

**Quint Capital Corp. v Kashinsky**

2020 NY Slip Op 33748(U)

November 5, 2020

Supreme Court, New York County

Docket Number: 654078/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART IAS MOTION 59EFM**

*Justice*

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**INDEX NO. 654078/2020**

QUINT CAPITAL CORPORATION,  
Petitioner,

**MOTION DATE 11/5/2020**

**MOTION SEQ. NO. 001**

- v -

JOSEPH KASHINSKY and GINA KASHINSKY,

**DECISION + ORDER ON  
MOTION**

Respondents:

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISQUALIFY COUNSEL

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition to disqualify the firm of McCormick & O'Brien LLP as counsel for respondents is denied, and the petition is dismissed, with costs and disbursements to respondents; and it is further

ADJUDGED that respondents, having an address at \_\_\_\_\_, do recover from petitioner, having an address at \_\_\_\_\_, costs and disbursements in the amount of \$ \_\_\_\_\_ as taxed by the Clerk, and that respondents have execution therefor.

DECISION

The decision in Cooke v Laidlaw, Adams & Peck, Inc., 126 AD2d 453 (1<sup>st</sup> Dept. 1987), where the First Department reversed

the trial judge's order denying plaintiff's motion to disqualify defendants' attorneys, and granted the order disqualifying such firm, is completely distinguishable on its facts, and therefore, instructive as to the petition at bar.

In Cooke, the defendant corporation in two prior arbitrations before the New York Stock Exchange, retained, was billed, and paid the bills of the law firm. The former officer of that corporation brought an arbitration proceeding against such corporation, for breach of employment contract. The former officer of that corporation argued that the law firm that represented him in the two prior arbitrations should be disqualified from representing the defendant corporation in his arbitration, pursuant to DR 5-108.<sup>1</sup>

The Cooke court went on to find that

"it is undeniable that there is a substantial relationship between the issues in the present litigation and the subject of [the prior arbitrations]. In their answer, the defendants themselves have put that affair in issue by asserting that Cooke [the corporate officer] is not entitled to prevail on his [breach of employment contract] claims because he failed to 'discharge his responsibilities properly' in the [matters that were the subject of the arbitrations]. Since [the law firm] represented the [corporate officer] in prior proceedings involving [the matters in the arbitration proceedings], it would be

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<sup>1</sup>The Cooke court found the fact that defendant corporation paid the legal bills in the two prior arbitrations of no moment as to whether the law firm also represented the corporate officer, holding that the law firm represented the plaintiff corporate officer, as well, as he had been sued "as the result of actions he has taken within the ambit of his official duties." Cooke, supra, at 455.

inappropriate to permit that firm to represent the opposing party here and the firm should be disqualified." Cooke, supra, at 456.

By contrast, in the case at bar, there is no dispute that Alexander Quint, the principal of the petitioner corporation, retained and was represented by the law firm of McCormick & O'Brien LLP, in the FINRA Department of Enforcement investigation of Peterson Investments, for whom Quint was employed as a securities salesperson. The distinction with the facts in Cooke begins there, as under no interpretation of the facts at bar can it be said that McCormick & O'Brien LLP represented the corporate petitioner herein, as such corporation was not a party to that FINRA proceeding. Nor in any way, shape or form can petitioner corporation at bar argue that the respondents herein base their position that they owe it no damages arising from the transaction before the present arbitration because of any of the actions of Peterson Investments, or its agents, including Quint, that FINRA was investigating eight years ago before the parties even entered into such transaction. Therefore, as petitioner Quint Capital has demonstrated not one iota of a relationship, let alone a substantial one, between any of Peterson Investments' or Quint's actions, omissions, or inactions that culminated in FINRA's 2012 investigation of Peterson Investments and the respondents'

present dispute with petitioner corporation, disqualification of McCormick & O'Brien LLP is unwarranted.

Finally, petitioner corporation's argument that McCormick & O'Brien LLP should be disqualified from representing respondents because during its representation of Quint in the prior FINRA proceeding, Quint divulged confidential and secret information, somehow belonging to petitioner corporation, to such law firm, which it can use against petitioner in the present arbitration, likewise fails. It is tautological that Quint did not possess any confidences or secrets of petitioner Quint Capital, for whom he did not work at the time. Further, as discussed above, it is undisputed that Quint Capital was not involved in the FINRA proceedings against Peterson Investments, let alone that it lacked any attorney-client relationship with McCormick & O'Brien LLP. As McCormick & O'Brien LLP owed no duty of confidentiality to Quint Capital, whom such law firm did not represent, the motion of petitioner Quint Capital to disqualify such law firm on that basis is unavailing. See Pellegrino v Oppenheimer & Co., Inc., 49 AD3d 94, 99 (1st Dept. 2008).

11/5/2020  
DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: