

EXHIBIT A

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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 A.R. AS PARENT AND NATURAL
4 GUARDIAN OF N.B.,

5 Plaintiff,

6 v.

12 CV 7144 (RWS)

7 NEW YORK CITY DEPARTMENT OF
8 EDUCATION,

9 Defendant.

10 New York, N.Y.
11 March 26, 2014
12 12:08 p.m.

13 Before:

14 HON. ROBERT W. SWEET,

15 District Judge

16 APPEARANCES

17 ARTHUR R. BLOCK
18 ANTON G. PAPAKHIN
19 Attorneys for Plaintiffs

20 NEW YORK CITY LAW DEPARTMENT
21 OFFICE OF THE CORPORATION COUNSEL
22 Attorneys for Defendant
23 BY: ERIC B. PORTER
24
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1 THE COURT: I regret that I was unable to really
2 address this problem telephonically during your whatever it
3 was -- a deposition or whatever it was -- and I'm sorry about
4 that, but just I couldn't get my hands around it or my head
5 around it.

6 Let me ask you, Mr. Block, just tell me what are the
7 records that you have. What records do you have? And when I
8 say what records do you have, I mean records relating to your
9 fee calculation.

10 MR. BLOCK: Your Honor, we made our motion for fees on
11 February 24. In that motion, it's a standard motion --

12 THE COURT: Yeah, yeah.

13 MR. BLOCK: -- and it has the exact hours worked.

14 THE COURT: No, no. That's not quite I asked.

15 What I asked is what are the records that you have
16 relating to your fees. I know you made a calculation and so
17 on, but what records are there?

18 MR. BLOCK: Well, are you talking about the fees that
19 have been paid by JRC?

20 THE COURT: Yes.

21 MR. BLOCK: Well, what I was explaining in the call is
22 that under the agreement which I provided as per your
23 instructions last week, it describes that I'm doing various
24 services for JRC.

25 THE COURT: Forgive me. I take it that means you are

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1 representing different clients who have a relationship or seek
2 to have a relationship with JRC?

3 MR. BLOCK: Yes. The agreement which I produced as
4 per your instruction says I'm doing four things under this
5 agreement, one of which and the main one is representing
6 parents that are advancing me part of my fee and that I will
7 reimburse you if and when I get an attorneys' fee award.

8 And then the agreement talked about three other
9 categories of things that were unrelated to that which is what
10 the redactions are.

11 So it says I will render monthly bills.

12 THE COURT: To?

13 MR. BLOCK: To JRC for these four categories of work.
14 So a typical monthly bill has all these line items where it
15 will have first the name of the child and then the description.
16 And so there are 24, 24 of these monthly bills, of which only a
17 tiny part involves --

18 THE COURT: Relate to.

19 MR. BLOCK: -- involves this case. And the rest is
20 confidential information about other clients.

21 And I may just say one thing more about this record,
22 your Honor. These records, even redacted, are useless to their
23 attempted defense because what I was paid, all that's relevant
24 is what I was paid for the hours that I have billed in my
25 attorneys' fees claim. So I set out in -- my declaration makes

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1 clear why these documents are useless because -- may I just say
2 one more thing?

3 THE COURT: Sure.

4 MR. BLOCK: Because I put in my declaration exactly to
5 the dollar how much I've been advanced for the work on this
6 case. And the only way to come up with that figure is to take
7 the hourly rate for the year -- there's one rate for 2012, one
8 for 2013, one for 2014 -- to take that rate and multiply it
9 times the number of hours that are in my attorneys' fees claim.

10 So I'm already saying in my declaration I got paid the
11 maximum. So these bills are useless because what are they
12 going to find, that I didn't bill some of the things in the
13 claim? That's irrelevant.

14 THE COURT: But from what you tell me then, there
15 wouldn't be any difficulty -- and you say that there are 24 of
16 these -- just producing those that relate to this particular
17 client.

18 MR. BLOCK: Well, that would be redacting about 170
19 pages. And if your Honor wants me do that, I would ask they
20 pay for my time.

