

Tatishvili v Ala Turk Inc

2025 NY Slip Op 33381(U)

September 9, 2025

Supreme Court, New York County

Docket Number: Index No. 154036/2020

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **05M**

Justice

-----X

NATALIA TATISHVILI,

Plaintiff,

- v -

ALA TURK INC, GORDON CHANG, PEI-YUNG FONG,
M.C. TV INC, CHAIT MEDIA INC., THE CITY OF NEW
YORK

Defendant.

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INDEX NO. 154036/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64

were read on this motion for

ATTORNEY - FEES

Petitioner Rosenberg & Rodriguez, PLLC (“RRPLL”), outgoing counsel, moves by Order to Show Cause for an order: (i) determining the apportionment of attorneys’ fees between itself and successor counsel, the Law Office of Albert Buznik, P.C. (“LOAB”); (ii) alternatively directing an evidentiary hearing to determine the fee due; and (iii) compelling LOAB to provide copies of settlement checks and a sworn statement of the settlement amount. LOAB opposes, asserting that RRPLL was discharged for cause and therefore forfeited its entitlement to fees.¹

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff retained RRPLL on March 21, 2019 pursuant to a contingency retainer providing for one-third of the gross recovery. RRPLL’s work included intake, property research, representation letters, medical record collection, filing a notice of claim against the City, preparing for and defending a GML § 50-h hearing, drafting and filing a summons and complaint (Index No. 154036/2020), effectuating service, and filing a CPLR 306-c notice

On May 13, 2021, Plaintiff discharged RRPLL and retained LOAB, which commenced a separate action (Index No. 155047/2021) against additional parties, including indispensable party Lucia Tuan. That action was later consolidated with the first. LOAB undertook substantial litigation efforts, including filing pleadings, securing default judgments, responding to discovery, preparing for and attending conferences and mediation, and ultimately negotiating a \$200,000 settlement. From that recovery, \$66,666.66 was allocated to counsel as fees, \$2,193.92 as expenses, \$3,719.52 to satisfy a Medicaid lien, and \$127,419.90 to Plaintiff.

¹ At the return date of September 9, 2025, counsel stipulated on the record that the court may consider the oral argument and the papers submitted in support of and in opposition to the Order to Show Cause as the record upon which to render a determination on the allocation of fees, in lieu of conducting a full evidentiary hearing.

RRPLLC asserts a lien for \$843.48 in disbursements and seeks a share of the attorney's fee. LOAB rejects RRPLLC's lien, arguing that RRPLLC mishandled the case, was discharged for cause, and is entitled to no fee.

ARGUMENTS

RRPLLC, the outgoing attorneys, contends that it performed substantial and significant early legal work that directly contributed to the prosecution and eventual resolution of Plaintiff's claims. Specifically, RRPLLC emphasizes that it was the first law firm retained by Plaintiff and that it undertook a wide array of foundational tasks: conducting the intake interview, performing property research, preparing and serving representation letters, requesting and reviewing medical records, filing a notice of claim against the City of New York, preparing and defending Plaintiff at a General Municipal Law § 50-h hearing, drafting and filing the summons and complaint under Index No. 154036/2020, and effectuating service of process. Petitioner maintains that these steps constituted necessary groundwork for the litigation and advanced Plaintiff's cause at a critical juncture.

Relying on the Court of Appeals' seminal decision in *Lai Ling Cheng v. Modansky Leasing Co.*, 73 NY2d 454 (1989), and subsequent authorities such as *Brown v. Governele*, 29 AD3d 617 (2d Dept 2006), and *Rodriguez v. Ryder Truck Rental, Inc.*, 171 AD3d 963 (2d Dept 2019), RRPLLC argues that where counsel is discharged without cause, outgoing and incoming attorneys must share the contingent fee based upon *quantum meruit*. This requires an equitable allocation of fees reflecting each firm's respective contributions to the ultimate recovery. Petitioner stresses that *quantum meruit* does not require that its work be the proximate cause of the settlement, but rather that it added value to the representation and meaningfully furthered Plaintiff's claims.

RRPLLC further contends that LOAB has frustrated the equitable distribution of fees by failing to provide full and transparent information about the settlement and about the precise work performed after substitution. Petitioner highlights that it repeatedly sought disclosure of settlement documentation and a detailed accounting of LOAB's services, yet its requests were met with silence or outright rejection. This lack of cooperation, according to RRPLLC, underscores the need for judicial intervention to ensure a fair division of the attorney's fee.

Respondent, the Law Office of Albert Buznik, P.C. ("LOAB"), takes the position that RRPLLC was properly discharged for cause and thereby forfeited any entitlement to compensation. Citing controlling authority such as *Teichner v. W & J Holsteins, Inc.*, 64 NY2d 977, 979 (1985), and *Campagnola v. Mulholland, Minion & Roe*, 76 NY2d 38 (1990), LOAB stresses that when an attorney is terminated for cause, New York law is unequivocal in denying that attorney any share of the contingent fee.

LOAB asserts that RRPLLC's handling of the matter was marred by repeated negligence and errors that prejudiced Plaintiff. In particular, RRPLLC commenced an action naming the City of New York as a defendant despite the clear directive of Administrative Code § 7-210, which places liability for sidewalk defects on abutting property owners, not the City. This misstep forced Plaintiff to undergo an unnecessary notice of claim process and 50-h hearing, thereby delaying her

case. LOAB also points out that RRPLLC failed to name indispensable parties, including property manager Lucia Tuan, failed to serve all necessary defendants, and neglected to secure default judgments against those who had failed to answer. These omissions, LOAB argues, left Plaintiff's claims in a precarious posture and necessitated corrective litigation measures.

