

Freedman Normand Friedland LLP v Lavvan, Inc.

2026 NY Slip Op 31750(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 655463/2025

Judge: Phaedra F. Perry-Bond

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

INDEX NO. 655463/2025
MOTION DATE 09/12/2025, 11/05/2025
MOTION SEQ. NO. 001 002

FREEDMAN NORMAND FRIEDLAND LLP

Petitioner,

- v -

LAVVAN, INC.,

Respondent.

DECISION + ORDER ON MOTION

For an Order pursuant to Article 75 of the CPLR, disqualifying counsel for Respondent in AAA Case No. 01-25-0001-1355

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 6 were read on this motion to/for DISQUALIFY COUNSEL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 6, 7, 8 were read on this motion to/for DISMISS

Upon the foregoing documents, motion sequences 001 and 002 are consolidated for disposition. Upon consolidation, the Petition (Mot. Seq. 001) is granted and the motion to dismiss the Petition (Mot. Seq. 002”) is denied.

Petitioner previously represented Respondent in an arbitration and a companion case in federal court. Those matters resolved, which Petitioner claims entitles it to success fees under the parties’ engagement agreement. Respondent denied its obligations and dissolved, and the parties are not in arbitration regarding the unpaid legal fees.

Respondent is represented in the arbitration by Jason Cyrulnik, Paul Fattaruso, and Cyrulnik Fattaruso LLP. Jason Cyrulnik is a former partner employed by Petition who was removed for cause in February of 2021. Prior to his termination, Mr. Cyrulnik negotiated and drafted the engagement agreement with Respondent under which Petitioner now seeks fees from

Respondent. Cyrulnik allegedly spend time representing Respondent while employed by Petitioner which included reviewing and approving Petitioner's legal invoices to Respondent.

Paul Fattaruso was also formerly employed by Petitioner and billed substantial time to Respondent's legal file during his employment. When Cyrulnik was terminated, Fattaruso left Petitioner's firm and joined with Cyrulnik to form Cyrulnik Fattaruso LLP, the firm currently representing Respondent in the arbitration over legal fees. Petitioner now seeks an order disqualifying Cyrulnik, Fattaruso, and Cyrulnik Fattaruso LLP from representing Respondent in the arbitration because Cyrulnik and Fattaruso are witnesses on numerous issues in the arbitration. Such issues include the negotiation and interpretation of the engagement letter, the validity of hours billed to Respondent, and the quantum meruit compensation for the hours worked. Respondent cross moves to dismiss and argues that Petitioner has failed to establish that Cyrulnik or Fattaruso's testimony is necessary and failed to establish that Petitioner would be substantially prejudiced without Cyrulnik or Fattaruso's testimony.

The Petition is granted and the motion to dismiss is denied. Disqualification of counsel rests within the discretion of the trial court (*Ferolito v Vultaggio*, 99 AD3d 19, 27 [1st Dept 2012]). However, a movant seeking disqualification bears a heavy burden (*Mayers v Stone Castle Partners, LLC*, 126 AD3d 1 [1st Dept 2015]). This is because the disqualification of counsel affects a party's federal and state constitutional rights to counsel of their own choosing (*Dietrich v Dietrich*, 136 AD3d 461 [1st Dept 2016]). Disqualification of an attorney under the advocate-witness rule is required only if the testimony to be given by the attorney is necessary (*see Ullman-Schneider v Lacher & Lovell-Taylor PC*, 110 AD3d 469 [1st Dept 2013]). Testimony is "necessary" where the attorney is "likely to be a witness on a significant issue of fact" (*see Ehrlich v Wolf*, 127 AD3d 613, 614 [1st Dept 2015]).

The Court finds that Petitioner has sufficiently established that Cyrulnik and Fattaruso's testimony is necessary and materially related to numerous issues raised in the ongoing fee dispute arbitration (*see Anderson & Anderson LLP v North American Foreign Trading Corp.*, 139 AD3d 464, 466 [1st Dept 2016]; *see also Gould v Decolator*, 131 AD3d 448, 449-450 [2d Dept 2015]). Petitioner sues Respondent under the very same agreement that Cyrulnik negotiated. The agreement is not a standard engagement agreement but contains multiple objectives which, if reached, trigger varying amounts of fees owed, and which also contained certain triggering events for "Success Fees" and contained termination rights. Cyrulnik, as the drafter, will be required to testify as to the structure and any ambiguities with respect to certain terms or triggering events (*see Fuller v Collins*, 114 AD3d 827 [2d Dept 2014] [where attorney was the only person, other than the defendant, who had knowledge of any discussions regarding the terms of the agreement, the attorney was "likely to be a witness on a significant issue of fact" in lawsuit premised on the contract the disqualified attorney negotiated]). Whether the agreement was breached by firing Cyrulnik, and whether certain events were triggered according to the agreement, are material issues of fact of which Cyrulnik's testimony will likely be needed.

Moreover, Cyrulnik approved the bills which Petitioner now seeks to collect, and Cyrulnik and Fattaruso created the timesheets which were sent to Respondent. To the extent Respondent challenges the bills, Cyrulnik and Fattaruso will be required to testify to the validity of those bills and the value of the services they provided. To the extent Respondent argues the agreement was breached and unenforceable, Petitioner may seek to recover under a quasi-contract claim, such as quantum meruit, in which case Cyrulnik and Fattaruso will be required to testify as to the fair value of their services. In either event, Cyrulnik and Fattaruso's testimony will be necessary on a material issue of fact – specifically the value of their services to Respondent while employed by Petitioner.

Cyrulnik & Fattarusso LLP must be disqualified because ethnically, Cyrulnik and Fattarusso must testify as to the validity of the bills and value of their services, which will prejudice Respondent, thereby creating a conflict of interest between Respondent and Cyrulnik & Fattarusso LLP.

Accordingly, it is hereby,

ORDERED and ADJUDGED that the Petition is granted in its entirety, and Jason Cyrulnik, Paul Fattarusso, and Cyrulnik & Fattarusso LLP are disqualified from representing Respondent in AAA Case No. 01-25-0001-1355; and it is further

ORDERED that the motion to dismiss the Petition is denied; and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/22/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	