

**Omnivere, LLC v Friedman**

2017 NY Slip Op 32405(U)

November 21, 2017

Supreme Court, New York County

Docket Number: 154544/2016

Judge: Shirley Werner Kornreich

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

-----X  
OMNIVERE, LLC,

Plaintiff,

-against-

SAUL N. FRIEDMAN, SAUL N. FRIEDMAN & CO.,  
SIMEON FRIEDMAN, BEN FRIEDMAN, INTELLIGNET  
DISCOVERY MANAGEMENT, LLC, and BALINT  
BROWN & BASRI, LLC,

Defendants.

-----X  
ROSENFELD CONSULTING, LLC,

Plaintiff,

-against-

OMNIVERE, LLC and ERIC S. POST,

Defendants.

-----X  
MARCIE BALINT,

Plaintiff,

-against-

KOPY INTERNATIONAL LLC d/b/a SUPERIOR  
DISCOVERY, INTELLIGENT DISCOVERY  
MANAGEMENT, LLC, SIGHT, SEARCH & SELECTION,  
LLC, SUPERIOR GLACIER, INC., B3 LEGAL LLC,  
SAUL N. FRIEDMAN, EVA FRIEDMAN, SIMEON  
FRIEDMAN, BEN FRIEDMAN, and MORRIS FRIEDMAN,

Defendants.

-----X  
KOPY INTERNATIONAL LLC d/b/a SUPERIOR  
DISCOVERY, INTELLIGENT DISCOVERY  
MANAGEMENT, LLC, SIGHT, SEARCH & SELECTION,  
LLC, SUPERIOR GLACIER, INC., B3 LEGAL LLC, and  
MORRIS FRIEDMAN,

Index No.: 154544/2016  
(*Omnivere v Friedman*)

**DECISION & ORDER**

Index No.: 651650/2015  
(*Rosenfeld v Omnivere*)

Index No.: 652230/2014  
(*Balint v Kopy*)

Third-Party Plaintiffs,

-against-

GADI ROSENFELD,

Third-Party Defendant.

-----X  
MARCIE BALINT,

Index No.: 653666/2014  
(*Balint v Omnivere*)

Plaintiff,

-against-

OMNIVERE, LLC,

Defendant.

-----X  
SHIRLEY WERNER KORNREICH, J.:

Motion 002 under Index No. 154544/2016, motion 004 under Index No. 651650/2015 and motion 004 under Index No. 652230/2014 are consolidated for disposition.

By order dated January 10, 2017, the court denied the Friedman Parties' motion to disqualify Robert Bernstein and EVW from representing Balint and Omnivere in the above captioned actions. *See Omnivere v Friedman*, Dkt. 112. (the January Decision).<sup>1</sup> The court, however, held a similar disqualification motion made by Rosenfeld in abeyance pending a hearing before a Special Referee to determine whether, at an October 20, 2014 meeting, Rosenfeld disclosed to Bernstein any confidential information *prejudicial to Rosenfeld* (as opposed to the Friedman Parties). The January Decision extensively sets forth the posture of the actions, the issues raised by the parties, the applicable law, and the court's rationale for why disclosure of confidential information prejudicial to Rosenfeld is a necessary predicate for disqualification. Rosenfeld did not move for reargument.

<sup>1</sup> All capitalized terms not defined herein have the same meaning as in the January Decision.

Instead, he participated in a two-day hearing before Special Referee Jeremy R. Feinberg (the Referee) on March 23 and May 11, 2017. In a thorough and well reasoned report dated October 10, 2017 (the Report) (Dkt. 120),<sup>2</sup> the Referee found that, at the October 20, 2014 meeting, no “confidences that were harmful to Mr. Rosenfeld” were disclosed. *See* Report at 23.

Currently before the court are the parties’ competing motions regarding the Report. Bernstein moves to confirm the Report and deny the portion of Rosenfeld’s disqualification motion that was held in abeyance. Rosenfeld also seeks confirmation of the Report, and does not challenge the Referee’s key finding that no confidences harmful to Rosenfeld were disclosed. *See* Dkt. 129 at 10. Nonetheless, Rosenfeld moves for Bernstein’s disqualification by proffering what is effectively a (belated and untimely) motion for reargument of the January Decision. Simply put, Rosenfeld asks the court to reconsider its ruling that disqualification is not warranted absent disclosure of confidences harmful to Rosenfeld.

The court will not do so. The arguments proffered by Rosenfeld were extensively considered in the January Decision and rejected as contrary to current, controlling First Department precedent, which prohibits disqualification if “the conveyed information [does] not have the potential to be **significantly harmful** to [the former client] in the matter from which he seeks to disqualify counsel.” *See* January Decision at 9, quoting *Mayers v Stone Castle Partners, LLC*, 126 AD3d 1, 7 (1st Dept 2015) (emphasis added). While Rosenfeld protests the supposed unfairness of permitting Bernstein to remain as counsel to Balint and Omnivere, at best, his complaints might have justified disqualification under the old standard (i.e., the appearance of

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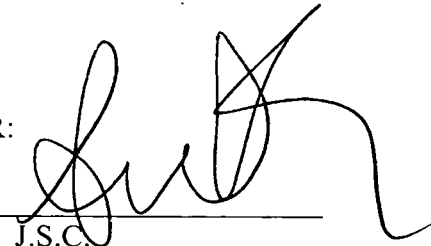
<sup>2</sup> The sealing issues, which do not merit further discussion, are now moot.

impropriety),<sup>3</sup> which no longer applies and which was expressly abrogated in *Mayers*. See January Decision at 9-10. Rosenfeld's proffered basis for disqualification is plainly infirm under *Mayers* because it is now uncontroverted that Rosenfeld never conveyed any information to Bernstein that had "the potential to be significantly harmful" to him in these actions. Accordingly, it is

ORDERED that the motion by Balint and Omnivere to confirm the Report is granted, without opposition, and Rosenfeld's motion to disqualify Bernstein and EVW that was held in abeyance in the January Decision is hereby denied.

Dated: November 21, 2017

ENTER:

  
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J.S.C.  
SHIRLEY WERNER KORNREICH  
J.S.C.

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<sup>3</sup> While academic, disqualification would not have been warranted under the old standard since, unlike in the cases discussed in the January Decision, there is no question about whether prejudicial confidences were revealed at the attorney-client meeting (i.e., there is no doubt that need be resolved in favor of disqualification). Here, as discussed, a hearing was conducted to resolve this question, and the Referee's findings are uncontroverted.