



## **While the Standards Applied By Courts In Ethical Matters Differ to that of Civil Litigation, Collateral Estoppel Is Still Applicable to Challenges to the Same Issues in Complementary Ethical and Civil Matters**

*Peng v. Law Office of Feng Li and Feng Li, No.*

**A-3280-14T2, 2017 WL 1166454 (N.J. App. Div. Mar. 29, 2017)**

**By Willard C. Shih, Esq. and Risa M. Chalfin, Esq., Woodbridge, New Jersey**

At the end of the day, collateral estoppel is applicable to prevent the re-litigation of the same issues already reviewed and decided by the Court. A recent decision by the New Jersey Appellate Division stressed that a defendant is collaterally estopped from relitigating issues the New Jersey Supreme Court already decided and rejected in multiple levels of attorney disciplinary proceedings and in a complementary civil lawsuit.

Feng Li, a disbarred New Jersey attorney, appealed a final judgment finding him liable to return \$1,040,421.46 in funds he misappropriated as a fee and wired out of the country in violation of a temporary restraining order. The matter arose out of a New York litigation that Li substituted in as counsel in 2005. Li had his clients sign a contingent fee agreement he found on the internet that provided a contingent fee on a sliding scale based on total recovery, less costs and prejudgment interest. Victorious in the litigation, Li recovered \$1.3 million for his clients, which, with prejudgment interest, amounted to approximately \$3.4 million. He also recovered an additional \$500,000 (the proceeds of the sale of the commercial property) that had been held in trust by defendants' counsel for his clients, bringing the total Li held in trust to slightly over \$4 million.

Rather than abide by the terms of the retainer agreement, Li took the position that under New York law he was entitled to one-third of the total recovery including prejudgment interest and should receive a fee between \$1.2 and \$1.3 million. He included the recovery of the \$500,000 commercial property proceeds in his calculation. Instead of resolving the dispute, Li issued four checks from his trust account, made payable to his children, totally over \$1.2 million. The checks were deposited in accounts controlled by his wife.

A lawsuit was commenced in New Jersey State Court by the former clients, now plaintiffs, asserting that Li was only entitled to a fee of \$326,642.47. A temporary restraining order was granted, restraining Li from disbursing the funds. The next day, Li wired the money from his children's bank accounts to China to satisfy pre-existing debt.

Li's contention, which was rejected by New Jersey State and Federal courts, as well as New York State Courts, was that New Jersey did not have jurisdiction over this dispute. Following the rejection of his subsequently-filed New York actions, Li filed for bankruptcy in New Jersey where the plaintiffs asserted the debt to them was non-dischargeable.

Further adding to the judicial proceedings, plaintiffs' grievance was reviewed during the pendency of the bankruptcy proceeding by the Office of Attorney Ethics. Following a formal complaint, a four day hearing was held before a special master. The special master found by clear and convincing evidence that Li knowingly misappropriated client funds.

Then the Disciplinary Review Board conducted a de novo review of the ethics hearing record and agreed with the special master's decision, by clear and convincing evidence, that Li knowingly misappropriated client funds. The panel was split 4-3 whether to disbar or suspend Li.

Then the New Jersey Supreme Court reviewed Li's ethics matter and disbarred Li based upon a finding that he knowingly misappropriated client funds.

After that, the New Jersey bankruptcy court denied Li's discharge of the plaintiffs' debt, and accorded collateral estoppel effect to the Supreme Court's finding that Li knowingly misappropriated client funds, the debt at issue in the bankruptcy. Climbing the judicial ladder once again, this decision was then affirmed by the District Court which "specifically rejected Li's claims that the bankruptcy court erred in applying the doctrine of collateral estoppel."

The District Court found that the issue of knowingly misappropriating client funds was actually litigated in the disciplinary proceeding, and essential to the disbarment of Li. Collateral estoppel thus barred relitigation of that issue in later bankruptcy proceedings. The Third Circuit affirmed and the United States Supreme Court denied Li's petition for certiorari.

The state court proceedings were then reinstated. At a hearing, summary judgment was entered for the plaintiffs. Once again, another court ruled that Li was collaterally estopped from relitigating the issue of the calculation of his fee. Finding that the Supreme Court already ruled how the fee was to be calculated and that there was already a judgment as to liability, summary judgment was entered in favor of the plaintiffs. The Appellate Division affirmed.

Even though the standard of review for a civil lawsuit is the preponderance of the evidence and a disciplinary proceeding is clear and convincing evidence, and a civil lawsuit grants a litigant the right to a jury whereas a disciplinary proceeding does not, the Appellate Division found collateral estoppel still applies to prevent further challenges on the same issues. Here it was evident that Li was seeking to relitigate in the civil litigation his entitlement to the calculation of his fee which had already been determined in disciplinary proceedings to be a knowing misappropriation of client funds.

Having been afforded the opportunity to a three-level disciplinary proceedings, both the three-levels of federal courts and two-levels of the state court, the Appellate Division held Li was collaterally estopped from relitigating issues decided by the New Jersey Supreme Court in the disciplinary proceeding – whether the written fee agreement did not authorize Li to take a fee and by taking the disputed funds, it was equated with a knowing misappropriation of client funds. Given that the same arguments were being made, the arguments were once again rejected, and the prior ruling of the Supreme Court upheld.

Practice Note: Given that there is a higher standard for disciplinary proceedings (clear and convincing evidence) than in civil litigation (preponderance of the evidence), and even though attorneys are not afforded the right to a jury in a disciplinary proceeding, a determination of an issue in a disciplinary proceeding is sufficient to invoke the doctrine of collateral estoppel to bar the relitigation of issues of attorney misconduct.