

Pludeman v Northern Leasing Sys., Inc.

2011 NY Slip Op 32208(U)

August 10, 2011

Sup Ct, NY County

Docket Number: 101059/04

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **MARTIN SHULMAN**
J.S.C. Justice

PART 1

Kevin Plupeman, Et Al.

INDEX NO. 101059/04

Northern Leading Systems Inc., Et Al.

MOTION DATE _____

MOTION SEQ. NO. 21

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for pro hac vice admission

PAPERS NUMBERED

~~Notice of Motion~~/ Order to Show Cause — Affidavits — Exhibits ...

1, 2

Answering Affidavits — Exhibits _____

3

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in

accordance with the attached decision and order.

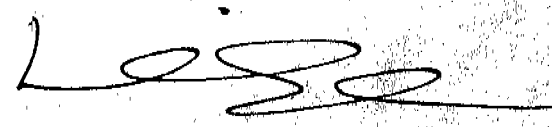
FILED

AUG 11 2011

CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: August 10, 2011



MARTIN SHULMAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----X
KEVIN PLUDEMAN, et al.,

Plaintiffs,

Index No.: 101059/04

-against-

DECISION/ORDER

NORTHERN LEASING SYSTEMS, INC., et al.,

Defendants.
-----X

In this class action lawsuit, plaintiffs move by order to show cause ("OSC") pursuant to *inter alia* 22 NYCRR §520.11 for an order allowing Keith Altman, Esq., a member in good standing of the State Bar of California, to appear *pro hac vice* as counsel "to conduct and/or participate in discovery proceedings and/or to argue and/or try this case in whole or in part . . ." Upon signing the OSC, this court issued an interim order permitting Mr. Altman to participate in discovery proceedings pending the hearing of the OSC so that certain discovery deadlines could be met.

Defendants oppose the motion on the grounds that Mr. Altman, though admitted to practice law in California, would be ineligible to practice law in New York or even sit for the New York State Bar Examination because he did not receive his law degree from an approved law school. See generally, 22 NYCRR §520.3. In his supporting affidavit, Mr. Altman avers that he is a member of the law firm of Finkelstein & Partners, LLP and maintains a business address in Newburgh, New York. Defense counsel contends that the Finkelstein firm does not have an office in California and speculates that Mr. Altman repeatedly seeks *pro hac vice* admission to avoid New York's

requirements for the practice of law.¹ According to defendants, this raises the question whether Mr. Altman is engaging in the unauthorized practice of law.

Discussion

Pursuant to 22 NYCRR §520.11(a)(1), “[a]n attorney and counselor-at-law or the equivalent who is a member in good standing of the bar of another state . . . may be admitted pro hac vice: (1) in the discretion of any court of record, to participate in any matter in which the attorney is employed . . .” See also, *Matter of Ancona*, 17 AD3d 584 (2d Dept 2005); *Neal v. Ecolab, Inc.*, 252 AD2d 716 (3d Dept 1998). This court finds no support for defendants’ objection to Mr. Altman’s admission pro hac vice based upon his obtaining his law degree via correspondence courses.

The plain language of 22 NYCRR §520.11(a)(1) requires only membership in good standing of the bar of another state. Mr. Altman submits a sealed certificate of standing from the State Bar of California dated August 2, 2011, indicating that he was admitted to practice on August 25, 2008, has been an active member since that date and “that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Governors or a Disciplinary Board to the Supreme Court of the State of California.” Exh. A to Altman Aff. This court finds that Mr. Altman is eligible for pro hac vice admission in this matter by virtue of: 1) his admission to the

¹ The U.S. District Court for the Southern District of New York admitted Mr. Altman as pro hac vice counsel in *Serin v Northern Leasing* (Case No. 06-CV-1625 [JSG]), a related matter. Defendants’ counsel did not oppose that application because they were unaware of the facts they now present to this court. Similarly, the U.S. District Court for the Eastern District of New York admitted Mr. Altman as pro hac vice counsel in *Gagasoules v MBF Leasing* (Case No. 08-CV-2409 [ADS] [ARL]), also claimed to be a related matter.

* 4]
California Bar; 2) his unblemished professional record;² and 3) his background in the field of electronic discovery for which plaintiffs seek his expertise.³

While the court would otherwise exercise its discretion and grant this OSC, nonetheless, it must be denied as defective. Admission pro hac vice is conditioned upon counsel being familiar and complying with the standards of conduct imposed upon those duly admitted to practice in New York. See 22 NYCRR 520.11(e)(1). Further, an attorney seeking admission pro hac vice must agree to be subject to the jurisdiction of the courts of New York with respect to all acts occurring during the course of the attorney's participation in the action. See 22 NYCRR 520.11(e)(2).

Here, Mr. Altman's supporting affidavit recites only that he is "familiar with the New York Civil Practice Laws and Rules and with the Rules of this Court." Altman Aff. at ¶5. This language has specifically been found insufficient. See *Matter of M.N.*, supra, 905 NYS2d at 765; see also, *Adkins v Lipner, Gordon & Co.*, supra, at *1 (Sup. Ct., Nassau Co., 2005) (application denied as defective with leave to renew upon proper papers where attorney's affidavit failed to indicate familiarity with and agreement to be bound by rules governing conduct of attorneys in New York, as well as agreement to be subject to New York court's jurisdiction). Counsel of record's statements in his

² Cf., *Adkins v Lipner, Gordon & Co.*, 10 Misc3d 1062(A), 814 NYS2d 559, at *2 (Sup. Ct., Nassau Co., 2005), wherein the court denied pro hac vice admission to an attorney with an extensive record of professional censure, including discipline for multiple instances of professional misconduct, temporary suspension from the practice of law and public censure; and *Matter of M.N.*, 28 Misc3d 1154, 905 NYS2d 763 (Sup. Ct., Bronx Co., 2010).

³ Plaintiffs' deposition of defendants' custodian of records must be completed on or before August 25, 2011.

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supporting affidavit that he believes Mr. Altman is familiar with and will comport himself in accordance with the standards of professional conduct imposed upon New York attorneys and subject himself to the court's jurisdiction are insufficient to satisfy 22 NYCRR §520.11(e)'s requirements.

For all of the foregoing reasons, it is hereby

ORDERED that the OSC is denied with leave to renew upon the presentation of a proper affidavit from Mr. Altman, which application may be submitted directly to chambers along with a proposed order.

The foregoing constitutes this court's Decision and Order. Copies of this Decision and Order have been faxed to counsel for the parties.

Dated: New York, New York
August 10, 2011



Hon. Martin Shulman, J.S.C.

FILED
AUG 10 2011
CLERK OF COURT
NEW YORK