NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2452-13T1

TANIA DOMINGUEZ,

Petitioner-Appellant,

v.

EDUCATION MANAGEMENT
SERVICES, INC.,

Respondent-Respondent.

Submitted December 8, 2014 – Decided July 10, 2015

Before Judges St. John and Rothstadt.

On appeal from the New Jersey Department of Labor, Division of Workers' Compensation, Claim Petition No. 2012-25613.

Lynda Yamamoto, attorney for appellant.

Law Offices of William E. Staehle, attorneys for respondent (Sandra E. Celona, on the brief).

PER CURIAM

Petitioner Tania Dominguez appeals from an order of the judge of workers' compensation (JWC) denying her motion for recusal alleging bias and prejudice. Upon our review in light of the record and governing law, we affirm.

I.

The record discloses the following facts and procedural history. We limit our recitation to those facts pertinent to the recusal motion now before us on appeal. Petitioner, through her counsel, Kickbusch Wallach, P.C. (K.W.), initiated the instant suit against her employer, respondent Education Management Services, Inc., in the New Jersey Division of Workers' Compensation (Division).[1] The complaint sought compensation for various alleged work-related injuries resulting from a slip-and-fall.

On April 10, 2013, the JWC heard testimony from petitioner and her husband. On April 23, K.W. served the JWC with a motion to recuse herself from all the firm's cases. It filed the motion under the caption Kickbusch Wallach, P.C. v. State of New Jersey Division of Workers' Compensation, without a claim petition number. K.W. attached the motion to the instant matter, notwithstanding its demand for recusal in all its pending cases before the JWC. In support of its motion, K.W. filed the certifications of Kenneth L. Wallach and John P. Kickbusch.

[1] K.W. concentrates in workers' compensation cases and regularly litigates before the Division.

The certifications stated, prior to her appointment with the Division, the JWC worked as an associate at the firm of Perskie Wallach, P.C. (P.W.), of which Kenneth Wallach was then a partner. According to Wallach, he was forced to terminate her employment due to conflicts with P.W.'s support staff after a period of only a few weeks. Wallach portrayed the termination as being on less-than-amicable terms. Wallach's certification then stated:

> Since her arrival in Atlantic City, I have found that, in every case, involving our firm . . . in which the [JWC] is required to make a "credibility call" or "exercise [her] sound discretion," her decisions reflect a bias against my [clients] based on what I can only believe is personal animus.

Kickbusch's certification went further, specifically identifying cases before the JWC in which she allegedly abused her discretion in rendering unfavorable rulings against K.W.'s clients. These rulings, according to K.W., "have the impact of raising an unacceptable taint of prejudice in any matters brought before [the JWC] by [K.W.]," thereby requiring the JWC's recusal in the instant matter, as well as all pending cases in which K.W. serves as counsel.

In supplemental certifications filed on May 13, Wallach and Kickbusch stated the JWC contacted Wallach on April 30, informing him "she would not resist the [m]otion and would

voluntarily place [K.W.] and [its] cases on her disqualification list." On May 3, however, K.W. learned the JWC would not be recusing herself prior to oral argument on the motion, which occurred on May 22.

On June 7, the JWC issued her reserved decision denying the motion. First, the JWC concluded the record was devoid of any evidence of actual prejudice against K.W. or its attorneys. Additionally, the JWC portrayed her brief employment with P.W. as relatively minor in context of her twenty years of litigating before her appointment to the Division. She denied ever informing Wallach she would put any cases on a "disqualification list," or ever hearing the term before reviewing Wallach's certification. Finally, the JWC stated emphatically: "As to the specific allegations regarding the disposition of each case mentioned in the motion, the [c]ourt stands by its record and the transcripts created therein."

Petitioner moved for leave to appeal on an interlocutory basis, which we denied. On June 26, the JWC issued an amplification of her decision, wherein she expanded upon the factual circumstances surrounding her brief employment with P.W., distinguishing the present case from Chandok v. Chandok, 406 N.J. Super. 595 (App. Div.), certif. denied, 200 N.J. 207 (2009), where we concluded the trial judge's and counsel's

mutual involvement in the bitterly-litigated breakup of their previous firm demanded recusal. Id. at 606. The amplification reiterated K.W. failed to meet its burden of proof. The JWC subsequently dismissed petitioner's case with prejudice in January 2014. This appeal ensued.

II.

We begin by noting that "a decision to recuse resides in the trial judge's sound discretion." State v. Dalal, 438 N.J. Super. 156, 161 (App. Div. 2014), certif. granted, 221 N.J 216 (2015). Rule 1:12-1(g) requires disqualification of a judge, on the court's own motion, "when there is any [] reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." The Rules also permit "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor," to move for recusal. R. 1:12-2 (emphasis added). However, "it is inappropriate for a judge to withdraw from a case 'unless the alleged cause of recusal is known by [the judge] to exist or is shown to be true in fact,'" Dalal, supra, 438 N.J. Super. at 161 (alteration in original) (quoting Hundred E. Credit Corp. v. Eric Schuster Corp., 212 N.J. Super. 350, 358 (App. Div.), certif. denied, 107 N.J. 60 (1986)), so that "'a fully informed person might reasonably question the impartiality of [the]

judge.'" Ibid. (quoting In re Advisory Letter No. 7-11 of the Supreme Court Advisory Comm., 213 N.J. 63, 78 (2013)).

We agree with the JWC that K.W.'s motion lacks merit. First, the motion is procedurally deficient on several grounds. It was not served until after the JWC began hearing testimony in petitioner's case, in contravention of Rule 1:12-2. The motion was brought on behalf of K.W. itself, and only later attached to petitioner's case on the JWC's instruction.[2] The Rules make provision for a party, not counsel individually, to move for recusal. See R. 1:12-2. Additionally, we are unable to locate any support in the Rules for K.W.'s request for the JWC to recuse herself "from presiding over all of the cases from [K.W.]."

More importantly, we conclude the JWC properly found K.W.'s proofs insufficient to support the recusal motion. The attached certifications demonstrated nothing more than unfavorable discretionary rulings rendered by the JWC against K.W.'s clients. Moreover, the facts here rise nowhere near those in Chandok, where the trial judge and counsel had worked together for many years before their firm's breakup led to bitter and protracted litigation replete with personal attacks. See

[2] We reject K.W.'s argument that its reliance on the JWC's instruction to attach the motion to the instant matter controls or cures the numerous procedural deficiencies.

Chandok, supra, 406 N.J. Super. at 606. Here, the allegations of prejudice or bias were not "shown to be true in fact," Dalal, supra, 438 N.J. Super. at 161, but rather were based solely on K.W.'s unsubstantiated inferential leap that the JWC's rulings could only be based upon a personal animus stemming from her termination from P.W. There is simply nothing in the record to warrant such an inference or which might cause "a fully informed person [to] reasonably question the impartiality of [the] [JWC]." Ibid.; see also State v. Marshall, 148 N.J. 89, 186-87 ("[B]ias is not established by the fact that a litigant is disappointed in a court's ruling on an issue."), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION