

Matter of Law Offs. of Michael S. Lamonsoff, PLLC v Gorayeb & Assoc., P.C.
2023 NY Slip Op 34500(U)
December 21, 2023
Supreme Court, New York County
Docket Number: Index No. 157431/2023
Judge: John J. Kelley
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**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 -

GORAYEB & ASSOCIATES, P.C.,

Respondent.

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INDEX NO. 157431/2023

MOTION DATE 08/04/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7 were read on this motion to/for RELEASE RECORDS.

Law Offices of Michael S. Lamonsoff, PLLC (Lamonsoff), petitions to compel the law firm of Gorayeb & Associates, P.C. (Gorayeb), to deliver, to it, the litigation file referable to Gorayeb's representation of Olga Jimenez-Rosas and Alexis Reyes-Jimenez in connection with claims for injuries that they sustained in an April 3, 2023 accident. Gorayeb does not oppose the petition. The petition is granted, and, on or before January 20, 2023, Gorayeb shall deliver to Lamonsoff the litigation file referable to Gorayeb's representation of Olga Jimenez-Rosas and Alexis Reyes-Jimenez, along with 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. In the event that Gorayeb already has commenced an action on behalf of Jimenez-Rosas and Reyes-Jimenez (see Judiciary Law § 475), the amount of Gorayeb's charging lien shall be determined after any such action is resolved.

Jimenez-Rosas and Reyes-Jimenez retained Gorayeb to represent them in connection with a potential claim to recover for personal injuries that they sustained in an April 3, 2023 accident. On July 19, 2023, Lamonsoff sent Gorayeb, by certified mail, return receipt

requested, (a) a letter, signed by Jimenez-Rosas and Reyes-Jimenez, discharging Gorayeb as their attorneys and directing Gorayeb to take no further steps in connection with their claim, (b) a proposed substitution of attorney form executed by Lamonsoff, Jimenez-Rosas, and Reyes-Jimenez, and (c) a request that Gorayeb turn over its litigation file referable to Jimenez-Rosas and Reyes-Jimenez, and execute and return the substitution of attorney. As set forth in the petition, Gorayeb never responded to the requests. According to Ryan S. Sharp, an attorney at the Lamonsoff firm, on July 20, 2023, he spoke with a receptionist at Gorayeb, who informed him that no one was available to discuss the matter with him. He asserted that, on July 21, 2023, he again called, and was given the same response. That same day, Sharp received a call back from Gorayeb's office manager, Maria Urgiles, who told him that Gorayeb had received Lamonsoff's substitution papers, but that Gorayeb also had received substitution papers from Edelman, Krasin, & Jaye, PLLC.

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 Gorayeb's disbursements in full, but Lamonsoff has not yet paid Gorayeb therefor because Gorayeb has not provided Lamonsoff with a statement of disbursements. Gorayeb's failure in this regard has only served to delay the transfer of the file, to the detriment of the personal injury claimants. Hence, Gorayeb's must turn over the relevant

litigation file to Lamonsoff contemporaneously with its provision of a statement of disbursements.

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 Gorayeb had commenced an action on behalf of Jimenez-Rosas and Reyes-Jimenez, and thus became an “attorney of record,” Gorayeb nonetheless must execute the substitution of attorney form and return it to Lamonsoff to effectuate its discharge as the attorney Jimenez-Rosas and Reyes-Jimenez. 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 has not adduced any evidence as to whether Gorayeb commenced an action on behalf of Jimenez-Rosas and Reyes-Jimenez, 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 23, 2024, Gorayeb & Associates, P.C., shall deliver, to Law Offices of Michael S. Lamonsoff, PLLC, the litigation file referable to the representation of Olga Jimenez-Rosas and Alexis Reyes-Jimenez by Gorayeb & Associates, P.C., 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 Olga Jimenez-Rosas and Alexis Reyes-Jimenez, 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 Gorayeb & Associates, P.C., for those disbursements; and it is further,

ORDERED that, on or before December 29, 2023, Law Offices of Michael S. Lamonsoff, PLLC, shall serve a copy of this order with notice of entry upon Gorayeb & Associates, P.C., and Edelman, Krasin & Jaye, PLLC, by overnight delivery.

This constitutes the Decision and Order of the court.

12/21/2023
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED
		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
		SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: