

**Levy v Richstone**

2008 NY Slip Op 31198(U)

April 15, 2008

Supreme Court, New York County

Docket Number: 0112348/2007

Judge: Doris Ling-Cohan

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SCANNED ON 4/24/2008  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Doris Ling-Cohan  
*. Justice*

PART 36

Index Number : 112348/2007  
**LEVY, ALBERT**  
VS.  
**RICHSTONE, GEOFFREY**  
SEQUENCE NUMBER : 001  
DISMISS ACTION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for dismiss/amend

PAPERS NUMBERED

1, 2  
5

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

3, 4

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *& cross-motion are decided*  
*in accordance with the attached memorandum decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**  
APR 24 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

HON. DORIS LING-COHAN

Dated: 4-15-08

*[Signature]*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 36

----- X  
ALBERT LEVY,

Plaintiff,

Index No. 112348/07

- against -

GEOFFREY RICHSTONE, *et al.*,

Defendants.

Motion Seq. No.: 001

**FILED**  
APR 24 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

----- X  
**DORIS LING-COHAN, J.:**

**BACKGROUND**

Plaintiff Albert Levy (Levy) seeks to enforce an employment agreement with Hercules Diagnostic Corporation (Hercules Corp.) and Hercules, P.C., (collectively Hercules Entities) corporations which were allegedly created by defendants Geoffrey Richstone (Richstone) and Tatiana Mamaeva, M.D.

The complaint alleges a classic fee-splitting arrangement between plaintiff and some, or all of the defendants. It further alleges a rather nefarious history to the creation of the Hercules Entities, and the conduct of their businesses. Richstone is alleged to have been a doctor until his license was revoked in 1999, after which he was incarcerated for a period of time. Dr. Tatiana Mamaeva is alleged to have been a licensed physician during all relevant times alleged in the complaint, lending her name to the business so that others, not licensed doctors, could perform medical services. Defendant Irwin M. Echtman (Echtman) is alleged to have been Richstone's lawyer, and, *inter alia*, to have been responsible for disbursing Richstone's money for the operation of the Hercules Entities.

Specifically, Levy claims that he was hired to provide management services for

Hercules Corp., and that checks were issued from attorney Echtman's escrow account in order to finance the start-up of the Hercules Entities. Levy also alleges that Dr. Mamaeva was a "dummy doc," named solely for the purpose of legitimizing Hercules, P.C., which allegedly engaged in a pattern of insurance fraud, fraudulent billing, billing for services not rendered, and billing out of network for covered patients in order to generate extraordinary income; Dr. Mamaeva never treated any patients at Hercules, P.C. The complaint further alleges that defendant Richstone was not licensed to practice medicine or to have any ownership interest in a medical clinic or professional corporation during the entire period in question. Nevertheless, Levy claims Richstone practiced medicine without a license and the vast majority of Hercules, P.C.'s income was diverted to Richstone, from 2004 to the present. Richstone is alleged to have maintained a "hands-on" relationship with Hercules, P.C., to have managed and directed its operations, and to have continued practicing medicine, despite the revocation of his license. Plaintiff further alleges that Richstone engaged in illegal distribution of controlled substances, signing Dr. Mamaeva's name to prescriptions. It is alleged that attorney Ectman was aware of the insurance fraud allegedly being perpetrated by Richstone through his use of Hercules P.C. and R. Mamaeva.

Plaintiff's employment agreement with Hercules Corp. allegedly provides that Levy would be paid \$1,000 per week and 20% of the profits of Hercules Corp., and that at the death of the principal, Richstone, Levy would become the owner of 80% of Hercules Corp.

Levy claims that, as part of his involvement with Hercules Corp. and Hercules,

P.C., he was forced to sign personal guarantees for the payment of a commercial lease, for equipment leases, and for a loan taken on behalf of Hercules Corp. Levy further alleges that he recently resigned his position with the Hercules Entities, but that he has not been paid for 11 weeks of his employment.

In five causes of action, Levy seeks a declaratory judgment relieving him of any personal liability for the guarantees signed by him; indemnification from the individual defendants for all current and future costs incurred as a result of his involvement with the Hercules Entities; payment of his outstanding salary in the amount of \$11,000; and a judgment against Echtman and Richstone for negligent infliction of emotional distress, fraud and intentional infliction of emotional distress.

Echtman now moves, *inter alia*, to dismiss the complaint. Plaintiff Levy has cross-moved to amend the complaint.

### **PROPOSED AMENDED COMPLAINT**

Plaintiff's proposed amended complaint reiterates the facts alleged in the original complaint, with material and relevant additional information. For example, the amended pleading alleges that Echtman informed Levy that Levy would be working for a management company that had been set up to provide office space and services for the medical professional corporation.

The amended pleading also alleges many serious charges against attorney Echtman including that, in order to obtain a lease for the Hercules Entities, Echtman had plaintiff Levy falsely attest that he was the sole general partner of yet another corporation, in whose name defendants obtained commercial leases. It is further alleged that another

[\* 5 ]

document drafted by attorney Echtman in Levy's name was deliberately designed to mislead prison authorities into believing that defendant Richstone had a commitment for employment after his release from prison. Levy claims that until Richstone's release from prison, he acted upon attorney Echtman's instructions, and in reliance on his statements, that Echtman was aware of the insurance fraud and further criminal activity engaged in by Richstone, and knowingly and intentionally misled Levy for Richstone's benefit, and in order to generate legal fees. Levy adds that the profits from Hercules Corp. consisted solely of management fees paid, or diverted to it by Hercules, P.C.

In plaintiff's amended complaint, Levy repeats the requests for relief from the original complaint, and adds additional claims for fraud, negligent misrepresentation and negligence.

Documents supporting Levy's newer allegations are annexed as exhibits to the moving papers. Included are two letters dated July 15, 2004, under Levy's signature, one of which states that he is the general partner of the commercial lessee; and the other of which is addressed to a correctional officer, vouching for employment for Richstone upon his release from prison, as an assistant manager at a medical office.

"[L]eave to amend a pleading should be freely granted, but the party seeking amendment has the burden of establishing the merit of the proposal." CPLR 3025 (b); *Manhattan Real Estate Equities Group LLC v Pine Equity N.Y., Inc.*, 27 AD3d 323 (1<sup>st</sup> Dept 2006). Wide latitude and great discretion are afforded to a court in determining whether to permit an amendment. *Murray v City of New York*, 43 NY2d 400 (1977).

Paragraph 16 of the proposed amended complaint states:

[\*6]

On Richstone's instructions Plaintiff contacted Echtman. Echtman spoke to Plaintiff at length about the new business, a medical "P.C." or professional corporation, and Echtman told Plaintiff that Plaintiff could be one of the owners of the business. Echtman also informed Plaintiff that he would be working through a separate management company set up to provide office space and services for the P.C.

Other allegations in the complaint state that Plaintiff was to inherit an 80% interest in Hercules, P.C., a medical corporation. Plaintiff claims to have been damaged by becoming involved in a fraudulent corporation, which may expose him to personal civil and criminal liability.

As previously indicated, the complaint alleges a classic fee-splitting arrangement between plaintiff and some or all of the defendants. Plaintiff attempts to mask the true nature of the arrangement as fee for services employment, characterized by the agreement to pay Levy 20% of the profits of Hercules Corp., with a promise to pay the remaining 80% to Levy upon the death of the corporate principal. Although such payments were only to be paid to Levy from profits from the management corporation, all of the management corporation's fees were alleged to have been paid by the medical corporation. This arrangement fails to circumvent the fee-splitting prohibition contained in Education Law § 6509-a. *See Gorman v Grodensky*, 130 Misc 2d 837 (Sup Ct, NY County 1985). It is irrelevant that Levy was called upon to perform, and seeks to be paid wages for, work that was primarily of a business nature, rather than medical services. *Id.* at 840. The arrangement, which violated the Education Law's fee-splitting prohibition, also violates public policy, and is unenforceable. The court will not sever the portions of

Levy's employment agreement which may have been enforceable, standing alone, where the agreement, as a whole, is unenforceable.

