

Malandrino v ASL Holdings LLC
2019 NY Slip Op 33201(U)
October 25, 2019
Supreme Court, New York County
Docket Number: 651349/2015
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48-----X
CATHERINE MALANDRINO,

Plaintiff,

- v -

ASL HOLDINGS LLC, ASL OPERATIONS LLC, TAHARI
ASL LLC, ELIE TAHARI, ARTHUR LEVINE, LESTER
SCHREIBER, CM BRAND HOLDINGS LLC, BLUESTAR
ALLIANCE LLC, JOSEPH GABBAY, RALPH GINDIDefendants.
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INDEX NO. 651349/2015

MOTION DATE N/A

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82,
83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101

were read on this motion to/for

REFERENCE - HEAR & REPORT

Masley, J.:

On August 22, 2017, the court granted attorney Richard D. Hott's motion to be relieved as counsel in this action. This case settled on April 12, 2018. The retainer agreement provided that Hott would be paid 25% of Malandrino's recovery in this action. According to Hott, when he received the last settlement payment, he sent Malandrino \$50,000 and held \$100,000.

On September 23, 2019, plaintiff moved for a referral to a referee to hear and report on the amount of attorneys' fees due to Hott. While Hott does not oppose the referral, he seeks discovery. Specifically, Hott seeks perusal of the settlement agreement in *CM Brand Holdings LLC and CM Brand Group LLC v Catherine Malandrino*, Index No. 650635/2017, in which he now claims an interest. Plaintiff objects on the grounds that Hott had no connection to the 2017 case, his retainer

agreement is limited to recovery in this case, and the settlement agreement in the 2017 action is confidential.

The parties appeared before the court on October 21, 2019 and agreed to the referral, but not to Hott's requested discovery. The court granted Hott's request to review the settlement agreement subject to his signing of a non-disclosure agreement. The parties agreed to negotiate the logistics for his review of the settlement agreement. The court agreed to delay its referral order until 12 noon today, the deadline for the parties to submit an agreement as to the logistics. Having failed to comply with their agreement and this court's order, it is

ORDERED that Hott may review the settlement agreement within 30 days of the date of this order at plaintiff counsel's office between the hours of 10 am and 5 pm, on a weekday, and he shall not make any copies or disclose the contents of the settlement agreement other than for the purpose of this action and plaintiff's counsel shall make the agreement available for review at the time designated by Hott; and it is further

ORDERED that a Judicial Hearing Officer or Special Referee shall be designated to hear and report on the following issues, which are hereby submitted to the JHO/Special Referee for such purpose: (1) the amount of legal fees due to attorney Hott; and (2) the discovery relevant to the first issue, if any; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SPR), which, in accordance with the Rules of that Part, shall assign this matter at the initial appearance to an available JHO/Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar in the Special Referees Part; and it is further

ORDERED that, on the initial appearance in the Special Referees Part, the parties shall appear for a pre-hearing conference before the assigned JHO/Referee to resolve discovery, if any, and the date of the hearing to determine attorneys' fees shall be fixed at that conference; the parties need not appear at the initial conference with witnesses and evidence; and it is further

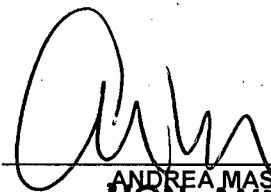
ORDERED that, except as otherwise directed by the assigned JHO/Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and Special Referees and by filing the same with NYSCEF; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that plaintiff's counsel is directed to order the transcript of the October 21, 2019 oral argument and submit a copy to the Part 48 Clerk (Room 242) and e-file on NYSCEF.

<u>10/25/19</u> DATE CHECK ONE: APPLICATION: CHECK IF APPROPRIATE:	☐ ☐ ☐ ☐ CASE DISPOSED GRANTED SETTLE ORDER INCLUDES TRANSFER/REASSIGN ☐ DENIED	☒ ☐ ☐ ☐ NON-FINAL DISPOSITION GRANTED IN PART SUBMIT ORDER FIDUCIARY APPOINTMENT	☒ ☐ ☒ OTHER REFERENCE
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 ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY