

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28240
O/prt

_____AD3d_____

Argued - May 7, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2009-06943

DECISION & ORDER

Jeffrey L. Rosenberg & Associates, LLC, appellant, v
Candid Litho Printing, Ltd., et al., respondents.

(Index No. 2782/09)

Jeffrey L. Rosenberg & Associates, LLC, Old Westbury, N.Y., for appellant.

Spizz & Cooper, LLP, Mineola, N.Y. (Harvey W. Spizz and Theresa M. McSweeney
of counsel), for respondents.

In an action to recover unpaid legal fees, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), dated June 30, 2009, as denied those branches of its motion which were for summary judgment on its first, second, and third causes of action, and dismissing the defendants' counterclaims.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The courts possess the traditional authority "to supervise the charging of fees for legal services under the courts' inherent statutory power to regulate the practice of law" (*Matter of First Natl. Bank of E. Islip v Brower*, 42 NY2d 471, 474; *see Gair v Peck*, 6 NY2d 97, *cert denied* 361 US 374; *Collier, Cohen, Crystal & Bock v MacNamara*, 237 AD2d 152; *Finkelstein v Kins*, 124 AD2d 92). In cases involving disputes between attorneys and clients over legal fees, as a matter of public policy, the attorneys have the burden of establishing that their compensation was fair and reasonable (*see Shaw v Manufacturers Hanover Trust Co.*, 68 NY2d 172, 176; *Matter of Bizar & Martin v U.S. Ice Cream Corp.*, 228 AD2d 588, 589; *Malamut v Doris L. Sassower, P.C.*, 171 AD2d

August 3, 2010

Page 1.

JEFFREY L. ROSENBERG & ASSOCIATES, LLC v
CANDID LITHO PRINTING, LTD.

780). In light of these considerations, and under the particular circumstances of this case, the plaintiff failed to establish its prima facie entitlement to judgment as a matter of law since it did not demonstrate the reasonableness of the fees it charged the defendants. Moreover, there is a triable issue of fact as to the amount the defendants actually paid to the plaintiff.

Accordingly, the Supreme Court properly denied those branches of the plaintiff's motion which were for summary judgment on its first, second, and third causes of action, and dismissing the defendants' counterclaims (*see Alvarez v Prospect Hosp.*, 68 NY2d 320; *Jacobson v Sassower*, 66 NY2d 991, 993; *O'Connor v Blodnick, Abramowitz & Blodnick*, 295 AD2d 586; *Law Off. of Howard M. File, Esq., P.C. v Ostashko*, 60 AD3d 643).

MASTRO, J.P., SANTUCCI, CHAMBERS and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court