

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**U.S. TRUSTEE and CHIEF ERIC L.
FRANK,**

Defendants,

v.

**RENEE MARIE THORPE,
Debtor-in-Possession,**

**FREDERICK L. REIGLE,
Trustee.**

CIVIL ACTION

NO. 17-857

Bankruptcy No. 13-15267

MEMORANDUM OPINION

This case concerns a dispute over the disbursement of bankruptcy settlement funds in the wake of Debtor Renee Thorpe’s Chapter 12 bankruptcy proceeding, which previously resulted in the sale at auction of the Thorpe family farm to satisfy debts to mortgage holder Lititz Properties, Inc. *See In re Thorpe*, 540 B.R. 552 (E.D. Pa. 2015). Joseph Q. Mirarchi Legal Services, P.C. (“MLS”), a solo law practice maintained by Joseph Q. Mirarchi, is now attempting to recover \$113,400 from the bankruptcy settlement as compensation for its representation of Renee Thorpe and her husband, Dale Thorpe, in a suit against their property insurer, Nationwide Mutual Insurance Company. MLS claims both a contractual and an equitable right to recover for services rendered prior to its dismissal as the Thorpes’ attorney. The Thorpes maintain that the circumstances of Mirarchi’s termination bar recovery, and that Lititz is instead entitled to a portion of the funds in satisfaction of the mortgage debt.

The disputed funds are currently in escrow, pursuant to an order of the Bankruptcy Court. MLS filed a motion with the Bankruptcy Court seeking to claim the funds (the “MLS motion”). The Bankruptcy Court, after finding that the MLS motion presented a non-core matter over

which it could not issue final judgment, issued proposed findings of fact and legal conclusions recommending denial of the motion. MLS has objected to that recommendation. After a *de novo* review of the record, the Bankruptcy Court's recommendation shall be adopted in all material respects and the MLS motion shall be denied.

I. BACKGROUND

Between 2010 and 2012, the Thorpes' farm sustained significant property damage from three separate events: two storms and one fire. 8/8/16 N.T. at 149.¹ In response to this damage, the Thorpes retained Brem Moldovsky in early 2013 to represent them against Nationwide, their property insurer. Ex. M-2. Moldovsky soon obtained a partial settlement, and in June of 2013 Ms. Thorpe filed a motion with the Bankruptcy Court to award Moldovsky his \$51,025.54 contingency fee. Ex. M-35. The Thorpes subsequently retained Herbert McDuffy to continue their suit against Nationwide. Ex. M-2. On November 7, 2014, McDuffy filed a complaint against Nationwide on the Thorpes' behalf. Ex. M-2.

McDuffy was unable to continue his representation of the Thorpes for personal reasons, and the Thorpes retained Mirarchi, a solo practitioner specializing in first-party insurance litigation, to continue the suit. 8/3/16 N.T. at 15-16, 19, 125-27. On December 23, 2014, prior to receiving a signed contingency agreement from the Thorpes, Mirarchi filed an amended complaint on their behalf. 8/3/16 N.T. at 131; *see also* Ex. M-6 at 3. Faced with what he believed to be a firm filing deadline, Mirarchi did not have the Thorpes review and verify the complaint. 8/8/16 N.T. at 141-42. Rather, he obtained Dale Thorpe's verbal consent to attach

¹ All citations within this factual background refer to the record considered by the Bankruptcy Court. Citations to "N.T." refer to the Bankruptcy Court's notes of testimony during hearings, and include the date and page of testimony from which the information was drawn. Citations to "Ex." indicate exhibits admitted during the Bankruptcy Court hearings. Citations to "ECF" refer to entries on the docket of the bankruptcy matter, *In re Thorpe*, No. 13-15267, (Bankr. E.D. Pa. June 13, 2013).

signed verifications obtained from the original complaint filed by McDuffy. 8/19/16 N.T. at 19. The amended complaint successfully mooted Nationwide's preliminary objections. 8/3/16 N.T. at 131.

