

Josephs v AACT Fast Collections Servs. Inc.

2025 NY Slip Op 34427(U)

November 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 502491-2012

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 502491-2012

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ELYSE JOSEPHS/ADVANCED ACUPUNCTURE
HEALTH, P.C.,

Plaintiff,

-against-

DECISION/ORDER

AACT FAST COLLECTIONS SERVICES INC.,
KARINA MITSELMAKHER AKA KARINA
PISMICHENKO, LUBARSKY & TARNOVSKY
ATTORNEYS AND COUNSELORS AT LAW P.C.,
LEON LUBARSKY, ESQ., AND RADA TARNOVSKY,
ESQ.,

Defendants.
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The undersigned presided over a bench trial of the above action on October 21, 2025. Ed C. Lehman appeared for the plaintiff, ELYSE JOSEPHS/ADVANCED ACUPUNCTURE HEALTH, P.C. (“Plaintiff”), and Frank Falcone appeared LUBARSKY & TARNOVSKY ATTORNEYS AND COUNSELORS AT LAW P.C. (“L&B P.C.”) The purpose of the trial against L&B P.C was to determine liability and damages. The trial was also an inquest on the issue of damages as against AACT FAST COLLECTIONS SERVICES INC. (“AACT”) and KARINA MITSELMAKHER AKA KARINA PISMICHENKO (“Mitselmakher”), who were held in default during the pendency of the action. The action insofar as asserted against LEON LUBARSKY, ESQ. and RADA TARNOVSKY, ESQ. in the individual capacities was dismissed due to lack of personal jurisdiction.

The Amended Complaint, filed December 9, 2014, sets forth three causes of action against the various Defendants. The Plaintiff, a licensed acupuncturist, alleges that she retained the Defendants to collect outstanding and unpaid medical bills for acupuncture services from various insurance companies, beginning in or about January 2008. In the first cause of action alleged against AACT and Mitselmakher, Plaintiff alleges causes of action for breach of contract and professional negligence. The Plaintiff alleges that the collection services provided by AACT and Mitselmakher were performed carelessly, unskillfully, and negligently. Crucially, it is

alleged that Defendants AACT and Mitselmakher forwarded the Plaintiff's claims to the legal co-defendants (L&B P.C.) without the Plaintiff's knowledge, agreement, or consent, and failed to follow up, control, and supervise the work of those legal defendants.

In the second cause of action, the Plaintiff alleges that defendants L& B P.C., Leon Lubarsky, Esq. and Rada Tarnovsky, Esq. were negligent in their representation of her in her actions against many insurance companies for the payment of her bills. Specifically, she claims that these defendants agreed to undertake collection services but committed numerous negligent acts and omissions, including failing to reasonably and adequately investigate the claims; failing to comply with relevant statutory requirements, and failing to commence timely legal actions against certain defendants and obtain jurisdiction over them, and/or failing to add proper parties, allowing all applicable statutes of limitations to expire, thereby precluding recovery on the underlying claims, and failing to attend scheduled court hearings or conferences, which caused or failed to prevent the dismissal of some of her legal claims.

In the third cause of action against L&B P.C., Leon Lubarsky, Esq., and Rada Tarnovsky, Esq., the Plaintiff alleges that these defendants engaged in a willful course of conduct to deceive and defraud the Plaintiff. The complaint states that the legal Defendants violated their fiduciary duties and engaged in a "chronic and extreme pattern of legal delinquency." The Plaintiff seeks general and special damages, as well as punitive and treble damages pursuant to a violation of Judiciary Law §487.

The Trial/Inquest

At the trial/inquest, the Plaintiff called one witness, Elysee Josephs. Ms. Josephs has been a licensed acupuncturist since 2002 and maintains an office at 261 E. 78th St., Level C, New York, New York. As an acupuncturist, she primarily treats patients for pain, many of whom were injured in motor vehicle accidents.

Ms. Josephs testified that her general business practice for treating victims of motor vehicle accidents is to provide the patient with treatment, prepare treatment notes, and forward the treatment notes to a medical biller. The medical biller would prepare the bill and send the bill to the insurance company responsible for payment.

For several years prior to the institution of this action, she utilized ACCT and Mitselmakher, who is apparently the principle of AACT, as her medical biller. With respect to those patients that were injured in motor vehicle accident, she testified that ACCT would prepare a bill based on her treatment notes and submit the bill to the appropriate no-fault insurance carrier for payment. If the bill was not paid, ACCT would often institute a legal action against the No-Fault carrier responsible for the payment of the bill seeking to recover the amount of the bill. ACCT used L&B P.C. as their litigation attorneys. L&B P.C. would then institute an action against the non-paying no-fault carrier on Plaintiff's behalf. While Ms. Josephs ultimately became aware that L&B P.C. was representing her in the many actions that were commenced on plaintiff's behalf against the no fault carriers, she did not retain them, did not have a retainer agreement with them and did not know that they were representing her until after the actions against the no-fault carriers were commenced.

Plaintiff's chief complaint against L&B P.C. and the defendant attorneys is that they settled many of her cases well below what she believed was the industry standard settlement amount of between 80% and 85% of the bill without her consent. She specifically claims that in one instance, the defendant settled a bulk of her cases with GEICO for a small fraction of the amount of the bills at issue and that she received no more than 15% to 20% of the billed amount. Ms. Josephs testified she never authorized the settlement, and that defendant never requested her permission to enter into the bulk settlement.

At one point Ms. Josephs filed a complaint against the individual attorneys and L & B P.C. with the Grievance Committed. The committee found that the conduct of the attorneys that Plaintiff complained of constituted a breach of the Rules of Professional Conduct and directed that an admonition be issued to the law firm. The committee determined that the law firm violated Section 1215 of the Appellate Division rules which require that a client sign a written letter of engagement prior to representation. The committee also concluded that the law firm violated rule 1.4 of the Rules of Professional Conduct by repeatedly failing to inform Plaintiff of developments of her/its cases including notification of court dates, information regarding material developments in the cases and ongoing settlement efforts and court decisions. The Committee further found that the law firm engaged in other improper conduct, including but not limited to failing to carry out its duties as attorneys of record by allowing cases to be dismissed

in violation of rule 1.3c of the Rules of Professional Conduct by not acting with reasonable diligence and promptness in transferring the files in violation of rule 1.3 A of the Rules of Professional conduct.

The only documentary proof that plaintiffs attempted to introduce into evidence to establish damages was hearsay. She first attempted to introduce into evidence a list of cases that were faxed to her summarizing certain information about cases that were in litigation. She did not know who provided her with this list and did not know if it was provided by AACT or the attorney defendants. She had no independent recollection of any of the details of the cases on the list, nor did she produce any of her own records to support the information summarized on the list. Indeed, at no time during the trial did she produce any of her own business records. While she attempted to introduce one file pertaining to one particular patient, the court ruled that file could not be received in evidence due to plaintiffs' failure to disclose the contents of the file prior to trial pursuant to L & B, P.C. demand for discovery and inspection. The court ultimately refused to allow the list summarizing the details of some of the cases in litigation as no proper evidentiary foundation for its admission into evidence was laid.

Ms. Josephs also attempted to admit into evidence a document she prepared which summarized her damages. This document was excluded from evidence, particularly since none of the underlying documents supporting the figures on the summary were received in evidence.

After carefully considering Ms. Josephs' testimony and assessing her credibility, the court makes the following findings of fact and conclusion of law:

While the court found Ms. Josephs to be a credible witness, she did not introduce any admissible evidence at the time of trial/inquest supporting her damages claims. All her claims for damages were based on hearsay documents that were not received in evidence. Notably, the Plaintiff did not offer any of her own business records into evidence at the time of trial. She did not offer her treatment notes with respect to any of the patients she claims she treated, nor did she introduce copies of any of her bills that were submitted to the no-fault carriers that were allegedly responsible for the payment of the bills. Indeed, she did not submit any admissible proof of the claims that were submitted to the no-fault carriers, documenting the amounts that

were billed for and the amounts for which the action was settled, if they were settled. Finally, she offered no admissible evidence documents that amounts she claims she lost due to defendants' failure to properly transfer and handle her litigation cases.

The Plaintiff's failure to prove damages requires that the action be dismissed.

Accordingly, it is hereby

ORDERED and ADJUDGED that this action is DISMISSED.

This constitutes the decision and order of the Court.

Dated: November 18, 2025,

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

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