

**MF Acquisitions, LLC v Linka Landau Irrevocable
Life Ins. Trust**

2020 NY Slip Op 30300(U)

January 2, 2020

Supreme Court, New York County

Docket Number: 654430/2013

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

-----X

MF ACQUISITIONS, LLC,

Plaintiff,

- v -

LINKA LANDAU IRREVOCABLE LIFE INSURANCE TRUST, LINKA LANDAU, SHEA OSTREICHER, ISRAEL LUNGER

Defendant.

-----X

INDEX NO. 654430/2013
MOTION DATE N/A
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 154, 155, 156, 157, 158

were read on this motion for RELIEF OF COUNSEL

Upon the foregoing documents:

Counsel for Defendant Shea Ostreicher, Solomon Rosengarten, Esq., seeks to withdraw as counsel pursuant to CPLR §321(b)(2). This motion is unopposed.

This action was commenced by Plaintiff by motion for Summary Judgment in Lieu of a Complaint on December 23, 2013. Solomon Rosengarten, Esq was retained in or around April 2017.

Now before the Court is Solomon Rosengarten, Esq's motion, brought by Order to Show Cause, to be relieved as counsel on behalf of Defendant Shea Ostreicher. Mr. Rosengarten asserts there has been a communication breakdown which has arisen between himself and Mr. Ostreicher which prevents him from effectively representing Mr. Ostreicher. (NYSCEF 155, ¶¶7-12).

The Order to Show Cause was signed on December 10, 2019 and directed opposition, if any, to this requested relief be filed by December 20, 2019 and further provided that a copy of

the Order to Show Cause and the supporting papers upon which it is based shall be served upon all parties by overnight mail and through NYSCEF. Counsel filed affidavits of service attesting that copies were served upon the parties. (NYSCEF 158). 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 Shea Ostreicher.

Relieving counsel from its representation of a party is appropriate where, *inter alia*, there is adequate evidence showing a breakdown in the attorney-client relationship. *Robinson v. Friedman Mgt. Corp.*, 49 A.D. 3d 436, 437 (1st Dep't 2008); *see also Bok v. Werner*, 9 A.D.3d 318 (1st Dep't 2004) (reversing denial of motion to withdraw as counsel in view of counsel's claimed breakdown in relationship with client). Movant has done so. Given that discovery is ongoing, Mr. Ostreicher should not be prejudiced by a change in counsel.

The Court concludes that Solomon Rosengarten, Esq has made a sufficient showing of entitlement to withdraw as counsel for Shea Ostreicher and his motion is Granted. Solomon Rosengarten, Esq is directed to comply with his obligation under Rule 1.16(d) of the Rules of Professional Conduct as stated below.

It is therefore:

ORDERED that the motion of Solomon Rosengarten, Esq to be relieved as attorney for Defendant Shea Ostreicher in this action is granted without opposition, subject to the following conditions; it is further

ORDERED that Solomon Rosengarten, Esq is to comply with his obligation under Rule 1.16(d) 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, Solomon Rosengarten, Esq shall serve a copy of this order with notice of entry upon Shea Ostreicher by email and by hard copy at his last known address by certified mail, return receipt requested, and upon the attorneys for all other parties 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 Shea Ostreicher, moving counsel shall forward a notice directing Defendant Shea Ostreicher to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith. As Mr. Ostreicher is named individually to this action, should he desire, he may proceed in this matter *pro se* under CPLR 321; it is further

ORDERED that any new attorney retained by Defendant Shea Ostreicher 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 Shea Ostreicher without leave of this court for a period of 40 days after service on all parties 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/supctmanh); and it is further

ORDERED that all parties are to appear for a Compliance Conference in this matter on February 18, 2020 at 11:00 a.m.

1/2/2020
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT