Matter of Matza v Oshman, Helenstein & Matza
2011 NY Slip Op 30256(U)
February 1, 2011
Sup Ct, New York County
Docket Number: 117309/04
Judge: Carol R. Edmead
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SCANNED ON 2/7/2011

[* 1]

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

PRESENT: HON. CAROL EDMEAD PART 35

Index Number : 117309/2004

MATZA, MORRIS E.

vs

OSHMAN, HELFENSTEIN & MATZA

Sequence Number : 006

OTHER RELIEFS

INDEX NO. _____

MOTION DATE 12/17/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

FILED

FEB 07 2011

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the branch of petitioner's motion for an order addressing petitioner's specific objections to the accounting by respondent Matthew Oshman, Theodore Oshman and Hugh Helfenstein dated September 13, 2010, is granted to the extent that pursuant to CPLR 4317(b), the issue of the long accounting of the amounts due, if any, to the petitioner, is referred for assignment to Special Referee to hear and determine solely as to the following cases: Redlich, Tavormina, Rutman, Blake, Olivia and William; and it is further

ORDERED that, no later than the hearing date to be assigned, a copy of the long accounting and any formal objections shall be filed with the Special Referee to whom this long accounting is assigned; and it is further

ORDERED that counsel for (plaintiff or defendant) shall serve a copy of this order with notice of entry on the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date for the reference to a Special Referee; and it is further

ORDERED the movant shall move pursuant to CPLR 4403 within 30 days of receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that the branch of petitioner's motion for an order referring back to the Court certain cases which respondents refused to allow Special Referee Louis Crespo to hear and decide is denied; and it is further

ORDERED that the branch of the petitioner's motion for an order as to petitioner's objections to the Referee's use of "E-Law" reports in issuing his Decision and Order is denied.

This constitutes the Decision and Order of the Court

Dated: 2/1/11

J.S.C.

HON. CAROL EDMEAD

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

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 35

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In the matter of the Arbitration of
Certain Controversies Between

Index No. 117309/04

MORRIS E. MATZA,

Petitioner,

-and-

OSHMAN, HELENSTEIN & MATZA, OSHMAN & HELFENSTEIN, THEODORE OSHMAN, MATTHEW OSHAMAN, HUGH J. HELFENSTEIN, STUART D. SCHWARTZ AND CHARLES J. MIRASOLA,

Respondents.

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FILED

FEB 07 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. CAROL R. EDMEAD, J.S.C.

MEMORANDUM DECISION

Petitioner Morris E. Matza ("petitioner") seeks an order (a) as to petitioner's specific objections to the accounting by respondent Matthew Oshman, Theodore Oshman and Hugh Helfenstein ("respondents") dated September 13, 2010, (b) referring back to the Court certain cases which respondents refused to allow Special Referee Louis Crespo (the "Referee") to hear and decide, and (c) as to objections to the Referee's use of "E-Law" reports in issuing his Decision and Order (the "Order").

Factual Background[1]

Petitioner and respondents were partners in a law practice, Oshman, Helfenstein and Matza ("OH&M") pursuant to a partnership agreement dated December 22, 1992. When the partnership dissolved on December 31, 1995, a dispute arose over the amount of money to which petitioner was entitled. The parties arbitrated the dispute before the American Arbitration

[1] The Factual Background is taken in large part from the petitioner's papers and the Referee's Order.

Association (the "AAA"), and a Final Award dated March 6, 2000 awarded petitioner $40,959.44 plus $990 for certain administrative fees of the AAA. The arbitrator retained jurisdiction until all cases pending on December 31, 1995 had been resolved and payment made to petitioner in accordance with the Final Award. The arbitrator also directed respondents to deliver status reports to the AAA and petitioner for the cases pending on December 31, 1995 to which petitioner might be entitled to share in the legal fee.

Petitioner filed an Article 75 petition to vacate the Final Award. By Order dated November 21, 2000, the Court (Lehner, J.) dismissed the petition and confirmed the Award.

