

# Avoiding a *Harrington* Hearing

by Jane R. Altman

How many times do we leave an adversary's office, a mediator's office, or the courthouse after hours or days of intensive settlement negotiations believing we have finally settled that old case only to learn the next morning that someone has reneged? Your client or his or her spouse has, overnight, reconsidered a basic term, thought of 17 more issues that are essential to his or her approval or simply has buyer's remorse. At the conclusion of the settlement negotiations, your client asked you: "Can I rely on this agreement?" Optimistically, you may have answered: "Sure. It's just a matter of drafting the property settlement agreement." Now you have to call and backpedal due to the 17 new contingencies raised by the spouse.

Can you avoid this all too familiar scenario? There's a very good chance you can, if you make sure the basic terms of the agreement are written or typed and signed or initialed by the parties *before* you leave the settlement conference. Having a memorandum of understanding (MOU) ready to revise on a computer or mark up by hand is usually a good idea. However, even a signed document may not avoid one party's attempt to repudiate the deal. The question addressed here is whether the repudiating party has the right to a hearing to enforce the terms of the agreement (commonly known as a *Harrington* hearing)<sup>1</sup> when there is no dispute that a written agreement was reached.

The first step in this process is to acknowledge that there are certain policy pronouncements from the Supreme Court. There is a strong public policy in the state of New

Jersey favoring the stability of settlement agreements, and presuming them to be valid and enforceable.

In *Nolan v. Lee Ho*,<sup>2</sup> the New Jersey Supreme Court stated that "a settlement agreement between parties to a lawsuit is a contract," and emphasized that "settlement of litigation ranks high in our public policy."<sup>3</sup>

In the absence of a showing of fraud, duress or unconscionability, interspousal agreements are not to be lightly disturbed.<sup>4</sup>

In *Peterson v. Peterson*,<sup>5</sup> the New Jersey Supreme Court reaffirmed the longstanding principle regarding the enforcement of settlement agreements, noting that:

agreements that are essentially consensual and voluntary in character are therefore entitled to considerable weight with respect to their validity and enforceability.<sup>6</sup>

The Appellate Division, in *Schiff v. Schiff*,<sup>7</sup> stated that

when a contract has been fairly procured and its enforcement will work no injustice or hardship, it is enforced almost as a matter of right. If it has been procured by fraud or falsehood, or its enforcement will be attended with great hardship or manifest injustice, the court will refuse its aid.<sup>8</sup>

The public policy reasons favoring the enforcement of settlement agreements were cogently set forth by the New Jersey Supreme Court as follows:

Voluntary agreements that address and reconcile conflicting interests of divorcing parties support our strong public policy favoring stability of arrangements in matrimonial matters.

The prominence and weight we accord such agreements reflect the importance attached to individual autonomy and freedom, enabling parties to order their personal lives consistently with their post-marital responsibilities. Thus, it "would be shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves." For these reasons, "fair and definitive arrangements arrived by mutual consent should not be unnecessarily or lightly disturbed." The very consensual and voluntary character of these agreements render them optimum solutions for abating marital discord, resolving matrimonial differences, reaching accommodations between divorced couples, and assuring stability in post-divorce relationship. (Internal citations omitted.)<sup>9</sup>

If you have a signed form of written agreement, whether handwritten or typed, which covers the basic issues in your case, even though it may not be the comprehensive form of marital settlement agreement with all the boilerplate we like to include, you have a very good chance of enforcing that agreement. The reneging party who is seeking to set aside the agreement has the burden of demonstrating extreme circumstances that would justify setting it aside through clear and convincing evidence.<sup>10</sup> This is, as it should be, a difficult burden to meet. A sufficient showing of fraud, duress or unconscionability will be the exception, not the rule, and clearly will be very fact sensitive.

What if the reneging party argues that he or she did not under-

stand when a hastily drawn agreement was signed or initialed? These arguments are unlikely to prevail if he or she was represented by an attorney at the time, and if the written or typed agreement was initialed or signed. After all, if it was not a binding agreement, there would be no reason for the parties to sign it. If the reneging party signed the agreement, or abided by any provision of it, he or she may be precluded from seeking to set aside the agreement by the doctrine of unclean hands.

