

**510 E. 6th St. LLC v Perez**

2022 NY Slip Op 32198(U)

July 8, 2022

Supreme Court, New York County

Docket Number: Index No. 152128/2019

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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510 EAST 6TH STREET LLC,

Plaintiff

Index No. 152128/2019

- against -

DECISION AND ORDER

KAMEPHIS PEREZ,

Defendant

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

In an order dated January 20, 2020 (Kalish, J.), based on the parties' stipulation, the court appointed former Supreme Court Justice Larry Schachner, now affiliated with National Arbitration and Mediation, LLC (NAM), to supervise disclosure and empowered him to render any orders related to disclosure in this action, unless prohibited by statute. C.P.L.R. § 3104(b) and (c). Defendant has moved to remove the Special Master from his supervision of disclosure due to bias, incompetence, and misconduct. In an order dated May 23, 2022, the court found that defendant had failed to show any bias, incompetence, or misconduct in the Special Master's orders. The only other conduct on which defendant based his request to remove former Justice Schachner as the Special Master was that he billed the parties for conferences January 31, April 30, May 31, and

December 21, 2020, and September 30, 2021, that defendant claims never occurred and for a half hour conference January 28, 2020, that defendant claims the Special Master ended after 11 minutes. Therefore the court granted defendant's motion to remove the Special Master from his supervision of disclosure to the extent of ordering a hearing for defendant to establish overbilling by the Special Master that warrants former Justice Schachner's removal and the substitution of a new Special Master.

## II. EVIDENCE

At the hearing, defendant called himself and plaintiff's attorney as witnesses, who were sworn and testified, and the court admitted defendant's Exhibits E and G without objection. Exhibit E is email correspondence between defendant and NAM's Accounting Department, in particular Lou Jocks, in which the Accounting Department confirmed, upon defendant's inquiry, that, if the parties reserved a span of the Special Master's time, in this instance a half hour January 28, 2020, the parties were to pay for the half hour, even if it was not used. Defendant concluded: "I'll workout [sic] the future hearing estimates with the judge," referring to Justice Schachner. Ex. E, at 3. Defendant does not complain of any further instances when reserved time was unused.

Exhibit G resolves defendant's remaining complaints. It is email correspondence between defendant and Marinos Constanti, a

Commercial Case Manager at NAM, in which he confirmed, upon defendant's inquiry, that "there was no conference scheduled in September 2021," which included September 30, 2021, about which defendant complains. Ex. G, at 1. He also offered to discuss defendant's inquiry further, but defendant did not present any evidence of a further discussion. Most importantly, Constanti explained about the invoice from September 30, 2021, that, even though it indicated conference time, "the line item is for time spent by Judge Schachner in that month," which included services in connection with conferences or hearings, such as review of documents or preparation of orders. Ex. G, at 1 (emphasis added). Both defendant and plaintiff's attorney testified that the Special Master performed such services outside of conferences or hearings that the parties attended.

Defendant also offered his Exhibit F into evidence, but the court sustained plaintiff's objection to the unsworn hearsay document to the extent that the document was offered for its truth, absent a foundation for an exception to the rule against hearsay. Defendant did authenticate Exhibit F as an invoice he received from NAM, however, so the court considers the document other than for its truth. People v. Patterson, 28 N.Y.3d 544, 549 (2016); People v. Becoats, 17 N.Y.3d 643, 655 (2011); People v. Ricco, 56 N.Y.2d 320, 328 (1982); People v. Baustista, 132 A.D.3d 523, 525 (1st Dep't 2015), aff'd, 30 N.Y.3d 935 (2017).

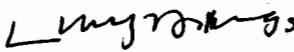
The invoice is entitled "INVOICE FOR: OTHER SERVICES." Ex. F, at 1. The "line item" for each date other than January 28, 2020, about which defendant complains, January 31, April 30, May 31, and December 21, 2020, as well as September 30, 2021, is for "Conference Time," followed by the month and year: "January 2020," "April 2020," "May 2020," "December 2020," and "Sept 2021." Id., at 1-2. The date of each of these line items is the last day of the month, except December 21, 2020, shortly before the holiday period at the end of the year.

Thus Constanti's explanation of the line item for September 30, 2021, that, even though it indicated "Conference Time," it was "for time spent by Judge Schachner in that month," including on review of documents, preparation of orders, or other services outside of conferences or hearings that the parties attended, applies equally to the other line items about which defendant complains. Ex. G, at 1 (emphasis added). Each such entry was the accumulated, previously unbilled time Special Master Schachner spent on such services during that month: January, April, May, and December 2020, as well as September 2021. Had defendant accepted Constanti's offer to discuss defendant's inquiry further, defendant might have realized what this analysis of his exhibits reveals.

III. CONCLUSION

Consequently, defendant does not demonstrate any overbilling by Special Master Schachner or NAM, other than the Special Master's failure to use 19 of the 30 minutes reserved for his services January 28, 2020, a discrepancy that defendant acknowledged he would work out with the Special Master in the future. Although defendant testified that the early end to the conference January 28, 2020, was abrupt, defendant further failed to demonstrate that it was unjustified. Even were it unjustified, it does not warrant vacatur of the stipulation and order appointing former Justice Schachner as the Special Master and removing him from that capacity. Therefore the court denies defendant's motion for that relief. Nevertheless, the parties are free to stipulate (1) to the substitution of a new Special Master, such as the one plaintiff has proposed, or (2) that disclosure is complete, so that a Special Master is no longer needed to supervise disclosure, as defendant has proposed.

DATED: July 8, 2022

  
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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C