Thereafter, petitioner disputed the nature and extent of respondents' status reports and the amounts due him. Following conferences and an additional hearing, the arbitrator directed, in a Supplemental Final Award dated September 13, 2004, that respondents: (i) provide petitioner with status reports for all cases which were pending on December 31, 1995 and not closed as of June 28, 2004;[2] and (ii) deliver to petitioner closing statements for 32 cases identified in paragraph "6" of the Supplemental Final Award which were closed prior to OH&M's dissolution and pay petitioner his share of legal fees for those 32 cases if not previously paid. A Judgment dated July 5, 2005 (Acosta, J.) confirmed the Supplemental Arbitration Award, and directed respondents to "furnish status reports to Claimant at thirty (30) day intervals with respect to all cases which were pending on December 31, 1995 and not closed on June 28, 2004."

In June 2006, petitioner moved to compel respondents to submit the status reports for all outstanding cases. On February 2, 2007, respondents' counsel sent petitioner's counsel a case

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[2] Such cases included *Mavoshev v. Transit Authority*, *Mavoshev v. Shalosh Realty*, *Riley (Porter, Rachael)*, and *Hope v. Dr. Richstone and Klein*.

list updated to January 30, 2007, a case list with supporting documents, a letter dated January 26, 2007 from Theodore Oshman, Esq., and a check payable to petitioner in the sum of $197.92.

Thereafter, at a court conference on February 22, 2007, petitioner questioned the veracity of respondents' statements as to the disposition of the cases, and the parties agreed to permit petitioner to obtain all retainer and closing statements for all the cases directly from the Office of Court Administration ("OCA") (see order dated March 6, 2007).

At a status conference on December 13, 2007, petitioner's counsel asserted that OCA produced closing statements for only 15 of the 101 cases being reported with a retainer or closing statement as stated in OCA's June 15, 2007 letter. Respondents' counsel showed the Court the status reports which were produced on February 2, 2007, and stated that respondents would not produce any further reports with the exception of the only open case - *Reilly* - for which a court conference was scheduled on January 16, 2008. The Court stated that petitioner could make a motion.

Upon petitioner's motion to compel respondents to produce status reports, this Court directed respondents to provide written transmittal documents and accompanying closing statements and/or retainer statements of 83 cases listed in OCA's June 2007 letter; and that if respondents were arguing "that this is not a proper case listed by OCA," to submit an affidavit explaining why each case is "not a proper case." (Transcript dated October 14, 2008, p. 2).

Thus, respondents submitted an Affidavit from Theodore Oshman to which was annexed a list of the 83 cases with a corresponding statement of the status or disposition of each case or a reference to an exhibit in which the issue of closing statements was addressed. Mr. Oshman's affidavit also explained why a majority of the 83 cases were not proper cases to be reported.

By Order dated December 15, 2008, this Court directed that "the issue of a long accounting of the amounts due, if any," to petitioner, regarding the 83 cases, be referred to a Referee to "hear and determine."

Respondents filed a Long Accounting indicating that they paid petitioner $625,400.62 to date. Thereafter, the Referee held hearings on the Long Accounting to determine what amounts, if any, were due petitioner as to the 83 cases. Respondents presented the testimony of OH&M's managing partner Theodore Oshman, Esq., the Long Accounting, and a handwritten ledger containing an inventory of cases, and other documents. Petitioner testified on his own behalf.

By Decision and Order dated July 8, 2010, the Referee found that respondents properly accounted for 61 of the 83 cases, including the *Reilly* case, and that no further accounting was required on those 61 cases. As to the remaining 22 cases, the Referee directed respondents to provide petitioner with further accounting, and for petitioner to move before the Court as to any "specific objections to the accounting" and request "specific relief to the extent allowed by law."[3]

On September 13, 2010, respondents timely served an accounting of the 22 cases.

