

Espinoza Kearney Law Group v Fattorini
2026 NY Slip Op 31371(U)
March 30, 2026
Supreme Court, New York County
Docket Number: Index No. 161217/2024
Judge: Verna L. Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC

PART 36

Justice

-----X

INDEX NO. 161217/2024

THE ESPINOZA KEARNEY LAW GROUP,

MOTION SEQ. NO. 001

Petitioner,

- v -

DECISION + ORDER ON MOTION

RAYMOND FATTORINI,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

DISMISS

This proceeding arises out of a fee dispute arbitration proceeding between the parties relating to legal services rendered by petitioner to respondent in a matrimonial action, pursuant to a retainer agreement dated March 30, 2022. In December 2022, respondent filed a "Client Request for Fee Arbitration", wherein respondent disputed \$20,000.00 in attorney's fees on various grounds, including that he never received any itemized invoices during petitioner's representation in the divorce action. On October 3, 2025, the Fee Dispute Resolution Program, New York County Lawyers Association, awarded respondent a refund in the amount of \$51,350.000 as against petitioner stating the following: "[t]he panel observed the credibility of the parties, considered the testimony of the parties and the documents produced at the hearing, and bases its award thereupon. We note that, although the attorney involved did work for the client, he did not comply with 22NYCRR1400.3. Therefore, by the preponderance of the evidence. We find that the client is to be returned \$51,350 of the \$52,350 paid to 'Attorney' for their services" (NYSCEF Doc. No. 12).

Petitioner commenced this special proceeding by Petition and Demand for a Trial de Novo, seeking relief on the ground that the panel's award of \$51,350.00 exceeded the \$50,000.00 that was the subject of the dispute, and that the panel exceeded its jurisdictional limit of hearing matters in dispute over \$50,000.00. Moreover, petitioner contends that the panel lacked a sufficient basis to issue a return of funds already paid by respondent because, if the panel chose to disregard the retainer agreement, providing for an hourly fee, the panel was still required to engage in a quantum meruit analysis to resolve the matter (NYSCEF Doc. No. 1, summons and complaint).

Respondent now moves, pursuant to CPLR 3211(a)(1) and (a)(7), for dismissal of the petition on the ground that petitioner's failure to comply with 22 NYCRR 1400.3 and section DR 2-106(c)(2)(ii) of the Code of Professional Responsibility, precludes said attorney from recovery. Specifically, respondent argues that an attorney is precluded from recovering legal fees for services rendered to a client if said services go outside of the scope of the representation set forth in the retainer agreement. The facts presented here, argues respondent, demonstrate that the

parties executed a retainer agreement for narrow work, to wit, the withdrawal of a matrimonial action in Westchester County. The agreement expressly provided that representation of respondent in a matrimonial action would require the execution of a new retainer agreement and payment of a new retainer fee. Notwithstanding the language in the retainer agreement, petitioner proceeded to render legal services to respondent in a matrimonial action without a retainer agreement. Assuming, *arguendo*, the court were to deem the retainer agreement sufficient to encompass representation in a matrimonial proceeding, respondent argues that the petition nevertheless fails because the retainer agreement provides that counsel was entitled to a flat fee payment of one thousand dollars (\$1,000.00), negating petitioner's claim that it is entitled to an hourly legal fee.

Respondent also argues that petitioner is not entitled to recovery under the doctrine of quantum meruit, stating that the doctrine of quantum meruit is not available in domestic relations matters, even where noncompliance is deemed unintentional.

In support of his application, respondent submits, *inter alia*, the retainer agreement, which provides in relevant part:

"The scope of this representation is: Communications with opposing counsel in regards to a Notice of Withdrawal of Westchester County Supreme Court matrimonial matter. Should Firm be unable to withdraw client from this matter, Firm will produce new retainer at the additional amount of \$4,000.00 to begin litigating the divorce."

The retainer agreement also sets forth a "Flat rate" in the amount of "1000.00 (hourly/retainer: \$450.00)" (NYSCEF Doc. No. 13, *retainer agreement*).

Petitioner opposes the dismissal motion, arguing that the panel exceeded its jurisdictional limit. According to 22 NYCRR § 137.0(b)(2), an arbitration panel may oversee an attorney-client fee dispute limited to \$50,000.00 or less, unless both parties consent to arbitration in a higher amount. Petitioner contends that, inasmuch as the panel issued an award of \$51,350.00, in contravention of 22 NYCRR § 137.0(b)(2), the award is void and entitled to *de novo* review. Additionally, it notes that respondent's submission to arbitration sought only \$20,000.00 in legal fees.