The Thorpes sent Mirarchi a signed copy of the contingency fee agreement ("MLS Fee Agreement") on March 4, 2015. Ex. M-13. The agreement provides, in pertinent part, that MLS's compensation "shall be determined as follows: Thirty-Five (35%) of the funds derived by suit or amicable settlement." Ex. M-13. Further, the agreement authorizes MLS "to bring suit or to settle and compromise" the claim, with the Thorpes' consent. Ex. M-13. Nationwide filed its Answer to the amended complaint on April 29, 2015, and though MLS was at this point formally retained, no discovery was conducted by either party between April and August of 2015. Ex. M-2; *see also* 8/3/16 N.T. at 131-32.

On July 15, 2015, Mirarchi was administratively suspended from practicing law in Pennsylvania effective August 14, 2015, due to a failure to fulfill his Continuing Legal Education ("CLE") requirements under Pennsylvania Rule for Continuing Legal Education 111(b). Exs. M-38, M-42. Mirarchi soon obtained the necessary CLE hours, and the Pennsylvania CLE Board sent Mirarchi a letter on August 28, 2015 acknowledging Mirarchi's completion of his CLE obligations for 2014 and 2015. Ex. M-16. The letter also noted that the administrative suspension would not be lifted until certain "form(s) and fee(s)" were sent to the Disciplinary Board. Ex. M-16. Mirarchi was not reinstated to active status as an attorney until September 16, 2015, the same day that the Thorpes' farm was sold at auction. Ex. M-42.

At no point did Mirarchi inform the Thorpes of his suspension, and he continued to act as their attorney while suspended from the bar. On August 25, eleven days after his suspension

took effect, Mirarchi engaged in settlement negotiations with Nationwide's counsel on the Thorpes' behalf. 8/3/16 N.T. at 23-24. Nationwide offered a figure of \$324,729.30. Mirarchi texted this offer to Dale Thorpe, who after some prodding suggested that he could not assent without first discussing the matter with Ms. Thorpe's bankruptcy counsel. 8/8/16 N.T. at 95; *see also* Ex. M-6 at 15-17. Mirarchi nevertheless forged ahead: He sent Ms. Thorpe's counsel a copy of the MLS Fee Agreement in preparation for the filing of a motion for: (1) approval of the Nationwide settlement, (2) Mirarchi's appointment as special counsel, and (3) approval of MLS's contingent fee. Ex. M-17.

In mid-September 2015, Dale Thorpe and Rene Thorpes' bankruptcy counsel began to request details concerning Mirarchi's administrative suspension. Exs. M-22, M-23. On October 2, Mirarchi sent the Thorpes a letter addressing the issue, claiming that the suspension "in now [sic] way effected [sic] my representation of you." Ex. M-24 at 3. He further maintained that "[a]t all material times, I was a Member of the Bar of our Commonwealth's Supreme Court." Ex. M-24 at 3. At no point did Mirarchi inform the Thorpes of either the nature of the suspension or its length. Ex. M-24 at 3. In the following weeks, Mirarchi continued urging the Thorpes to accept Nationwide's offer, at times disparaging the effectiveness of Debtor's bankruptcy counsel and suggesting that the Thorpes' case against Nationwide was "very weak." Exs. M-26, M-27, M-28, M-30.

The Thorpes terminated Mirarchi by e-mail on November 23, 2015, without having accepted the Nationwide settlement. Ex. M-34. The email cited both Mirarchi's failure to notify the Thorpes of his administrative suspension as well as his inadequate responses to their inquiries concerning the suspension. 8/8/16 N.T. at 155, 180-81. The Thorpes rehired McDuffy, who

accepted the Nationwide offer on the Thorpes' behalf without any further negotiation.² 8/19/16 N.T. at 43.

The following day, the Bankruptcy Court held a status hearing in the Chapter 12 case. The funds received from the farm's auction sale (\$1.75 million) failed to satisfy the extent of Lititz's claim (in excess of \$2.3 million), a claim still secured by the Thorpes' second residential property. Rather than continue the litigation, both parties agreed to undergo mediation with the Honorable Ashely M. Chan. During the mediation conferences, the issue of MLS's legal fees was discussed but not resolved; the parties were nevertheless able to agree upon a proposed settlement. The settlement required the Thorpes to accept the Nationwide settlement offer and immediately pay Lititz \$210,600 from the proceeds. The remaining funds (\$113,400) would remain undistributed until the matter of MLS's fees could be resolved. If MLS received less than the entire sum, Lititz would be entitled to an additional payment, up to a maximum of \$9,400. Lititz would then accept these payments in full satisfaction of its claim against Ms. Thorpe.