Now, in this instant motion, petitioner asserts objections to respondents' accounting as to the 22 cases. Petitioner seeks a closing statement as to these 22 cases and specifically objects to 12 (*Redlich; Tavormina; DePerrari; Dominick; Ratman; Blake; Drew; Olivia; Dato; Cimorelli; Baach; and William*). As to these 12 cases, petitioner maintains that although respondents indicated that they neither acted as attorney of record nor received a legal fee in an action closed prior to the date of dissolution and never represented the parties in such actions, respondents'

[3] Petitioner served a copy of the Referee's Order with Notice of Entry on July 30, 2010, and has notice an appeal as to said order. The last day for petitioner to do so was September 3, 2010 (35 days from July 30, 2010).

Post Hearing Memorandum dated February 9, 2010 indicates that such actions were either settled or were disposed of pre-December 31, 1995, were "rejected," that no record existed for such cases, or that respondents were the attorney of record.

Petitioner also asserts that certain other cases must be referred back to the Court. During the course of the hearing before the Referee, certain cases came up that were in the office prior to December 31, 1995, for which the petitioner would be entitled to a fee. When the Referee asked for the respondents' consent to expand the hearing beyond those 83 cases which were listed on the OCA letter dated June 15, 2007 and to include certain other cases which are on the letter, but not specifically included in the 83 cases, respondents refused. The Referee instructed petitioner to seek relief from the Court regarding these cases. Thus, petitioner claims that as to the eight additional cases (*Diana Beskin McDonald; Sheya Speilman v. City; Benjamin Sbrahiaian v. LIBR; Pappas, James; Burgos; Ornella; Morgan; and Reiss*), closing statements are outstanding and no payment has been made as to two of the cases (*Sheya Speilman v. City* and *Benjamin Sbrahiaian v. LIBR*).

Petitioner also objects to the Referee's reference to E-Law Reports that were not before the Court and not part of the testimony or evidence, and the Referee relied on such Reports while preventing petitioner to confront, object, explain said Reports or produce further evidence addressing said issue.

Finally, petitioner objects to certain statements made by the Referee in his Decision as to eight other cases (*Rosenthal, Singh, Delgado, Underwood, Jungroio, Cordel, Cunniffe v. LIBR, Roqovin and Joseph*). Petitioner contends that the Referee's findings were either contradicted or unsupported by the record, or immaterial to the issue before him.

In opposition, respondents argue that petitioner's motion should be denied.

Respondents argue that petitioner's objections as to 12 of the 22 cases for which the Referee directed a further accounting, are conclusory, vague and not supported by documents. The purported discrepancies, which are mere mischaracterizations between three classes of cases: (1) settled before dissolution (*Redlich, Tavormina, Rutman, Olivia*), (2) settled before respondents' formation in 1992 (*Dominick*), or (3) never handled by respondent (*DeFerrari, Black, Drew, Dato, Cimorelli, Basch* and *William*), do not create a substantive difference. Regardless of which category the cases may fall, petitioner is not entitled to a fee in any of the cases. Although petitioner has access to the Court's public web site and respondents' master list of open and closed files, petitioner has not produced any document in any of these 12 cases to dispute respondents' accounting. This dispute has been ongoing for over 15 years, and petitioner and his attorneys and accountants have reviewed, inspected and examined respondents' books and records. Yet, petitioner failed to produce any checks or other financial documents to support his conclusory, self-serving claims.

Nor does this Court have the jurisdiction to entertain for the first time (15 years after the partnership was dissolved) petitioner's claim to eight new cases which were resolved before the arbitrator and are not the subject of the July 5, 2005 Judgment. This Court's Order of Reference dated December 15, 2008 directed that "the issue of a long accounting of the amounts due, if any," to petitioner, regarding the aforesaid 83 cases, be referred to a Referee to "hear and determine." Seven of the eight cases (excluding *Ebrahimian*) which petitioner now seeks to bring up before this Court for the first time are not part of the 83 cases, are not mentioned in the Judgment dated July 5, 2005 (Exhibit "C"), and were not deemed to require further reporting by