"[A] party to an illegal contract ... cannot ask a court of law to help him carry out his illegal object, nor can such a person plead or prove in any court a case in which he, as a basis for his claim, must show forth his illegal purpose". *Prins v Itkowitz & Gottlieb, P.C.*, 279 AD2d 274, 275 (1<sup>st</sup> Dept 2001)(internal quotation marks and citations omitted). The statutory definition of professional misconduct by doctors includes fee-splitting arrangements. New York Education Law § 6509-a.

Levy's admissions, in the complaint, that he signed off on false correspondence in furtherance of the defendants' schemes cannot be sanitized by allegations of misconduct by attorney Echtman and the other defendants. As admitted in the original complaint: "[n]otwithstanding the incorporation documents, it was clear to the plaintiff that Hercules P.C. was owned by Richstone and that Mamaeva was a figurehead, a "dummydoc" named solely for the purpose of legitimizing Hercules P.C." [¶16, Original Complaint, attached as Exh. A to Plaintiff's Notice of Motion, emphasis supplied]. Levy cannot admit that he knowingly permitted false documents to be issued under his signature in furtherance of an illegal gambit, while at the same time plead claims based on his own reasonable reliance on Echtman's professional license and advice. Levy does not claim that he was either blind, illiterate, or ignorant of the language, and thus must bear the consequences of signing documents which he knew were false when he signed them. *See Federal Sav. and Loan Ins. Corp. v Dokkim Ltd.*, 142 AD2d 548, 549 (2<sup>nd</sup> Dept 1988).

While Echtman is not without blame based on the claimed facts, "[t]hat the

defendant may profit from the court's refusal to intervene is irrelevant." *Id.* The court will leave all of the parties to an illegal agreement, both plaintiff and defendant, "where their own acts have placed them'." *Id.* (citation omitted). In light of this hands-off policy, the defendant Echtman's motion to dismiss the complaint against him is granted. Further, based upon the above, the court, *sua sponte*, directs that the entire action be dismissed. Plaintiff's cross motion to amend the complaint is denied, as moot.

In light of the serious allegations made by plaintiff against attorney Echtman, a copy of the pleadings in this action and this decision, will be forwarded to the Departmental Disciplinary Committee for the First Department, for review. Given the serious allegations made by plaintiff against Dr. Tatiana Mamaeva, a copy of the pleadings and this decision will be forwarded to the NYS Department of Health: Office of Professional Conduct. Further, given the serious allegations as to the unlicensed practice of medicine, insurance fraud, and other illegalities, a copy of the pleadings and this decision will be sent to the NYS Attorney General's Office and the New York County District Attorney's Office.

The Court has considered the balance of defendant Echtman's contentions in the motion and find them to be without merit.

Accordingly, it is

ORDERED that the motion to dismiss the complaint against defendant Irwin M. Echtman, Esq. is granted, without costs; and it is further

ORDERED that the the entire complaint is dismissed, *sua sponte*, for the reasons stated herein; and it is further

ORDERED that the Court will send a copy of the complaint and the proposed amended complaint and a copy of this decision to the: (1) Disciplinary Committee of the First Judicial Department, 61 Broadway, 2<sup>nd</sup> Flr., NYC, NY 10006; (2) NYS Department of Health: Office of Professional Conduct, 433 River Street, Suite 303, Troy, New York 12180-2299; (3) NYS Attorney General's Office, 120 Broadway, New York, New York 10005; and (4) New York County District Attorney's Office, One Hogan Place, New York, New York, 10013; and it is further

ORDERED that the balance of defendant's motion is denied in all respects; and it is further

ORDERED that within 30 days of entry of this order, defendant Echtman shall serve a copy upon all parties with notice of entry.

**Dated: April 15, 2008**



Hon. Doris Ling-Cohan, J.S.C.  
**DORIS LING-COHAN**

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**FILED**  
 APR 24 2008  
 COUNTY CLERK'S OFFICE  
 NEW YORK