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SUPREME COURT, APPELLATE DIVISION
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April 7, 2011

BY OVERNIGHT MAIL EV109717516 US
PERSONAL AND CONFIDENTIAL

Andrew W. Klein
Clerk of the Court
Court of Appeals of the State of New York
20 Eagle Street
Albany, NY 12207

Re: Matter of Norman Leonard Cousins
a Disbarred Attorney

Dear Mr. Klein:

Enclosed please find an original and six (6) copies of an Affirmation in Opposition to appellant's Motion for Leave to Appeal.

Please note the proof of service upon appellant annexed to the back of the original.

Very truly yours,


Vitaly Lipkansky

VL:eh

cc: Victor M. Serby, Esq.
255 Hewlett Neck Road
Woodmere, NY 11598
Attorney for Appellant

STATE OF NEW YORK
COURT OF APPEALS

-----X
In the Matter of Norman Leonard Cousins,
a disbarred attorney:

AFFIRMATION
IN OPPOSITION

Departmental Disciplinary Committee
for the First Judicial Department,

Respondent,

Norman Leonard Cousins,

Appellant.
-----X

VITALY LIPKANSKY, an attorney duly admitted to practice in the State of New York, affirms the following under the penalty of perjury:

1. I am Deputy Chief Counsel to Jorge Dopico, Chief Counsel to the Departmental Disciplinary Committee for the First Judicial Department (Committee), the respondent herein. As such, I am fully familiar with the facts and circumstances of this matter.

2. I submit this affirmation in opposition to the motion of Norman Leonard Cousins, the appellant herein (appellant), seeking permission to appeal from the February 17, 2011 order of the Appellate Division, First Judicial Department, which denied appellant's motion for reargument or, in the

alternative, for leave to appeal to this Court, and from the Appellate Division's underlying order of October 19, 2010, which disbarred appellant. Matter of Cousins 80 A.D.3d 99 (1st Dept 2010). A copy of the Appellate Division's February 17, 2011 order is attached to appellant's motion as Exhibit 21, and a copy of the Appellate Division's October 19, 2010 order is attached to appellant's motion as Exhibit 19.

3. Appellant previously sought to appeal to this Court as of right from the aforesaid order of the Appellate Division filed October 19, 2010, disbaring him essentially for his dishonest conduct in taking an excessive fee, over the amount permitted by Judiciary Law § 474-a, from a brain-damaged client whom appellant represented in a medical malpractice action. Id. That appeal was dismissed by this Court because appellant failed to present a substantial constitutional question for this Court's review. A copy of this Court's order dismissing appellant's appeal is attached to appellant's motion as Exhibit 22.

4. In his voluminous motion for leave to appeal, appellant now contends that he was denied due process in the disciplinary proceedings because the Appellate Division applied the doctrine of collateral estoppel to find him liable for violations of the Code of Professional Responsibility. (Appellant's Motion at 12, 17, 21.) Appellant's contention is without merit. The application of collateral estoppel in the disciplinary context does not violate due process.

Collateral estoppel is a time-honored doctrine wholly consistent with due process. As this Court has observed: “[collateral estoppel] is a doctrine intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it.” Kaufman v. Eli Lilly and Co. 65 N.Y. 2d 449, 455 (1985). That, however, is exactly what appellant wishes to do.

5. This Court has previously determined that the prerequisites for the invocation of collateral estoppel are as follows: (1) identity of issue which has necessarily been decided in a prior action and is decisive of the present proceeding, and (2) a full and fair opportunity to contest the civil findings now said to be controlling. Id. Appellant asserts that Justice Heitler of the New York County Supreme Court, whose decision formed the basis of the Appellate Division’s collateral estoppel decision, did not conduct a hearing prior to making her findings against him (Appellant’s motion 13). In fact, appellant had ample opportunity to contest the excessive fee allegations before Justice Heitler in the underlying civil proceedings, including oral argument and a hearing held before a Referee appointed by Justice Heitler. Matter of Cousins 80 A.D.3d 99, 102-103 (1st Dept 2009); (Appellant’s Motion, Exhibits 9 and 13.) Notably, respondent was also able to present his arguments as to the excessive fee issue in


the disciplinary proceedings on the issue of sanction. Id. at 103. The remainder of respondent's arguments as to the collateral estoppel issue, which essentially focus on the purported motives and misdeeds of various individuals involved in the matter upon which the Appellate Division's collateral estoppel decision was made, including Justice Heitler, are irrelevant to the two prongs of collateral estoppel. Furthermore they do not constitute questions of law. (See, e.g., Appellant's Motion, "Questions Presented," ¶¶ 6-8.)

6. Appellant also argues that this Court should review the issue of whether the burden of proof in attorney disciplinary proceedings should be raised from a fair preponderance of the evidence to clear and convincing evidence. (Appellant's Motion 23-24.) Like the issue of applying collateral estoppel, this issue has also long been settled. Specifically, this Court has upheld the fair-preponderance standard in attorney disciplinary proceedings, observing that the interest here at stake [a license to practice law] does not come within that category [of a denial of personal or liberty rights]..., "but rather involves the "privilege to practice law, a not insignificant privilege, but one which, once extended, is more nearly to be classified as a property interest, as to which the higher standard of proof has not been required." Matter of Cappocia, 59 N.Y.2d 549, 552- 553 (1983).

7. Appellant's motion for leave to appeal presents no other compelling reason for this Court to grant leave to appeal, including no question of novel or public importance, no conflict with prior decisions of this Court, and no conflict among the Appellate Divisions. See 22 NYCRR §500.11(d)(1)(v). Appellant's motion is basically a thinly-veiled attempt to have this Court allow him to relitigate Justice Heitler's findings on the basis of labyrinthine arguments and unfounded allegations as to the purported motives and misdeeds of various individuals connected to the proceedings before Justice Heitler which are irrelevant to whether the Appellate Division properly granted the Committee's collateral estoppel motion in this matter.

WHEREFORE, Respondent respectfully requests that the Court deny appellant's motion for leave to appeal, and that the Court grant such other relief as justice may require.

DATED: New York, New York
April 7, 2011



Vitaly Lipkansky

To: Victor M. Serby, Esq.
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Woodmere, NY 11598
Attorney for Appellant