SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Kathryn Jordan,

Plaintiff,

– against –

Bates Advertising Holdings, Inc., f/k/a AC&R Advertising, Inc. and Bates Advertising Holdings (USA), Inc.,

Defendant.

AMENDED DECISION/JUDGMENT

Index No. 118785/99

Attorneys Fees Hearing, Seq. 10 & Final Judgment

Rolando T. Acosta
Supreme Court Justice

On October 11, 2006, this Court denied plaintiff's motions for (Seq. No. 11) re-argument and upon re-argument, for an order vacating this Court's Decision and Judgment dated August 10, 2006, and (Seq. No. 12) for an order by this Court recusing itself from this matter. The Court, however, stated that it would sua sponte vacate the August 10, 2006 Decision and Judgment and substitute it with a new Decision and Judgment to correct a few technical errors.

The Court now vacates the August 10, 2006 Decision and Judgment and substitutes it with the following Decision and Judgment:

Plaintiff sued Bates Advertising Holdings for employment discrimination under both the New York State and New York City Human Rights Laws. She claimed that she was denied a position because of her gender and perceived disability, and that she was ultimately terminated because of the perceived disability. After a jury trial over a three week period,

the jury found that plaintiff had been terminated because she was perceived to be disabled and awarded her $2,000,000 in damages and an additional $500,000 in punitive damages. On February 7, 2006, this Court denied defendant's motion for judgment notwithstanding the verdict, new trial, or remittitur and ordered a hearing on plaintiff's motion for attorney's fees. An attorney's fee hearing was held on April 11, 2006, where plaintiff presented evidence by a few of the nine different attorneys who have represented her in the over ten-year course of her federal and state litigation.

The Court took testimony and exhibits on April 11th, but left the record open for the parties to submit additional affidavits. Plaintiff, however, took this is an opportunity to involve the Court with a deluge of faxes into her dispute with Lawrence Lebowitz, her trial counsel, which included dismissal of Lebowitz over an alleged breach of contract and for his tactical decisions at trial. Plaintiff also attempted to get the Court to reclassify a portion of the jury verdict of $2,000,000 for pain and suffering rather than economic damages as found by the jury.

In fact, prior to the April 11th hearing, the Court, by letter dated March 29, 2006, had instructed plaintiff "that all correspondence to the Court regarding this matter as well as with the [upcoming] April [11th] hearing cease and desist immediately. The Court is an independent and impartial fact finder in this matter and will not engage in back and forth correspondences with the parties regarding any matter that is pending before it." The Court also told plaintiff to "[p]lease cease attempting to get the Court involved in your dispute with

Lebowitz." As of the Court's March 29th letter, plaintiff had submitted four letters to the court by facsimile: March 19; two on March 20; and March 28. Notwithstanding the Court's admonition, plaintiff faxed a letter to the Court on April 5, 2006 regarding the upcoming hearing.

After the April 11th hearing, plaintiff faxed two letters to the Court on April 19, 2006. In response, the Court issued the following letter to plaintiff on April 19:

> I am in receipt of your April 19, 2006 letter to Mr. Lebowitz copied to the Court only and the letter addressed to the Court attaching Mr. Somer's Affirmation in Response to Subpoena Duces Tecum. Ms. Jordan, once again, it is inappropriate for you to attempt to drag the Court into your dispute with Mr. Lebowitz. I informed you of this by prior correspondence, at the conference the Court had with you and Mr. Lebowitz where you informed me that he no longer represents you, and on the record during the April 11, 2006 attorneys fees hearing. I also understand that you contacted my Clerk and made inappropriate comments regarding this matter.
>
> I am hereby **ORDERING** you to not contact the Court or its staff except for issues pending before the Court. And as to those issues, you **must** copy the defendants in this case. Secondly, the Court heard evidence at the April 11, 2006 attorneys fees hearing and I have 60 days to issue a decision on your entitlement to attorneys fees. I understand that you wanted to supplement the record with affirmations from attorneys who previously represented you. Your contact with the court must be limited to these submissions and nothing else. This restriction, of course, applies to all counsel and parties to this litigation.

Two days later, on April 21, 2006, plaintiff faxed a two page letter to the Court responding to the Court's April 19 letter. She followed that fax with nine others (April 21, 24, 25, 26, 29, 29, 29, and two on May 2) informing the Court, inter alia, of her efforts to obtain documentation supporting attorneys fees. One of the May 2 letters dealt with her complaints about Mr. Lebowitz. On May 5, plaintiff faxed two letters to the Court. One provided

additional information regarding her claim for attorneys fees and the second dealt with dissatisfaction with Lebowitz and her claim that the verdict does not compensate her for pain and suffering.[1] On May 12, plaintiff submitted another document in support of her attorneys fees application. A day later, on May 13, she faxed the Court a letter asking for a clarification of the Court's April 19th Order. According to plaintiff, the effect of the order "has been to stiffen all communication between Plaintiff and the Defendants and Your Honor, widening instead of leveling the playing field for Plaintiff as a pro se litigant." She went on to state that a recent call to this Part "would have been appropriately interpreted by Your Honor had it been handled more maturely or by your senior clerk." She also posited that she "believe[s] that there are jealousies that lie behind some of the "feedback" that Your Honor may be receiving, so I would respectfully petition that You Honor to consider this when evaluating any criticisms you might hear about me either from chambers, other attorneys, or even other jurist who failed to seized this opportunity."

On May 16, plaintiff faxed a seven page letter detailing her losses given Mr. Lebowitz's performance. She estimated these losses at between $4,941,000 and $15,382,000. Plaintiff followed that letter with two faxes dated May 18, 2006, seeking a

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1. Although in his proposed Jury Instructions, Lebowitz sought charges on Emotional Distress and Physical Consequences, PJI 2:284, Aggravation of Pre-Existing Injury, PJI 2:282, and Increased Susceptibility to Injury, PJI 2:283 (all three of which allow damages for suffering), for apparent tactical reasons he withdrew those requests at the charge conference and instead pursued his request for punitive damages, "Back Pay" and "Front Pay." See Court Exhibit 4; Trial Minutes at 783-84, 785-86, and 929-34.

status conference with the Court to finalize the attorneys fees issue. On May 19, she submitted a six page fax on the effect of stress on persons with multiple sclerosis. On that same date, the Court issued a letter to the litigants informing them that a decision on attorneys fees would soon be issued, and that a conference was not necessary at this time. The Court assured the parties that if a question should arise in the process of deciding the matter, the Court would ask for the parties' input. The Court also implored the parties "not to submit any further documents or letters regarding this issue to the Court."

Notwithstanding the Court's May 19th Order, plaintiff submitted faxes on May 20 and June 7, filed an Order to Show Cause seeking an order awarding her attorneys fees on June 13, which was made returnable on June 29, and submitted two additional faxes dated June 26. One of the June 26 letters dealt with her efforts to reclassify the damages award and the second complained about Mr. Lebowitz.

On June 29, 2006, the Court inquired of plaintiff as to the purpose of filing an Order to Show Cause for the same relief already pending before the Court. The Court also explained to plaintiff that it had 60 days to issue a ruling from the date of the final submission, and that her constant submissions were merely preventing it from issuing a decision. The Court reminded plaintiff that it had told her not to make any further submissions, but that she had ignored its order. It also reiterated that her difficulties with Mr. Lebowitz were not before the Court.

The Court also admonished plaintiff, "if you were an attorney I would have sanctioned

you already, I have not done so because I believe you are doing this out of lack of knowledge about how the process works." June 29, 2006 Minutes at 4. The Court also told plaintiff that "it understand[s] that your illness is debilitating and you want things to be done as expeditiously as possible. That's precisely why I am so baffled that after the last discussion that we had, that you would not let me expedite it. I just want you to know that you're working against yourself here; that I'm trying to get this thing done." June 29, 2006 Minutes at 11.

Although plaintiff acknowledged that Mr. Lebowitz has an interest in the judgment, she stated that her problem is "that he is not a party in this case; he is not the defendant; he's not the plaintiff; and he has no reason to be communicating with the Court. That is what I have a problem with." In response, the Court asked her whether by "communicating" did she mean "making the submissions?," to which she responded, "[l]ike setting up faxes, like coming in to talk to you, whatever it is he does, it's not right." The Court answered, "[y]ou're right, it would be inappropriate for Mr. Lebowitz to come in and talk to me. The Court would not permit that. That would be an ex parte communication. To the extent that he submits faxes in response - - that's why I don't want these faxes to be coming back and forth - - I don't want any additional communication with the Court period; zero communication until I render a decision. That's what I said the last time; that's what I am reiterating now. And by that I mean not a letter from your doctor or a proposal to submit a letter. . . I don't know how else to explain it. I don't want to hear from any of you until I

render a decision in this case." June 29, 2006 Minutes at 17-18.