the original arbitrator. In view of the parties' broad arbitration clause, these cases were subject to the original arbitration, petitioner's remedy (as to seven of those cases) was to address them during the course of the 26-session, which they were. Respondents' counsel attended each arbitration session and attests that these eight cases were subsumed by the arbitrator's original award. The Referee properly determined that the scope of the reference under the Order of Reference was limited to the 83 cases and that since seven of the eight cases were not part of the 83 cases, he had no authority to consider them. The Referee had no power to direct this Court to consider new cases not on the list of 83 cases and/or to confer jurisdiction on this Court over these cases which were subsumed by the original arbitration award. Therefore, those seven cases are not properly before this Court. And, the documents submitted by petitioner herein were not presented to and admitted into evidence by the Referee, and have been improperly produced by petitioner for the first time on the instant motion, some fifteen years late. As to the eighth case, *Ebrahimian*, the Referee specifically approved respondents' accounting thereof. Thus, the only cases before this Court are the 22 cases for which the Referee directed a further accounting.

Further, petitioner's objection to the Referee taking judicial notice of E-Law Reports published in the Court's website, is beyond the jurisdiction of this Court because the reference to the Referee was to "hear and determine," not hear and report. Caselaw dictates that petitioner's remedy was to appeal the Referee's decision, and his time to do so has expired. Even if the Court has jurisdiction to entertain petitioner's objection, the Referee did not err in relying on Reports published in e-courts to aid in his determination as to whether respondents properly accounted for certain cases. E-courts is the official site maintained by the New York State Unified Court System. As the Referee correctly stated, he was entitled to take judicial notice of public State

records maintained and accessible on the Internet. Thus, petitioner's assertion that the Referee wrongfully relied on "E-law" is incorrect. E-law is a privately owned and operated website and is not the same as E-courts. Respondents also point out that nowhere has petitioner challenged the accuracy of the E-courts reports of which the Referee took judicial notice.

In reply, petitioner argues that on December 15, 2008, this Court indicated that respondents needed documentation or transmittal letters to show the disposition of the cases not accounted for by respondents. The mere fact that respondents represent that a case may have allegedly settled prior to December 31, 1995 without documentation, is not an indication as to when a fee was received. A closing statement would show the date of Retainer, receipt of settlement funds, and how the fee was distributed and to whom. Respondents produced no such documentation.

Documentation was never received such as a closing statement to show distribution of the fee or any other documentation on the cases. Respondents should provide documentation as called for by this Court, *i.e.*, checks, transmittal letters or a closing statement which would show when and how proceeds were received and disbursed.

There were never any new cases added in petitioner's papers. All cases mentioned were on the list of cases in OCA's letter dated June 15, 2007.

The Referee's Order noted that several other cases were identified but were not on the list of the 83 cases, which were referred to the Referee. Petitioner was advised to seek relief from the Court as to these cases. And, all of such cases were in the office as of December 31, 1995.

Discussion

As to respondents' accounting of the 22 cases at issue, the Court determines the following:

Redlich and Tavormina

Respondents' conclusory assertion that it did not represent any party by the names of Redlich and Tavormina is insufficient. As pointed out by petitioner, respondents stated in their Post-Hearing Memorandum dated February 9, 2010 that these cases were settled prior to the date of dissolution (Exhibit E p. 10, Exhibit D p. 1). That these cases settled before the partnership was dissolved raises an issue as to whether respondents represented such parties in any manner and as to whether petitioner is entitled to any fees related thereto. The respondents failed to provide a closing statement, or reconcile the fact that they claim the cases settled, and that they were not the attorneys of record and did not receive any fees prior to the dissolution. Further, respondents' statement does not dispel the possibility that they may have received fees from the settlement after the dissolution. Thus, petitioner's objection is granted, and respondents must provide documentation previously ordered by this Court pertaining to such settlements.

DeFerrari

Respondents' accounting states that they never handled a case or received any legal fees in regard to a client known as DeFerrari. That the Post-Hearing Memorandum indicates that respondent "rejected" this case does not contradict the accounting. Nor does the *unsigned* letter dated November 8, 1995 from OH&M to Allstate Insurance Company, enclosing DeFerrari's medical records, on which petitioner relies, contradict respondents' accounting or Post-Hearing Memorandum. Such letter does not contradict respondents' position that they never handled this

case and did not receive a fee on this case. Thus, petitioner's objection based on the letter from OH&M to Allstate Insurance Company is denied.

