

**Rubenstein Pub. Relations, Inc. v Madison Global
LLC**

2020 NY Slip Op 31551(U)

May 22, 2020

Supreme Court, New York County

Docket Number: 655900/2017

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH **PART** **IAS MOTION 14**

Justice

-----X

RUBENSTEIN PUBLIC RELATIONS, INC.

Plaintiff,

- v -

MADISON GLOBAL LLC, dba NELLO RESTAURANT dba
NELLO

Defendant.

-----X

INDEX NO. 655900/2017

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 34, 35, 36, 37

were read on this motion to/for

JUDGMENT - SUMMARY

Plaintiff's motion to strike defendant's answer and for judgment in its favor is granted without opposition. Although defendant filed an opposition, it was undoubtedly late. And instead of filing a reply, plaintiff filed a notice of rejection.

Background

Plaintiff claims that in April 2015 it entered into an agreement with defendant to provide media and public relations services. It claims that defendant has failed to pay for the services rendered by plaintiff.

Plaintiff points to a preliminary conference order entered into on May 21, 2019 and asserts that defendant failed to comply. A compliance conference was held on September 10, 2019 and plaintiff claims defendant again failed to respond to plaintiff's discovery demands.

Plaintiff maintains that its attorneys are entitled to one-third of the judgment amount for legal fees.

After this motion was filed, the parties entered into a stipulation which extended defendant's time to file opposition to January 15, 2020 (NYSCEF Doc. No. 26). On February 4, 2020, plaintiff agreed to extend the deadline again and defendant had until February 26, 2020 to file opposition (NYSCEF Doc. No. 26). This request was so-ordered by the Court on February 13, 2020 (NYSCEF Doc. No. 30).

The Court also observes that there was a conference held on February 4, in which plaintiff did not appear and where the Court adjourned the conference and motion to March 10, 2020 (NYSCEF Doc. No. 31). However, this order is silent on when defendant's opposition is due.

For some reason, defendant filed its opposition and responses to plaintiff's discovery demands on March 4, 2020 (NYSCEF Doc. Nos. 32-36). Plaintiff then filed a notice of rejection and pointed out that this violated the parties' prior agreement (NYSCEF Doc. No. 37). The Court notes that all of this happened well before the Covid-19 pandemic caused automatic stays and excused delays.

Discussion

This Court has no interest in trivial discovery disputes between the parties or in deciding cases on purely procedural grounds. However, this motion's original return date was December 6, 2019, then plaintiff consented to two adjournments for defendant and, still, defendant failed to timely respond even though the second adjournment was so-ordered by the Court. Moreover, this is not a case where defendant filed opposition a day late or offered a reasonable excuse for

why it ignored the deadline. There were so many things defendant could have and should have done but defendant failed to do anything; in fact, the opposition makes no reference to the fact that it's late. Therefore, the Court has no choice but to grant plaintiff's motion to strike the answer and enter judgment in plaintiff's favor in the principal sum of \$28,900.75.

Although plaintiff asks for interest from January 1, 2016, it did not provide a date when the amount sought came due. And plaintiff states it provided services "through on or about January 1, 2016" (NYSCEF Doc. No. 11, ¶ 14). There is no clarity about when the bills were due; obviously, defendant had to be given the opportunity to pay for plaintiff's services before it was in default. The invoice used to calculate the amount due is from October 20, 2016 (NYSCEF Doc. No. 15). This confusion forces the Court to award interest at the contractual rate from the date of the complaint-- September 18, 2017-- to the date of this decision and then at the statutory rate.

The claim for attorneys' fees is severed. Plaintiff may file an inquest to determine the reasonable attorneys' fees. The Court notes that the affirmation seeking attorneys' fees claims that the contract provides for 33 1/3% but this is, in fact, untrue. The contract provides for reasonable attorneys' fees. While one third may or may not be reasonable, a hearing is necessary to determine what is reasonable under the circumstances. There is no automatic right to one third, and certainly not when the attorney seeking the one third misrepresents the terms of the agreement between the parties in an affirmation before the Court. Moreover, there is no entitlement to "fees on fees" in this matter under these circumstances.

Defendant may, of course, move to vacate this decision and offer an explanation as to why it ignored a deadline so-ordered by the Court.

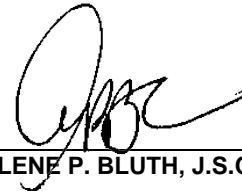
Accordingly, it is hereby

ORDERED that the motion by plaintiff to strike defendant’s answer and for a judgment against defendant is granted and the Clerk is directed to enter a judgment (as soon as is practicable) in favor of plaintiff for \$28,900.75 plus interest at the contractual rate from September 18, 2017 until the date of this decision and then at the statutory rate, plus costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the claim for attorneys’ fees is severed.

05/22/2020

DATE



ARLENE P. BLUTH, 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