Approximately three weeks later, on July 18, 2006, plaintiff faxed a letter to the Court accusing it of having ex parte communications with Mr. Lebowitz:

> It has been apparent from Your Honor's remarks during the June [29]th conference, and from the "Proposed Judgment" documents forwarded to the Court, that discussions about this critical subject have occurred without my knowledge, input and participation. Your Honor has entertained a proposed Judgment from my "former attorney", Mr. Lebowitz, who has no sanctioned role in this litigation, and whose recommendations are completely objectionable to me. It is also clear that Your Honor has accepted these recommendations and reached a despositive conclusion based on the statements you made at the June [29]th conference. Notwithstanding Your Honor's rationalization that Mr. Lebowitz's proposal was "more encompassing" than mine, it was not proper for Mr. Lebowitz to have submitted any proposal to either you or my adversary.

In the second paragraph of the letter, she complained that the proposed judgments by Mr. Lebowitz and the defense did not reclassify the damages. She went on to state that "Your Honor's remark at the last conference on this issue, that "the Jury was not directed on this [long term disability] (LTD) issue, was highly suggestive of a conclusion based on input from the attorneys as well. As your honor is aware I have spent thousands of dollars seeking expert advice on the tax issues related to this award. You dismissed my request to brief this issue and have a tax expert testify before you. Instead, you once again sought the opinion of Mr. Lebowitz." She then went on to further accuse the Court of ex parte communications:

> At the April 12th conference you agreed to hold a conference on the issue of the Judgment, but at the last conference June [29]th you indicated that you felt this was not necessary. It is now apparent why. You have been conducting informal discussions with the defendants and Mr. Lebowitz on this issue. I have also become aware of a plan afoot to [bifurcate] the Judgment so that Mr. Lebowitz can get paid

while I, the seriously ill Plaintiff in this matter, would be left with out relief pending the threatened appeal.

This scheme is not surprising, given everything that has transpired during this litigation, but I would like to remind everyone that I have the option of vetoing anything proposed by the attorneys and to appeal anything ordered by this Court. It is extremely unlikely that the First Department would view such a scheme with favor.

There is nothing "emotional" about any of my requests or communications to you. Everything I have sent you has been necessitated by your actions during and after the April 3rd "conference", the false accusation you made about me in your subsequent letter, and the fact that you have continued to encourage an ex parte dialogue with my "former attorney" Mr. Lebowitz, and between Mr. Lebowitz and the defendants, over my strong objections. I have exercised great restraint while this shameful charade has transpired and while you looked the other way when I was subjected to gender biased remarks and disparaging exclusionary behavior by the attorneys in this matter.

I have only one request [at] this point. If you Honor is so beleaguered by your caseload that you cannot bring this case to Judgment by the end of the month, and if you cannot refrain from continuing a dialogue with Mr. Lebowitz while this litigation is pending, and if you cannot afford me the respect and rights that I am due, then I would petition you to transfer this case to another judge on the basis of administrative convenience.

As far as the Judgment, since you have threatened "sanctions" if I communicate my positions and objections to you, instead of holding a conference so we could discuss this critical issue, I really have no choice now but to wait for you to enter Judgment so that I can make my concerns known to the First Department.

Plaintiff followed this scathing letter with a letter dated August 3, 2006, where she proposed language for the Court's judgment.

Attorneys Fees Analysis

Pursuant to the New York City Human Rights Law, the court in its discretion "may award the prevailing party cost and reasonable attorneys fees." Admin. Code § 8-502(f). A

plaintiff may be considered a prevailing party "for attorneys fees purposes if she succeeds on any significant issue in litigation which achieves some of the benefit the [party] sought in bringing the suit." Hensley v. Eckert, 461 U.S. 424, 433 (1983), quoting Nadeau v. Helgemoe, 581 F.2d 275, 278-79 (1st Cir. 1978). Once this threshold is met, it remains for the court to determine what fee is reasonable. Id.; McGrath v. Toys R Us, 3 N.Y.3d 421, 429-30 (2004).

