

**Matter of Law Offs. of Michael S. Lamonsoff, PLLC v
Gambone Law Group, PLLC**

2022 NY Slip Op 34302(U)

December 19, 2022

Supreme Court, New York County

Docket Number: Index No. 158093/2022

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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In the Matter of

LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC,

Petitioner,

- v -

GAMBONE LAW GROUP, PLLC,

Respondent.

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INDEX NO. 158093/2022

MOTION DATE 10/11/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for RELEASE RECORDS.

The Law Offices of Michael S. Lamonsoff, PLLC (Lamonsoff), petitions to discharge, for cause, the law firm of Gambone Law Firm, PLLC (Gambone), from representing Achraf Ardouni in connection with injuries that Ardouni sustained in a June 19, 2022 accident, and to deliver, to it, the litigation file referable to Gambone’s representation of Ardouni. Alternatively, Lamonsoff requests that, if the court does not find cause for Gambone’s discharge, to fix Gambone’s outgoing lien and fees for services rendered. Gambone does not oppose the petition. The petition is granted to the extent that, on or before January 20, 2023, Gambone shall deliver to Lamonsoff the litigation file referable to Gambone’s representation of Ardouni and an executed substitution of attorney form, and provide Lamonsoff with a statement of disbursements. Lamonsoff shall pay those disbursements within 30 days of receipt of the statement. The petition is otherwise denied, and, in the event that Gambone has commenced an action on Ardouni’s behalf (see Judiciary Law § 475), the amount of Gambone’s charging lien shall be determined after Ardouni’s underlying claim is disposed.

Ardouni retained Gambone to represent him in connection with a potential claim to recover for personal injuries that he sustained in a June 19, 2022 accident. On September 12, 2022, Lamonsoff sent Gambone, by certified mail, return receipt requested, (a) a letter, signed by Ardouni, discharging Gambone as Ardouni's attorneys and directing Gambone to take no further steps in connection with his claim, (b) a proposed substitution of attorney form executed by Ardouni and Lamonsoff, and (c) a request that Gambone turn over its litigation file referable to Ardouni, and execute and return the substitution of attorney. As set forth in the petition, Gambone never responded to the requests. On September 21, 2022, Lamonsoff's principal, Michael S. Lamonsoff, was told that Gambone had received the documents, and that the attorney assigned to the matter was then not available to speak with him, but that, upon receipt of a check for disbursements, Gambone would send Lamonsoff a proposed stipulation and would deliver the case file to Lamonsoff upon its receipt of the signed stipulation.

A client may discharge an attorney at any time, with or without cause (see *Cohen v Grainger, Tesoriero & Bell*, 81 NY2d 655, 658 [1993]; *Ginsberg v. Gamiel*, 13 AD3d 79, 79 [1st Dept 2004]). An attorney who has been discharged by a client must turn over the client's files to an incoming attorney, regardless of any retaining liens it may have thereon (see *Matter of Rehabilitation of Contrs. Cas. & Sur. Co. [Levin, Hollander & Assoc.]*, 276 AD2d 411, 411 [1st Dept 2000]). Although, "[a]bsent evidence of discharge for cause, a court should not order turnover of an outgoing attorney's file before the client fully pays the attorney's disbursements or provides security therefor" (*Bing Hui Chen v Speedway Plumbing Corp.*, 138 AD3d 660, 660 [2d Dept 2016], quoting *Warsop v Novik*, 50 AD3d 608, 609 [1st Dept 2008]), here, Lamonsoff indicated its readiness to pay Gambone's disbursements in full, but Lamonsoff has not yet paid Gambone therefor because Gambone has not provided Lamonsoff with a statement of disbursements. Gambone's failure in this regard has only served to delay the transfer of the file, to Ardouni's detriment. Hence, Gambone must turn over Ardouni's litigation file to Lamonsoff contemporaneously with its provision of a statement of disbursements.

Lamonsoff, however, has submitted no proof whatsoever that Gambone was discharged for cause. Rather, it relies on a hearsay statement from Ardouni that he was merely “dissatisfied” with Gambone’s representation, a ground insufficient to constitute cause (*see Brill & Meisel v Brown*, 2012 NY Slip Op 32107[U], *15-16, 2012 NY Misc LEXIS 3856, *27 [Sup Ct, N.Y. County, Jul. 10, 2012]). The court notes that Ardouni discharged Gambone less than three months after the date of the accident, a period of time that appears to be insufficient for any type of dissatisfaction to develop.

Where, as here, a client discharges an attorney without cause, “[u]ntil an attorney of record is discharged by order of the court or by the filing of the consent of the retiring attorney and party in the prescribed form,” that attorney remains obligated to represent the client (*Hawkins v Lenox Hill Hosp.*, 138 AD2d 572, 573 [2d Dept 1988]; *see Hess v Tyszko*, 46 AD2d 980, 980 [3d Dept 1974]). Even though it is not clear from Lamonsoff’s submissions whether Gambone had commenced an action on behalf of Ardouni, and thus became an “attorney of record,” Gambone nonetheless must execute the substitution of attorney form and return it to Lamonsoff to effectuate its discharge as Ardouni’s attorney. The court notes that any charging lien on a recovery secured in this matter may only be asserted with respect to legal work performed “[f]rom the commencement of an action” (Judiciary Law § 475; *see Matter of Taylor, Jacoby & Campo*, 208 AD2d 400, 401 [1st Dept 1994] [lien may only be asserted by an attorney who appears for a party in an action or special proceeding]; *see also Jaghab & Jaghab v Marshall*, 256 AD2d 342, 343 [2d Dept 1998]). Since neither Lamonsoff nor Gambone adduced any evidence as to whether Gambone commenced an action on behalf of Ardouni, there is no basis upon which the court may fix the amount of any charging lien at this juncture.

Accordingly, it is

ORDERED that the petition is granted, without opposition, to the extent that, on or before January 20, 2023, Gambone Law Firm, PLLC, shall deliver, to Law Offices of Michael S. Lamonsoff, PLLC, the litigation file referable to the representation of Achraf Ardouni by

Gambone Law Firm, PLLC, return an executed substitution of attorney form to Law Offices of Michael S. Lamonsoff, PLLC, and provide Law Offices of Michael S. Lamonsoff, PLLC, with a statement of disbursements that it has incurred to date in connection with its representation of Achraf Ardouni, and the petition is otherwise denied; and it is further,

ORDERED that, within 30 days of its receipt of the statement of disbursements, Law Offices of Michael S. Lamonsoff, PLLC, shall pay Gambone Law Firm, PLLC, for those disbursements; and it is further,

ORDERED that, on or before December 29, 2022, Law Offices of Michael S. Lamonsoff, PLLC, shall serve a copy of this order with notice of entry upon Gambone Law Firm, PLLC, by overnight delivery.

This constitutes the Decision and Order of the court.

12/19/2022
DATE



JOHN J. KEENEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: