

Ikramov v A-Life Saver Home Care Servs., Inc.

2023 NY Slip Op 33728(U)

October 23, 2023

Supreme Court, New York County

Docket Number: Index No. 161328/2017

Judge: Frank P. Nervo

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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. FRANK P. NERVO PART 04

Justice

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MIRZAGADAYBOY IKRAMOV, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY A-LIFE SAVER HOME CARE SERVICES, INC. ALONG WITH OTHER ENTITIES AFFILIATED OR CONTROLLED BY A-LIFE SAVER HOME CARE SERVICES, INC.,

Plaintiff,

- v -

A-LIFE SAVER HOME CARE SERVICES, INC., AND/OR ANY OTHER RELATED ENTITIES,

Defendant.

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A-LIFE SAVER HOME CARE SERVICES, INC.

Plaintiff,

-against-

ALL HEART HOMECARE AGENCY, INC., STEVEN GERSHKOWITZ, ALBERT FINKELSTEIN

Defendant.

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INDEX NO. 161328/2017
MOTION DATE 09/25/2023
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

Third-Party
Index No. 595420/2019

The following e-filed documents, listed by NYSCEF document number (Motion 006) 119, 120, 121, 122, 123, 124

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW .

Defendant’s counsel moves by order to show cause to be relieved as counsel due to defendant’s failure to meaningfully communicate with counsel or pay counsel’s outstanding legal bills. The application is wholly unopposed.

“The fact that a client fails to pay an attorney for services rendered does not, without more, entitle the attorney to withdraw,” especially where proceedings have been ongoing (*George v. George*, 217 AD2d 913 [4th Dept 1995]; see also *Haskell v. Haskell*, 185 AD2d 333 [2d Dept 1992]). However, where a client has failed to respond to their attorney’s communications in addition to failing to pay their attorney’s fee, the Appellate Division has found an attorney is entitled to withdraw on “unreasonably difficult” grounds (see e.g. *Bok v. Werner*, 9 AD3d 318 [1st Dept 2004]; *Aragona v. Shaibani*, 138 AD3d 649 [2d Dept 2016]).

Here, defendant’s counsel avers defendant has not meaningfully communicated with counsel throughout September 2023, and counsel is unable to effectively respond to the pending motion to certify the action as a class action due to this lack of communication. Counsel further avers that its legal bills remain outstanding. Defendant has not appeared to refute these claims. Consequently, defendant’s counsel has stated sufficient grounds to be relieved. However, the Court is mindful of the dictates of CPLR § 321(a) requiring that corporate entities appear only by counsel and prohibiting pro-se appearances of same.

Accordingly, it is

ORDERED that Matthew J. Blit, Esq. and the law firm of Levine & Blit, PLLC, are relieved as counsel for defendant A-Life Saver Home Care Services, Inc. upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 5 days from entry, moving attorney shall serve a copy of this order with notice of entry upon the former client at its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that within 5 days, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney no later than December 01, 2023, and the client shall comply therewith. Defendant A-Life Saver Home Care Services shall be prohibited from appearing pro-se pursuant to CPLR § 321(a); and it is further

ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website; and it is further

ORDERED that any new attorney retained by defendant A-Life Saver Home Care Services shall file a notice of appearance with the Clerk of the General Clerk's Office and the Clerk of the Part no later than December 01, 2023; and it is further


ORDERED that no further proceedings may be taken against the former client without leave of this court before December 01, 2023; and it is further

ORDERED that should defendant A-Life Saver Home Care Services fail to substitute counsel by December 01, 2023, plaintiff may file an application, by

order to show cause, to strike defendant’s pleading and find defendant A-Life Saver Home Care Services in default and/or any other appropriate relief; and it is further

ORDERED that should the conditions herein remain unsatisfied, Levin & Blit, PLLC, shall remain counsel of record for defendant A-Life Saver Home Care Services.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

<p>10/23/2023 DATE</p>			 <hr/> <p>HON. FRANK P. NERVO J.S.C.</p>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> DENIED		