21 THE COURT: How can it be 170 pages?

22 MR. BLOCK: Twenty-four months times about -- the
23 bills range from five to eight pages. So it's going to take me
24 hours. And I think that if your Honor wants me to do that, I
25 would respectfully --

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1 THE COURT: How much are the entries for A.R.? I
2 mean.

3 MR. BLOCK: It varies over the months of the two years
4 of this case. I've prepared a sample, if you want me to hand
5 it up, of a redacted one of these bills.

6 THE COURT: Well, but okay. But that is -- I
7 understand your contention that it doesn't help the defense at
8 all, but nonetheless there it is. It's relevant. So it seems
9 to me that those should be produced, that is, the ones relating
10 to A.R.

11 MR. BLOCK: Well, I would ask that your Honor also
12 order an interim attorneys' fees to be paid for my time spent
13 redacting these documents that I believe are totally
14 unnecessary to be produced.

15 THE COURT: Well, I guess that's another claim. So
16 when we get to resolving the attorneys' fee issue, I understand
17 your position and I'll deal with that when the time comes.

18 MR. BLOCK: Your Honor --

19 THE COURT: But so there's that. Those are the bills
20 to JRC. But you have other, presumably, you have other time
21 records.

22 MR. BLOCK: Well, the time records are electronic and
23 they're printed out into the JRC bill and those electronic
24 slips were selected out of all those bills to put into my claim
25 so that you have before you in my motion.

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1 THE COURT: In other words, what you do is when you
2 finish doing one of your exhaustive briefs, let's say, you
3 calculate the time. You put it into the computer and the
4 computer then spits out all the time that has been spent.
5 Right?

6 MR. BLOCK: Right. At the end of the month it
7 produces a bill for JRC.

8 THE COURT: So the only other record of time spent is
9 the computer.

10 MR. BLOCK: Oh, yes. Yes.

11 THE COURT: Okay.

12 MR. BLOCK: And then the printouts of the original JRC
13 bill and the claims that I've submitted to the Court.

14 THE COURT: I don't know, I won't say your testimony,
15 but it's your representation that the charges to JRC for A.R.
16 are simply the mechanical computation of the time.

17 Of course, let me ask the city, are you going to -- I
18 understand there is an issue relating to the participation of
19 JRC, but at this point are you planning to attack Mr. Block's
20 allocation of time?

21 MR. PORTER: We do have certain -- yes, your Honor, we
22 will make certain arguments that certain amounts of time that
23 he's claimed should be reduced.

24 Now, that's based solely upon the time sheets that he
25 submitted to the DOE for purposes -- that were attached as an

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1 exhibit to his fee motion. Those are not the time sheets, as I
2 understand from Mr. Block's representation today, that
3 represent invoices to JRC.

4 THE COURT: He would say, I'm sure he would take the
5 position that the time, the bills to JRC are simply
6 replications or compilations of the computer time sheets.

7 MR. PORTER: Yes, your Honor. And I don't believe
8 that we would take issue with that representation. We do
9 intend to object to certain allocations of time, certain
10 amounts of time spent.

11 THE COURT: Sure.

12 MR. PORTER: And to the extent we haven't seen these
13 records to JRC yet.

14 THE COURT: Yeah, but they aren't going to help you in
15 any regard, I take it.

16 MR. PORTER: It's hard for me to know that, your
17 Honor, not having seen them. For instance, if the bills to JRC
18 reflected a number of hours that were inconsistent with what
19 was being billed to the DOE, that may present an issue for us
20 that we want to raise. I'm not saying that's going to happen.
21 Not having the records, I can't comment.

22 MR. BLOCK: Well, your Honor, now he's talking about a
23 whole different purpose for this which is unheard of in terms
24 of attorneys' fees motions that he is now trying to audit,
25 audit my time records. That's not appropriate.

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1 This whole motion is supposed to be about their
2 defense which we say has no legal merit at all of contribution
3 by JRC. And my motion is saying I was paid the maximum amount
4 possible under this arrangement, so there's nothing more for
5 them to complain about. I'm saying the maximum.

