

**Independent Inv. Bankers Corp. v National Energy  
Partners LLC**

2019 NY Slip Op 31365(U)

May 13, 2019

Supreme Court, New York County

Docket Number: 656277/2016

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

-----X  
 INDEPENDENT INVESTMENT BANKERS CORP DBA IIB  
 CORP

INDEX NO. 656277/2016

Plaintiff,

MOTION DATE N/A

- v -

MOTION SEQ. NO. 003

NATIONAL ENERGY PARTNERS LLC,

Defendant.

**DECISION AND ORDER**

-----X  
 HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100 were read on this motion for RELIEVE ATTORNEY.

Upon the foregoing documents:

This action was commenced by Independent Investment Bankers Corp d/b/a IIB Corp, John Moorhead, Gardner Macdonald, and Richard Petree against Defendant National Energy Partners, LLC (“Defendant”) on December 2, 2016 alleging breach of contract and/or unjust enrichment. Defendant filed an Answer on October 25, 2017.

Now before the Court is Schmeiser, Olsen & Watts, LLP’s motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Defendant. Through an Affidavit offered by Anthony L. Meola, Esq, Schmeiser, Olsen & Watts, LLP cites unpaid legal fees as its reason for being unable to continue to work with Defendant. *Meola Aff.*, ¶3-10 (NYSCEF 97). The Order to Show Cause was signed on April 17, 2019 and directed opposition, if any, to this requested relief be filed by May 6, 2019 and further provided that a copy of the Order to Show Case and the supporting papers upon which it is based shall be served upon Defendant by overnight and

electronic delivery. Counsel filed affidavits of service attesting that copies were served upon Defendant.

No opposition having been filed, this motion is unopposed. For the following reasons, the Court grants counsel's motion to withdraw as attorney of record for Defendant.

Mr. Meola asserts that there has been a breakdown in his firm's relationship and communications with Defendant, due to Defendant's failure to remit payment for legal services performed, rendering continued and effective representation of Defendant in this action impossible. *Meola Aff.*, ¶10. Mr. Meola recounts that on February 15, 2019, he notified Defendant that unless it was willing to come current in payment and restore the lines of communication, Schmeiser, Olsen & Watts, LLP would be forced to take steps to seek withdrawal of counsel. *Id.*, ¶7. According to Mr. Meola, efforts to communicate with Defendant continued in March but were unsuccessful. *Id.*, ¶8-9.

Relieving counsel from its representation of a party is appropriate where, *inter alia*, there adequate evidence is presented, showing a breakdown in the attorney-client relationship. *Robinson v. Friedman Mgt. Corp.*, 49 A.D. 3d 436, 437 (1<sup>st</sup> Dep't 2008); *see also Bok v. Werner*, 9 A.D.3d 318 (1<sup>st</sup> Dep't 2004) (reversing denial of motion to withdraw as counsel in view of counsel's claimed breakdown in relationship with client); *see also* Rule 1.16(c)(5) of the Rules of Professional Conduct (a lawyer may withdraw from representing a client when: the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees). Movant has done so. Note of Issue has not yet been filed and this matter is not on the trial calendar, therefore, Defendant should not be prejudiced by a change in counsel.

The Court concludes that Schmeiser, Olsen & Watts, LLP has made a sufficient showing of entitlement to withdraw as counsel for Defendant and its motion is Granted. Schmeiser, Olsen

& Watts, LLP is directed to advise Defendant that, as a corporation, it must retain new counsel and cannot appear *pro se*. See, CPLR §321(a). Schmeiser, Olsen & Watts, LLP is directed to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct as stated below.

It is therefore:

**ORDERED** that the motion of Schmeiser, Olsen & Watts, LLP to be relieved as attorney for Defendant in this action is granted without opposition, subject to the following conditions; it is further

**ORDERED** that Schmeiser, Olsen & Watts, LLP is to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as applicable to the facts presented, to “take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.”; it is further

**ORDERED** that, within 10 days from entry, Schmeiser, Olsen & Watts, LLP shall serve a copy of this order with notice of entry upon Defendant by email and by hard copy at its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties, if any, appearing herein by posting to the New York State Courts Electronic Filing System; it is further

**ORDERED** that, together with the copy of this order with notice of entry served upon Defendant, moving counsel shall forward a notice directing Defendant to appoint a substitute

attorney within 30 days from the date of the mailing of the notice and Defendant shall comply therewith; it is further

**ORDERED** that any new attorney retained by Defendant shall file a notice of appearance with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; it is further

**ORDERED** that no further proceedings may be taken against Defendant without leave of this court for a period of 40 days after service on Defendant of the aforesaid notice to appoint a substitute attorney; it is further

**ORDERED** that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); it is further

**ORDERED** that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

**ORDERED** that all parties are to appear for a Status Conference in this matter on July 23, 2019 at 11:00 a.m.

5/13/2019  
DATE

  
JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE