

**Matter of Law Offs. of Michael S. Lamonsoff, PLLC v
Oresky & Assoc., PLLC**

2024 NY Slip Op 32919(U)

August 19, 2024

Supreme Court, New York County

Docket Number: Index No. 160421/2023

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 -

ORESKY & ASSOCIATES, PLLC,

Respondent.

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INDEX NO. 160421/2023

MOTION DATE 07/12/2024

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, 8, 9, 10

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

The Law Offices of Michael S. Lamonsoff, PLLC (Lamonsoff), petitions to compel the law firm of Oresky & Associates, PLLC (Oresky), to deliver, to it, the litigation file referable to Oresky’s representation of Richard Martinez in connection with a personal injury action entitled *Martinez v City of New York* that Oresky commenced on Martinez’s behalf in the Supreme Court, Kings County, under Index No. 501374/2020. Lamonsoff further seeks to compel Oresky to execute and return a substitution of attorney form, and to set forth a statement of disbursements that it has incurred to date in connection with its representation of Martinez. Oresky does not oppose the petition. The petition is granted to the extent that, on or before September 19, 2024, Oresky shall deliver to Lamonsoff the litigation file referable to its representation of Martinez, and provide Lamonsoff with a statement of disbursements, and the petition is otherwise denied as academic.

Martinez retained Oresky to represent him in connection with a July 9, 2019 construction accident. On January 17, 2020, Oresky commenced an action on Martinez’s behalf in the Supreme Court, Kings County, against the City of New York, the New York City Department of

Education, the New York City School Construction Authority, Ladi Construction, and Whitestone Construction Corp. On October 20, 2023, Martinez both discharged Oresky as his attorney, and retained Lamonsoff as his new attorney. On that same date, Lamonsoff sent Oresky, both by facsimile transmission and certified mail, return receipt requested, (a) a letter, signed by Martinez, discharging Oresky as Martinez's attorneys and directing Oresky to take no further steps in connection with his claim and the pending action, (b) a proposed substitution of attorney form executed by Martinez and Lamonsoff, and (c) a request that Oresky turn over its litigation file referable to Martinez, execute and return the substitution of attorney form, and provide Lamonsoff with a statement of disbursements. As set forth in the petition, although Lamonsoff discussed the matter with a representative of Oresky's office on several occasions, including an exchange of emails, Oresky apparently never formally responded to the requests to deliver the file or provide Lamonsoff with a statement of disbursements, although it has executed and returned the substitution of attorney form. Nor has Oresky opposed the petition.

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 has expressly indicated its readiness to pay Oresky's disbursements in full, as evidenced by its request that Oresky provide it with a statement of disbursements. There is no indication in the papers as to whether Lamonsoff paid Oresky for those disbursements. If Lamonsoff has yet to do so, however, that would be solely because Oresky apparently has not provided Lamonsoff

with the requested statement. Any failure by Oresky in this regard would only have served to delay the transfer of the file, to Martinez's detriment. Hence, to the extent that Oresky has not already done so, it must turn over Martinez's litigation file to Lamonsoff contemporaneously with its provision of a statement of disbursements.

Although a client may discharge an attorney, where he or she does so 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]). The court notes, however, that Oresky executed the substitution of attorney form, which was dated October 20, 2023, and filed in Martinez's action on December 6, 2023. Hence, that branch of the petition which sought the execution and return of the substitution of attorney form must be denied as academic.

Accordingly, it is,

ORDERED that the petition is granted, without opposition, to the extent that, on or before September 19, 2024, Oresky & Associates, PLLC, shall, to the extent that it has not already done so, deliver to Law Offices of Michael S. Lamonsoff, PLLC, the litigation file referable to its representation of Richard Martinez, 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 Richard Martinez, and the petition is otherwise denied and the proceeding is otherwise dismissed as academic; 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, if it has not already done so, pay Oresky & Associates, PLLC, for those disbursements; and it is further,

ORDERED that, on or before August 23, 2024, Law Offices of Michael S. Lamonsoff, PLLC, shall serve a copy of this order with notice of entry upon Oresky & Associates, PLLC, by overnight delivery.

This constitutes the Decision and Order of the court.

8/19/2024
DATE



JOHN J. KELLEY, 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