6 THE COURT: Let's just hypothecate that you gave --
7 that there is a difference. I'm not saying this is the case,
8 but that there is a difference between the amount allocated to
9 JRC and the amount claimed to the city.

10 MR. BLOCK: Well, there will be some amounts that are
11 different because I didn't bill to the city everything that I
12 billed to JRC. But that's their bargain.

13 So could I just say two things about answering your
14 other questions. Just to make clear about other records, I
15 enter these on my computer. There's no paper. So I just want
16 to be clear about that --

17 THE COURT: I assumed.

18 MR. BLOCK: -- like a lot of law firms.

19 And, No. 2, besides redacting all the other children's
20 time, in the narratives for this case, I have redacted in the
21 log for them -- and I will redact in this -- any parts of the
22 narrative that would disclose confidential information or work
23 product.

24 THE COURT: Understood.

25 MR. BLOCK: I want to make clear that I don't get a

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1 complaint back from them.

2 THE COURT: You probably will get a complaint but the
3 nature of it is as yet undetermined.

4 Actually, if you make the redaction, well, let's do it
5 this way. Let's assume that any redactions you make other than
6 the ones for other people but relating to the A.R.
7 representation are based on confidential communications between
8 client and lawyer. And if there's some other basis for
9 redaction other than that, I think you should indicate.

10 MR. BLOCK: Well, your Honor, I would say that I
11 should also be able to redact narrations that describe
12 strategy, settlement --

13 THE COURT: Work product.

14 MR. BLOCK: -- settlement possibilities, what cases I
15 read for briefing, and --

16 THE COURT: Sure.

17 MR. BLOCK: -- so work product, as well as
18 confidential communications.

19 THE COURT: That's fair.

20 MR. BLOCK: So now there's Mr. Papakhin's bill. Let's
21 deal with that. That's going to be very simple.

22 Mr. Papakhin has said in the agreement that he
23 produced as per your instruction, and as he said in his
24 declaration, he was paid \$5,000 for the impartial hearing
25 because the impartial hearing was less than three days. His

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1 agreement that you have says that if it's more than three days,
2 he gets another 5,000. So he has a bill for 5,000 at that
3 stage.

4 And then the agreement leaves open charges for further
5 proceedings at the SRO or this court. And so the practice was
6 and was done here, and as he said in the declaration, he got
7 another \$5,000 at the beginning of the SRO proceedings. So he
8 has a bill to JRC for that.

9 His bills, however, like mine, include billings for
10 other clients in other matters. So I assume that based on that
11 same thing about his being able to redact that.

12 And so just to be clear, I am going to redact and
13 produce this -- by now it's probably 200 pages of billing
14 records -- redacted. And Mr. Papakhin will produce the two
15 bills reflecting the two payments that he received from JRC.

16 I'd like to say for the record, your Honor, as I said
17 in my motion, my opposition to their motion, that it's our
18 position that a contribution by a third party to a civil rights
19 plaintiff who prevails is absolutely irrelevant to our
20 attorneys' fees claim.

21 THE COURT: I understand.

22 MR. BLOCK: This entire discovery thing --

23 THE COURT: That's substantive. I'm doing this on the
24 basis just simply discovery that might lead to relevant. I'm
25 not taking a position on that issue.

E3QLARPC

Conference

1 MR. BLOCK: But also in our motion for fees, which
2 they have not opposed so it hasn't been before you, we said
3 arguendo that even if that is a valid defense in part, they say
4 that it's only a defense to the extent that the attorney does
5 not have to reimburse the client or reimburse the third party.
6 So in our motion we preempted that. We put in, we said, yes,
7 we get third party payments. Here's the exact amount we got
8 paid. This is our deal, sworn statement saying our agreement
9 is to pay it back if we get attorneys' fees.

10 So then we came here last week and your Honor said,
11 well, if you have those agreements, give them to them, so we
12 did. So you have them and the agreements say exactly what we
13 said in our sworn statements.

14 And so in terms of attorneys' fees litigation, I just
15 want to say that I believe that this is really, you know,
16 inappropriate. All of this discovery is inappropriate.