Moreover, petitioner argues that, under 22 NYCRR § 137.8, it is entitled to commence an action for *de novo* review, as of right, within 30 days of the award being mailed. Since the proceeding was timely commenced and is properly before the court, petitioner argues that the underlying dispute must be litigated anew and, thus, respondent's motion seeking to preempt that process through a motion to dismiss is improper and must be denied. Petitioner also represents that it substantially complied with 22 NYCRR § 1400.3 because all services provided to respondent were within the scope of the two written retainer agreements executed with respondent. Annexed to its opposition, petitioner submits a copy of a second retainer agreement dated April 13, 2022 (NYSCEF Doc. No. 22). Petitioner further posits that it is entitled to relief under the doctrine of quantum meruit because where a retainer agreement does not fully comply with the matrimonial rules, a court is not required to direct the return of legal fees that were duly earned but, rather, the court may determine the value of the legal services rendered on a quantum

meruit basis. Given the extensive legal services provided to respondent, petitioner avers that it is entitled to a quantum meruit analysis to determine whether the legal fees paid by respondent were properly earned (NYSCEF Doc. No. 21, *Sandler's aff.*).

In his reply, respondent argues that petitioner failed to include sufficient evidence to establish *prima facie* compliance with billing requirements in a matrimonial action pursuant to 22 NYCRR § 1400.2 and § 1400.3. Notwithstanding petitioner's representation to the court that it provided respondent periodic itemized billing statements, it fails to produce any documentary evidence to substantiate said claim. Respondent further contends that, in light of retaining agreement, which limited the scope of the legal services to the discontinuance of a Westchester matrimonial action and set forth a flat fee arrangement, any fees retained by petitioner in excess of the contracted amount must be disgorged without the need for further proceedings.

As to the second retainer agreement produced in opposition to the motion, respondent argues that same was not provided nor relied upon by petitioner in the underlying arbitration. Notwithstanding, respondent contends that this second retainer agreement, produced only after the motion papers noted that the first retainer agreement required that a new retainer agreement be executed to establish a attorney-client relationship with regard to the matrimonial proceeding, fails to raise a triable issue of fact because said agreement expressly required that it be executed by both respondent and managing partner Cannon C. Kearney. Kearney, however, did not execute the agreement. As such, this second retainer agreement produced never took effect.

Respondent further argues that the fact that the fees in dispute exceed \$50,000.00 does not necessarily render the arbitration award invalid (NYSCEF Doc. No. 26).

Generally, an arbitration award is final and binding. However, in accordance with the Part 137.8, a party may avail themselves of a trial *de novo*, which has the "effect of vacating an entire arbitrator's award and returning all of the causes of action pleaded to the court for trial" (*Flum v Goldman Band Concerts*, 128 Misc 2d 42 [NY Civ Ct 1985] *citing Bridges v City of Troy*, 112 Misc 2d 384 [Sup Ct, Rensselaer County 1982]).

In determining a motion to dismiss pursuant to CPLR 3211, "the pleading is to be afforded a liberal construction. [The court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citations omitted].) A pleading may be dismissed, pursuant to CPLR 3211(a)(7) if plaintiff fails to identify a claim cognizable at law or where the plaintiff has identified a cognizable cause of action but has nevertheless failed to plead a material allegation necessary to establish it. (See CPLR 3211[a][7]; *Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014].) Furthermore, "[a] cause of action may be dismissed under CPLR 3211(a)(1) 'only where the documentary evidence utterly refutes [the] plaintiff's factual allegations, conclusively establishing a defense as a matter of law.'" (*Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014], quoting *Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002]).

As an initial matter, this court notes that the petition was timely filed within thirty (30) days of the Notice of Arbitration Award, and there is no claim that petitioner has somehow waived his right to seek *de novo* review.

Here, applying the liberal standard as required on a motion to dismiss, this court finds that respondent has failed to establish *prima facie* entitlement to dismissal of this action on the grounds that petitioner failed to state a cause of action or that documentary evidence utterly refutes the claims alleged. There is, at the very least, a colorable claim that the arbitrator exceeded its authority in rendering an award in excess of \$50,000.00, absent consent from the parties. 22 NYCRR §137.1(b)(2) expressly provides that “amounts in dispute involving a sum of less than \$1,000 or more than \$50,000, except that an arbitral body may hear disputes involving other amounts if the parties have consented.” To this argument, respondent fails to raise a substantive argument in reply, arguing instead, in rather conclusory fashion, that this deviation does not necessarily render the arbitration award invalid. Moreover, denial of the motion finds further support in the fact that, respondent disputed only \$20,000.00 in the client request for fee arbitration. Notwithstanding respondent’s argument that no quantum meruit relief is available upon failure to comply with 22 NYCRR § 137.1(b)(2), the Appellate Division, First Department has held that “[w]hen a client is seeking the return of funds already paid to the attorney, the attorney does not need to show substantial compliance with 22 NYCRR 1400.3, but only that the fees paid were properly earned” (*Law Off. Of Sheldon Eisenberger v Blisko*, 106 AD3d 650, 652 [1st Dept 2013]). At this early stage in the litigation and, given the foregoing, respondent has failed to persuade this court that dismissal of this action is warranted. It is hereby

ORDERED that respondent’s motion to dismiss is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon respondent; and it is further

ORDERED that the parties in this action are hereby directed to appear remotely for a preliminary conference on May 6, 2026, details which shall be provided by the court no later than May 4, 2026.

This constitutes the decision and order of this court.

March 30, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: