

Penavic v Khan

2020 NY Slip Op 31929(U)

June 16, 2020

Supreme Court, New York County

Docket Number: 655058/2019

Judge: Joel M. Cohen

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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. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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KRESIMIR PENA VIC, DEAN BERNSTEIN, CHARLES CURTIS, EDWARD KASSEL MAN, MARK GOLODE TZ, PAUL GRIDLEY, ROBERT VAN BRUGGE, MALCOLM THWAITES, MIRIAM TAI, ROBERT GELFOND, PETER SLAGOWITZ, LORINE SCHAEFER, JOHN CHAPMAN

Plaintiffs,

- v -

OMAR KHAN, LESLIE KHAN, SENSEI INTERNATIONAL, LLC, INTERNATIONAL BUSINESS & WINE SOCIETY LLC,

Defendants.

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INDEX NO. 655058/2019
MOTION DATE 02/20/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28

were read on this motion to WITHDRAW AS COUNSEL

On this motion, the law firm Bedell & Forman LLP ("B&F") moves, by Order to Show Cause, to withdraw as counsel for Defendants Omar Khan ("Khan"), Sensei International, LLC ("Sensei"), and International Business & Wine Society LLC ("IBWS") (together, the "Sensei Defendants"), and to stay these proceedings pending the Sensei Defendants' engagement of new counsel.

The motion to withdraw, which is unopposed, is granted subject to the conditions set out below. An attorney is permitted to withdraw when "the client's conduct, namely . . . failure to respond to any communication from counsel, made it unreasonably difficult" for counsel to represent the client effectively (Bok v Werner, 9 AD3d 318 [1st Dept 2004] [citing 22 NYCRR 1200.15 [c] [1] [iv]; Tartaglione v Tiffany, 280 AD2d 543 [2d Dept 2001]; Bankers Trust Co. v Hogan, 187 AD2d 305 [1st Dept 1992]). In addition, "deliberately disregard[ing] an agreement or obligation to the lawyer as to expenses or fees" is another permissible basis for granting

withdrawal (NYCRR 1.16 [c] [5]); *see Weiss v Spitzer*, 26 AD3d 675 [1st Dept 2007] [permitting attorney to withdraw where client was almost \$4,000 in arrears]; *Winters v Winters*, 25 AD3d 601, 601 [2d Dept 2006] [holding attorney may withdraw where client “refuses to pay reasonable legal fees”]).

Here, B&F has made an un rebutted showing that: (1) the Sensei Defendants have failed to communicate with Mr. Bedell and B&F, making it unreasonably difficult for counsel to continue representing the client; and (2) the Sensei Defendants have failed to pay legal fees in accordance with their contractual arrangement with counsel (NYSCEF 23 ¶¶ 7-8 [Bedell Aff.]). In short, the Court concludes that B&F’s withdrawal is warranted.

As part of its motion, B&F also requests that the Court “stay this action for a reasonable time” to permit the Sensei Defendants to obtain new counsel and permit electronic service of the Order to Show Cause and accompanying papers (NYSCEF 26 at 4-5). Given that the Sensei Defendants have already had several months to begin the search for new counsel – B&F filed the Order to Show Cause seeking withdrawal in February – the Court finds that a 3-week stay is appropriate here. And given that Defendant Omar Khan’s physical whereabouts are apparently unknown, but that he is known to communicate to counsel through email, service by e-mail is appropriate (*Kozel v Kozel*, 161 AD3d 700, 701 [1st Dept 2018], lv to appeal dismissed, 32 NY3d 1089 [2018], rearg denied, 32 NY3d 1221 [2019] [finding “[u]nder the[] circumstances, the court properly directed that [nonparty witness] be served via email”]).

B&F is directed to communicate to the Sensei Defendants that any corporate entities must retain counsel to continue this litigation (*see* CPLR § 321 [a]). B&F is also directed to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as stated below.

Accordingly, it is

ORDERED that B&F's motion to be relieved as counsel for the Sensei Defendants is **Granted**, subject to the following conditions; it is further

ORDERED that B&F is to comply with its 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 clients, including giving reasonable notice to the clients, allowing time for employment of other counsel, delivering to the clients all papers and property to which the clients are 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 5 days from entry of this Order, B&F shall serve a copy of this Order with notice of entry upon the Sensei Defendants by email and, to the extent practicable, by hard copy at their 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 the Sensei Defendants, moving counsel shall forward a notice directing the Sensei Defendants to appoint a substitute attorney within 21 days of such notice (*see* CPLR § 321). If any individually named Defendant elects to proceed in this matter *pro se*, that individual must advise the Court of such a decision within 30 days of moving counsel's notice; it is further

ORDERED that any new attorney retained by the Sensei Defendants shall file a notice of appearance within 21 days from the date the notice to retain new counsel is sent; it is further

ORDERED that no further proceedings may be taken against any of the Sensei Defendants without leave of this court until 21 days from the date of notice; it is further

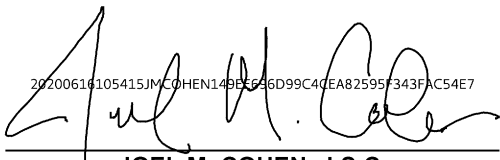
ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this Order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); it is further

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 Preliminary Conference on **July 14, 2020 at 11:00 a.m.**

This Constitutes the Decision and Order of the Court.

6/16/2020
DATE


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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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE