State of New York
Court of Appeals

To be argued Thursday, September 8, 2022 at the Fulton County Courthouse in Johnstown

No. 73 Matter of Independent Insurance Agents and Brokers of New York, Inc. v New York State Department of Financial Services

In 2018, the State Department of Financial Services (DFS) amended Insurance Regulation No. 187 to establish a uniform standard of care requiring insurance companies, as well insurance agents and brokers (identified as "producers" in the new regulation), to consider "the best interest of the consumer" in recommending life insurance and annuity policies. The amendment, titled "Suitability and Best Interests in Life Insurance and Annuity Transactions," was meant to address concerns about the complexity of insurance and annuity products, the growing need of consumers to rely on professional advice to understand such products, and to mitigate abuses in the compensation of agents and brokers, who had incentive to recommend financial products that would result in higher commissions but might fail to meet consumers' needs. Independent Insurance Agents and Brokers of New York, Inc. (IIAB), a trade association, and one of its members brought this suit to strike down the regulation on multiple grounds, including that it was unconstitutionally vague.

Supreme Court dismissed the suit, saying, "The Amendment is not ambiguous; in fact, it is clear and quite self-explanatory. It provides that the producer must consider the best interest of the consumer.... It contains precise definitions of the issues highlighted by the petitioners. To be clear, the court is not persuaded by the arguments that different meanings could be ascribed; for example: 'consumer.' Consumer is defined as 'the owner or prospective purchaser of a policy'.... Recommendation is defined ... as 'advice' provided to a consumer intended, or reasonably perceived by the consumer to be intended, "to result in a consumer entering into or refraining from entering into a transaction.'"

The Appellate Division, Third Department reversed and declared the regulation unconstitutionally vague. "[W]hile the consumer protection goals underlying promulgation of the amendment are laudable, as written, the amendment fails to provide sufficient concrete, practical guidance for producers to know whether their conduct, on a day-to-day basis, comports with the amendment's corresponding requirements for making recommendations and compiling and evaluating the relevant suitability information of the consumer.... Although the amendment provides certain examples of what a recommendation does not include..., the remaining definitional language is so broad that it is difficult to discern what statements producers could potentially make that would not be reasonably interpreted by the consumer to constitute advice regarding a potential sales transaction.... Additionally..., the guidelines with respect to the suitability information that producers must obtain from the consumer and the suitability considerations that must necessarily be disclosed are inadequate to the extent that they rely upon subjective terms that lack long-recognized and accepted meanings...." Given the "ambiguities in the language" of the amendment and "its lack of clear standards" for enforcement, the court said, DFS would "have 'virtually unfettered discretion' in determining whether a violation has occurred."

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To be argued Thursday, September 8, 2022 at the Fulton County Courthouse in Johnstown

No. 74 People v Ronald K. Johnson

Emergency medical personnel were called to assistant a heavily intoxicated 14-year-old girl who was found nearly unconscious and sitting in a pool of vomit at a Rochester bus stop in October 2006. At a hospital, she said she had virtually no memory of events after she began drinking with an acquaintance. A sexual assault examination recovered semen from her underwear and swabs of her body, but due to backlogs at the Monroe County Crime Lab, the DNA evidence was not analyzed until January 2010. The following month, the DNA profile was entered into the CODIS database and matched to Ronald K. Johnson, who had not been a suspect in the case. Due in part to difficulties investigators encountered in locating the victim through her mother and through school and motor vehicle records, Johnson was not indicted until June 2014. He was charged with first-degree rape, for allegedly having sexual intercourse with a person who was "incapable of consent by reason of being physically helpless," and with second-degree rape, for intercourse with a person under the age of 15.

Johnson moved to dismiss the charges, saying the nearly eight-year delay between the crime and the indictment violated his due process right to prompt prosecution. County Court denied the motion based on the five-factor test in People v Taranovich (37 NY2d 442) for assessing preindictment delay: (1) extent of the delay; (2) reason for the delay; (3) nature of the underlying charge; (4) whether there was an extended period of pretrial incarceration; (5) whether there is any indication the defense was impaired by the delay. After his motion was denied, Johnson pled guilty to second-degree rape and was sentenced to 2½ to 5 years in prison.

The Appellate Division, Fourth Department affirmed. After assuming, without deciding, that the prosecution failed to establish good cause for the delay, it found the first three Taranovich factors favored Johnson. However, the court ruled his rights were not violated "because his defense to the charge of which he was convicted was not prejudiced in any conceivable respect by the preindictment delay.... Specifically, although defendant correctly notes that the extensive preindictment delay undoubtedly compromised his ability to contemporaneously investigate the facts and circumstances of the underlying incident, he concedes that no amount of contemporaneous investigation could have revealed a defense to the strict-liability crime of which he was ultimately convicted, namely, rape in the second degree" based on the victim's age. It said, "Whether and to what extent the preindictment delay impaired defendant's ability to defend himself on the separate count of rape in the first degree is irrelevant to our analysis because defendant was not convicted of that count."

Johnson argues the Appellate Division erred by limiting its prejudice analysis to the second-degree rape count because he was also facing the more serious first-degree rape charge when he made his motion to dismiss, the "Appellate Division acknowledged that he was prejudiced, by the delay at least as to the highest offense charged," and he accepted the plea bargain only after the trial court denied his motion. He says that had County Court dismissed the first-degree charge, he "would not have had remotely the same incentive – avoiding the risk of conviction after trial of a more serious offense – to accept the People's offer to plead guilty to rape in the second degree. Thus, the impairment of [his] defense on one count was inextricably intertwined with the other...."

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