The law of the state of New Jersey has long held that a court must not give relief to a wrongdoer in the transaction.<sup>11</sup> A court of equity is unlikely to permit the reneging party to set aside an agreement, and therefore benefit from his or her 'wrongdoing' if he or she voluntarily signed the agreement. This is particularly true if he or she subsequently acted in accordance with any part of the agreement, thereby complying with it. But, failure to comply with the agreement does not, by itself, support an argument that there was no binding agreement.

It is not uncommon when settlement negotiations appear to be progressing, but later fall apart, for one of the attorneys to threaten that he or she will seek a *Harrington* hearing to enforce the alleged verbal agreement that was reached. In the *Harrington* case, the parties had reached a verbal agreement on the essential terms of settlement but had not yet memorialized the agreement in a comprehensive marital settlement agreement. After a plenary hearing, the oral agreement was ultimately enforced, despite one party's attempt to repudiate the agreement.

There is arguably no need to waste time, money and resources on a *Harrington* hearing when there is a writing setting forth the basic settlement terms, which has been signed or initialed by the parties. In theory, it should not matter if the terms are scrawled on a

series of cocktail napkins, as long as they are readable, they cover the basic issues, and they are acknowledged as accepted by the signatures or initials of the parties. That is why it is always a good idea to memorialize the agreement in some form (such as a MOU) and have the parties sign it before leaving the settlement conference.

When arguing that a *Harrington* hearing is unnecessary, remind the court that not every factual dispute arising in the context of matrimonial proceedings triggers the need for a plenary hearing.<sup>12</sup>

An unreported 2007 Appellate Division decision held that a *Harrington* hearing was not required when one party tried to renege on a negotiated and signed MOU. In *Minervini v. Minervini*,<sup>13</sup> decided on March 20, 2007, the Appellate Division rejected the defendant-appellant husband's attempt to renege on the agreement contained in an MOU. The defendant husband argued that he had not conducted discovery and obtained an expert to properly value his own stock options, and he should not have agreed to the value in the signed memorandum. He sought a *Harrington* hearing, which was denied by the trial court.

The Appellate Division affirmed the trial court decision reviewing the applicable law. Emphasizing that the record revealed no evidence of any unconscionable conduct or material misrepresentation, the appellate court held that the trial judge correctly denied the request for a *Harrington* hearing.

A *Harrington* hearing, as well as the attendant costs, both monetary and emotional, is not an inevitable requirement to enforce a written agreement. Take the extra hour to write out the terms once they are agreed upon, and do not leave without getting both parties to sign and acknowledge their acceptance of the terms. You'll be glad you did. ■

#### ENDNOTES

1. *Harrington v. Harrington*,

- 281 N.J. Super. 39 (App. Div. 1995), *cert. denied*, 142 N.J. 455 (1995).
2. 120 N.J. 465, 472 (1990).
3. *Id.* at 472.
4. *Edgerton v. Edgerton*, 203 N.J. Super. 160, 171; *Avery v. Avery*, 209 N.J. Super. 155, 162 (App. Div. 1986); *Wertlake v. Wertlake*, 137 N.J. Super. 476 (App. Div. 1975).
5. 85 N.J. 638 (1981).
6. *Id.* at 642.
7. 116 N.J. Super. 546 (App. Div. 1971), *cert. denied*, 60 N.J. 139 (1972).
8. *Id.* at 560.
9. *Konzelman v. Konzelman*, 158 N.J. 185, 193-94 (1999) (citations omitted).
10. *Nolan v. Lee Ho*, 120 N.J. 465 (1990).
11. *Borough of Princeton v. Mercer County*, 169 N.J. 135, 158 (2001); *Bond v. Bond*; 36 N.J. Super. 16 (App. Div. 1955).
12. *Harrington* at 47; *Fineberg v. Fineberg*, 309 N.J. Super. 205 (App. Div. 1998).

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