

EXHIBIT 3
Comparison of Two New York Cases

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| Issue | <i>BDO Seidman v. Hirshberg</i> [93 N.Y.2d 382 (1999)] | <i>Scott, Stackrow & Co., C.P.A.'s, P.C. v. Skavina</i> [9 A.D.3d 805; cert. denied, 3 N.Y.3d 612 (2004)] |
| Clients | Agreement required reimbursement for loss if Hirshberg served any former client of BDO's Buffalo office. This was too broad because BDO did not use its own resources to create or develop the relationships with Hirshberg's personal clients or clients obtained through Hirshberg's own efforts. The court held that the agreement could be reformed to exclude these clients because there was no evidence of employer misconduct. | Agreement provided that Skavina, a staff accountant, could not solicit or perform for "any" client. This was too broad, as it was not limited to clients whom Skavina had served with significant assignments during employment. The court noted that <i>BDO</i> should have put the firm on notice that an overbroad definition of clients would be overreaching. The firm's "misconduct" prevented the agreement from being reformed to an enforceable agreement. |
| Effect on Employee and Public | Minimal. This was a reimbursement fee and not a practice ban. Hirshberg could still practice. He simply had to reimburse BDO's loss for providing services to BDO clients for 18 months. Buffalo is a large metropolitan area and had plenty of available accounting services. | Much harsher because this was a practice ban. Although the case was not decided on this issue, there was no provision for the accountant to opt out of the noncompete by paying for the business loss. |
| Exchange and Misconduct | No employer misconduct. Hirshberg signed the noncompete agreement as part of a promotion to manager. He acknowledged his position as a fiduciary and receipt of disclosures that gave him an advantage in attracting BDO clients. There was no evidence of employer misconduct in hiring or termination. | Employer overreached and exerted anticompetitive conduct. Skavina had to sign the agreement to retain employment when the firm merged, and annually thereafter. There was no increased responsibility, fiduciary relationship, or raise with signing the agreement each year. |