

Law Offs. of Charles D. Hellman v Genova

2009 NY Slip Op 32236(U)

September 25, 2009

Supreme Court, New York County

Docket Number: 104156/2008

Judge: Lancelot B. Hewitt

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART 81R

Index Number : 104156/2008

HELLMAN, CHARLES D.

INDEX NO. _____

vs

GENOVA, JOSEPH JR.

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

HEAR AND DETERMINE

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

THIS REFERENCE IS DISPOSED OF IN ACCORDANCE WITH ACCOMPANYING ~~REPORT~~ DETERMINATION

FILED
SEP 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

LANCELOT B. HEWITT
SPECIAL REFEREE

Dated: SEP 25 2009

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
LAW OFFICES OF CHARLES D. HELLMAN, and
CHARLES D. HELLMAN, ESQ.

Index No. 104156/08

Plaintiffs,

Decision and Order

-against-

JOSEPH GENOVA, JR., and CROCCHIOLO
PIZZERIA, INC.,

Defendants.

FILED
SEP 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

-----X
ORDER OF THE SUPREME COURT, NEW YORK COUNTY: IAS PART 81R

By decision and order of the Honorable Ira Gammerman, JHO, dated November 10, 2008, the issue of the amount of attorneys' fees¹ to be awarded plaintiffs, was referred for assignment to a Special Referee to hear and determine.

This matter was assigned to the undersigned Special Referee for a hearing on March 17, 2009, at which time only counsel for plaintiffs appeared. Appearances were as follows:

For Plaintiffs (*Pro se*),
Charles D. Hellman, Esq.
Law Offices of Charles D. Hellman
420 Lexington Avenue-Suite 2620
New York, N.Y. 10170

For Defendants (*Pro se-Default*),
Joseph Genova, Jr.
6 22nd Street
Jericho, New York 11753

Crocchiolo Pizzeria, Inc.
C/o Joseph Genova, Jr.
6 22nd Street
Jericho, New York 11753

An inquest on the referenced issue was held on March 17, 2009.

¹Including costs and expenses.

Testimony

(1) Plaintiffs called Charles Hellman, Esq. to testify on its behalf. Counsel testified that the defendants are former clients who he and his firm represented in two separate matters. According to counsel, he was orally retained by corporate defendant Crocchiolo Pizzeria, Inc. (“Crocchiolo”) sometime prior to June 2006 with respect to a landlord/tenant dispute and that he rendered legal services to Crocchiolo during the period June 1, 2006 through December 31, 2006.

(2) Counsel testified that during the course of his representation of Crocchiolo, he regularly sent the corporation invoices with regard to services rendered. Counsel testified that such invoices contained information about the work performed, the time spent, and the time billed for such work.² Counsel testified that as of March 5, 2007, Crocchiolo owed him the total sum of \$18,926.66, representing a balance owed.

(3) Counsel testified that he was retained by defendant Joseph Genova, Jr. (“Genova”) to perform certain legal services with regard to a proposed business transaction and that he performed such services during period July 1, 2006 through January 31, 2007. Counsel testified that he sent Genova an invoice for the legal services rendered, but that Genova failed to pay the monies owed despite demand.³ Counsel testified that as of March 15, 2007, Genova owed him the total sum of \$5,798.50.

(4) Counsel testified that he obtained his undergraduate degree from Cornell University and graduated from Rutgers University School of Law in 1981. Counsel testified that while at law

²Copies of invoices for the periods June 1 through June 30, 2006, July 1 through August 31, 2006, September 1 through September 30, 2006, and October 1 through December 31, 2006, were admitted into evidence as Plaintiff’s Exhibit#s 2-A, 2-B, 2-C, and 2-D, respectively.

³A copy of this invoice was admitted into evidence as Plaintiff’s Exhibit#4.

school, he served on Law Review-Notes and Comments. Counsel also testified that after graduation, he was admitted to practice law in the federal courts in July 1981. Counsel testified that practiced law at a small law firm and eventually became a partner. According to counsel, he was admitted to practice law in New Jersey in 1981, and in New York State in 1986. Counsel also testified he started his own law practice approximately 5 years ago. Counsel further testified that he concentrates real estate law and litigation, and that he billed the defendants in the instant matter at the rate of \$300 per hour.

Conclusions of Law

(1) The Special Referee's query is limited by the scope of the instant reference (*see, Marshall v. Pappas*, 143 AD2d 979 [2nd Dept. 1988]-[a referee is controlled by the order of reference, and must comply with direction therein]; *Volk v. Volk*, 254 AD2d 274 [2nd Dept. 1998]).

(2) In determining same, the referee is to consider the character, demeanor, and interest of the witness[s]. As the trier of fact, the referee determines whether or not the testimony is colored intentionally or unintentionally by those factors (*see, Lauria v. Lauria*, 187 AD2d 888, 889 [3rd Dept. 1992]). Although the witness may have an interest in the outcome of the litigation (*see, Coleman v. New York City Tr. Auth.*, 41 AD2d 812, *affirmed* 37 NY2d 137 [1975]), which is highly material to the assessment of the credibility of the witness (*see, 65 NY Jur., Witnesses*, 71, pp. 233-234), it does not mean that the witness has not told the truth (*see, Calandra v. Norwood*, 81 AD2d 650, 651 [2nd Dept. 1981]; *Dobro v. Village of Sloan*, 48 AD2d 243, 247-248, *appeal dismissed* 37 NY2d 804 [1975]-[it is widely accepted that whether a witness has a personal interest in the outcome of the litigation is a factor that must be identified in order to adequately perform the unique duty of weighing the evidence and assessing the credibility of witnesses]).