LOAB further underscores that Plaintiff herself submitted an affidavit attesting to dissatisfaction with RRPLLC's representation, specifically citing failures in communication, lack of responsiveness, and mishandling of the case. According to LOAB, this sworn testimony corroborates its assertion that RRPLLC's discharge was for cause.

Finally, LOAB maintains that it alone carried the matter to a successful resolution. After being retained, LOAB commenced a new action naming the proper defendants, prosecuted motions, secured default judgments, engaged in discovery, attended court conferences, and ultimately prepared the matter for and succeeded at mediation, resulting in a \$200,000 settlement. LOAB contends that it was its efforts—not those of RRPLLC—that were the direct and proximate cause of Plaintiff's recovery. Consequently, LOAB asserts that it is entitled to the entirety of the attorney's fee.

DISCUSSION

I. Applicable Legal Standards

It is well-settled that a client may discharge counsel at any time, with or without cause (*Matter of Montgomery*, 272 NY 323 [1936]); *Cohen v. Grainger, Tesoriero & Bell*, 81 NY2d 655 [1993]). When discharge is without cause, the outgoing attorney is entitled to compensation measured either by the retainer agreement or in quantum meruit, less any expenses, with the apportionment determined by the relative contributions of each firm (*Lai Ling Cheng*, 73 N.Y.2d at 458, *supra*). Where discharge is for cause, however, the outgoing attorney forfeits all right to compensation (*Teichner*, 64 NY2d at 979, *supra*).

In determining whether cause existed, courts consider whether the attorney's representation was deficient, whether misconduct or neglect prejudiced the client, and whether the attorney failed to meet professional obligations (*see Garcia v. Teitler*, 443 F.3d 202 [2d Cir. 2006][applying New York law]; *Coccia v. Liotti*, 70 AD3d at 749, *supra*).

II. Whether RRPLLC Was Discharged for Cause

Here, LOAB and Plaintiff contend that RRPLLC's filing against the City was legally baseless under Administrative Code § 7-210, which places sidewalk liability on abutting landowners rather than the City. They also argue that RRPLLC failed to name indispensable parties (notably property manager/POA Lucia Tuan), failed to serve other owners, and neglected to secure defaults. Plaintiff's affidavit states that RRPLLC failed to return calls and keep her informed.

These assertions, if credited, could support a discharge for cause. However, this court must weigh the record carefully. Not every strategic misstep or omission constitutes cause for discharge.

As the Court of Appeals has recognized, only conduct rising to the level of neglect, incompetence, or misconduct justifies forfeiture (*Campagnola*, 76 NY2d at 44, *supra*).

RRPLLC undeniably undertook substantial preliminary work, including investigation, notice of claim, and GML § 50-h representation. While naming the City was likely unnecessary, this appears more a legal error than misconduct. Likewise, delays in pursuing default judgment, while less than diligent, do not compel forfeiture. Courts have been reluctant to deprive counsel entirely absent egregious neglect (*see Reubenbaum v. B. & H. Express, Inc.*, 6 AD2d 47 [1st Dept 1958]).

On balance, this court finds that RRPLLC was not discharged for cause. Rather, the discharge was without cause, leaving RRPLLC entitled to fees in *quantum meruit* proportionate to its contribution.

III. Apportionment of Fees

The \$66,666.66 fee must be apportioned considering each firm's efforts. RRPLLC performed meaningful initial work: intake, research, record collection, representation letters, filing, and defending the client at a 50-h hearing. This laid the groundwork but did not directly advance the case toward settlement, given errors in party selection and service.

LOAB, by contrast, commenced the action against the correct defendants, secured defaults, handled discovery, prepared for mediation, and achieved settlement. This was the substantial and proximate cause of the recovery.

Courts have routinely allocated the majority of fees to the attorney whose work led to the recovery, even where outgoing counsel made legitimate early contributions (*see Podbielski v. KMO 361 Realty Assoc.*, 6 AD3d 597 [2d Dept 2004]; *Matter of Gary E. Rosenberg, P.C. v. McCormack*, 250 AD2d 679 [2d Dept 1998]).

Considering all factors, this court concludes that a 20/80 allocation fairly reflects the relative value of the services rendered: 20% of the fee (\$13,333.33) to RRPLLC, and 80% (\$53,333.33) to LOAB. In addition, RRPLLC is entitled to reimbursement of its documented disbursements of \$843.48.

Accordingly, it is hereby

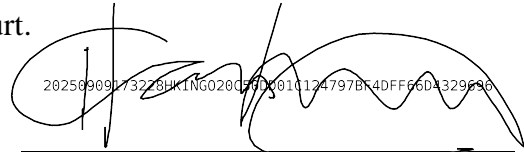
ORDERED that Petitioner RRPLLC's motion is granted to the extent set forth herein; and it is further

ORDERED that the attorneys' fee of \$66,666.66 is apportioned as follows: \$13,333.33 to Rosenberg & Rodriguez, PLLC, and \$53,333.33 to the Law Office of Albert Buznik, P.C.; and it is further

ORDERED that Rosenberg & Rodriguez, PLLC is entitled to reimbursement of its disbursements in the amount of \$843.48 from the settlement proceeds; and it is further

ORDERED that the balance of the motion is denied as academic in light of this decision and order.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

9/9/2025
DATE

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