Dominick

Although the Post Hearing Memorandum states that the case *Dominick v. Khera Delivery Service* was settled prior to December 31, 1995, respondents' accounting points out that the only case they handled with a client known as Dominick is the matter of *Dominick Mattina v Ryder*, which was marked disposed as of March 18, 1991, nearly five years prior to the date of dissolution. (E-courts printouts). Notably, the partnership was not formed until 1992. Thus, petitioner's objection based on reference that this matter was settled prior to December 31, 1995 is denied.

Rutman

Respondents' accounting states they never handled a case or received any legal fees in regard to a client known as Rutman. However, respondents' Post-Hearing Memorandum states that this case was disposed pre-December 31, 1995. Respondents' contention that the Post-Hearing Memorandum indicates that the case was settled prior to the date of dissolution is insufficient to establish that petitioner is not entitled to a fee. Thus, petitioner's objection is granted and respondents must provide documentation previously ordered by this Court pertaining to such settlement.

Blake

Respondents' accounting states they never handled a case or received any legal fees in regard to a client known as Blake. While respondents' Post-Hearing Memorandum states that they have no record of any such case, the retainer signed by Blake to Matthew Oshman, Esq.

dated August 7, 2005, indicating that the retention was "subject to investigation" does not establish that petitioner is not entitled to a fee on this case. Thus, petitioner's objection is granted and respondents must provide documentation previously ordered by this Court pertaining to this matter.

Drew

Respondents' accounting indicates that Drew was a client of Victoria Weinman, Esq., a former attorney at OH&M, who left the firm approximately two years prior to the dissolution of OH&M. OH&M was substituted out as attorney of record and the case was taken by Ms. Weinman when she opened her own practice. The accounting further provides that Ms. Weinman disposed of this case on February 16, 1994 (as evidenced by an E-courts printout), and that no fees were received by the respondents. Respondents' Post-Hearing Memorandum indicating that they did not have a record of such case being accepted is not inconsistent with the claim that respondents received no fee. Thus, petitioner's objection based on the respondents' Post-Hearing Memorandum is denied.

Olivia

Respondents' accounting states that they never handled a case or received any legal fees in regard to a client known as Olivia. Respondents' Post-Hearing Memorandum stating that the case settled pre-December 31, 1995 is insufficient to establish that petitioner is not entitled to a fee. That respondents submitted printouts from the court database pertaining to every Supreme Court and Civil Court case with a plaintiff named Olivia, to demonstrate that respondent did not represent a client named Olivia is insufficient. Thus, petitioner's objection is granted and respondents must provide documentation previously ordered by this Court pertaining to such

settlement.

Dato

Respondents' accounting states that they never handled such a case or received any legal fees in regard to a client known as Dato. The Post-Hearing Memorandum states that this matter was rejected pre-December 31, 1995. Respondents' submission with the accounting of a printout from the courts online database which pertains to every Supreme Court and Civil Court case with a plaintiff named Dato shows that respondents did not represent a client known as Dato. Such records sufficiently establish that Dato was never handled such a case or received any legal fees in regard to a client known as Dato. Therefore, petitioner's objection based on respondents' statement that the case was "rejected" is denied.

Cimorelli

Respondents' accounting states that Cimorelli was a client of a former attorney of OH&M, David Karlin, Esq. Upon leaving the firm after the date of dissolution, Mr. Karlin took the case to his new practice when he left the firm. However, in the Post Hearing Memorandum dated February 9, 2010, it states that Mr. Karlin was substituted. While a retainer statement indicates that respondents were listed as the attorney of record, respondents were no longer active in handling this file as of October 24, 1997, and no fees were received by respondents. No closing statement is required and petitioner's objection is denied.

Basch

Respondents' accounting provides that in or about 1995, they were retained by Simon Gluck, Esq., the attorney of record in the case of *Basch v Mercado*, Index No. 002239/1994, to act as trial counsel. OH&M was not the attorney of record and the case was settled in the

pre-trial part on November 29, 1995, prior to the date of dissolution.

