

## **Sean R. Kelly Successfully Defends Hedge Fund at The NJ Supreme Court on Former Employee's Bid to Revive Disability Bias Case**

June 16, 2013

On Monday, June 10, 2013 the New Jersey Supreme Court declined to hear a case brought by a former employee of a hedge fund who said he was wrongfully terminated by a hedge fund administrator after disclosing that he had multiple sclerosis, and that a state agency, the NJ Division of Civil Rights (NJDCR), erred by refusing to investigate his claim. In its order, the Supreme Court denied a bid for certification from the hedge fund's former employee, a former senior vice president for the hedge fund, who accused the company of terminating him after less than a year of employment because of his medical condition. This certification denial ends a long fought battle by the former employee, who lost two prior appeals, one of which involved a claim that the NJDCR had improperly declined to conduct its own investigation into his claims.

The former employee first pursued a claim in June 2009, two months after he was terminated from the hedge fund. He filed a grievance with the federal Equal Employment Opportunity Commission (EEOC), as well as with the NJDCR, which has a "worksharing" agreement with the EEOC to facilitate cases filed with both agencies. In October 2009, the EEOC found no violation of federal law after investigating the former employee's claims, and the NJDCR declined to pursue its own investigation, instead deferring to the EEOC's findings per the worksharing agreement.

In May of 2011, the former employee filed a civil lawsuit against the hedge fund, charging the company with a violation of the state's Law Against Discrimination (LAD), but the claim was dismissed because in filing a claim with the NJDCR, he had waived his right to pursue a civil suit. In June 2012, a two judge appellate panel affirmed the dismissal. The former employee's second appeal argued that the NJDCR should be forced to conduct its own investigation, not merely close the file because the EEOC found no violation of federal law. The appellate panel found it had no substantial record before it to determine whether there was good cause for an independent NJDCR review, and therefore affirmed the NJDCR's dismissal of the claim. For over 30 years, Sean Kelly has focused his practice on counseling employers and defending employment cases, and has successfully tried many employment cases to verdict. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey "Super Lawyers," holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.