

Root v Freidman

2020 NY Slip Op 33596(U)

October 23, 2020

Supreme Court, New York County

Docket Number: 650856/2019

Judge: Laurence L. Love

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

PRESENT: HON. LAURENCE L. LOVE

PART

IAS MOTION 63M

Justice

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GREGORY ROOT,

Plaintiff,

INDEX NO. 650856/2019

MOTION DATE 07/15/2020

MOTION SEQ. NO. 001

- v -

EVGENY FREIDMAN, LAW OFFICES OF EVGENY A. FREIDMAN & ASSOCIATES, 28TH STREET MANAGEMENT, INC., DOWNTOWN TAXI MANAGEMENT, LLC, TAXI CLUB MANAGEMENT INC., TUNNEL TAXI MANAGEMENT, LLC, WEST SIDE CLAIMS PROCESSING, INC., WOODSIDE MANAGEMENT INC., AL-ANN CAB CORP., ALLMAY CAB CORP., ANDRAS CAB CORP., ANTIBES TAXI INC., ARBAT TAXI INC., ASTRA TAXI INC., B&D RIDE HACKING CORP., BASNYA TAXI INC., BAZAR TAXI INC., BEREZKA CAB CORP., BIMER TAXI INC., BOLIVAR TAXI, LLC, BORISKA TAXI INC., BOSS TAXI, LLC, BRATISHKA TAXI INC., BREITLING TAXI INC., BULIBASS TAXI INC., BUNDI CAB CORP., CABBO SERVICE CORP., CANARY TRANS CORP., CARRERA TAXI INC., COTE DZUR TAXI INC., CREOLE TAXI INC., CUTLASS CAB CORP., DANİYAL TAXI INC., DANUSHKA TAXI INC., DOCHENKA TAXI INC., DORIT TRANSIT INC., DRACHMA HACKING CORP., ECHELON CAB CORP., EMDEE CAB CORP., EMO CAB CORP., ENAF TAXI, INC., ERMITAGE TAXI, LLC, ETILEE TAXI, INC., EXTASEA CAB CORP., FERCO HACKING CORP., FLAMINGO TAXI, INC., FORWARD TAXI, INC., FREMONT TAXI CORP., FUSION TRANSIT LLC, GALUSHA TAXI INC., GEMINI TAXI INC., GORYANKA TAXI INC., GRAPPA TAXI LLC, GURMAN TAXI INC., HUBLLOT TAXI INC., JACK DANIEL TAXI LLC, JACLINE & ELENORA HACKING CORP., KAISU TAXI INC., KERRY TAXI INC., KESEV TAXI, INC., KING MARIO TAXI, INC., KING PIERRE TAXI, INC., KIRUNA CAB CORP., KORMILITSA TAXI INC., LACOSTE TAXI INC., LIBNOTH CAB CORP., LIMA CAB CORP., M.F.S. HACKING CORP., MAGYAR CAB CORP., MALYSH TAXI INC., MARBORO HACKING CORP., MEGEVE TAXI LLC, MERRY CAB CORP., MILA & ANITA CAB CORP., MIRA EXPRESS TAXI INC., MOTZKIN TAXI INC., MUNOR CAB CORP., MURZIK TAXI INC., N.Y. ABAR TAXI CORP., N.Y. PISCES TAXI CORP., NACHALO TAXI INC., OAK TAXI INC., OASIS CAB CORP., OPEN CAB CORP., PACE TAXI INC., PATRON TAXI, LLC, PERTS HACKING CORP., PERVOYE TAXI INC., PIGUET TAXI INC., PLIKH HACKING CORP., POOKIE HACKING CORP., PORSCHE TAXI INC., PRADA TAXI INC., PRAISE CAB