Citing Hensley, the Court of Appeals stated that in determining a reasonable award, the courts must make a "discretionary inquiry that takes into account a multitude of facts, although 'the most critical factor is the degree of success obtained.'" McGrath v. Toys R Us, 3 N.Y.3d at 429. The other factors are the time and labor required; the novelty and difficulty of the questions; the skill required to perform the legal services properly; the preclusion of other legal work resulting from the acceptance of this case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the experience, reputation and ability of the attorneys; the "undesirability" of the case; the nature and length of the professional relationship with the client; and awards in similar cases. Id. f.n. 1.

"[W]hen a plaintiff obtains what amounts to complete relief – plaintiff is usually entitled to an award that compensates counsel for the time reasonably expended in the lawsuit. . . . Commonly referred to as the 'lodestar' method, the amount of the award is

calculated by multiplying the number of hours reasonably expended by a reasonable hourly rate, a procedure that subsumes many of the factors" Id at 429-30, citing Hensley at 434. The Court of Appeals noted, however, where a plaintiff obtains only partial success, the procedure for assessing a reasonable counsel fee award is more complex:

> The inquiry is not answered merely by applying the lodestar formula because, if plaintiff "has achieved only partial or limited success," an award based solely on the lodestar figure may be excessive (id. at 436). Emphasizing that calculation of an appropriate fee award is a discretionary procedure best left in the hands of trial courts who have a "superior understanding of the litigation," the Court noted that the trial court "should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained" (id. at 437). If plaintiff has attained only partial success, the award may be adjusted accordingly.

Id. at 430.

Succeeding on only one legal theory, however, does not necessarily make it a partial victory. As the Supreme Court noted in Hensley, in some cases, "plaintiff's claim for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divided the hours expended on a claim-by-claim basis. Such a lawsuit cannot be seen as a series of discrete claims. Instead the [court] should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on th litigation." Hensley v. Eckert, 461 U.S. at 435. "[T]he fee should not be reduced simply because the plaintiff failed to prevail on every contention raised in the law suit. . . . The result is what matters." Id. (citation omitted).

In this case, not only was Jordan the prevailing party, but in being awarded damages

in the amount of $2,500,000, she obtained complete relief. Moreover, the fact that the jury found in Jordan's favor in only one of the three causes of action is of no moment inasmuch as they all dealt with a common core of facts, and at least two of the legal theories were based on perceived disability. Indeed, counsel relied on virtually the same facts in his attempt to establish that Jordan was denied a position because of her gender and perceived disability (the first two causes of action submitted to the jury, which were rejected) that he used to establish that she was ultimately terminated because of a perceived disability (the third cause of action, which she won on). Accordingly, this Court will determine a reasonable fee using the lodestar method, taking into consideration the prevailing hourly fee for lawyers who practice in this area. In Bell v. Helmsley, 2003 WL 21057630 (Sup. Ct. N.Y. Co. 2003), the court surveyed cases involving attorneys' fees wards in New York County and concluded that the going rate for partners in this area of law ranged from $250 to $375 per hour and $180 to $200 for associates. Given that the Bell survey is at least three years old and the complex nature of this case, where trial counsel was forced to rely on depositions and discovery that was conducted by someone else years prior to trial, this Court will compensate trial counsel, a partner at Zelman, Rothermel & Dichter, LLP (KZRD) at $450 per hour and his associate at $300 per hour.

At the attorneys fees hearing, trial counsel's time sheets established and defendants concede, that KZRD generated fees and costs in the amount of $137,875.71 from August 2004 through April 30, 2005. In addition, KZRD generated additional fees and expenses

in the amount of $49,109.51 from May 6, 2005 through June 27, 2005. This figure was arrived in the following manner: Lebowitz billed 80 hours at $450/hr and an associate billed 39.6 at $300/hr for a total of $47,880.00 plus $1,229.51 in expenses. KZRD also paid $2,592 of the $4,592 in court reporter fees and $15,833 of Dr. Crawford's $18,433 fee for his economic study. The balance of the court reporter fee and Dr. David L.Crawford's fee was paid by plaintiff; Dr. Crawford had prepared a report on economic damages and testified at trial as to that issue. Thus in total, plaintiff incurred $210,010.22 in attorneys fees and expenses from August 2004 to the present.[2]

From April 2000 to September 2003, plaintiff was represented by Gangemi, Mango & Iacoviello, LLP. In a post-hearing affirmation by Salvatore G. Gangemi, billed plaintiff $42,956 (214.78 hours at $200 an hour) plus an additional $3,712.49 for expenses, for a total of $46,668.49.

