

Saunders v New York City Hous. Auth.
2023 NY Slip Op 34161(U)
November 30, 2023
Supreme Court, New York County
Docket Number: Index No. 156621/2020
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

-----X

ELIZABETH SAUNDERS,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, THE CITY OF
NEW YORK,

Defendants.

-----X

INDEX NO. 156621/2020

MOTION DATE 11/30/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion for

ATTORNEY - FEES

The underlying action arises out of plaintiff Elizabeth Saunders's November 25, 2019 trip and fall within the apartment building located at 228 West 62nd Street, New York, New York (NYSCEF Doc. No. 16 [Kuller Aff. at ¶9]). Brett Kuller, while employed as an associate attorney at C&N, referred this matter to C&N and represented plaintiff in connection with this action from its commencement (*Id.* at ¶12). During the pendency of this action, C&N terminated Kuller's employment over disagreements about the firm's COVID-19 office protocols (*Id.* at ¶¶13-16). Kuller then formed his own firm—the Law Offices of Brett Kuller, P.C. ("BKPC")—and plaintiff subsequently elected to substitute BKPC as her counsel of record in place of C&N (*Id.* at ¶18).

Pursuant to a stipulation dated April 15, 2021, C&N asserted a charging lien against any settlement or judgment obtained in this action, the value of which to be determined upon the conclusion of this action in the event the fee dispute could not be resolved by agreement (NYSCEF

Doc. No. 22). BKPC subsequently partnered with Ramy Joudah to form Joudeh & Kuller, LLP (“J&K”), which continued to handle plaintiff’s case (Id. at ¶25).

On January 27, 2022, this action settled for \$150,000 (Id.).

J&K now moves, by order to show cause, for an order, pursuant to Judiciary Law §475, directing a hearing to determine the value of Chopra & Nocerino, LLP’s (“C&N”) charging lien on any recovery in this action which, J&K argues, should be limited to no more than five percent of the contingency fee.

C&N opposes J&K’s motion, arguing that it is premature as J&K may be barred from obtaining any compensation for services rendered in plaintiff’s action in light of Joudeh’s December 1, 2022 guilty plea to federal criminal charges involving marijuana distribution and potential disbarment. C&N also requests the Court stay any such hearing pending the resolution of C&N’s civil action against, inter alia, J&K, Joudeh, and Kuller, entitled Chopra & Nocerino, LLP v Ramy H. Joudeh, Brett L. Kuller et al., in Supreme Court of New York, Nassau County under index number 613134/2021 (the “Nassau County Action”) in which C&N asserts claims against Joudeh and Kuller for, inter alia, breach of fiduciary duty, breach of loyalty, unfair competition, and unjust enrichment based upon allegations that Joudeh and Kuller stole the contents of C&N’s server and used this information to start a competing law firm, diverting forty-six cases of C&N’s cases, including the instant action (See NYSCEF Doc. No. 31). C&N argues that a stay is appropriate because, should it prevail on these claims in the Nassau County Action, J&K would not be entitled to any portion of the contingency fee earned in the instant action¹.

¹ C&N argues that J&K’s motion is procedurally defective because a Joshua Ram—a former partner of J&K, a defendant in the Nassau Action, and, at one point, an attorney of record in the instant action—was never served with the instant motion. However, J&K e-filed the instant motion and Ram was therefore notified of the instant motion through NYSCEF (See 22 NYCRR §202.5-b[f][2][ii]; see also, Jones v City of New York, 2015 NY Slip Op 30927[U], *5 [Sup Ct, NY County 2015])

For the reasons set forth below, J&K's motion is granted.

DISCUSSION

Judiciary Law §475 provides that

[f]rom the commencement of an action, special or other proceeding in any court or before any state, municipal or federal department, except a department of labor, or the service of an answer containing a counterclaim, or the initiation of any means of alternative dispute resolution including, but not limited to, mediation or arbitration, or the provision of services in a settlement negotiation at any stage of the dispute, the attorney who appears for a party has a lien upon his or her client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, award, settlement, judgment or final order in his or her client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.

In this case, there is no dispute that C&N has asserted a valid charging lien. However, to the extent that the parties dispute the value of C&N's charging lien, J&K's motion is granted and this matter is to be set down for a hearing before a Special Referee to determine the value of C&N's fee measured by a percentage of the contingency "based on [C&N's] proportionate share of the work performed on the whole case" (Cohen v Grainger, Tesoriero & Bell, 81 NY2d 655, 658-659 [1993]) and upon consideration of "relevant factors including the amount of time spent by the attorneys on the case, the nature and quality of the work performed and the relative contributions of counsel toward achieving the outcome" (Rosado v Alhati, 109 AD3d 753, 753 [1st Dept 2013]; see also Bd. of Mgrs. of the Boro Park Vil.-Phase I Condominium v Boro Park Townhouse Assoc., 284 AD2d 237, 237 [1st Dept 2001]).

C&N's arguments in opposition are unavailing. As an initial matter, the Court rejects C&N's argument that Joudeh's guilty plea to federal criminal charges and potential disbarment impedes resolution of the instant fee dispute. "A lawyer forfeits his entire fee due to misconduct only where the misconduct relates to the representation for which the fees are sought" (Decolator,

Cohen & DiPrisco, LLP v Lysaght, Lysaght & Kramer, P.C., 304 AD2d 86, 91 [1st Dept 2003] [law firm did not forfeit right to attorneys' fees for services rendered in negligence action despite its principal shareholders being convicted of federal racketeering charges]), which is not the case here. Moreover, even a future disbarment would not prevent J&K from seeking its percentage of the contingency fee based on services performed prior to the disbarment (See Id.).

Neither is it appropriate to stay such a hearing until the conclusion of the Nassau Action. C&N's argument that the conclusion of that action may moot the need for such a hearing is belied by the order of Justice Jerome C. Murphy in the Nassau County Action, in which he expressly directed that

since it appears likely that Plaintiff and Defendants, may both have a contested interest in the future fees concerning these 46 cases, that the attorney/law firm defendants are to place into an escrow account, or an attorney trust account, the disputed portion, of any fees that each claim to be entitled to and if the lawyers cannot agree in writing on the appropriate and ethical allocation of attorney fees, the lawyers are to, if required seek arbitration, or if not required to seek arbitration, to make a motion to the judge assigned to each case to get their fees allocated and paid

(NYSCEF Doc. No. 33 [emphasis added]). As such, the hearing sought here will in no way conflict with the Nassau County Action but is, in fact, entirely consonant with that action.

Accordingly, it is

ORDERED that Joudeh & Kuller, LLP's motion by order to show cause is granted and this matter is set down for a hearing to determine the apportionment of attorneys' fees between Chopra and Nocerino, LLP and Joudeh & Kuller, LLP; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the reasonable value of the services rendered by Chopra and Nocerino, LLP to the plaintiff, for purposes of its charging lien; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link under “Courthouse Procedures”), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and, within thirty days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

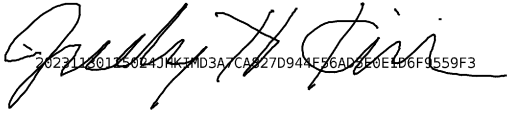
ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR §4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that Joudeh & Kuller, LLP shall serve a copy of this order upon Chopra & Nocerino, LLC by regular mail and e-mail within 20 days of the entry of this order;

ORDERED that within ten days from the entry of this order, Joudeh & Kuller, LLP shall serve a copy of this order, with notice of entry, on Chopra & Nocerino, LLP as well as on the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk's Office (60 Centre St., Rm. 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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 this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

<u>11/30/2023</u>			
DATE		HON. JUDY H. KIM, 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