

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL**

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<b>EUN Y. WOO</b>	:	October Term, 2010
<i>Plaintiff</i>	:	
<b>v.</b>	:	Case No. 02633
<b>EUN AE OH ET AL.</b>	:	
<i>Defendants,</i>	:	
<b>EUN AE OH</b>	:	
<i>Joinder Plaintiff</i>	:	Commerce Program
<b>v.</b>	:	
<b>v. MOON AHN ESQUIRE</b>	:	Control No. 11072478
<i>Joinder Defendant</i>	:	

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**OPINION**

The Motion to Disqualify Counsel requires this Court to determine whether Counsel for Defendant/Counterclaim Plaintiff may continue to represent its client in the instant action. For the reasons below, Counsel for Defendant/Counterclaim Plaintiff may not represent any client in the instant action.

**Background**

Plaintiff, Eun Young Woo (“Woo,”) is the owner of half the stock of J.P. Food Services, Inc. (the “Corporation,”) an entity which owns 100% of a convenience store located in Philadelphia, Pennsylvania. Defendant Eun Ae Oh (“Oh,”) owns the remaining half of the Corporation’s stock.

In August 2010, Oh commenced against Woo and other Defendants a

derivative lawsuit on behalf of the Corporation (the “August 2010 Action”).<sup>1</sup> In that action, Oh asserted that Woo had refused to provide Oh with full and accurate accounting of the affairs of the Corporation, had paid herself excessive compensation, and had refused to properly share corporate profits with Oh.<sup>2</sup>

Subsequently, Defendants in the August 2010 Action filed a Motion to Dismiss for Improper Venue. In the Response to the Motion to Dismiss, Oh conceded that—

Respondents now believe ... the gravamen of their suit stems from a breach of the stock purchase agreement. As the agreement contains a mandatory arbitration clause, the parties to the agreement are bound thereby.<sup>3</sup>

Based upon Oh’s concession, this Court granted the Motion to Dismiss the August 2010 Action, and sent the case to Arbitration. At the time Oh conceded that the August 2010 Action should go to Arbitration, Oh and the Corporation were represented by the law firm of Pinnola & Bomstein, Attorneys at Law (“Pinnola & Bomstein.”)

In October 2010, Woo commenced the instant action against Oh (the “Instant Action”). The Amended Complaint in the Instant Action seeks rescission of the Stock Purchase Agreement by which Oh acquired half of the Corporation’s stock. Oh filed an Answer, New Matter and Counterclaim to Woo’s Amended Complaint. The law firm of Pinnola & Bomstein drafted the Answer, New Matter and Counterclaim on behalf of Oh. In the New Matter, Oh asserts that Woo failed

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<sup>1</sup> J.P. Food Services, Inc and Eun Ae Oh v. Eun Young Woo and Joon Park, Case No. 1008-01386.

<sup>2</sup> J.P. Food Services, Inc and Eun Ae Oh v. Eun Young Woo and Joon Park, ¶ 44.

<sup>3</sup> Oh’s Response to Motion to Dismiss Complaint for Improper Venue, ¶ 16.

to report income received by the convenience store and Corporation.<sup>4</sup> Oh also asserts that Woo failed to share the profits generated therefrom.<sup>5</sup> Finally, Oh prays for dissolution of the business of J.P. Food on grounds that under Woo's control, the actions of that Corporation have been "illegal, oppressive or fraudulent".<sup>6</sup>

On July 22, 2011, Woo filed the instant Motion to Disqualify Pinnola & Bomstein as Counsel for Defendant Oh. In the Motion, Woo asserts that Pinnola & Bomstein may not represent Oh in the Instant Action because such representation is directly adverse to the representation which Pinnola & Bomstein provided to J.P. Food in the August 2010 Action. Oh filed a Response in Opposition, and the Motion is ripe for a decision.

### **Discussion**

Under the Pennsylvania Rule of Professional Conduct—

... a lawyer may not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) The representation of one client will be directly adverse to another client....<sup>7</sup>

... [A]bsent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even if the matters are wholly unrelated.<sup>8</sup>

In the August 2010 Action, Oh, as represented by Pinnola & Bomstein, sought to enforce the rights of the Corporation by means of a derivative suit. In the Instant Action, Oh, also represented by Pinnola & Bomstein, seeks dissolution

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<sup>4</sup> New Matter of Defendant Oh, ¶¶ 2, 4, 5, 6, 7.

<sup>5</sup> New Matter of Defendant Oh, ¶ 8.

<sup>6</sup> Counterclaim, Count II.

<sup>7</sup> Pa. R.P.C. 1.7(a)(1)

<sup>8</sup> Pa R.P.C 1.7, Comment 6.

of the Corporation for its alleged failure to report income to the tax authorities. The simultaneous representation of Oh in the Instant Action, and the Corporation in the August 2010 Action, involves a concurrent conflict of interest. The simultaneous representation involves a concurrent conflict of interest because if Oh succeeds in showing that the Corporation failed to report its income, then the Corporation's interests could be adversely affected. Pinnola & Bomstein may not simultaneously represent Oh in the Instant Action and the Corporation in the August 2010 Action.

In the Response in Opposition to the Motion to Disqualify, Oh asserts through Pinnola & Bomstein that "neither Bomstein nor Pinnola & Bomstein represent the [C]orporation in any pending matter." Oh concludes that since Pinnola & Bomstein do not represent the Corporation in any pending matter, there is no concurrent conflict of interest and Pinnola & Bomstein should not be disqualified. This conclusion disagrees with the Pennsylvania Rules of Professional Conduct which state:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives information.<sup>9</sup>

Matters are substantially related ... if they involve the same transaction or legal dispute....<sup>10</sup>

Here, the matter in the August 2010 Action involves the same legal dispute involved in the Instant Action, namely, control of the Corporation. The outcome in the Instant Action, as litigated by Pinnola & Bomstein on behalf of Oh, could be

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<sup>9</sup> Pa. R.P.C. 1.9(a).

<sup>10</sup> Pa. R.P.C. 1.9 Comment 3.

materially adverse to the interests of the Corporation which in the past was represented also by Pinnola & Bomstein. Since the matter in the Instant Action involves the same legal disputes, and the outcome in the Instant Action could affect adversely Pinnola & Bomstein's former client, Pinnola & Bomstein may not represent any party in the Instant Action.

The Court shall issue a simultaneous Order consistent with this Opinion.

**By The Court,**

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**Arnold L. New, J.**

Dated: October 17, 2011