶¶ 8, 15.

The Complaint sounds in three counts. Count III alleges that the Defendants, as Rhode Island attorneys, committed deceptive trade practices in violation of R.I.G.L. § 6-13.1. The act regulates “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce,” provides for investigations by the Attorney General, and allows broad remedies. The remedies include civil penalties and forfeiture of corporate status, R.I.G.L. § 6-13.1-8, 9.

The statutory scheme includes a broad exemption:

“6-13.1-4. Exemptions.-- Nothing in this chapter shall apply to actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States.”

The motion to dismiss submitted by Attorneys Levine and Pushner is based on this exception. It suggests that Rhode Island law, as recognized by Rhode Island Supreme Court precedent, exempts professions otherwise regulated by statute or regulation.¹ They note that attorney advertising is sufficiently regulated by the Rules of the Rhode Island Supreme Court, and courts in other states have found attorneys to be exempt by similar versions of the act.

The former clients counter that the statutory exemption does not apply, as attorneys are regulated by court rule, not by statute or regulations. The former clients further suggest that the role of the courts, in regulating attorneys by court rules should be distinguished from that of our legislature, which enacts statutes. In 2004, the Rhode Island Constitution was significantly amended to create “separate and distinct” branches of government. Rhode Island Constitution, article V. Hence, the former clients contend the role of the courts is distinct from the role of the legislature, and attorneys are subject to the act.²

Attorneys are licensed and regulated by the Rhode Island Supreme Court and its subordinate regulatory authorities. Presumably, this authority is rooted in the broad language of article X of the Rhode Island Constitution, which, in section 1 vests, “The judicial power of this state ... in one supreme court ...” Here, however, a pivotal question is whether the courts are

¹ It does not appear that our high court has directly considered the question of whether attorneys are subject to the Deceptive Trade Practices Act.

² On November 2, 2004, the voters of Rhode Island approved a significant change to the Rhode Island Constitution. When our state (and the preceding colony) first organized in 1663, it was based on a Charter from the King of England, establishing the legislature as the focal center of the government. At the outset, the General Assembly appointed all executive officials, members of the judiciary and other officers of the government. Through time, a written Constitution was adopted, followed by Constitutional amendments, providing for the direct election of certain executives, appointments of department officials and judges with the advise and consent of the Senate, and a distribution of various powers. The 2004 amendment clarified the distinction by declaring, “The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial.” Rhode Island Constitution, article V.

authorized to license and regulate attorneys *by statute*, triggering the express exception of the Deceptive Trade Practices Act.

R.I.G.L. § 8-1-2 states:

“Jurisdiction and powers of court.-- The supreme court shall have general supervision of all courts of inferior jurisdiction to correct and prevent errors and abuses therein when no other remedy is expressly provided; it may issue writs of habeas corpus, of error, certiorari, mandamus, prohibition, quo warranto and all other extraordinary and prerogative writs and processes necessary for the furtherance of justice and the due administration of the law; it may entertain informations in the nature of quo warranto and petitions in equity to determine title to any office; it shall have jurisdiction of petitions for trials and new trials, as provided by law, of bills of exceptions, appeals and certifications to the supreme court, and special cases in which parties having adversary interests concur in stating questions for the opinion of the court as provided by law; and it shall by general or special rules regulate the admission of attorneys to practice in all the courts of the state.” Emphasis added.

This statute clearly declares that attorneys are admitted to practice and are regulated by the Rhode Island Supreme Court. Accordingly, the Deceptive Trade Practices Act does not apply to attorneys when acting within the scope of their profession.

The motion of the defendant-attorneys to dismiss Count III of the Complaint is therefore granted.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Phyllis A. Stafford, et al. v. Robert Levine, et al.

CASE NO: P.C. No. 12-5913

COURT: Providence County Superior Court

DATE DECISION FILED: July 2, 2013

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Keven A. McKenna, Esq.

For Defendant: Geoffrey W. Millsom, Esq.
Brenna Anatone Force, Esq.