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Ex-administrative law judge cleared of bar's disciplinary charges

By Lyle Moran

A former state administrative law judge has been exonerated of State Bar disciplinary charges brought seven years after the alleged wrongdoing in a case her attorney says caused the loss of her job.

State Bar Court Judge Pat McElroy dismissed the case against Dianna Lynne Albini last week because she said the bar failed to provide clear and convincing evidence during trial that Albini was culpable of misappropriating \$50,000 in client funds.

Albini's exoneration comes as leaders of the bar's employee union have said the attorney discipline unit under Chief Trial Counsel Jayne Kim has been seeking excessive discipline for attorneys, resulting in an unprecedented number of court defeats.

Albini, who was a San Francisco-based personal injury attorney before being appointed an administrative law judge for the state Office of Administrative Hearings in November 2009, said she has felt mixed emotions since McElroy's ruling.

"I was very excited about the exoneration and it was a long time coming, but the adverse effects the false allegations had on my life have been devastating," she said. "My character has been assassinated, and my reputation has been destroyed."

The bar did not receive the client complaint about Albini involving a 2007 incident until March 2014. The agency filed a notice of disciplinary charges in November 2014 and posted a consumer alert on her page on its website.

Albini was placed on leave from her administrative law judge position last winter and terminated this summer, she said.

Sam Bellicini, the San Rafael attorney who represented Albini, said the judge's ruling in his client's favor was "more of a Pyrrhic victory than anything else."

"In my opinion, Dianna was fired from her position as an administrative law judge based on the State Bar's accusations," he said.

Bellicini, who was very critical of the consumer alert, said Albini is contesting her termination.

Jacqueline Cummings, a spokeswoman for California's Department of General Services, said the state could not comment directly on an ongoing personnel matter.

"The Office of Administrative Hearings and the Department of General Services have the highest possible ethical standards for our employees and take any allegations of wrongdoing very seriously," Cummings wrote in an email.

The bar declined to comment on Albini's case because it is "pending," said spokeswoman Laura Ernde. The bar could appeal the exoneration to the State Bar Court's Review Department.

Albini could recover costs from the bar in light of the dismissal, but not the "tens of thousands" of dollars in attorney fees she said she has accrued.

The case focused on Albini's handling of a \$450,000 settlement she obtained against AC Transit for her client, Doris Harris, in 2007. Of that amount, \$50,000 was to be held in trust for medical costs and health care recovery liens.

The bar accused Albini of failing to keep the money in a client trust account and misappropriating it. Albini denied the allegations and testified she paid \$50,000 to Kaiser on behalf of Harris.

McElroy, the State Bar judge, noted that much of the documentary evidence pertinent to the case had been destroyed since Albini was only required to maintain records for five years after the distribution of client funds.

"Because respondent had based her custom and practice to prove her conformity with her professional obligations, this court gives great weight to the credibility of respondent," McElroy wrote.

Albini and her attorney criticized the bar for bringing the case despite evidence an agency investigator had uncovered before charges were filed.

A bar investigator was told by Kaiser in 2014 that there was no collections notification and that Harris would have been contacted if she had an outstanding debt, according to McElroy. No entity has asked Harris to pay anything regarding the medical bills, the judge wrote.

"Frankly, Dianna Albini's good name and distinguished career is too high a cost to run a discipline mill," said Bellicini.

Bar Trustee Joanna Mendoza recently said she heard concerns from more than a dozen attorneys matching those raised by the employees' union that Kim's office is seeking excessive levels of discipline and not settling cases that should be settled.

"The charging memos request extreme levels of discipline that are not warranted, they are beyond the standards, and even the State Bar Court judges are frustrated because of this," Mendoza said she was told.

State Bar President David Pasternak defended Kim and her office.

"If anything, the allegations are that we are trying too hard to protect the public, which is much better than not trying hard enough," he said.

The bar's board voted 14-1 on Monday to reappoint Kim to a second four-year term, with Mendoza opposed. The appointment now goes before the state Senate for confirmation.

lyle_moran@dailyjournal.com