

Client Alert
April 2014

**NEW YORK COURT OF APPEALS UPHOLDS *MARTIN* RULE DEFENSE
AND CLARIFIES ITS APPLICABILITY TO
DUTY OF FAIR REPRESENTATION CLAIMS
PALLADINO V. CNY CENTRO, INC. et al., No. 47 (April 8, 2014)**

In a just-issued major decision, the New York Court of Appeals upheld a union's use of the so-called *Martin* rule defense against the plaintiff's duty of fair representation ("DFR") claims. Under the *Martin* rule, an unincorporated association cannot be held liable unless the plaintiff alleges, and proves, that every member of the association authorized or ratified the allegedly wrongful conduct.

The *Martin* rule, which applies to a variety of state-law claims, has been widely criticized as out-dated and unfair. In finding the defense applicable to the duty of fair representation claims in *Palladino*, the Court declined to overrule its 1951 decision in *Martin v. Curran*, 303 N.Y. 276, or to carve out an exception for DFR claims. This case has state-wide importance, as it preserves the ability of most unions to use the defense against intentional tort or breach of contract claims under state law. It also effectively limits public employees who wish to sue their unions to bringing a DFR claim by filing an improper practice charge with the New York State Public Employment Relations Board ("PERB").

Underlying Facts and Procedural Background

The union, Amalgamated Transit Union Local 580 ("Union"), represents a unit of bus drivers and mechanics employed by CNY Centro, Inc. ("Centro" or "Company"). In October 2007, a driver (the "Member") was disciplined for misrepresenting his absence from work on a day he was moonlighting. Centro suspended the Member without pay for five days. He was also advised in writing that "[a]nother incident of misrepresentation will result in termination from employment." The Union filed a grievance protesting the discipline, which was denied. After processing the grievance through the contractual procedure without resolution, the Union requested arbitration. However, due to concerns over the merits of the grievance and the Member's lack of cooperation in further investigating the facts, in June 2008 the Union's executive board determined to withdraw the grievance and not proceed to arbitration.

Then, in August 2008, the Member was again charged with misconduct, including another act of misrepresentation. After Centro advised that it would likely discharge the Member, the Union negotiated a proposed settlement that would have preserved the Member's employment and imposed certain discipline. However, the proposed settlement was rejected by the Member, and the Company therefore moved forward with the termination procedure. The Union filed a grievance protesting the discharge, which the Company denied at the first and second steps. At a meeting in December 2008, the Union's executive board members deliberated and voted unanimously not to submit the grievance to arbitration.

The Member commenced two lawsuits in Onondaga County Supreme Court alleging that the 2007 discipline and the 2008 termination violated the collective bargaining agreement and that the Union breached its duty of fair representation in declining to arbitrate the grievances. In January 2012, the Union and Centro filed motions for summary judgment dismissing all claims against them. Among other points, the Union argued that the case should be dismissed on the basis of the *Martin* rule. The court issued a bench decision, granting dismissal of some claims but denying the Union's motion with respect to the DFR claims. The trial court expressly rejected the applicability of the *Martin* rule defense.

The Union and Centro each appealed to the Appellate Division, Fourth Department. In unanimously reversing, the Fourth Department ruled that, on the basis of the *Martin* rule, the Supreme Court should have granted the defendants' summary judgment motions in their entirety. The appellate court held that because the Union is an unincorporated association, the plaintiff's failure to allege the Union's conduct was authorized or ratified by the entire membership rendered the complaints "fatally defective." *Palladino v. CNY Centro, Inc.*, 101 A.D.3d 1653, 1654 (4th Dep't 2012). After successfully seeking permission to appeal, the Member appealed the decision to the Court of Appeals.

Court of Appeals Decision

The Court of Appeals began by discussing the history of the underlying common law and its earlier decision in *Martin*, where the president of one union sued another union for libeling him in its newspaper. The *Martin* Court had held that, pursuant to section 13 of the General Associations Law, the plaintiff could not maintain a claim for libel without pleading and proving that each member of the defendant union had authorized or ratified the alleged tortious conduct. In reaching its decision, the *Martin* Court had reasoned "[i]t is for the legislature" to change the statute to comport with the modern realities of unincorporated associations, including labor unions.

The *Palladino* Court followed the precedent set in *Martin* regarding the interpretation of General Associations Law section 13. The Court noted that while the Legislature amended the statute after *Martin* was decided, the Legislature did not amend any of the language that the

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Martin court interpreted: “The Legislature did not take that opportunity to clarify or correct our interpretation of the statute, nor has it acted since in response to *Martin*.” Thus, the Court held that the “weighty considerations” associated with overturning the *Martin* rule are best left to the Legislature, which is better suited to assess all of the policy concerns in the area.

Practical Impact

The *Palladino* decision marks an important legal development for most unions in New York State. First, any union that is an unincorporated association (most unions are) can continue to assert the *Martin* rule as a defense against claims sounding in intentional tort or breach of contract. Second, it is now clear that public sector unions can use *Martin* as a defense to duty of fair representation claims brought under state law in a court action. Although the *Martin* rule has not been applied to DFR claims charged as improper practices before PERB, that forum offers several tactical advantages.

The Union in the *Palladino* litigation was represented by Blitman & King attorneys Kenneth L. Wagner, Nathaniel G. Lambright, and Bryan T. Arnault.

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