Thereafter, in 1997, well after the date of dissolution, respondents were retained to represent Sabena Basch, as attorney of record, in another action entitled *Basch v Ciltec*, Index No. 123252. Petitioner fails to indicate the manner in which the respondents' accounting is deficient. No closing statement is required and petitioner's objection is denied.

William

Respondents' accounting provides that the only cases they could find with a client known as William or Williams were the matters of *William Gelman v. Prahalis* and *William Guilliano v. Koppel*. Respondents claim that the former case was marked disposed as of March 20, 1992, nearly four years prior to the date of dissolution. The Court notes that the case was thus marked disposed before the partnership was formed.

However, the latter case was marked disposed as of August 18, 1993, during the pendency of the partnership. Further, a retainer dated February 1, 1994 identifies OH&M as the attorney of record on a case, *William Dee Dee v. Tishman*. The Court notes that the retainer was signed by Victoria Weinman, who (based on respondents' representation concerning Drew) left the firm approximately two years prior to the dissolution of OH&M and may have taken the case with her when she opened her own practice for Dee Dee Williams. However, respondents made no representation to this effect as to *William Dee Dee v. Tishman*. Therefore, respondents' notation in their Post-Hearing Memorandum that they had no record of such a case is insufficient to establish that petitioners are not entitled to a fee pertaining to *William Guilliano v. Koppel* or *William Dee Dee v. Tishman*. Thus, petitioner's objection is granted and respondents must provide documentation previously ordered by this Court pertaining to these two cases.

"Additional" Eight Cases

As to petitioner's request that the Court review an additional eight cases that "came up that were in the office prior to December 31, 2005," such request is denied.

First, the Referee properly denied review of the seven additional cases,[4] as such cases exceeded the scope of the reference directed by the Court (*see H&YRealtvCo. v Baron*, 160 AD2d 412, 413, 554NYS2d 111, 112 [1st Dept 1990] ("a referee is limited to those matters contained in the reference")).

Nor are the seven additional cases reviewable by the Court. Seven of the eight cases which petitioner now seeks to redress from this Court are not mentioned in the Judgment dated July 5, 2005 (Acosta, J.), and the Judgment expressly provides that "Any claim heretofore made by any party which is not specifically referred to in this Supplemental Award is hereby denied." Therefore, to the extent such cases were litigated before the arbitrator and subject to the July 5, 20005 Judgment, such cases cannot be relitigated herein. To the extent such cases were *not* litigated before the arbitrator (and petitioner does not claim that they were), such cases are not properly before this Court.

As to the eighth case, *Ebrahimian*, the Referee approved respondents' accounting of this matter. It is noted that this case was listed as one of the 83 cases on OCA's July 2007 letter and this Court's December 15, 2008 Order referred the 83 cases to the Referee. The Referee credited the testimony as to the disposition of this case (Order p. 29, ¶21), which respondents claimed that petitioner was either paid or the case was "settled without a fee to the law firm." (Order p. 24, ¶98). Petitioner's objection that the Referee stated that this case was settled and petitioner was

[4] *Diana Beskin McDonald; Sheya Speilman v. City;Pappas, James; Burgos; Ornell; Morgan; and Reiss.*

paid, in contravention an April 10, 2000 Closing Statement showing that petitioner was not paid, is an issue that should have been appealed by petitioner. The Court cannot review the merits of the Referee's findings (see discussion, *infra* p. 15-16).[5]

