

Gamaliel v Papadopoulos-Vlantes

2017 NY Slip Op 32553(U)

December 7, 2017

Civil Court of the City of New York, Bronx County

Docket Number: SCB 2082-17

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: SMALL CLAIMS

JEAN-BAPTISTE GAMALIEL, X

Claimant

-against-

DECISION & ORDER

Index No.: SCB 2082-17

HON. SABRINA B. KRAUS

AGLAIA PAPADOPOULOS-VLANTES,

Defendant

X

BACKGROUND

Claimant commenced this action, on September 27, 2017, seeking \$5000 based on an alleged “failure to provide proper services”. Claimant had retained Defendant to represent him in a matrimonial matter.

The initial court date was October 26, 2017. Defendant did not appear on that date and the action was adjourned to November 30, 2017 and the court send a post card of the new date to Defendant. Defendant appeared on November 13, 2017 and filed a counterclaim for \$3710.86 based on alleged breach of contract.

On November 30, 2017, the court held the trial and reserved decision.

The claim and the counterclaim are consolidated herein for disposition.

FINDING OF FACTS

Defendant represented Claimant in a matrimonial dispute in Nassau County. Claimant was unhappy with the services provided by Defendant and the result of the litigation and asserts he is due back monies paid to Defendant for her legal services.

Claimant submitted a letter from Defendant to Claimant, dated February 24, 2015, wherein Defendant urged Claimant to reconsider a proposal to resolve the issues of custody, child support, and equitable distribution in the matrimonial action (Ex 1).

The letter concluded by stating:

The retainer of \$5,000.00 is almost exhausted. I shall be preparing a bill for your review. If we do not settle, you would need to be prepared to replenish my retainer.

Based on the aforementioned, I STRONGLY advise you to consider the aforementioned and SETTLE.

Claimant elected not to settle. Defendant testified that there was a three month trial in Supreme Court, Nassau County.

After the litigation concluded, Defendant sought to collect additional fees due from Claimant through Arbitration.

Defendant submitted into evidence an Arbitration Award dated November 1, 2016, encaptioned *In the Matter of Fee Dispute Arbitration between Gamaliel Jean Baptiste and Aglaia Papadopoulou-Vlantes* (Ex A). The award provides that a total of \$25,000 was in dispute and a finding that Defendant was entitled to \$3,710.86 of that amount, and that Claimant was not entitled to any refund of monies previously paid. Under the Statement of Reasons for the award is written:

Attorney sent only 2 bills to client over a period of one year, only one of which was tendered in accordance with § 1400.3. Based upon the forgoing and the testimony and the evidence presented, the attorney showed by a preponderance of the evidence that she is entitled to \$3,710.86 for services rendered. Accordingly, the client shall pay to the attorney \$3,710.86.

On September 25, 2017, Defendant sent Claimant a letter demanding payment of the arbitration award (Ex B). The letter stated in part:

If the **FULL** amount is not received in **CERTIFIED FUNDS** on or before **OCTOBER 10, 2017**, I shall proceed to collect the same including INTEREST + COURT COSTS = ATTORNEY'S FEES.

Claimant testified that he was represented by counsel in the Arbitration, David Gevanter, Esq., and that he did not agree to the Arbitration Award and wishes to challenge it.

Defendant testified that the only retainer in effect was the February 24, 2015 letter (Exhibit C-1).

DISCUSSION

Pursuant to 22 NYCRR 137.0 The New York State Fee Dispute Resolution Program was established to provide “ ... for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation.”

Pursuant to 22 NYCRR 137.2 “... the arbitration award shall be final and binding unless *de novo* review is sought as provided in Section 137.8 ...”.

22 NYCRR 137.8 provides:

A party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court of competent jurisdiction within 30 days after the arbitration award has been mailed. If no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding.

Claimant's action in effect seeks *de novo* review of the fee dispute arbitration award.

Neither party offered any evidence as to the date of the mailing of the award. The only evidence Defendant offered as to mailing pertained to the September 25, 2017 letter (Ex B). There is no indication that said letter included a copy of the award, and even if it did, Claimant commenced this action within 30 days of the mailing of said letter.

Based on the foregoing, the arbitration award was rendered nonfinal and nonbinding by Claimant's filing, as such the counterclaim to enforce the award is dismissed [*Hoperman v Seiff*

46 Misc3d 126(A)], and Claimant's request for *de novo* review is granted [*Tzu-Chen Ju v Lebow* 37 Misc3d 134(A)].

The evidence submitted concerning the merits of the fee dispute is scant. The evidence shows that Claimant paid a \$5000 retainer fee, but there were no details provided as to the nature and extent of services rendered.

Defendant acknowledged there was no written retainer agreement as required by 22 NYCRR 1400.3.

While an attorney is precluded from recovering fees for services rendered where there has been complete noncompliance with the mandatory requirements of the matrimonial rules with respect to retainer agreements, where a client seeks the return of funds already paid to the attorney, the attorney may defend by showing 'that the fees paid were properly earned'.

(*Miller v. Carle*, 47 Misc. 3d 13, 15 (*internal citations omitted*)).

The court finds that in the interest of justice a further hearing must be held as to the nature and extent of the services rendered for the \$5000 retainer that was paid, prior to a determination on the issue of whether Claimant is entitled to a refund for same.

CONCLUSION

Defendant's counterclaim (SCB 2082/2017-11) is dismissed with prejudice.

The further hearing on Claimant's cause of action shall take place on Wednesday January 24, 2018 at 2pm in room 103.

This constitutes the decision and order of this court.

Dated: December 7, 2017
Bronx, New York

Hon. Sabrina B. Kraus
JCC

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