

LAW FIRM FAULTED BY APPEALS COURT

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In an unusually harsh opinion, a New York appeals court has criticized the powerful law firm of Sullivan & Cromwell for what it called unethical conduct, "including deceit," in the handling of a suit.

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The Appellate Division of State Supreme Court, ruling in a case involving trusts, also took the extraordinary measure of disqualifying the firm from representing its client.

Legal experts said they expected the finding to result in disciplinary measures.

The comments by the court, according to a number of lawyers who have studied the opinion but who asked not to be identified, are unusual in the severity of the language used to describe the Manhattan firm's conduct and in the sanction it imposed. The ruling, in a dispute over a trust that involved the Antiques Company of New York, was issued June 19 and became public last week. Inquiry on Conduct

In addition, a disciplinary panel under the supervision of the court, is investigating the conduct of a Sullivan & Cromwell lawyer in another matter, the legal battle over the \$500 million estate of the late J. Seward Johnson, son of the founder of the Johnson & Johnson pharmaceutical empire.

The focal points for this month's ruling were documents that the appeals court said had been obtained by a Sullivan & Cromwell lawyer, Gerrard R. Beeny, through "stealth." The court held that the firm could not use those documents, but it went further and took the measure of disqualifying the firm from representing Martin R. Wynyard in his lawsuit against his sister, Rotraut L. U. Beiny.

According to a spokesman for Sullivan & Cromwell who asked not to be identified, the law firm intends to ask the Appellate Division to reconsider its ruling and to remand the case back to the Manhattan Surrogate, where it originated, for a hearing to determine if there were any ethical improprieties.

"It's our view that the court's decision was not based on an awareness and understanding of all the facts and circumstances," the spokesman said, "and we think the court drew unwarranted inferences from its incomplete understanding." Trusts in Lichtenstein

The case stems from a dispute over a trust established in 1966 by Hans and Elisabeth Weinberg, the parents of Ms. Beiny and Mr. Wynyard. Mr. Weinberg had amassed a large collection of antique porcelains and other art objects in pre-Nazi Germany before emigrating in 1939, first to London and, later, to the United States.

The main asset of the trust is the antiques company, of which Ms. Beiny is the president and chief executive officer; Mr. Wynyard is a director. Ms. Beiny, who oversees the trust, is the beneficiary of 55 percent of the shares of the antiques company; her brother, 45 percent.

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Mr. Wynyard has claimed in his suit that since 1972, Ms. Beiny has diverted assets, including antique porcelains, Renaissance jewelry and other art objects, from the antiques company, and placed them in two other trusts based in Lichtenstein that are controlled exclusively by her and her family.

For 10 years, the Weinbergs were represented by the law firm of Greenbaum, Wolff & Ernst, which is now defunct. But, according to the court, Mr. Beeny used "clandestine," "deceptive" and "covert" means to obtain the Weinberg files from the caretaker of the Greenbaum firm's records. Much of the information in those files, because it was based on confidences divulged by the Weinbergs and Ms. Beiny to their lawyers, was off-limits to Sullivan & Cromwell.

Marie M. Lambert, the Manhattan Surrogate, concluded that the firm "clearly obtained material in a manner not in accord with proper practice in this state," but she had refused the request of Ms. Beiny's lawyers, from the firm of Patterson, Belknap, Webb & Tyler, that Sullivan & Cromwell be removed from the case. She did bar the firm from using most of the documents. Barring Not Enough

But four of the five judges on the appeals panel - Presiding Justice Francis T. Murphy and Justices E. Leo Milonas, Bentley Kassal and Richard W. Wallach 3d - concluded that merely barring the firm from using the documents was not enough. The justices determined that the law firm had knowingly violated a number of rules that govern the litigation process.

"We do not believe that Sullivan & Cromwell was ignorant of these rules, nor would its ignorance be excusable," the majority held. "These are not trivial or seldom invoked provisions; they are fundamental to the orderly and fair conduct of pretrial litigation and are daily put to use by litigants and the courts."

The majority continued: "The inference which sadly follows is that, far from making an 'earnest' attempt to comply with the rules, Sullivan & Cromwell chose to chart a course which it knew to be at variance with acceptable discovery practice so as to obtain by stealth that which could not be readily obtained through proper channels."

The majority went on to say that disqualification of the firm - a sanction generally reserved for situations where there is a conflict of interest - was warranted because of "the blatant abuse with which we are here confronted, involving willful disregard of procedural rules, deceit and the covert acquisition of otherwise unobtainable privileged material."

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