

New York Law Journal

\$4.00

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MONDAY, AUGUST 4, 2014

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Abramowitz Tapped as Counsel In Moreland Commission Probe

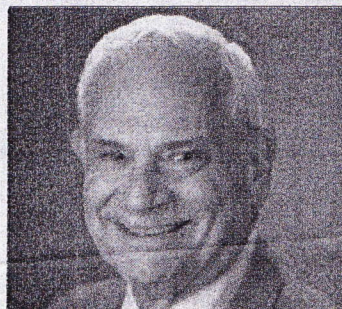
BY JOHN CAHER
ALBANY

GOV. ANDREW Cuomo's chief counsel is a likely witness in an ongoing federal probe into the administration's handling of the Moreland Commission, according to an attorney hired by the governor's re-election campaign to represent the executive branch in the investigation.

White collar criminal defense expert Elkan Abramowitz said Friday he was brought into the case because Mylan Denerstein, counsel to the governor, will be a witness in the investigation being conducted by Southern District U.S. Attorney Preet Bharara, who is apparently looking into the formation, functioning and disbanding of the panel that Cuomo created last year to root out public corruption.

"I have not been retained by the governor, but by the executive chamber to substitute for Mylan Denerstein as counsel to supervise the Moreland Commission investigation," Abramowitz said in an interview. "[Denerstein] is involved in the investigation. She will be a witness. My role is to help coordinate a response to the U.S. attorney's investigation. I don't represent any individual. I represent the entity."

Although Denerstein is involved in virtually all high-level legal matters in the administration, it is unclear precisely what role she



Elkan Abramowitz

played with regard to the Moreland Commission.

In a statement, Cuomo said he would have no further comment on the commission or investigation.

"As I believe the U.S. Attorney has made it clear that ongoing public dialogue is not helpful to his investigation, we will have no additional comment on the matter," Cuomo said in the statement.

Abramowitz, a partner at Morvillo Abramowitz Grand Iason & Anello, contributed \$11,000 to Cuomo's re-election campaign, according to records on file at the state Board of Elections.

Abramowitz will be paid an undisclosed sum out of the governor's political funds, according to Morris Peters, a spokesman for the Division of the Budget.

"Although the chamber could have procured counsel at state expense, the governor's campaign will pay for the lawyer acting as chamber counsel to avoid any cost to taxpayers," Peters said. » Page 7

Second Dept. Addresses 'In Foreclos

BY ANDREW KESHNER

A BROOKLYN appellate court has ruled that judges must weigh a range of facts when deciding whether parties failed to negotiate in good faith during mandatory foreclosure settlement conferences.

"The issue of whether a party failed to negotiate in 'good faith' within the meaning of CPLR 3408(f) should be determined by considering whether the totality of the circumstances demonstrates that the party's conduct did not constitute a meaningful effort at reaching a resolution," Justice John Leventhal said, writing for the panel in *US Bank N.A. v. Sarmiento*, 2012-03513.

The ruling upheld a lower court decision that barred the collection of interest or fees that had been accumulating on a loan since December 2009. Justices Reinaldo Rivera, Peter Skelos and Plummer Lott joined in the decision.

Bruce Bergman, a partner at Berkman, Henoch, Peterson, Peddy & Fenchel, in Garden City and an expert on foreclosure law who is not involved in the case, said the ruling marked the first time the Second Department honed in on a definition of good faith.

October by a Second Department panel that found him guilty of professional misconduct based on his failure to cooperate with the Grievance Committee for the Tenth Judicial District. According to the suspension order, the grievance committee began investigating him in February 2013 when it received a notice from the Lawyers Fund for Client Protection about a \$1,106 check drawn on his escrow account against insufficient funds.

Hirsch in June 2013 provided some bank records in response to the committee's request but failed to appear at two appointments at the grievance committee's offices and did not produce other records as promised. The grievance committee ultimately received five notices from the Lawyer's Fund for Client Protection about checks drawn on Hirsch's escrow account that didn't clear, prompting five new complaints against Hirsch.

Meanwhile, Hirsch, who was admitted to the bar in 1987, failed to answer the original petition.

The grievance committee moved to discipline him based on his default, and Hirsch didn't respond to the committee's motion. In an order Wednesday, a Second Department panel composed of Justices William Mastro, Reinaldo Rivera, Peter Skelos, Mark Dillon and Plummer Lott disbarred Hirsch.

The case, *Matter of Hirsch*, 2013-08219, is on page 7.

—Christine Simmons

Panel Upholds Robbery Conviction

Following a ruling by state's highest court, an Appellate Division, Third Department, panel upheld the robbery conviction of a woman for stealing earrings that she apparently discarded after she had fled the store.

The panel had earlier reduced the robbery counts against Hazel Gordon to petit larceny, holding that the more

One Man's Crusade Against Air Rights Lasts 7 Years, a

BY SUEVON LEE

FOR JAMES Brady—investor, businessman and crusader against the corporate forces he believes have trampled over his rights—every fight must come at a cost. Not least of all, the one that has consumed him for the last seven years.



