

## Decisions Of Note

BY LAZAR EMANUEL

After the firm of Milbank, Tweed, Hadley & McCloy had conceded a claim of legal malpractice based on the actions of a former partner, Supreme Court Justice Herman Cahn granted the firm's motion to dismiss a former client's claim for punitive or treble damages based upon fraud.

The judge cited cases holding that damages will be awarded for claims of fraud only when the malpractice claims will not adequately compensate the plaintiff. Here, the plaintiff would be compensated in full out of the malpractice claim. Once the fraud claim was dismissed, the claim for punitive damages fell as well, because a claim for legal malpractice alone will not support a claim for punitive damages.

The Judge held that in a relatively large firm, the "bad acts" of one partner should not be imputed to the other lawyers in the firm on a claim for fraud and punitive damages.

Section 487 of the Judiciary Law was also controlling in a dispute among lawyers decided in November by Supreme Court Justice Barry Cozier. The Section provides that an attorney who engages in deceitful conduct in the course of a legal proceeding is liable for treble damages. The Section also defines a lawyer's deceit as a misdemeanor punishable under the Penal Code.

In 1997, the law firm of Liddle & Robinson, represented by Stroock, Stroock & Lavan, sued the law firm of Greenfield, Stein & Senior, represented by Kelly & Roth. The suit involved a dispute over fees. Greenfield Stein countersued, joining the Stroock firm as defendant. Greenfield asserted that Liddle and Stroock had both violated Section 487.

Judge Cozier granted a motion by Liddle and by Stroock to dismiss the counterclaim and awarded sanctions of \$2,500 each against Greenfield and Kelly & Roth. The Judge said that a firm which invokes Section 487 must recognize that the Section carries with it "very, very serious sanctions...this is a provision which cannot be lightly invoked."

The judge felt that the issues raised by Liddle & Robinson represented legitimate disagreement over the division of fees and were asserted in good faith.