**DECISION + ORDER ON
MOTION**

CORP., RAMI CAB CORP., RHEA TRANS CORP., RICALE TAXI, INC., RIVIERA TAXI, LLC, ROSA HACKING CORP., RUTH EXPRESS CAB CORP., SABOR TAXI INC., SAKE TAXI LLC, SEMYA TAXI INC, SIBERIA TAXI LLC, SINULYA TAXI INC., SMOOCHIE CAB CORP., SPARKLE CAB CORP., STAR FOURTEEN CAB CORP., STAR-9 CAB CORP., STARUSHKA TAXI INC., STUDENT TAXI INC., TANGUERAY HACKING CORP., TAXI CLUB ONE CAB CORP., TAXI CLUB TWO CAB CORP., TEENAGER TAXI INC., TORPEDO TAXI INC., TWINKLE CAB CORP., VAS TAXI INC., VEM TRANS CORP., VIRGIN TAXI INC., VOBLA TAXI INC., VOIN TAXI INC., VOVCHIK TAXI INC., VOZDUX TAXI INC., YAGODKA TAXI INC., YANUSH TAXI INC., YEFIM & MIKHAIL CAB CORP., YELLOW DIAMOND TAXI LLC, ZLUCHKA TAXI INC., ZODIAC TAXI INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion is decided as follows:

Plaintiff commenced the instant action by filing a Summons with Notice on February 19, 2019, seeking damages in the amount of \$123,675.00, for breach of contract, account stated and unjust enrichment based upon defendants' alleged failure to pay for legal services rendered. On February 29, 2019, plaintiff served all of the defendants by delivering 130 copies of the Summons with Notice to Evgeny Friedman, personally. On March 6, 2019, plaintiff mailed an additional 130 copies of the Summons with Notice pursuant to CPLR 3215(g). Defendants have failed to oppose the instant motion or otherwise appear in this action. As such, defendants are now in default. Plaintiff now moves for a default judgment on the issue of liability against defendants, Evgeny Friedman and the Law Offices of Evgeny Friedman and Associates, and to sever the corporate defendants.

CPLR 3215 (f) provides in pertinent part as follows: "On any application for judgment by default, the applicant shall file proof ... by affidavit ... made by the party of the facts constituting

the claim, the default and the amount due (see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept 1997]; *Rafiq v. Weston*, 171 AD2d 783 [2nd Dept 1991]; *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]).

In support of its motion, plaintiff submits the affidavit of plaintiff, Gregory S. Root, together with a list of invoices. Said affidavit specifically alleges that “Mr. Friedman retained the law firm of Gerber & Gerber, PLLC (“Gerber & Gerber”), and its successor firm, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP (“Abrams Fensterman”) to represent himself as well as the corporate and LLC defendants with respect to personal injury actions that had been filed against them. Mr. Friedman authorized Gerber & Gerber and Abrams, Fensterman to retain me as counsel to appear in court on behalf of himself and the corporate and LLC defendants for these personal injury actions and to provide related legal services.” Plaintiff’s procedure to be paid for said legal services “was to send my invoices for my legal services to Gerber & Gerber (and then Abrams Fensterman), who would in turn forward my invoices to Mr. Friedman with a ‘check request’ to pay my legal services provided to Mr. Friedman and his corporate and LLC defendants. Plaintiff further alleges that “there is an unpaid balance due and owing me by Mr. Friedman in the sum of \$123,675.00 for legal services which I rendered him between February 11, 2013 and February 28, 2016.” The included list of invoices contains no actual invoices and bears no indication that any were ever presented to defendants for payment.

Plaintiff’s affidavit, despite alleging that he met with Mr. Friedman, who consented to his appearance as a per diem attorney, fails to establish that he had a contractual relationship with defendants and fails to establish that any invoices were served upon defendants, establishing only that plaintiff was employed by Gerber & Gerber and Abrams, Fensterman. As such, plaintiff has not established a *prima facie* entitlement to judgment.

Plaintiff's motion is hereby denied in its entirety.

10/23/2020
DATE


LAURENCE L. LOVE, 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