

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

D32925
W/prt

_____AD3d_____

Submitted - October 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2010-09500

DECISION & ORDER

Galasso, Langione & Botter, LLP, etc., respondent,
v Anthony P. Galasso, et al., defendants;
Thomas F. Liotti, nonparty-appellant.
(Action No. 1)

Signature Bank, plaintiff, v Galasso, Langione
& Botter, et al., defendants.
(Action No. 2)

Galasso, Langione & Botter, LLP, respondent, et al.,
plaintiffs, v Signature Bank, et al., defendants;
Thomas F. Liotti, nonparty-appellant.
(Action No. 3)

Wendy Baron, et al., plaintiffs, v Anthony Galasso,
et al., defendants, Galasso, Langione & Botter, LLP,
respondent; Thomas F. Liotti, nonparty-appellant.
(Action No. 4)

(Index Nos. 10038/07, 14211/07, 19198/07, 1510/09)

Law Offices of Thomas F. Liotti, LLC, Garden City, N.Y. (Thomas F. Liotti pro se
of counsel), for nonparty-appellant.

November 15, 2011

Page 1.

GALASSO, LANGIONE & BOTTER, LLP v GALASSO
SIGNATURE BANK v GALASSO, LANGIONE & BOTTER
GALASSO, LANGIONE & BOTTER v SIGNATURE BANK
BARON v GALASSO

Mark E. Goidell, Garden City, N.Y., for respondent.

In related actions, inter alia, to recover damages for negligence, breach of contract, and defamation, nonparty Thomas F. Liotti appeals from an order of the Supreme Court, Nassau County (Warshawsky, J.), dated January 20, 2010, which granted the motion of Galasso, Langione & Botter, LLP, the plaintiff in Action No. 1, a plaintiff in Action No. 3, and a defendant in Action No. 4, to confirm the report of a referee dated September 30, 2009, recommending the imposition of a sanction upon him in the amount of \$6,553.75, and denied his cross motion to reject the report.

ORDERED that the order is affirmed, with costs.

Peter Galasso, a partner in the law firm Galasso, Langione & Botter, LLP (hereinafter GLB), represented Stephen Baron in his divorce. Baron designated GLB as his escrow agent in June 2004, and instructed it to hold almost \$5 million in an escrow account. Peter's brother, Anthony P. Galasso (hereinafter Anthony), was GLB's bookkeeper. In January 2007 Anthony confessed that he had stolen approximately \$4.4 million from the escrow account. Nonparty Thomas F. Liotti is a criminal defense attorney who represented Anthony in the criminal proceeding prosecuted against him in connection with the theft. Following Anthony's arraignment, Liotti made a statement to a reporter, which was published in Newsday, accusing the attorneys at GLB of stealing money from their clients' accounts. An action alleging defamation ensued (*see Galasso, Langione & Botter, LLP v Liotti*, 81 AD3d 880). Liotti moved to consolidate the defamation action against him with a commercial action in which Anthony was a defendant. In an order dated February 6, 2009, the Supreme Court denied the motion, and imposed sanctions on Liotti. This Court affirmed (*see Galasso, Langione & Botter, LLP v Galasso*, 81 AD3d 879).

In the order denying Liotti's motion to consolidate, the Supreme Court also referred the matter to a referee to hear and report on the issue of the amount of the appropriate award of an attorney's fee and costs against Liotti. After a hearing, the referee recommended that GLB was entitled to a total award in the sum of \$6,553.75. GLB moved to confirm the referee's report. Liotti cross-moved to reject the report. In an order dated January 20, 2010, the Supreme Court granted GLB's motion to confirm the report, and denied Liotti's cross motion. We affirm.

Although the court is entitled to reject the report of a referee and make new findings (*see CPLR 4403; Stein v American Mtge. Banking*, 216 AD2d 458), the report and recommendations of a referee should be confirmed if his or her findings are supported by the record (*see Sichel v Polak*, 36 AD3d 416; *Baker v Kohler*, 28 AD3d 375). The credibility determination of a referee's report are entitled to deference on appeal, since the referee had the opportunity to see and hear the witnesses (*see Contarino v North Shore Univ. Hosp.*, 13 AD3d 571; *Anonymous v Anonymous*, 289 AD2d 106, 107; *Slater v Links at N. Hills*, 262 AD2d 299). Further, "[t]he determination of a reasonable attorney's fee is generally left to the discretion of the Supreme Court, which is usually in the best position to determine the factors integral to determining reasonable fees" (*Utica Mut. Ins. Co. v Magwood Enters., Inc.*, 15 AD3d 471, 472).

November 15, 2011

Page 2.

GALASSO, LANGIONE & BOTTER, LLP v GALASSO
SIGNATURE BANK v GALASSO, LANGIONE & BOTTER
GALASSO, LANGIONE & BOTTER v SIGNATURE BANK
BARON v GALASSO

Here, the Supreme Court properly confirmed the referee's report. GLB's attorney testified that he had practiced law for 26 years, and usually charged \$375 per hour. Because of his close relationship to GLB, he only charged \$325 per hour to respond to Liotti's motion. According to the time records of GLB's attorney, which were entered into evidence, GLB's attorney spent 19.75 hours on the matter, resulting in a fee of \$6,418.75, plus disbursements in the sum of \$135, for a total of \$6,553.75. Liotti gave the referee no reason to question either the attorney's credibility, or the authenticity of the documents entered into evidence. Indeed, as the Supreme Court stated, Liotti's opposition to the motion to confirm was based on "an ad hominem attack on the Referee, which is totally inappropriate," and "comments on the qualifications of the Justices before whom this and the defamation matter are pending."

Liotti's remaining contentions are not properly before this Court.

RIVERA, J.P., FLORIO, DICKERSON and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court