Abramowitz

« Continued from page 1

It is not clear why Cuomo's campaign is paying Abramowitz since he is representing the executive branch rather than the governor. Abramowitz would not reveal his fee.

Cuomo created the Commission to Investigate Public Correction through Executive Order No. 106 on July 2, 2013, following through on a threat to investigate the Legislature unless it adopted his ethics reform package.

The extraordinary order utilized two separate subdivisions of the Executive Law to vest the panel with the power to probe both the executive and legislative branches. <http://www.governor.ny.gov/executiveorder/106>. Under Section 6 of the Executive Law, the governor empaneled the "Moreland Commission," an entity with jurisdiction to investigate the executive branch and its agencies, such as the Board of Elections.

But Cuomo expanded the scope of the panel by invoking another provision, Section 63 (8) of the Executive Law. Under that provision, the 23 lawyers on the 25-member panel were deputized as assistant attorneys general, with

the approval of Attorney General Eric Schneiderman.

With that, the commission had the authority to examine the workings of the Legislature and legislators with subpoenas.

The three commission chairs—Nassau County District Attorney Kathleen Rice, Milton Williams Jr. of Vladeck, Waldman, Elias & Engelhard and Onondaga County District Attorney William Fitzpatrick—had veto power over subpoenas. According to the executive order, their unanimous consent was required before any subpoena could be issued.

The formation of the commission immediately brought the executive and legislative branches to loggerheads, with lawmakers complaining that the governor had violated the separation of powers doctrine.

Ultimately, after the panel issued subpoenas demanding that law firms employing lawmakers disclose detailed client information, the Legislature passed a portion of the governor's proposed ethics reforms. In return, Cuomo defunded the panel. However, the executive order creating the commission has not been withdrawn, and its status as a supposedly independent legal entity remains blurry, observers say.

Bharara criticized the dismantling of the commission and mounted his own investigation several months ago. It is unclear what Bharara has found through subpoenas he has issued.

More recently, an article in The New York Times that expanded on other media reports indicated that the executive chamber meddled in the affairs of what was initially billed as an independent panel and attempted to control the Moreland Commission's investigations.

The Cuomo administration has denied interfering with the commission's work, but the governor has stated that he had a right to direct the panel's inquiries since he created the commission.

In May, the Moreland Commission hired a prominent Albany white collar criminal defense attorney, Michael Koenig, a partner at Hinckley, Allen & Snyder, to represent it in the Bharara investigation.

According to Jennifer Freeman, spokeswoman for the comptroller, the office just received the attorney general's sign-off on Koenig's hiring on Thursday. Koenig declined comment on Friday.

@ John Caher can be reached at jcaher@alm.com. Twitter: @JohnCaher

Disciplinary Proceeding

Matter of Glen D. Hirsch, a suspended attorney

2013-08219

Appellate Division, Second Department

Mastro, J.P., Rivera, Skelos, Dillon, Lott, J.J.

Decided: July 30, 2014

Robert A. Green, Hauppauge, N.Y. (Carolyn Mazzu Genovesi of counsel), for petitioner.

Per Curiam — By decision and order on motion of this Court dated October 23, 2013, the respondent was immediately suspended from the practice of law pursuant to 22 NYCRR 691.4(1)(1)(i), based upon his failure to cooperate with the Grievance Committee for the Tenth Judicial District; the Grievance Committee was authorized to institute and prosecute a disciplinary proceeding against the

respondent, based upon a verified petition dated August 5, 2013, which contained four charges of professional misconduct alleging that the respondent failed to cooperate with the Committee; the respondent was directed to serve and file an answer to the verified petition within 20 days of service of the decision and order on motion upon him; and the issues raised by the verified petition, and any answer thereto, were referred to Norma Giffords, Esq., as Special Referee, to hear and report.

On November 6, 2013, the respondent was personally served, inter alia, with this Court's decision and order on motion dated October 23, 2013. In the interim, i.e., between August 5, 2013 (the date of the verified petition), and October 23, 2013 (the date of this Court's decision and order on motion), and thereafter, the Grievance Committee received five notices from the Lawyers' Fund for Client Protection pertaining to checks drawn on the respondent's escrow account that had been returned for insufficient funds.

The Grievance Committee thereupon opened five new complaints against the respondent. However, he failed to answer.

Several months have elapsed since the respondent was personally served with the decision and order on motion of this Court dated October 23, 2013. However, the respondent has failed to serve and file an answer to the verified petition dated August 5, 2013, as directed.

The Grievance Committee now moves to deem the charges against the respondent established, and to impose such discipline upon him as the Court deems appropriate, based upon his default. The respondent has neither opposed the Grievance Committee's motion nor interposed any response thereto.

Accordingly, the Grievance Committee's motion is granted, the charges in the verified petition are deemed established and, effective immediately, the respondent is disbarred on default and his name is stricken from the roll of attorneys and counselors-at-law.

All concur.

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