

Court Upholds Settlement Based Upon Apparent Authority To Resolve Matter

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In *Releasee 1 and Releasee 2 v. N.G.* (A-4522-16T2), the Appellate Division analyzed whether defendant's attorney had actual or apparent authority to consummate a settlement with plaintiffs' attorney, despite defendant's arguments that she did not authorize her attorney to finalize a settlement on her behalf.

After reviewing testimony from an evidential hearing, the Court discussed types of authority: actual and apparent. Actual authority may be express or implied. The difference between implied actual authority and apparent authority is as follows: "implied actual authority depends on the agent's reasonable perceptions of the principal's actions; apparent authority depends on a third party's perceptions." (*Id.* at 8-9). Either type of authority will render a settlement enforceable, and there is a presumption that an attorney has the authority to act on behalf of a client. The client must overcome the "heavy burden" of that presumption.

The testimony elicited that defendant's attorney represented to plaintiffs' attorney that he had defendant's permission to negotiate and agree upon a settlement. Defendant did not overcome the burden that her attorney had apparent authority to act on her behalf. Therefore, the hearing judge found that defendant's attorney possessed apparent authority to enter into a settlement. The Court deferred to the hearing judge's credibility assessments in upholding the lower court's decision and enforced the settlement.

The Court did note in a footnote, however, that since the hearing judge found apparent authority, there was no need to determine whether actual authority existed. The Court indicated that defendant was free to pursue any appropriate claims against her attorney if she believed her attorney overstepped the bounds of authority.

The lesson is unmistakable: you should obtain clear and explicit authority with the defined boundaries before acting on your client's behalf in order to avoid accusations of exceeding authority.