

<b>The Dweck Law Firm, LLP v Sarada</b>
2012 NY Slip Op 33981(U)
May 4, 2012
Supreme Court, New York County
Docket Number: 116957/09
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN  
*Justice*

PART 7

THE DWECK LAW FIRM, LLP.  
Plaintiff,

INDEX NO. 116957/09

-against-

MOTION SEQ. NO. 007

UMAMAHESWARI SARADA,  
Defendant.

The following papers, numbered 1 to 7 were read on this motion by plaintiff to reject a Special Referee's Report and Recommendation.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ..	<b>FILED</b> MAY 14 2012	PAPERS NUMBERED
Answering Affidavits — Exhibits (Memo)		2,3,4
Replying Affidavits (Reply Memo)		5,6
		7

Cross-Motion:  Yes  No

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This action arises from an attorney fee dispute between The Dweck Law Firm, LLP (plaintiff) and Umamaheswari Sarada (defendant). Defendant hired plaintiff law firm to file an employment discrimination case on her behalf in federal court. The parties agree that the issue presented herein involves their second duly executed retainer agreement, dated September 11, 2008, but both claim different interpretations of the language of that agreement and dispute the amount of attorneys fees due and owing the plaintiff. Before the Court is a motion by plaintiff, pursuant to CPLR 4403 and § 202.44 of the Uniform Rules for the New York Supreme Court, to reject in its entirety the Report and Recommendation of Special Referee Marilyn Sugarman dated October 31, 2011. Defendant is in opposition to plaintiff's motion.

BACKGROUND

In an earlier motion (motion sequence 003), the plaintiff moved for summary judgment pursuant to CPLR 3212 for its attorney fee compensation, and defendant cross-moved for summary judgement on the basis that she already overpaid plaintiff's attorney fee. In an Order dated September 29, 2010 and entered on October 7, 2010, this Court denied both summary judgment motions and referred the issue of the amount of the plaintiff's attorneys fees,

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including discovery and a hearing, to a Special Referee to hear and report with recommendations.

On October 31, 2011, Special Referee Marilyn Sugarman issued her Report and Recommendations. Special Referee Sugarman found the second retainer agreement to be ambiguous, and recommended that the second retainer agreement be construed against plaintiff, read to include only the net proceeds that were paid to plaintiff, and read to exclude gross proceeds and any monies defendant received directly or in the future as additional pension benefits (see Notice of Motion, exhibit 3, p. 19). Moreover, Special Referee Sugarman reported and recommended, in light of the ambiguity of the second retainer agreement and because of plaintiff's efforts, that plaintiff be allowed to recover fees in quantum meruit (*id.* at 23). Special Referee Sugarman recommended a total fee award to plaintiff in the amount of \$75,000.00, including fees and disbursements. Special Referee Sugarman also recommended that plaintiff should retain \$21,149.01 from the monies held in the escrow account as plaintiff has already received \$53,850.99 in payment from the defendant, \$10,000.00 for a retainer fee and \$43,850.99 pursuant to a stipulation between the parties dated January 7, 2010. Special Referee Sugarman further recommended that the remaining money in escrow should be remitted to the defendant (*id.*).

Plaintiff now moves, in a motion filed on November 14, 2011, to reject the Report on the grounds the Report is not supported by facts or the law. Specifically, plaintiff asserts that while Special Referee Sugarman determined that the second retainer agreement is ambiguous, she failed to consider extrinsic evidence which clearly establishes that the parties intended for the contingency fee to include the value of the additional pension benefits that plaintiff obtained for defendant. Moreover, plaintiff avers that Special Referee Sugarman was mistaken in her determination that the value of the additional pension benefits is speculative. According to plaintiff, life expectancy is the proper and accepted method for calculating sums due in the future and to the extent that the Report ignores this, it should be rejected. Plaintiff also argues

that the Report misconstrues the facts concerning the annual value of the additional pension benefits.

In opposition, the defendant asserts, *inter alia*, that the Report provides a detailed procedural history, presents the issues to be resolved, provides a fair review of the actual and credible testimony and evidence offered, and applies the governing law. Defendant argues that plaintiff's motion should be denied and the Report accepted and confirmed with a numerical modification. Specifically, defendant maintains that the Report failed to include \$3,618.01 as monies already paid to plaintiff for costs and disbursements, which would have reduced the total amount owed. As such, defendant asserts that plaintiff can only retain \$17,531.00 and defendant is entitled to immediate payment of \$55,431.34.

#### DISCUSSION

"It is well settled that the report of a Special Referee shall be confirmed whenever the findings contained therein are supported by the record and the Special Referee has clearly defined the issues and resolved matters of credibility" (*Steingart v Hoffman*, 80 AD3d 444, 445 [1st Dept 2011], citing *Nager v Panadis*, 238 AD2d 135, 135-136 [1st Dept 1997]; see also *Melnitzky v Uribe*, 33 AD3d 373 [1st Dept 2006]; *Kaplan v Einy*, 209 AD2d 248 [1st Dept 1994]; *Namer v 152-54-56 W. 15th St. Realty Corp.*, 108 AD2d 705 [1st Dept 1985] lv dismissed sub nom *Walker v Sant'Andrea*, 72 NY2d 954 [1988]). "The Special Referee is considered to be in the best position to determine the issues presented" (*Nager v Panadis*, 238 AD2d at 136).

The Court finds that, contrary to plaintiff's assertions, the record fully supports Special Referee Sugarman's factual findings and conclusions of law regarding the amount of attorneys fees it is entitled to receive from defendant (see *TAG 380, LLC v Estate of Ronson*, 89 AD3d 411, 412 [1st Dept 2011] ["The Special Referee's findings as to the amount of reasonable attorneys' fees are supported by the record"]; *Steinberg v Queens Import Motors*, 74 AD3d 493 [1st Dept 2010]). Special Referee Sugarman clearly defined the issues and resolved matters of credibility after a hearing in which testimony was presented from both parties, and the support

of her findings in the record warrants confirmation (see *Adelaide Prods., Inc. v BKN Intl. AG*, 51 AD3d 598 [1st Dept 2008]; *Nager*, 238 AD2d at 135-136). Based upon the foregoing, plaintiff's motion to reject the Report and Recommendation of Special Referee Sugarman dated October 31, 2011, as well as defendant's request in opposition that the amount awarded be modified, are denied and the Report is confirmed in its entirety.

Accordingly it is,

ORDERED that plaintiff's motion pursuant to CPLR 4403 and § 202.44 of the Uniform Rules for the New York Supreme Court to reject in its entirety the Report and Recommendation of Special Referee Marilyn Sugarman dated October 31, 2011 is denied and the Report and Recommendation is confirmed in its entirety; and it is further,

ORDERED that plaintiff shall forthwith pay itself \$21,149.01 from the monies in the escrow account and remit the remainder of the money in the escrow account to the defendant; and it is further,

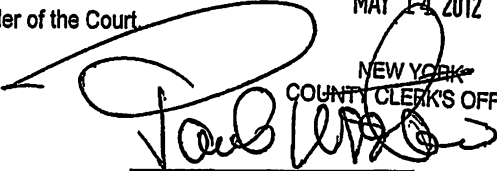
ORDERED that the defendant shall serve a copy of this order with notice of entry on the plaintiff.

**FILED**

This constitutes the Decision and Order of the Court.

MAY 14 2012

NEW YORK COUNTY CLERK'S OFFICE



Paul Wooten J.S.C.

Dated: 5-4-12

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