On April 19, 2016, Lititz filed a motion to approve the settlement. ECF No. 547. In an order dated May 25, 2016, the Bankruptcy Court approved the proposed settlement, authorized the payment of \$210,600 to Lititz, and directed that the remaining funds be held by the Clerk of the Bankruptcy Court until the question of MLS's legal fees could be resolved. ECF No. 572.

MLS filed the MLS motion with the Bankruptcy Court on June 22, 2016, seeking payment of the disputed funds based on the MLS Fee Agreement. ECF No. 581. The Thorpes filed a response on July 11, alleging that Mirarchi's attorney misconduct barred MLS from

² On June 23, 2016, the Thorpes' insurance litigation was marked "settled, discontinued and ended." Ex. M-2 at 3.

recovering for his services. ECF No. 586. The Bankruptcy Court, after a three-day hearing, found: (1) that the matter was a non-core proceeding, (2) that MLS had no contractual right to recover its legal fees, and (3) that Mirarchi's wrongful conduct during the Nationwide suit barred MLS from recovering in equity. The Bankruptcy Court issued its proposed finding of facts and legal conclusions recommending dismissal of all of MLS's claims and denial of the Mirarchi motion on February 17, 2017. ECF No. 644. That recommendation was transmitted to this Court for review on February 22, 2017. ECF No. 650. MLS entered objections to the Bankruptcy Court's proposed findings on March 5, 2017, essentially contesting the entirety of the Bankruptcy Court's recommendation, and seeking this Court's *de novo* review.³

II. LEGAL STANDARD

In a non-core proceeding, “the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.” 28 U.S.C. § 157(c)(1); *see* Fed. R. Bankr. P. 9033(d); *In re Mintze*, 434 F.3d 222, 228-29 (3d Cir. 2006). A district court may then “accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.” Fed. R. Bankr. P. 9033(a).

³ MLS initially filed its objections under Civil Case No. 15-cv-5343, the prior matter in which the Court affirmed the Bankruptcy Court's approval of the auction. The objections were properly filed on the docket for this matter on April 3, 2017. ECF No. 3.

III. DISCUSSION

In its objection to the Bankruptcy Court's proposed findings of fact, MLS argues that the court erred in its determinations concerning the attorney-client relationship between Mirarchi and the Thorpes. MLS further objects to the Bankruptcy Court's legal conclusions concerning both its breach of contract and *quantum meruit* claims. The Court will consider first MLS's proposed factual modifications, before evaluating the legitimacy of its contract and quasi-contract claims.

A. Objections to the Bankruptcy Court's Proposed Findings of Fact

Contrary to the Bankruptcy Court's factual findings, MLS maintains that Mirarchi was reinstated as an Attorney of Record in the Thorpes' insurance proceedings on September, 16, 2015.⁴ Mirarchi has offered no facts from the record to support this assertion, and the Court finds the modification unwarranted upon review. Indeed, the record points sharply in the opposing direction: Mirarchi never withdrew from the Thorpes' Nationwide proceedings during his administrative suspension, despite being obligated to do so under the Pennsylvania Rules of Disciplinary Enforcement. Nor did he inform his clients of his suspension from the bar. Thus Mirarchi, through his own actions, eliminated both the need and the opportunity for reinstatement in the Nationwide proceedings. In light of these considerations, the Court finds

⁴ MLS suggests two other modifications. First, it asks the Court to acknowledge Mirarchi's status as a duly licensed attorney between the dates of September 16, 2015 and December 31, 2015. But the Bankruptcy Court made it clear in its Proposed Findings that Mirarchi was reinstated to active attorney status on September 16, 2015, so the Bankruptcy Court's proposed finding of fact on this point is already consistent with the "modification" MLS seeks.

