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SHORT FORM ORDER

[redacted]

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 18 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. ROBERT WEBSTER OLIVER
Justice of the Supreme Court

Motion R/D: 1-31-02
[redacted]
Non-Final Disposition

MICHAEL J. REGAN,

Plaintiff,

- against -

HECHT & STECKMAN, P.C., HECHT & ASSOCIATES, P.C. and CHARLES J. HECHT,

Defendants.

Michael J. Regan
Plaintiff Pro Se
200 Railroad Avenue
Sayville, New York 11782

Hecht & Associates, P. C.
Attorneys for Defendants
60 East 42nd Street
New York, New York 10165-5101

Upon the following papers numbered 1 to 27 read on this motion to compel; Notice of Motion/Order to Show Cause and supporting papers 1 to 12; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 13 - 17; Replying Affidavits and supporting papers 18 - 25; Other Exhibits 26 - 27; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that this motion by the defendants to compel the plaintiff Michael Regan to attend and give testimony at a deposition and to produce documents in accordance with a Demand for Documents served on November 7, 2001 is granted to the extent that the plaintiff is directed to provide a response to the Demand for Documents pursuant to this Order.

The Court will first briefly review the facts in this case.

On September 30, 1998, United States Bankruptcy Court Judge Stephen Raslavich approved the employment of the plaintiff Michael J. Regan as special counsel to investigate and prosecute alleged misconduct that may have contributed to the bankruptcies of Eagle Enterprises Inc. and Liberty Recovery Systems Inc.

On or about August 11, 1999, Regan retained the firm of Hecht & Steckman, P.C. to aid him in his duties to investigate the viability of civil RICO claims and state claims on behalf of the estates of Eagle Enterprises Inc. and Liberty Recovery Systems Inc. against USA Waste Services Inc.

In negotiating the retainer agreement, Regan conducted all discussions with Lawrence Steckman, who was a principal of Hecht & Steckman at that time. Charles Hecht did not participate

in those negotiations. Regan then retained Hecht & Steckman pursuant to a written retainer agreement. Steckman has subsequently left the firm of Hecht & Steckman, P.C. and he has at times been associated professionally with the plaintiff.

The retainer agreement signed by the parties provided that all disputes arising under the agreement be resolved by arbitration conducted by the "American Bar Association." It did not contain a limitation on the fee to be charged by the defendants.

Regan had commenced an action entitled Mitchell W. Miller, as Trustee for the Estates of Eagle Enterprises Inc. and Liberty Recovery Systems Inc. v USA Waste Services Inc. and Blank, Rome, Comisky & McCauley, LLP (hereinafter Blank Rome). According to Regan, the defendants concentrated their legal efforts on working on the claims against USA Waste and the defendants did not work on the case against Blank Rome.

On August 31, 2000, a settlement was approved by the Bankruptcy Court in the action between Blank Rome and the trustee and that settlement resulted in a legal fee being paid to Regan. Regan alleges that the defendants are not entitled to any fee of this settlement because they played no role in that case. Regan does concede that the defendants are entitled to a percentage of the monies received from settlement of the claims against USA Waste.

At the time Hecht & Steckman was retained by Regan, there were four attorneys working on the Bankruptcy action. Regan alleges that to ensure that each of the attorneys would be fairly compensated, it was agreed that all four attorneys would maximize their recovery at 25% of the net fee. According to Regan this portion of the agreement was inadvertently omitted from the retainer agreement with Hecht & Steckman. Steckman alleges that when the agreement was drafted, it should have included the 25% limitation on recovery and it was inadvertently omitted.

The plaintiff has alleged that the choice of the American Bar Association in the agreement was not an error and the agreement was properly drafted to provide that the arbitration be before the American Bar Association. Hecht alleges that the inclusion of the American Bar Association was a scrivener's error and it should have stated that arbitration forum was the American Arbitration Association.

The parties have now commenced discovery in this case. The defendants have served a Demand for Documents. A response was served dated January 9, 2002. The defendants' Demand for Documents asks for any of Regan's retainer agreements other than the August 11, 1999 retainer that specifies arbitration before the American Bar Association with the name of the client or other party redacted and any retainer agreement or other agreement of Regan containing an arbitration clause relating to plaintiff's law firm or prepared by plaintiff's law firm specifying arbitration before the American Arbitration Association with the name of the client or other party redacted.

The plaintiff did not raise an issue of privilege and instead objected to the demand on relevancy grounds.

An attorney-client relationship is required before an attorney client privilege arises. An attorney-client relationship is established when one contacts an attorney for the purpose of obtaining legal advice or services (*see,* ***United States v United Shoe Mach. Corp. DC,*** 89 F.Supp 357). Not

all communications to an attorney are privileged. Privilege attaches only to communications made to the attorney for the purpose of obtaining legal advice or services (*see, **Matter of Jacqueline F.,*** 47 NY2d 215, 417 NYS2d 884). Therefore, if a client is a party to a pending litigation, the attorney can be compelled to disclose his client's identity (*see, **Matter of Kaplan (Blumenfeld),*** 8 NY2d 214, 203 NYS2d 836). This is so because a client's identity is not relevant to the advice given by the attorney.

It has been held that in a situation where the plaintiffs are seeking to recover attorney's fees as part of their claim for damages, the plaintiff's retainer fee is not protected by privilege (***Cutrone v Gaccone,*** 210 AD2d 289, 619 NYS2d 758). However, the Court notes that while the retainer agreement may not be privileged in that situation, the billing statements are still privileged (*see, **De La Roche v De La Roche,*** 209 AD2d 157, 617 NYS2d 767).

In any event, it has long been the law in New York that the terms of retainer agreements are not privileged (*see, **Glines v Bairds Estate,*** 16 AD2d 743, 227 NYS2d 71; ***Registered Country Home Builders inc. v Lanchantin,*** 10 AD2d 721, 198 NYS2d 767; ***Priest v Hennessy,*** 51 NY2d 62, 431 NYS2d 511).

Further, the Court further notes that the Appellate Division has at times explicitly permitted the discovery of retainer agreements (*see, **Matter of Estate of Hall,*** 204 AD2d 785, 611 NYS2d 697).

CPLR 3101 requires disclosure of all relevant information that may lead to the discovery of admissible proof (*see, **Keenan v Harbor View Health & Beauty Spa Inc.,*** 205 AD2d 589, 613 NYS2d 419). Discovery concerning credibility issues has specifically been permitted (*see, **Laurence v City of New York,*** 118 AD2d 758, 500 NYS2d 149).

The Court finds that these retainer agreements are relevant to the issue of whether the inclusion of the American Bar Association was a scriveners error. Therefore, the Court will direct that Regan produce all his retainer agreements containing an arbitration clause providing that the forum be either the American Arbitration Association or the American Bar Association prepared by him within a time period of two years before August of 1999 with the names and addresses of the parties and the amount of the retainer redacted within twenty (20) days of service of this order with notice of entry.

The plaintiff has served a response to the remaining items of the demand.

Depositions have been scheduled in this action.

Dated: 2-22-02

ROBERT WEBSTER OLIVER, J.S.C.