

**Kopelvich & Feldsherova, P.C. v Art of Healing  
Medicine P.C.**

2021 NY Slip Op 32180(U)

October 28, 2021

Supreme Court, Kings County

Docket Number: Index No. 509349/2020

Judge: Ingrid Joseph

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.

At an I.A.S Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28<sup>th</sup> day of October, 2021.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS  
**PRESENT: HON. INGRID JOSEPH, J.S.C**

-----X  
Kopelvich & Feldsherova, P.C.,

Index No. 509349/2020

Plaintiff,

-against-

Art of Healing Medicine, P.C., Svetlana Pinkusovich,  
Alexander Pinkusovich

Defendants.

-----X

**Recitation, as required by CPLR '2219(a), of the papers considered in the review of Plaintiff's and Defendants' Motion(s):**

<u>Papers Numbered</u>	
Notice of Motion and	
Affidavits/Affirmations Annexed.....	1, 2, 3, 4
Affirmation in Opposition Papers.....	
Reply to Opposition Papers.....	5

Plaintiff, Kopelevich & Feldsherova, P.C. commenced this action to recover legal fees for legal services allegedly provided by Plaintiff to the Defendants, Art of Healing Medicine, P.C. ("AHM), Mr. Alexander Pinkusovich and Mrs. Svetlana Pinkusovich ("The Pinkusovichs") or collectively ("Defendants"). Plaintiff filed a summons and complaint on June 5, 2020 and an amended complaint on July 10, 2020 and served it on AHM on August 3, 2020. The Pinkusovichs, moved to dismiss the complaint for failure to state a cause of action. That motion was denied by a prior judge on November 10, 2020 and defendants Pinkusovichs were directed to file an answer within ten (10) days of service of notice of entry of the order. The notice of entry of the November 10, 2020 order was filed on November 20, 2020. Maksim Leyvi, counsel for all the named defendants filed a notice of appearance on November 20, 2020. Defendants filed an answer on November 24, 2020. Plaintiff subsequently filed a notice of rejection of the untimely answer for defendant AHM on the basis that the November 10<sup>th</sup> order was only directed to the defendants that appeared in the action.

Defendant, AHM moves for an order compelling Plaintiff to accept the verified answer and granting summary judgment dismissing Plaintiff's complaint against it. Plaintiff cross-moves for an entry of default judgment against defendant AHM in the amount of \$59,767.22.

Defendants assert that the court should compel Plaintiff to accept Art of Healing Medicine, P.C.'s answer because Mr. and Ms. Pinkusovich who are officers of Art of Healing Medicine appeared in this action by filing a pre-answer motion to dismiss as pro se litigants. Defendants contend that their actions did not cause any prejudice or delay to the Plaintiff. Defendants maintain that they acted diligently in this matter by retaining counsel after their motion to dismiss was denied. Defendants concede that AHM was not represented by counsel as is required by law until after the motion to dismiss was denied. Defendants also highlight the fact that Governor Cuomo's Executive Order 202.8 and 202.67 tolled all specific time limits for filing such papers which stay ended on November 3, 2020. Defendants in support of that branch of the motion seeking summary judgment argue that Plaintiff's complaint should be dismissed since plaintiff did not comply with the Part 137 Fee Dispute Resolution program. Defendants contend that Plaintiffs failed to inform them in writing that they have thirty (30) days from receipt of the notice to elect to resolve the dispute by arbitration pursuant to 22 NYCRR 137. Defendants argues that *Herrick v. Lyon*, 7 A.D.3d 571 (2d Dept 2004) supports their argument since the Court held that failure [to provide the notice] is a fatal pleading defect and requires the dismissal of the complaint.

Plaintiff maintains that it is entitled to an order entering a default judgment against the defendant AHM pursuant to CPLR § 3215. Plaintiff states that the summons and complaint were served on AHM via Secretary of State pursuant to Business Corporation Law § 306 on August 3, 2020 and that AHM failed to serve a timely answer. Plaintiff asserts that it has established the merits of its claim by providing the Court with the retainer agreements, bill statements, an email of the principal of AHM, defendant Alexander Pinkusovich, who admitted to receiving the bill statements, a check that was endorsed by defendant AHM but subsequently dishonored by Chase and a sworn statement that the balance is still unpaid. Plaintiff also opposes Defendants' motion to compel it to accept AHM's answer and their motion for summary judgment dismissing the complaint. Plaintiff argues that the motion for summary judgment that was filed on the behalf of AHM should not be considered since it is improper. Plaintiff asserts that AHM does not meet its burden to vacate a default since it did not present a reasonable excuse or a meritorious defense. Plaintiff emphasizes that its complaint sufficiently pled that the Fee Dispute Program does not apply in this action because 1) the amount in controversy is more than \$50,000 (2) there has not been any attorney services rendered for more than two years since the last service rendered on

August 19, 2016 and this instant action was commenced in June of 2020. Plaintiff asserts that the Executive Order does not apply to AHM's time to serve an answer since it only states "any legal action, notice, motion, or other process or proceeding" time is tolled. Plaintiff further argue that even if the Executive Order applied to AHM the answer would still have been untimely.

The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf... the appearance shall be made within thirty days after service is complete (CPLR 320).

Generally, 22 NYCRR 137.1 fee Dispute Resolution Program does not apply to disputes where no attorney's services have been rendered for more than two years or where the amounts in dispute is more than \$50,000 (22 NYCRR 137.1[b][6] (*Carling v Peters*, 170 AD3d 482, 484 [1st Dept 2019]));(see also *Kerner and Kerner v Dunham*, 46 AD3d 372 [1st Dept 2007]).

After a review of the documents submitted, the Court finds that former Governor Cuomo's Executive Order 202.8 tolled the specific time limit for the... filing... of any other process... as prescribed by the procedural laws of the state, including but not limited to the... civil practice law and rules to include the filing of response papers, such as, an answer to a complaint. Plaintiff served its amended complaint on the Defendants on August 3, 2020. Governor Cuomo's executive order No. 2020.8 tolling the statute of limitations was lifted on November 3, 2020. Since the amended complaint was served on AHM via service on the Secretary of State of the State of New York On August 3, 2020 and the governor toll had expired on November 3, 2020 the defendant had thirty days thereafter to timely file its answer. Therefore, AHM answer which was filed within thirty days of the lifting of the toll is timely. AHM interposed an answer on November 24<sup>th</sup> which is twenty (20) days exactly from November 4<sup>th</sup> which was the first day that the Executive order was not in effect. The Court finds that the branch of Defendants; motion seeking summary judgment dismissing the complaint is without merit. Since Plaintiff's claim exceeds \$50,000 and attorney's services have not been rendered for more than two years therefore, the Fee Dispute Resolution Program is inapplicable to this case.

Accordingly, that part of Defendants' motion seeking an order compelling plaintiff to accept its answer is granted and that part of Defendant's motion for summary judgment dismissing plaintiff's complaint is denied. Plaintiff's cross-motion for a default judgment is denied.

This constitutes the decision and order of the Court.

ENTER,



---

HON. INGRID JOSEPH, JSC

Hon. Ingrid Joseph  
Supreme Court Justice