

PROFESSIONAL LIABILITY UPDATE

October 22, 2003

Issue No. 161

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By Anna Kapetanakos

A law corporation that fails to register with the State Bar of California is not required to disgorge legal fees where there is no allegation that any client either relied upon the existence of a corporate entity or was injured by the law corporation's delinquency.

Olson v. Cohen (2003) 106 Cal.App.4th 1209

David K. Olson and other clients of Baruch C. Cohen, Esq., a Professional Law Corporation (Cohen) filed a class action lawsuit for the disgorgement of all legal fees Cohen collected during a four and one-half year period before it registered to practice law with the State Bar. Mr. Cohen was a member of the Bar but did not register his firm as a law corporation between August 13, 1996 through April 8, 2001.

Plaintiffs' complaint asserted, in addition to other causes of action, a violation of §17200 of the Business and Professions Code and prayed for the imposition of a constructive trust. The trial court sustained Cohen's demurrer on grounds that requiring Cohen to return all of the legal fees collected, regardless of the results obtained, would be disproportionate to the wrong and was a matter of State Bar discipline.

The Court of Appeals agreed with the trial court rejecting Plaintiffs' argument that all services rendered by an

unregistered law corporation are illegal, rendering its fee agreements void.

To state a claim under §17200, plaintiffs must first allege a business practice that is forbidden by law. Plaintiffs did not allege that Mr. Cohen was unlicensed, only that he failed to register as a professional corporation.

An unfair competition action under §17200 is equitable in nature, and the court may consider equitable factors in determining whether relief should be granted. In this case, the court found that those factors weighed strongly in favor of denying plaintiffs relief.

The court noted that Cohen voluntarily registered with the State Bar prior to filing the original complaint. There were no allegations of malpractice. Moreover, there was no allegation that any client relied upon the existence of a corporate entity in seeking legal services.

The complaint simply alleged that Cohen did not comply with one of the requirements for operating as a law corporation. Incorporating as a professional corporation is typically made to obtain tax advantages and avoid personal liability; it is not undertaken to protect clients.

Laws governing incorporation can protect clients against abuses that might otherwise occur from the use of the corporate entity such as restrictions on who may be a shareholder. However, clients are protected through cease and desist or suspension orders. In light of the remedies afforded by the Business and Professions Code, an order disgorging fees due to the failure to register the corporation is disproportionate to the wrong.

The court recognized that regulation of law corporations lies with the State Bar and the California Supreme Court. There were insufficient grounds for invading an area already entrusted to the State Bar.

Comment: This decision is consistent with precedent that rejects civil causes of action based solely on the violation of professional rules of conduct.