17 THE COURT: I understand. I understand totally. You
18 think I'm wrong. That's okay. And I may conclude that I was.
19 Okay. Anything?

20 MR. PORTER: I do have a few points, your Honor. My
21 first will be to request a privilege log to the extent that --

22 THE COURT: You've just, in effect, you've just gotten
23 it. It's either going to be on the basis of confidential
24 attorney client or work product.

25 MR. PORTER: Yes, your Honor. And as your Honor

E3QLARPC

Conference

1 noted, I believe, to the extent that any additional information
2 is redacted and the reason for that redaction would be provided
3 as well.

4 THE COURT: Yeah. Those are the only two that I've
5 heard.

6 Okay. Anything else?

7 MR. PORTER: Yes, your Honor, if I may.

8 Mr. Block just stated that according to Mr. Papakhin's
9 declaration and according to his agreement, he was paid 5,000
10 for arguing the IHO hearing and then 5,000 for the SRO appeal.
11 That's not my reading of Mr. Papakhin's letter to JRC that was
12 produced, so I would ask for some clarification on that.

13 As I read the agreement, it is that Mr. Papakhin is
14 paid \$5,000 by JRC at the time that he files the request for
15 the impartial hearing and then is paid \$5,000 for handling the
16 impartial hearing and that the agreement does not cover any
17 appeals to the SRO or any federal litigation.

18 So if that is not, and this reflects the larger point,
19 your Honor, which is that the agreement or the letter that was
20 produced to us which we attached in our letter to the Court of
21 last Friday dealing with Mr. Papakhin covers a different school
22 year than the one at issue. It covers 2009-2010, when the
23 entire case we're dealing with covers representation of a
24 student during 2011-2012 school year. It also isn't signed by
25 Mr. Papakhin or JRC.

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1 So to the extent this is not the final agreement or
2 covers the year at issue, we ask for a copy of the actual
3 agreement. To the extent this is the agreement and it was just
4 interpreted to continue moving forward and there is no signed
5 agreement, it was just a handshake or a verbal understanding,
6 we would just request a representation from counsel that that's
7 the case, that there's nothing else out there.

8 THE COURT: I assume that is the case. Otherwise, it
9 would have been produced.

10 MR. BLOCK: Yes, your Honor. You asked us what
11 writing exists. This is the writing that exists. After that,
12 they had a course of conduct and that was it. In this
13 agreement that was produced it says this fee does not include
14 appeals to the state review officer or to state or federal
15 court. And so that was done on ad hoc basis without a separate
16 writing, and Mr. Papakhin has a sworn statement saying that
17 that's his deal with regard to the state review. Same as here.
18 He pays it back if he gets it.

19 MR. PORTER: I just wanted to clarify that because
20 what Mr. Block said before was the additional 5,000 came from
21 the SRO work and what the agreement and what he's now saying is
22 it comes prior to that.

23 But moving on, your Honor.

24 MR. BLOCK: That's not what I said, your Honor. I
25 said that 5,000, there's the bill for 5,000 for the impartial

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Conference

1 hearing. There's a bill for 5,000 for the SRO, just as
2 Mr. Papakhin said in his declaration, and that the agreement
3 here does not address the second 5,000 because it was never put
4 into writing. That's all.

5 THE COURT: Okay.

6 MR. PORTER: Well, I still think that is different
7 from what's in the agreement.

8 But moving on then, we also asked, there are a number
9 of other issues. And to the extent there were any additional
10 payments made to Mr. Papakhin beyond this 10,000, if there were
11 not, there were not. But to the extent there was, we would ask
12 for production of those records as well.

13 Now, our initial request, our initial motion to
14 compel, your Honor, sought more than just these records. It
15 sought any records reflecting an obligation on behalf of
16 plaintiff herself to repay JRC. It also sought any additional
17 records concerning payment to plaintiff's counsel or any
18 additional records concerning obligations. Now, to the extent
19 they produced everything that exists or with the anticipated
20 production of these individual bill invoices sent to JRC, that
21 that will encompass the universe of everything responsive, we
22 would just like confirmation of that point, a representation
23 from plaintiff that that is everything.

