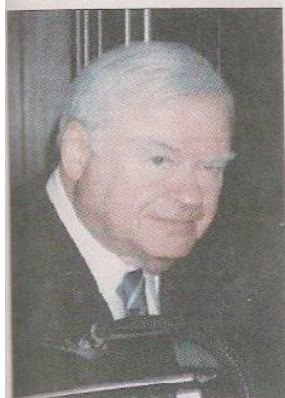


# Divorce Granted in N.J. Found to Bar Parties From N.Y. Equitable Distribution



Stanley Gartenstein

When presented with a sister-state decree for prospective amendment New Jersey has held that where the rendering state made no specific reservation of jurisdiction to amend, such decree was final.

BY VESSELIN MITEV

**A** HUSBAND who received a no-fault divorce in New Jersey cannot petition a New York court for an equitable distribution of marital property, a Nassau County judicial hearing officer has ruled.

In dismissing the claims of both Gennaro Ottomanelli and his former wife Debra Ottomanelli, Supreme Court Judicial Hearing Officer Stanley Gartenstein acknowledged that the ruling would affect a "significant number of matrimonial litigants involved in multi-state proceedings."

But he said that the U.S. Constitution's full faith and credit clause required him to defer to the New Jersey court's decision.

"The New York Court of Appeals has specifically held New Jersey divorce decrees to be final and non-amendable," wrote Mr. Gartenstein in *Ottomanelli v. Ottomanelli*, 018435/04, citing *Weintraub v. Weintraub*, 302 NY 104.

"When presented with a sister-state decree for prospective amendment New Jersey has held that where the rendering state made no specific reservation of jurisdiction to amend, such decree was final," he wrote, citing *Roskein v. Roskein*, 25 NJ Super 415.

Mr. Ottomanelli obtained a no-fault divorce in his home state of New Jersey in 2004 but returned to New York in the same year to commence an action to divide the marital assets pursuant to Domestic Relations Law §236(b)(5), which reads: "Except where the parties have provided in an agreement for the disposition of their property...the Court...in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine

The decision appears on page 27.

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the respective rights of the parties in their separate or marital property and shall provide disposition thereof in the final judgment."

Ms. Ottomanelli then demanded economic relief, which included a share of Mr. Ottomanelli's pension, said Mr. Ottomanelli's attorney, Sari M. Friedman.

"I've never seen a result like this [in this type of proceeding]," said Ms. Friedman, of Garden City.

Ms. Ottomanelli's attorney, Ivan W. Hametz, a partner at Taub, Hametz & Waldman in Mineola, agreed the decision was unusual.

"It's unfathomable...the judge is dismissing both the complaint and counterclaim on the grounds there was no jurisdiction," said Mr.

Hametz. "Mr. Ottomanelli brought the action in New York and Ms. Ottomanelli was certainly not precluded from being here in New York."

In his decision, Mr. Gartenstein drew a distinction between a "divisible" divorce—an ex parte proceeding in which a court that acquires jurisdiction over the marriage but not the absent spouse—and the current case where, according to the decision, the New Jersey court has acquired personal jurisdiction over both parties.

The judge said that the New York property distribution action would have been permitted if the divorce had been a divisible one. But he noted that the New Jersey court specifically claimed personal jurisdiction in its decision.

"While both judgments involving an absent spouse may resemble each other by virtue of their having been uncontested, the difference between them is profound," he wrote, citing *Vanderbilt v. Vanderbilt*, 354 U.S. 416. "In personam jurisdiction acquired by a rendering state gives rise to a bilateral decree binding upon the parties in all respects notwithstanding that the action itself was not contested...the rendering state has plenary jurisdiction to decide every issue over which it

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# New Jersey Divorce Is Found Final

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has subject matter jurisdiction pursuant to its own laws."

Mr. Gartenstein cited the Court of Appeals case *O'Connell v. Corcoran*, 1 NY3d 179, as holding that Domestic Relations Law §§236B(2) and 236B(5) authorizing "proceedings to obtain a distribution of marital property following a foreign judgment of divorce" had to be read to apply solely to ex parte "divisible" divorces. And he urged the Legislature to clarify that distinction.

However, Mr. Hametz said the cases cited by the hearing officer could be distinguished from the current case in that Ms. Ottomanelli never appeared or answered in New Jersey, and was served in New York.

"The way I read the New Jersey law—[the court] did not have personal jurisdiction over Ms. Ottomanelli," said Mr. Hametz, adding that the dismissal of both claims has left questions unanswered.

"There's no way to distribute the money and the court never addresses the issue of child support...it makes no sense," he said.

The parties already have sold their former home, and Mr. Gartenstein advised them to divide the proceeds, without resorting to further litigation.

## New Jersey Law

According to the decision, New Jersey law allows a court hearing a divorce action to make an award of equitable distribution or of spousal maintenance. Thus, the New Jersey court could have ordered equitable distribution if either one of the parties had asked for it, said Richard L. Hause, a partner at Samuelson, Hause & Samuelson, in Garden City, who reviewed the opinion but was not involved in the case.

"The court had authority to issue the order, but if [the Ottomanellis]

didn't ask for it, they are precluded from doing so later on" in New Jersey, he said.

Mr. Hause added that Mr. Gartenstein's decision conforms with precedent requiring cases decided in foreign jurisdictions with personal jurisdiction over both parties to remain.

New York remains the only state in the nation not to have no-fault divorces, said Lloyd C. Rosen, an attorney with Wisselman, Harounian & Associates in Great Neck.

"Parties feel compelled to go somewhere else to get a divorce without resolving other issues," said Mr. Rosen, adding that such decisions can come back to haunt the litigants.

Mr. Hametz said his client had not decided whether to appeal.

Ms. Friedman said she does not plan to appeal the ruling, calling it favorable for her client.

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## VERDICTS & SETTLEMENTS

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