Finally, petitioner's objection to the Referee's review of records published in the New York State Unified Court System's E-courts Case Detail Directory regarding the disposition date of certain actions (*Rosenthal, Singh, Delgado, Underwood, Jungreis, Cordel, Cunniffe v. LIRR, Rogovin and Joseph*) (Decision and Order, p. 25) cannot be considered by the Court and lacks merit in any event. Since the Referee was directed to "hear and determine," petitioner's remedy regarding the Referee's reliance on E-courts reports is an appeal (*see, Casiano v. Dukas*, 2 Misc 2d 560, 561-562, 152 NYS2d 512, 513-514 [Sup Ct. Bronx Co. 1956] (stating that where reference was to "hear and determine," the remedy for any alleged errors committed by referee was an appeal)). It is uncontested that petitioner did not appeal the Referee's Decision and Order and his time to do so has expired. Therefore, the branch of petitioner's motion for the Court to address petitioner's objections to the Referee's reliance upon the information he found on E-courts is denied. In any event, it cannot be contested that E-courts is the official site maintained

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[5] Petitioner claims that the Referee made erroneous conclusions as to the following:
Rosenthal (the Referee incorrectly stated that case came into the office after December 31, 1995, when notes indicate that it was signed up on December 11, 1995); *Delgado* (the Referee incorrectly stated that the case commenced in 1996, when the case was in the office prior to December 31, 1995); *Singh* (petitioner notes that the verdict was not provided by the Referee. However, the database equally accessible to petitioner indicates that the verdict was for defendant); *Underwood* (the Referee stated such case was disposed February, 1990 before petitioner joined the firm; however, petitioner was part of the prior firms in which the case was in the office); *Jungreis* (the Referee stated such case was not in existence in 1995 but in 1996 case, but it is only relevant as to whether the case was in the office prior to December 31, 1995 and a Retainer Statement is dated March 2, 1993); *Cordel* (Referee's statement that the case was not in existence until 1996, is irrelevant as to whether it was in the office prior to December 31, 1995); *Cunniffe v. LIRR* (the Referee referred to a Closing Statement belonging to a different case); and *Rogovin* (the Referee stated dismissed June 16, 2004 and a Summons & Complaint was sent to Nationwide Insurance in March 1995 before the partnership was dissolved); and *Joseph* (while the Referee stated the partnership was substituted, respondent's retainer is dated May 11, 1995).

by the New York State Unified Court System. Thus, the Referee was entitled to take judicial notice of public State records maintained and accessible on the Internet (*see, Siwek v Mahoney*, 39 NY2d 159, 163, fn. 2, 383 NYS2d 238 [1976] (stating "Data culled from public records is, of course, a proper subject of judicial notice"); *Transtechnology Corp. v. Assessor*, 71 AD3d 1034, 897 NYS2d 494 [2d Dept 2010] (taking judicial notice of the New York State Unified Court System E-Courts public website); *.Miller v Mace*, 74 AD3d 1442, 1444 fn. 1, 903 NYS2d 571 [3d Dept 2010] (stating that the Court can take judicial notice of computerized court records)).

Nor has petitioner alleged that the information contained in the subject E-courts reports was inaccurate.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the branch of petitioner's motion for an order addressing petitioner's specific objections to the accounting by respondent Matthew Oshman, Theodore Oshman and Hugh Helfenstein dated September 13, 2010, is granted to the extent that pursuant to CPLR 4317(b), the issue of the long accounting of the amounts due, if any, to the petitioner, is referred for assignment to Special Referee to hear and determine solely as to the following cases: Redlich, Tavormina, Rutman, Blake, Olivia and William; and it is further

ORDERED that, no later than the hearing date to be assigned, a copy of the long accounting and any formal objections shall be filed with the Special Referee to whom this long accounting is assigned; and it is further

ORDERED that counsel for (plaintiff or defendant) shall serve a copy of this order with notice of entry on the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a

date for the reference to a Special Referee; and it is further

ORDERED the movant shall move pursuant to CPLR 4403 within 30 days of receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that the branch of petitioner's motion for an order referring back to the Court certain cases which respondents refused to allow Special Referee Louis Crespo to hear and decide is denied; and it is further

ORDERED that the branch of the petitioner's motion for an order as to petitioner's objections to the Referee's use of "E-Law" reports in issuing his Decision and Order is denied.

This constitutes the Decision and Order of the Court.

Dated: February 1, 2011

Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

FILED

FEB 07 2011

NEW YORK
COUNTY CLERK'S OFFICE