24 The last issue, your Honor, is with respect to
25 information that was redacted from the letters they did produce

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Conference

1 to us last week. There are whole sections that are redacted.
2 Mr. Block represented in his cover letter to us, which I
3 provided to the Court, that these were unrelated to his
4 obligation to repay JRC for fees advanced for his work on this
5 case. But that to me does not sound like attorney-client
6 privilege or privilege that would justify withholding
7 information from a document that your Honor determined was
8 relevant and should be produced.

9 So we would request that the information be produced
10 to us, No. 1. In the alternative, there be an in camera review
11 to determine whether or not this is information properly
12 withheld. But there was no privilege log. There was just
13 redactions made to these documents.

14 MR. BLOCK: You asked us to produce any writing which
15 set forth the terms of advances of fees by JRC to me or
16 Mr. Papakhin and our obligation to return them. So the
17 document that I sent them May 5, my agreement with JRC says I
18 have been providing four kinds of legal services for and on
19 behalf of JRC. And I include everything about the first, which
20 is representing parents, and then you see second redaction,
21 third redaction, fourth -- I even included that even though I
22 didn't have to.

23 So this redacted document is complete as to what you
24 asked for, the agreement with regard to representing A.R.
25 These redactions have to do with the second and third types of

E3QLARPC

Conference

1 services that were under this agreement.

2 THE COURT: Other clients.

3 MR. BLOCK: Other types of services to JRC, not
4 involving representing parents.

5 THE COURT: That's what I'm saying.

6 MR. BLOCK: That's none of their business.

7 THE COURT: Your representation is that the redactions
8 relate to matters other than the A.R. matter.

9 MR. BLOCK: Other than the A.R. matter and other than
10 the generic A.R. matter, other than having to do with
11 representing parents at impartial hearings and so forth.

12 THE COURT: If you want me to look at the document,
13 but I'll accept Mr. Block's representation.

14 MR. PORTER: Okay, your Honor. I would only point out
15 that what is concerning to us and what raised this flag for us
16 is not the second, third, and fourth categories that were
17 redacted. But on page 4, the paragraph that immediately
18 follows the paragraph in which Mr. Block discusses the fee
19 arrangement with JRC, the very next paragraph is redacted and
20 that's in the same subheading. That raised a red flag to us
21 there may be some additional information about this payment
22 relationship that is not being revealed.

23 MR. BLOCK: The redacted part of page 3, the top
24 paragraph, the heading is Direct Services to JRC, underlined.
25 That's what that paragraph is about. It has nothing to with

E3QLARPC

Conference

1 representing parents.

2 THE COURT: With A.R.

3 MR. BLOCK: With A.R. or representing parents.

4 THE COURT: All right. Anything else?

5 MR. BLOCK: Mr. Papakhin, you know, redacted part of
6 his retainer. Let him just explain it to you, his payment
7 agreement, so we don't have to come back here again from
8 another letter from Mr. Porter.

9 MR. PAPAKHIN: Yes, your Honor. My engagement letter
10 describes a situation where I represent parents of students who
11 already attend JRC and who are seeking getting additional
12 services in their IEPs in the form of behavioral interventions.
13 And so this whole section in my letter relates to these
14 situations which is completely irrelevant to representation of
15 students who never attended the school and whose parents are
16 seeking to enroll them in the school for the first part.

17 So that's it. Thank you.

18 THE COURT: Anything else?

19 MR. PORTER: The only other thing, your Honor, is
20 again we would just ask for a representation from counsel in
21 writing that what we are receiving is the universe of
22 responsive documentation.

23 THE COURT: I take it it's implicit, but I take it
24 counsel will represent they have completed, they submitted all
25 materials that I directed be submitted.

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1 MR. BLOCK: Yes, that you directed, not what
2 Mr. Porter a day later interprets to be what you said. That's
3 why I had ordered the court reporter for today.

4 THE COURT: Thank you all.

5 MR. PORTER: Thank you, your Honor.

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