(3) As the trier of fact, the referee has the liberty to disbelieve the testimony of witnesses even though it is not otherwise impeached or contradicted (*see, Dominguez v. Manhattan & Bronx Surface Tr. Operating Auth.*, 46 NY2d 528, 534 [1979]-[issues of credibility are for the trier of fact]).

(4) The parties must establish by a fair preponderance of the credible evidence that the claim they are making is true (*see, Spangenberg v. Chaloupka*, 229 AD2d 482, 484 [2nd Dept. 1996]). The evidence must be relevant and have the tendency to make the existence of a fact more probable or less probable than it would be without the evidence (*see, Epstein & Wessenberger*, New York Evidence 1996/1997 Courtroom Manual 1996, Chap. 3-1, at 35; *People v. Lewis*, 69 NY2d 321, 325 [1987]-[evidence is relevant if it has any tendency in reason to prove any material fact]). Evidence which is “evenly balanced” is insufficient to overcome the burden of any applicable presumption (*see, Rinaldi & Sons, Inc. v. Wells Fargo Alarm Services, Inc.*, 39 NY2d 191, 192 [1976]).

(5) An award of attorneys’ fees must be supported by proof of billing and services rendered (*see, Cwikinski v. Cwikinski*, 115 Ad2d 951 [4th Dept. 1985]). In determining the appropriate attorneys’ fees, certain factors are to be considered by the court, such as time and labor required; the difficulty of the questions presented; the skill required to perform services, including the lawyer’s experience, ability and reputation; the amount involved; and the benefit resulting to the client from the services (*see, Matter of Freeman*, 34 NY2d 1, 9 [1974]; *Morgan & Finnegan v. Howe Chemical Co., Inc.*, 210 AD2d 62 [1st Dept. 1994]).

(6) A lawyer may of course perform certain “non-legal” work, such as clerical work or the filing of papers, but such work may command at a lesser rate. In other words, the dollar value of the

work is not enhanced just because a lawyer performs it (*see, In the Matter of Rahmey v. Blum*, 95 AD2d 294, 301 [2nd Dept. 1983]).

(7) The court may form an independent judgment from the facts and evidence before it, as to the nature and extent of the services rendered, make an appraisal of such services, and determine the reasonable value thereof (*see, Bankers Federal Sav. Bank FSB v. Off West Broadway Development*, 224 AD2d 376, 378 [1st Dept. 1996]).

Findings of Fact/Analysis

(1) I have considered all of the evidence submitted, and I find that plaintiffs have established, by a fair preponderance of the credible evidence, that they are entitled to an award in attorneys' fees against Crocchiolo in the total sum of \$18,926.66, and against Genova in the total sum of \$5,798.50 (*see, Spangenberg v. Chaloupka, supra*).

(2) Specifically, I find that counsel testified credibly that the defendants were former clients who he and his firm represented in two separated matters (*see, Lauria v. Lauria, supra*). I also find that counsel testified credibly as to his education and legal experiences, as to the legal services he performed on behalf of Crocchiolo during the period June 1, 2006 through December 31, 2006, and that he sent Crocchiolo invoices during the course of such representation (*.id*). I find that counsel also testified credibly that Crocchiolo currently owes plaintiffs the total sum \$18,926.66, representing a balance due (*.id*). I find that the documentary evidence corroborates counsel's testimony (*see, Cwikinski v. Cwikinski, supra; Matter of Freeman, supra*).

(3) I find that counsel further testified credibly that he and his firm performed legal services for Genova during the period July 1, 2006 through January 31, 2007, that he sent Genova invoices during the course of such representation, that Genova failed to pay the monies owed despite

demand (*id.*). I find that counsel also testified credibly that Genova currently owes plaintiffs the total sum of \$5,798.50 (*id.*). I find that the documentary evidence corroborates counsel's testimony (see, *Cwikinski v. Cwikinski, supra; Matter of Freeman, supra*).

Conclusion

Upon consideration of all the testimony presented, the considered credibility to be afforded the witness, and review of all exhibits admitted into evidence, I find that plaintiffs are entitled to an award of attorneys' fees against Crocchiolo in the total sum of \$18,926.66, and against Genova in the total sum of \$5,798.50.

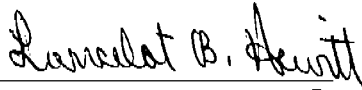
ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs Law Offices of Charles D. Hellman and Charles D. Hellman, Esq. and against defendant Crocchiolo Pizzeria, Inc. in the amount of \$18,926.66; and it is further;

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiffs Law Offices of Charles D. Hellman and Charles D. Hellman, Esq. and against defendant Joseph Genova, Jr. in the amount of \$5,798.50;

ORDERED that the interest on the judgment shall be calculated at the statutory rate, together with costs and disbursements, to be taxed by the Clerk upon submission on an appropriate bill of costs.

The foregoing constitute the decision and order of the court.

Date: September 25, 2009.


 Lancelot B. Hewitt,
 Special Referee

Date:

 Clerk of the Court

FILED
 SEP 29 2009
 COUNTY CLERK'S OFFICE
 NEW YORK