Second, MLS asks the Court to clarify the timeline of events surrounding the Lititz Settlement. Specifically, it would like it recognized that the Honorable Ashely M. Chan conducted two mediation conferences. The Court has done so for the sake of clarifying a complicated proceeding. However, this modification is immaterial to the legal entitlement to the disputed funds.

that Mirarchi never withdrew from the Thorpes' insurance litigation and could not, therefore, be reinstated as an Attorney on Record in the case.

B. Objections to the Bankruptcy Court's Proposed Legal Conclusions

MLS has raised objections to the Bankruptcy Court's legal conclusions concerning both its breach of contract claim as well as its claim for relief in *quantum meruit*. The Court shall adopt the Bankruptcy Court's conclusions of law, for the reasons outlined below.

1. Breach of Contract

MLS first maintains that the Thorpes, in refusing to accept the Nationwide settlement, materially breached the MLS Fee Agreement. This argument is unavailing. As the Bankruptcy Court explained, *see In re Thorpe*, 563 B.R. 576, 598-99 (Bankr. E.D. Pa. 2017), the ability of a client "to discharge his attorney for any or no reason and without penalty is an implied term of every attorney-client engagement contract." *Angino & Rovner v. Jeffrey R. Lessin & Assocs.*, 131 A.3d 502, 508 (Pa. Super. Ct. 2016). Such a right is premised upon "the unique concepts of trust and confidence that flow from [the] fiduciary relationship," and when a client exercises this implied contractual right of termination, there is no breach and the terminated attorney has no contractual right to damages. *Id.* at 509; *see also Mager v. Bultena*, 797 A.2d 948, 956 (Pa. Super. Ct. 2002) ("a client may terminate his relation with an attorney at any time, notwithstanding a contract for fees") (quoting *Sundheim v. Beaver Cty. Bldg. & Loan Ass'n*, 14 A.2d 349, 351 (Pa. Super Ct. 1940); *Kenis v. Perini Corp.*, 682 A.2d 845, 849 (Pa. Super. Ct. 1996) ("under Pennsylvania law, a client has the absolute right to terminate the attorney-client relationship").

In light of a client’s absolute right to terminate an attorney-client relationship at any time, an attorney hired on a contingency basis and terminated prior to settlement or court judgment does not have a contractual right to recover his or her fee. *Angino & Rovner*, 131 A.3d at 508-09; *see also Hiscott & Robinson v. King*, 626 A.2d 1235, 1237-38 (Pa. Super. Ct. 1993) (finding an attorney unable to recover in contract when terminated prior to full performance of contingency agreement). “Where the contingency has not occurred, the fee has not been earned,” *Mager*, 797 A.2d at 958, and MLS has offered no case law that suggests otherwise. Mirarchi’s termination prior to achieving the triggering contingency (*i.e.*, funds generated by “suit or amicable settlement”) extinguished MLS’s contractual entitlement to the contingency fee.

2. *Quantum Meruit*

As an alternative to contract-based recovery, MLS seeks compensation for Mirarchi’s legal services based on the equitable doctrine of *quantum meruit*. This doctrine may allow an attorney to recover for services rendered prior to dismissal despite the absence of a contractual right to payment. *See Angino & Rovner*, 131 A.3d at 508; *see also Mager*, 797 A.2d at 956 (an attorney dismissed prior to achieving triggering contingency “is not deprived of his right to recover on a *quantum meruit* a proper amount for the services which he has rendered”) (quoting *Sundheim*, 14 A.2d at 351). When *quantum meruit* recovery is warranted, a court has discretion to determine fair compensation. *Mager*, 797 A.2d at 962 (“[s]ince a *quantum meruit* action sounds in equity, fairness should prevail”).

Under Pennsylvania law, an attorney hired on a contingency basis will be entitled to some degree of recovery in *quantum meruit* when: (1) the client has dismissed the attorney prior

to complete performance of the contract, and (2) the dismissal is not due to the attorney's "own wrongful acts." *Lampl v. Latkanich*, 231 A.2d 890, 894 (Pa. Super. Ct. 1967). The first-prong of the analysis is satisfied in this case; Mirarchi never voluntarily withdrew from representing the Thorpes. The ultimate question, then, is whether an attorney's unauthorized practice of law, failure to notify his client of his administrative suspension, and failure to adequately represent his professional status to his client may be considered "wrongful conduct," which would bar the attorney from pursuing a claim in *quantum meruit*.

