

Kolchins v Evolution Mkts. Inc.
2022 NY Slip Op 32379(U)
July 18, 2022
Supreme Court, New York County
Docket Number: Index No. 653536/2012
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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 ANDREW KOLCHINS,

Plaintiff,

- v -

EVOLUTION MARKETS INC., ANDREW ERTEL

Defendant.

INDEX NO. 653536/2012

MOTION DATE N/A

MOTION SEQ. NO. N/A

**DECISION/ORDER AFTER
 INQUEST**

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 HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number 537, 538, 539, 540, 541, 542, 543, 544, 545, 552, 553, 554, 555

were read on this application for

ATTORNEYS FEES AND COSTS

The Court's June 8, 2022 Decision After Non-Jury Trial (NYSCEF 534 ["Decision"]) awarded Plaintiff Andrew Kolchins ("Kolchins") money damages for breach of contract and violations of the New York Labor Law against Defendant Evolution Markets Inc. ("EvoMarkets"). Additionally, the Decision awarded Kolchins "reasonable attorneys' fees and costs incurred specifically with respect to his Labor Law claim against EvoMarkets. . ." and directed the parties to submit a proposed judgment and, if necessary, proposed counter-judgment (Decision at 24-26). The Court expressly directed Kolchins to file "appropriate documentation" of his costs and fees (*Id.* at 25).

On June 21, 2022 – simultaneous with his motion to reargue (Mot. Seq. No. 020) – Kolchins submitted *three* proposed judgments: one for this case assuming the motion to reargue is not granted (NYSCEF 540); one assuming the motion to reargue is granted (NYSCEF 541); and one for the related case filed by EvoMarkets against Kolchins under Index No. 651271/2013

“2013 Case”) (Exhibit 544). Kolchins motion to reargue has been denied in a separate order. Further, Kolchins is not entitled to any fees with respect to the 2013 Case as they were not awarded in the Decision. Accordingly, the Court considers only those costs and fees requested vis-à-vis the successful Labor Law claim.

Kolchins argues that because the Labor Law award necessarily required a finding that EvoMarkets breached that 2009 Agreement. “[i]t is not possible to determine the amount of time expended solely on the Labor Law claim by parsing time records” and suggests that the Court apply a 34.5% discount factor based on the total amount awarded in the Decision to reach an attorney fee of \$293,041.42 and costs of \$19,392.57. (NYSCEF 537 ¶¶9-16 [Hamid Affirmation]). Mr. Hamid has neither annexed his firm’s retainer agreement with Kolchins or any relevant time sheets to his Affirmation. Mr. Hamid does, however, annex a spreadsheet of the claimed expenses incurred in this case (NYSCEF 539).

Defendants submitted opposition on July 15, 2022 and argue that Kolchins is not entitled to any award of attorneys’ fees for failure to provide “appropriate documentation” including a retainer or invoices, and, in the alternative, that the attorneys’ fees he seeks should be reduced (NYSCEF 552). Defendants argue that, at most, Kolchins is entitled to \$180,148.01 in attorneys’ fees and \$10,548.92 in costs (NYSCEF 522 at 2). Defendants argue that, should the Court apply a discount factor as invited by Kolchins, the amount should be 21.36% based on the amount Kolchins sought as opposed to the amount awarded in the Decision (NYSCEF 552 at 4-5 [Defendants’ Memorandum of Law]). Defendants do not object to costs in the amount of \$10,548.92 based upon their admission that \$49,386.32 in costs are recoverable and that the 21.36% discount rate should apply (NYSCEF 552 at 5-6).

The Court is mindful that it is being asked to calculate a “reasonable” fee owed absent submission of certain “appropriate documentation” such as a retainer agreement and time records. Kolchins does not provide any authority to support the contention that the Court should apply a “discount factor” rather than the “lodestar” amount typically utilized in Labor Law cases. (*Nager v Teachers' Retirement Sys. of City of New York*, 57 AD3d 389, 390 [1st Dept 2008] [“Supreme Court properly used the lodestar method in determining the reasonable value of plaintiffs' attorneys' services in instituting and settling this class action, rather than applying a percentage of the value of the settlement, in view of the enormous disparity in result between the two methods”]; see *Villanueva v 179 Third Ave. Rest Inc.*, 500 F Supp 3d 219, 240 [SDNY 2020], report and recommendation adopted sub nom. 2021 WL 2139441 [SDNY May 26, 2021][collecting cases]).

EvoMarkets contends that Kolchins' failure to submit a retainer and time sheets is fatal by citing a number of federal cases (NYSCEF 552 at 3-5). However, New York law is not as harsh as federal law in this regard. (*1 Toms Point Lane Corp. v New York State Div. of Human Rights*, 176 AD3d 930, 932-33 [2d Dept 2019] citing *Matter of Karp*, 145 AD2d 208, 216 [1st Dept 1989]). Kolchins submissions indicate that approximately 2,600 hours were spent on his case but lack specificity regarding his Labor Law claim (NYSCEF 537 ¶19). That said, the record in this case makes clear that Kolchins counsel devoted compensable time to the Labor Law claim distinct from the contract claim. (*Kolchins v Evolution Markets, Inc.*, 128 AD3d 47, 64 [1st Dept 2015], *affd*, 31 NY3d 100 [2018]). The Court directed that Kolchins recover attorneys' fees related to his successful Labor Law claim only and any resulting judgment must conform to that directive. (*Tomo v Episcopal Health Services, Inc.*, 112 AD3d 612, 614 [2d Dept 2013] [remitting for new fee calculation]).

Thus, on this record, the Court grants Kolchins the sum of \$180,148.01 in attorneys' fees and \$10,548.92 in costs along with any other costs as may be taxed by the Clerk of Court. The Court will enter final judgment based on the form of proposed counter-judgment submitted by Defendants (NYSCEF 555).

7/18/2022

DATE



JOEL M. COHEN, 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