

**Matter of Metropolitan Transp. Auth.**

2011 NY Slip Op 30561(U)

March 10, 2011

Supreme Court, New York County

Docket Number: 400467/06

Judge: Martin Shulman

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

PRESENT: SHULMAN  
Justice

PART 1

METROPOLITAN TRANSPORTATION AUTHORITY

INDEX NO. 400467/06

MOTION DATE \_\_\_\_\_

FULTON STREET TRANSIT CENTER

MOTION SEQ. NO. 07

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion to discharge lien

~~Notice of Motion/ Order to Show Cause~~ — Affidavits — Exhibits A-E  
Answering Affidavits — Exhibits A-H  
Repeating Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1	_____
2, 3	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion <sup>1</sup> is decided in accordance with the attached ~~decision~~ and order.

**FILED**

MAR 11 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: MAR 10 2011

**MARTIN SHULMAN** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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 1

-----X

In the Matter of the METROPOLITAN  
TRANSPORTATION AUTHORITY, relative to acquiring  
title in fee simple absolute to certain real property;  
acquiring temporary easements in certain real property;  
and terminating private interests in vaults in certain New  
York City sidewalks, required for the

Index No. 400467/06  
  
Motion Sequences 007  
and 008

FULTON STREET TRANSIT CENTER PROJECT  
PHASE 2

BLOCK 79, LOT 15; BLOCK 79, LOT 16; BLOCK 79,  
LOT 18; BLOCK 79, LOT 19; BLOCK 79, LOT 21 (FEE  
AND VAULTS); BLOCK 79, LOT 25; BLOCK 79, LOT 26  
(VAULTS)

as said property is shown on the current Tax Map of the  
Borough of Manhattan, City and State of New York.

-----X

**FILED**

**MAR 11 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

**Martin Shulman, J.:**

In motion sequence 007, claimant Genivio Corp. ("Genivio") moves by order to show cause to cancel and discharge of record the purported lien of their former counsel, Bruce Levinson, Esq. ("Levinson"). In motion sequence 008, claimant S&M Universal Jewelry, LLC ("S&M") moves for the same relief. Levinson opposes both motions, which are consolidated for disposition.

Claimants are former tenants of property the Metropolitan Transportation Authority ("MTA") acquired by eminent domain. S&M initially retained Levinson on January 12, 2005 to "bring any necessary proceedings to obtain an award for the taking of fixtures . . . in eminent domain proceedings." Retainer Agreement at Exh. A to Levinson Aff. in Opp. Approximately six months later, S&M discharged Levinson in June 2005 and retained its present counsel's predecessor in interest ("present

counsel") to file its claim for just compensation for the value of its trade fixtures. Levinson promptly sent S&M an invoice totaling \$1,950.00 for the legal services he had rendered to that point. When that invoice went unpaid, Levinson advised the MTA that he was asserting a lien in that amount, plus interest from June 17, 2005, on any sums MTA paid to S&M. S&M OSC at Exh. F. Ultimately, S&M received an award but a portion of the amount awarded was held in escrow pending resolution of Levinson's lien. *Id.* at Exh. G.

Similarly, Genivio entered into retainer agreements with Levinson on March 28, 2005. Retainer Agreements at Exh. G to Levinson Aff. in Opp. Approximately one year later, Genivio discharged Levinson effective June 4, 2006 and retained the same firm S&M retained to file its claim for just compensation for the value of its trade fixtures. Levinson again asserted his lien, claiming entitlement to 25% of Genivio's recovery. Genivio OSC at Exh. D. As with S&M, Genivio received an award and funds were held in escrow pending resolution of Levinson's lien. *Id.*

The court need not address claimants' arguments that Levinson did nothing on their behalf, had no contact with them and was discharged for cause. Nor is it necessary for the court to address Levinson's account of the preliminary work he performed on behalf of Genivio and S&M. Both motions must be denied because no attorney's liens ever came into existence and as such, there are no liens for this court to cancel or discharge.

Judiciary Law §475, which governs attorney's liens, provides in relevant part as follows:

From the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department . . . or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination . . .

Here, no liens were created because, notwithstanding the preliminary work Levinson performed for Genivio and S&M, Levinson never filed trade fixture claims for these tenants and never appeared for them in this condemnation proceeding. Admittedly, all the work he performed was done prior to title vesting in the MTA and as such, he could not have filed any claims.

In *Picciolo v State*, 287 AD2d 721, 722-723 (2d Dept 2001), also involving an attorney's attempt to assert a charging lien against a former client's condemnation recovery, the Second Department affirmed the dismissal of the attorney's petition in a special proceeding to fix and determine his charging lien. There, as here, the attorney performed preliminary work for the client but was discharged before bringing a claim against the condemnor and before the filing of acquisition maps. The court succinctly and clearly confirmed that:

. . . before an attorney can be granted a lien pursuant to Judiciary Law § 475, he or she must have appeared for the client by "participating in a legal proceeding on the client's behalf or by having his [or her] name affixed to the pleadings, motions, records, briefs, or other papers submitted in the matter" (*Cataldo v Budget Rent A Car Corp.*, 226 AD2d 574; *Ebert v New York City Health & Hosps. Corp.*, 210 AD2d 292, 293). Thus, "as a rule, a charging lien . . . will not attach . . . even though the attorney may have performed preliminary services for the client" (7 NY Jur 2d, Attorneys at Law, § 246 at 330 [emphasis added]; see, *United Orient Bank v 450 W. 31st St. Owners Corp.*, 155 Misc 2d 675). An attorney discharged before he or she has instituted an action has the right to

compensation on a quantum meruit basis only (*see, Turner v Steve Brody, Inc.*, 24 AD2d 904; *Lebovic v Ballantine & Sons*, 12 AD2d 494).

Based upon the express language of Judiciary Law §475 and the foregoing authority, it is hereby

ORDERED that the orders to show cause in motion sequences 007 and 008 are denied.

The foregoing constitutes this court's decision and order. Courtesy copies of this decision and order have been sent to Levinson and counsel for the claimants and the MTA.

Dated: March 10, 2011

  
\_\_\_\_\_  
Martin Shulman, J.S.C.

**FILED**  
MAR 11 2011  
NEW YORK  
COUNTY CLERK'S OFFICE