

**TAG 380, LLC v Estate of Ronson**

2010 NY Slip Op 31393(U)

June 2, 2010

Sup Ct, NY County

Docket Number: 101396/04

Judge: Marcy S. Friedman

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

PRESENT: **MARCY S. FRIEDMAN**  
*Justice*

PART 57

Index Number : 101396/2004  
**TAG 380 LLC**  
vs.  
**ESTATE OF HOWARD P. RONSON**  
SEQUENCE NUMBER : 014  
CONFIRM/REJECT REFEREE REPORT

INDEX NO. 101396/04  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 014  
MOTION CAL. NO. \_\_\_\_\_

In this motion to/for ~~to~~ confirm  
Referee's Report  
PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED  
1  
2  
3

Cross-Motion:  Yes  No

*Memo of Law MI-M4*

Upon the foregoing papers, It is ordered that this motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER.**

Dated: 6-2-10

*Marcy S. Friedman*  
**MARCY S. FRIEDMAN** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

*Slo*

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 57

PRESENT: Jon. Marcy S. Friedman, JSC

\_\_\_\_\_ x

TAG 380, LLC,

*Plaintiff,*

- against -

ESTATE OF HOWARD P. RONSON, et al.,

*Defendants.*

Index No.: 101396/04

DECISION/ORDER

\_\_\_\_\_ x

Defendant Estate of Howard Ronson, by its executors, Ivor Walter Freeman and Barclays Private Bank & Trust Limited (Ronson), defendants ComMet 380, Inc., RREEF Corp., and New York State Common Retirement Fund (collectively ComMet), defendants Frederick Barclay, David Barclay and Spartan Madison Corp. (collectively Barclay), and defendant Allen Silverman jointly move to confirm the Report of Special Referee Louis Crespo, dated September 2, 2009 and filed on September 3, 2009, awarding attorneys’ fees to each of the defendants. TAG 380, LLC (TAG) cross-moves to reject the Report. By decision and order dated July 14, 2005, this court granted defendants’ motions to dismiss TAG’s complaint pursuant to CPLR 3211(a)(7) and (1). In view of the “egregious frivolousness of the complaint,” the court awarded the maximum allowable sanction of \$10,000 against plaintiff and a \$10,000 sanction against its law firm, and referred the matter to a Special Referee for a hearing on “defendants’ actual expenses reasonably incurred and reasonable attorney’s fees in defending this action.”

The report of a referee should ordinarily be confirmed where the referee “clearly defined

the issues, resolved matters of credibility, and made findings substantially supported by the record.” (Rosenbloom v Gurary, 59 AD3d 274 [1<sup>st</sup> Dept 2009]; Halperin v Halperin, 282 AD2d 340 [1<sup>st</sup> Dept 2001].)

These standards are met here. The action, which sought \$115 million in damages, alleged that defendants had participated in an elaborate fraud spanning over a decade. The action was brought by an entity owned by Sheldon Solow, who had repeatedly been sanctioned for frivolous litigations, and was represented by well known (now disgraced) attorney Marc Dreier. The court concurs with the Referee’s finding that it was reasonable for defendants to expend substantial effort to achieve dismissal of the action at an early stage, in order to avoid costly discovery.

The court also finds that, after an extensive hearing, the Referee meticulously reviewed each defendant’s claim for legal fees, and cut fees where he concluded that they were duplicative, excessive, or for services not material to the defense. He accordingly reduced the fees sought by Chadbourne & Park LLP (Chadbourne) on behalf of Spartan by over 34 percent, reduced the fees sought by DLA Piper US LLP (DLA Piper) on behalf of Ronson by over 29 percent, and reduced the fees sought by Seward & Kissell on behalf of ComMet by over 25 percent. The Referee awarded in the full amount requested only the fees sought by Lazare Potter & Giacobas LLP, whose legal work on behalf of Silverman essentially piggybacked on that of the other defense counsel.

The Referee analyzed the fee award under the factors ordinarily considered in determining whether an award is reasonable. (See McGrath v Toys “R” Us, Inc., 3 NY3d 421, 429 n 1 [2004].) The Referee properly rejected plaintiff’s claim that the fees charged to Silverman set the standard for reasonableness. The court also credits defendants’ contention that

it was necessary for defendants to review the voluminous documents and to thoroughly research the transactional history that was the subject of the alleged protracted fraud, prior to drafting the motion to dismiss.

The court notes that it would have been preferable for the defense firms to have coordinated their work more closely so as to better avoid duplication of effort. However, each defendant was entitled to a separate defense by counsel of its own choosing. Plaintiff cannot be heard to complain that defendants chose to be represented by top tier firms which charged at top tier rates. As the Referee found, "shallow claims may require costly replies." (Report at 40, citing Brandt v Schal Assocs., Inc., 960 F2d 640, 648 [7<sup>th</sup> Cir 1992].)

All of the firms' fees were billed and thus actually incurred by their clients. Notwithstanding that fact, this court would be disinclined to approve fees of such magnitude if this were an award of legal fees to a prevailing party in a case involving a colorable claim. However, given the careful efforts of the Referee to parse the fee claim, and taking into account the unusual circumstances of this case – in particular, the highly vexatious nature of this litigation; the huge amount that plaintiff demanded in the complaint; and defendants' legitimate interest, in light of plaintiff's principal's litigation history, in resolving the case at an early stage -- the court concludes that the award should be approved in the amount recommended. The award will serve the primarily deterrent, but also compensatory, purposes of the order imposing sanctions. (See Brandt, 960 F2d at 646.)

The court rejects plaintiff's claim that the Referee erred in refusing to permit plaintiff's proposed expert to testify on the issue of reasonable fees. The court has considered plaintiff's remaining contentions and finds them to be without merit.

It is accordingly hereby ORDERED that defendants' motion is granted to the following extent: The Report of Special Referee Crespo, dated September 2, 2009 and filed on September 3, 2009, is confirmed; and it is further

ORDERED that plaintiff's cross-motion is denied.

Settle judgment for the amounts awarded by the Referee, attaching a copy of the "Conclusion" (page 79) of the Referee's Report.

This constitutes the decision and order of the court.

Dated: New York, New York  
June 2, 2010



MARCY FRIEDMAN, J.S.C.