Though it held that "an attorney is entitled to no compensation whatever, if he is discharged because of his own wrongful acts," the *Lampl* court did not clarify the meaning of "wrongful act." *Lampl*, 231 A.3d at 894. A federal district court examining this issue, however, has held that an attorney's "illegal or immoral acts" are sufficient to bar recovery in *quantum meruit*. *Mulholland v. Kerns*, 822 F. Supp. 1161, 1170 (E.D. Pa. 1993). Such an interpretation is consistent with the doctrine of *quantum meruit*, which is properly applied in situations where a client, through his or her own actions, makes it impossible for an attorney to complete his or her performance of the contract. *See Sundheim*, 14 A.2d at 351. The doctrine thus functions to prevent a client's unjust enrichment at the expense of his or her attorney. *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1252 (Pa. 2016) ("the applicability of *quantum meruit* relief depends on whether the defendant has been unjustly enriched"). If, however, an attorney engages in wrongful conduct while handling a client's case, termination based on that wrongful conduct will be proper, and any subsequent client enrichment is not unjust. *See Lampl*, 231 A.2d at 894.

MLS maintains that Mirarchi's dismissal was unwarranted and unreasonable. The Bankruptcy Court disagreed and found instead that Mirarchi's own misconduct prompted his termination. Furthermore, the Bankruptcy Court concluded that Mirarchi's misconduct may be properly described as wrongful, thus barring equitable recovery. The Court shall adopt the Bankruptcy Court's ultimate finding and conclusion, based on the following considerations.

During and after his administrative suspension, Mirarchi made several missteps material to the Thorpes' Nationwide litigation: (1) he continued to represent himself as the Thorpes' attorney, negotiating the key Nationwide settlement while unauthorized to practice law in Pennsylvania, (2) he failed to notify the Thorpes, Ms. Thorpe's bankruptcy counsel, or the court of his suspension, and (3) he consistently refused to accurately convey the nature and timing of his suspension to his clients. All of these actions constitute professional misconduct under the Pennsylvania Rules of Disciplinary Enforcement. *See* Pa. R.D.E. 103. Further, by representing himself as a licensed attorney capable of negotiating a settlement on his clients' behalf, Mirarchi engaged in the unauthorized practice of law, in violation of state statute. 42 Pa.C.S.A. § 2524; *see also Office of Disciplinary Counsel v. Marcone*, 855 A.2d 654, 660 (Pa. 2004) (finding "the holding out of oneself to the public as competent to exercise legal judgment" while suspended from the bar sufficient to qualify as the unauthorized practice of law).

Prohibiting the unauthorized practice of law serves to "protect and secure the public's interest in competent legal representation," and thereby reinforces the legitimacy of the legal profession. *Dauphin Cty. Bar Ass'n v. Mazzacaro*, 351 A.2d 229, 233 (Pa. 1976). No suspension from the bar should be taken lightly; administrative suspensions help "assure that lawyers admitted to practice in the Commonwealth . . . maintain the requisite knowledge and

skill necessary to fulfill their professional responsibilities.” *Kohlman v. W. Pennsylvania Hosp.*, 652 A.2d 849, 851 (Pa. Super. Ct. 1994). In this case, Mirarchi failed to fulfill his professional responsibilities, and his subsequent conduct provided just cause for termination. That the Thorpes did in fact terminate Mirarchi because of this conduct is evidenced in both the termination letter emailed to Mirarchi in November of 2015, as well as the testimony provided by Dale Thorpe during the Bankruptcy Court hearing. The Court therefore adopts the Bankruptcy Court’s finding that Mirarchi’s termination was the result of his own wrongful acts, and concludes that he is thereby barred from recovery in *quantum meruit*. MLS’s motion seeking payment of the disputed bankruptcy proceeds shall therefore be denied.

An order follows.

Dated: July 19, 2017

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.