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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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VADIM MIKHLYN, INGA MIKHLYN,  
AND ABC ALL CONSULTING, INC., )

Plaintiffs, )

v. )

ANA BOVE, POLINA DOLGINOV,  
ANNA BOVE COMPANY, LLC,  
ANNA BOVE COLLECTIONSM INC., )  
AND ANNA BOVE EMBROIDERY )  
SUPPLIES, INC, )

Defendants. )

ANA BOVE,  
AND ANNA BOVE EMBROIDERY )  
SUPPLIES, INC, )

Counter-Plaintiffs, )

v. )

VADIM MIKHLYN, INGA MIKHLYN,  
AND ABC ALL CONSULTING, INC., )

Counter-Defendants. )

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Index No. CV 08 3367

M. J. REYES

DECLARATION OF PETER L. BERGER  
IN REPLY TO BORIS KOGAN'S  
AFFIRMATION OF MAY 27, 2011

PETER L. BERGER, pursuant to U.S.C. §1746, declares as follows:

1. I have read the affirmation of Boris Kogan of May 27, 2011 and the concurrently submitted declarations of Jonathan Berger and Tuvia Rotberg.
2. I confirm that the facts stated in the declarations of Jonathan Berger and Tuvia Rotberg are true and accurate to the best of my knowledge.

3. It is unseemly for lawyers to be pointing fingers at each other. The involvement of lawyers being responsible for sanctions arose because of the *pro se* defendants raising the issue that they had little or no responsibility for any of the discovery omissions and that they were guided by Boris Kogan. They also supplied evidence of their compliance with any and all requests by Kogan of discovery information he was supposed to provide to plaintiffs.

4. Mr. Kogan's reply raised new issues re the defendants and also pointed a finger at this firm. This is our response.

5. As this case has proceeded, I, like opposing counsel and *pro se* defendants, found it almost impossible to be able to reach Mr. Kogan. There were emails and phone calls made by our office requesting communications on many issues, and the repeated lack of response was extraordinarily unusual in my experience.

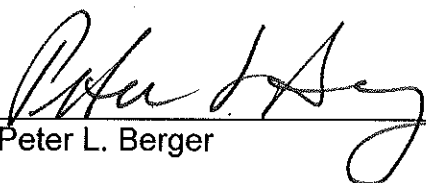
6. Perhaps, as Mr. Kogan has stated, he had medical conditions that prevented him from responding, but the period of time in which there futile attempts to reach him suggest that his medical condition had to be very long standing.

7. It is also unseemly for Mr. Kogan to claim Mr. Rotberg was speaking extensively at the November 2, 2009 conference before Your Honor. As Mr. Rotberg points out in his declaration, the portion of the transcript identified by Mr. Kogan dealt with financial matters. Considering that Mr. Kogan's own law clerk who was present at the hearing with Mr. Kogan realized that the transcript erroneously identified Mr. Rotberg as speaking when it was Mr. Kogan for most of the transcript, as evidenced by Exhibit C of the Rotberg Declaration, it is hard to understand what prompted Mr. Kogan to state Rotberg was speaking when in fact Kogan was, as was known to him, his law clerk and Mr. Rotberg.

8. Until Mr. Kogan withdrew from this case, our firm had very little responsibility for discovery. We did not participate in the exchanges between Kogan and plaintiff's counsel regarding the substantive components of discovery, but we did try to assist in resolving the communication issues between Plaintiff's counsel and Kogan. We were responsible for the intellectual property issues relating to this matter.

9. As a matter of principle, I would not seek to avoid responsibility if errors were of our firm's doing. In this case, accusations by Mr. Kogan of such a nature are both incorrect and unseemly.

I declare under penalty of perjury that the foregoing is true and correct.

  
Peter L. Berger

Dated: 6/16/11