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2. Plaintiff's retainer agreement with KZRD provided that plaintiff would pay the firm up to $25,000 in legal fees and that she would bear the expenses. KZRD, in turn, would receive 1/3 of the gross recovery and plaintiff would get credit against the recovery for the $25,000. In addition, "any award that this Court makes as a result of this hearing now will also be a credit against that third. So by way of example, if the Court gave us $100,000 and ultimately it was paid to us by the defendants, you'd get a credit of that $100,000 against the one-third of the recovery." Hearing Minutes at 57-58. "In addition, I believe you paid us 15,000, not 25,000; so you would get an additional $15,000 credit against your one-third for that." Hearing Minutes at 58.

Lebowitz also testified that "[w]e agreed that we would make an application for attorneys fees, and we also agreed that we would put in an application for you for any fees which you expended prior to you coming to Klein Zelman. . . . [A]ny fees you expended prior to Klein Zelman, those would be yours." Hearing Minutes at 59.

Defendants argue that this total should be reduced by half because much of it was duplicative of the work done by KZRD or related to the federal case. There is no indication in the record that the work was duplicative, and except for one conversation with plaintiff where Gangemi spent time analyzing and speaking to Jordan about the opinion of the Second Circuit denying the appeal of her federal discrimination claim, the time billed related to the present action. Moreover, any lawyer would have spent time discussing the Second Circuit decision with Jordan inasmuch as the decision could impact the way to proceed in state court. Accordingly, Jordan is awarded the $46,668.49 billed by Gangemi.

By post-hearing affirmation, Lloyd Somer, Esq., of the Law Offices of Lloyd Somer, affirmed that he represented plaintiff from January 20, 1998 to September 1, 1999 for a total of 185.07 hours at $250 per hour. Only three hours on September 1, 1999, however, dealt with the present action. The remaining 182.07 hours represent work done on plaintiff's failed federal court claim. Inasmuch as plaintiff was not the prevailing party in the federal case, she can not be awarded attorneys fees for that action. And although Jordan claims that the bulk of the discovery obtained in the federal case was used to successfully litigate the current action, awarding her attorneys fees for the gathering of that discovery evidence would in essence be awarding her fees for a failed attempt, which this Court may not do. Indeed, according to Hensley, only a "prevailing party" may be awarded attorneys' fees, and plaintiff has failed to cite any authority for her position. Accordingly, plaintiff is awarded $750 (3 hours times $250) for Somer's legal representation.

Last, Jordan seeks attorneys' fees for Martin Silberman, Scott Horn, Robert Ottinger, Lisa Lipman, Gary Phelan, and David Fish. She, however, was unable to establish either at the hearing or by post-hearing affirmations, her claim with respect to these attorneys. Accordingly, no attorneys fees will be awarded for any services provided by these attorneys.

Plaintiff's Contemptuous Behavior

Pursuant to 22 NYCRR 130-1.1(a), "[i]n addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart"(emphasis added). Conduct is frivolous if "it is undertaken primarily to . . . harass or maliciously injure another" or "it asserts material factual statements that are false." 22 NYCRR 130-1.1(c)(2)&(3). "Payments of sanctions by a party who is not an attorney shall be deposited with the Clerk of the Court for transmittal to the Commissioner of Taxation and Finance." 22 NYCRR 130-1.3; see also Martin-Trigona v. Capital Cities/ABC Inc., 145 Misc. 2d 405 (Sup. Ct, N.Y. Co. 1989). The imposition of sanctions may be made "upon the court's own initiative, after a reasonable opportunity to be heard." 22 NYCRR 130-1.1(d).

Here, the Court feels that the imposition of sanctions against plaintiff is warranted for her conduct, especially her letter to the Court dated July 18, 2006, and her repeated refusal to abide by this Court's orders. Although plaintiff has been proceeding pro se in the attorneys fees portion of this litigation, the Court can no longer ignore her conduct nor

excuse it by plaintiff's personal circumstances or her frustrating ten-year battle with defendants. She is a sophisticated business women who must comport herself in a professional manner, which excludes contumacious conduct, including noncompliance with this Court's orders. Compliance with court orders is at the heart of our system of justice. Her latest diatribe, defiantly ignoring the Court's warning of sanctions, constrains the Court to act. This Court simply cannot countenance plaintiff's disruptive behavior and baseless allegations challenging the Court's integrity. A hearing is not required in this case inasmuch as plaintiff has already explained to the Court why she has engaged in her conduct, namely her baseless belief that the Court is having ex parte communications with the attorneys in an effort to deprive her of her fair share of the verdict. In re Estate of Nicholas Marsh, 207 A.D.2d 749 (1st Dept. 1994)(petitioner was provided adequate notice and opportunity to be heard, despite the absence of a formal evidentiary hearing, where court had apprised her of its intention to consider costs and sanctions and petitioner submitted an affidavit in opposition); Jalor Color Graphics, Inc. v. Universal Advertising Systems, Inc., 191 Misc. 2d 653 (App. Term, First Dept. 2002), aff'd 2. A.D.3d 165 (1st Dept. 2003)("court was not required to hold a formal evidentiary hearing before finding defense counsel's conduct frivolous . . . since neither defendant nor its counsel submitted any meaningful response to the serious allegations of attorney misconduct specified by plaintiff").

Based on the foregoing, it is

ORDERED that the Decision and Judgement of this Court dated August 10, 2006 is

vacated and substituted with the present Decision, Order and Judgment; and it is further

ORDERED that sanctions are assessed against Plaintiff Kathryn Jordan in the amount of $5,000.00 to be deposited by plaintiff with the Clerk of the Court for transmittal to the Commissioner of Taxation and Finance; and it is further

ORDERED, ADJUDGED and DECREED, that Plaintiff Kathryn Jordan, whose address is 222 Lake View Avenue, West Palm Beach, Florida 33401, have judgment against and shall recover of Defendants Bates Advertising Holdings, Inc., f/k/a AC&R Advertising Inc., whose address is Bates Advertising USA, Inc., c/o WPP Group USA, Inc., 125 Park Avenue, New York, New York, the sum of Two Million Dollars ($2,000,000.00) as compensatory damages and Five Hundred Thousand Dollars ($500,000.00) as punitive damages, both with interest thereon at the rate of nine percent (9%) per annum from April 21, 2005, as calculated by the Clerk of the Court; and it is further

ORDERED, ADJUDGED and DECREED, that Plaintiff Kathryn Jordan, whose address is 222 Lake View Avenue, West Palm Beach, Florida 33401, have judgment against and shall recover of Defendants Bates Advertising Holdings, Inc., f/k/a AC&R Advertising Inc., whose address is Bates Advertising USA, Inc., c/o WPP Group USA, Inc., 125 Park Avenue, New York, New York, the sum of Fifty-Two Thousand and Eighteen Dollars and Forty-nine Cents ($52,018.49) as reasonable legal fees, costs and disbursements with interest thereon at the rate of nine percent (9%) per annum from April 11, 2006 to be calculated by the Clerk of the Court; and it is further

ORDERED, ADJUDGED and DECREED, that Plaintiff Kathryn Jordan, whose address is 222 Lake View Avenue, West Palm Beach, Florida 33401, and Laurence J. Lebowitz, Esq. and Klein, Zelman, Rothermel & Dichter, L.L.P. whose address is 485 Madison Avenue, 15th Floor, New York 10022 jointly shall have judgment against and shall recover of the Defendants Bates Advertising Holdings, Inc., f/k/a AC&R Advertising Inc., whose address is Bates Advertising USA, Inc., c/o WPP Group USA, Inc., 125 Park Avenue, New York, New York, the sum of Two Hundred and Five Thousand Four Hundred and Ten Dollars and Twenty-two Cents ($205,410.22),[3] as legal fees, costs and disbursements with interest thereon at the rate of nine percent (9%) per annum from April 11, 2006 to be calculated by the Clerk of the Court; and it is further

ORDERED, ADJUDGED and DECREED, that Defendants Bates Advertising USA, Inc., whose address is c/o WPP Group, 125 Park Avenue, New York have judgment against the Plaintiff, Kathryn Jordan, whose address is 222 Lakeview Road, West Palm Beach, Florida 33401, dismissing the complaint on the merits as against it.

Dated: November 20, 2006

ENTER SO ORDERED

Rolando T. Acosta, J.S.C.
ROLANDO T. ACOSTA
J.S.C.

3. This amount was arrived at by subtracting $4,600 from the $210,010.22 in attorneys fees and expenses that plaintiff incurred from August 2004 to the present. Lebowitz testified at the hearing that plaintiff paid $2,000 for transcripts and $2,600 of Dr. Crawford's fee. Hearing Minutes at 41-42. Any issues that plaintiff has with her retainer agreement with KZRD and Mr. Lebowitz are not before this Court.

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