STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Raymond Acevedo,
Employee/Claimant,

vs.

Southeast Personel Leasing (Group Wave)/Packard Claims Administration,
Employer/ Carrier/Servicing Agent.
_____/

Judge: Neal P. Pitts

OJCC Case No. 12-020189NPP

Accident date: 7/3/2012

FINAL EVIDENTIARY ORDER ON MOTION FOR DETERMINATION OF LIEN

A final evidentiary hearing was held on the 24th day of October, 2013, pursuant to Scott J. Sternberg & Associates, P.A.'s Motion For Determination Of Lien, filed with DOAH on July 5, 2013, to which the E/C responded in a written response filed with DOAH on July 12, 2013. The claimant, Raymond Acevedo, attended the hearing along with his current attorney, Donald Van Dingenen, Esq. The E/C's attorney, Troy Mathews, Esq., also attended. The claimant's former attorney, Natalie Navarro, Esq., attended the hearing telephonically. Live testimony was received from the claimant, Mr. Donald Van Dingenen, Ms. Natalie Navarro, and Ms. Heather Pattock.

The evidentiary hearing was coordinated and scheduled so as to allow Mr. Sternberg to attend via video teleconference from the offices of the OJCC in West Palm Beach, Florida. Because Mr. Sternberg is the moving party, he has the burden of proof to

establish entitlement and amount of his asserted charging lien. However, Mr. Sternberg chose not attend the hearing because of a conflict and instead had his associate, Natalie Navarro, telephone from her office because she was not aware that the hearing had been scheduled for her to attend via video conference. The claimant elected to proceed with the hearing.

The claim for determination at the hearing was:

Entitlement to and the value of the charging lien for attorney's fees and costs due by the claimant to the law firm of Scott J. Sternberg & Associates, P.A.

The following documents were admitted into evidence:

Scott J. Sternberg & Associates, P.A.'s Exhibit:

1. Unsworn Motion For Determination Of Lien, filed with DOAH on July 5, 2013, by Scott J. Sternberg & Associates, P.A. as prior counsel for the claimant.

Claimant's Exhibit:

1. Retainer Agreement, Power Of Attorney And Trust Agreement dated August 16, 2012 signed by the claimant with Scott J. Sternberg & Associates, P.A.

E/C's Exhibit:

1. Response To Motion For Determination Of Lien, filed with DOAH on July 12, 2013.

Judge's Exhibit:

1. Mediation Conference Report and Settlement Agreement, filed with DOAH on June 25, 2013.

SUMMARY OF RELEVANT AND UNDISPUTED EVIDENCE:

1. The claimant suffered an accident on July 3, 2012. The E/C provided for an unestablished period of time authorized medical care and paid indemnity benefits before denying the entire claim. There is no pay ledger in evidence; thus the undersigned is unable to determine when and for what period medical and indemnity benefits were paid to the claimant.

2. The claimant signed a retainer agreement with Scott J. Sternberg & Associates, P.A. (the law firm) on August 16, 2012. The claimant could not recall whether the E/C began paying the indemnity benefits and/or providing the medical benefits after he retained such law firm.

3. The claimant testified that he became aware of the law firm of Scott J. Sternberg & Associates, P.A. when he received an unsolicited notice in the mail from them following his injury. He called the phone number listed in the paperwork and spoke with a representative from the firm. He was told that there would be a local lawyer assisting him if he retained the firm to represent him in his workers' compensation claim. The retainer agreement

was sent to him in the mail which he signed and returned to the firm. He never met with a representative in person to go over the retainer agreement before he signed it.

4. At some point after retaining the law firm, the claimant became aware that a lawyer from such firm would not be attending in person his deposition nor would one attend the mediation. Rather, the claimant learned that an attorney would appear by phone. The claimant testified that he never spoke with an attorney from the firm. The claimant was unhappy with this arrangement.

5. According to the DOAH docket, the law firm filed petitions for benefits on August 31, 2012, October 17, 2012, and on December 27, 2012. The August 31, 2012 petition sought continued treatment with Dr. Ralph and Dr. Morris, and compensability of the head, neck, and left knee injuries. The October 17, 2012 petition for benefits sought compensability of the eye injury. The December 27, 2012 petition sought treatment with an ophthalmologist and a onetime change for an orthopaedic surgeon.

6. In the pretrial statement filed with DOAH on January 11, 2013, the E/C raised a number of defenses including that

the claimant made a false and/or misleading statement in violation of §440.105(4) and that under §440.09(4), he has forfeited all benefits under Chapter 440. Other defenses included major contributing cause issues. The pretrial statement reflected that no benefits were being paid at that time to or on behalf of the claimant because the entire claim had been denied.

7. According to the pretrial statement, it appears that two mediation conferences were scheduled while being represented by the firm; one on December 12, 2012 which was to be reconvened on February 1, 2013. However, it appears that the petitions were voluntarily dismissed by the law firm on February 1, 2013 and the merits' hearing was canceled. Mr. Scott Sternberg then filed a Motion To Withdraw on February 5, 2013, citing irreconcilable differences. An order allowing such withdrawn was entered on that date as well.

8. Mr. Donald Van Dingenen filed his Notice Of Appearance on March 7, 2013 and thereafter filed a petition for benefits on March 7, 2013. He asked for a onetime change to Dr. Krummins and authorization for evaluation and treatment with a primary care physician at CentraCare for the head and neck injuries and the vision loss in the

left eye. The E/C responded to this petition on the grounds that the claim was barred because of §440.105 and §440.09(4).

9. The parties attended a mediation conference on June 25, 2013 at which Mr. Donald Van Dingenen appeared in person and reached a settlement agreement. This agreement provided for a complete washout settlement of the entire claim for $5,000.00, inclusive of a $1,000.00 statutory attorney's fee and $250.00 in costs to Mr. Donald Van Dingenen.

10. Thereafter the firm filed its unsworn Motion For Determination of Lien. In its unsworn motion, the firm alleges that it spent 24.07 hours on the claimant's behalf and further incurred costs of $618.03.

11. The testimony from Ms. Navarro was limited because she had no personal knowledge regarding the handling of the claim on behalf of the claimant and there was no sworn motion or affidavit from an attorney from the firm who had such personal knowledge regarding the legal services which were rendered to this claimant. Her testimony was based upon her review of the file and notes made by other attorneys. Additionally, I could not personally review the firm's file, nor was it offered into evidence,

because her appearance and testimony was done telephonically.

ANALYSIS OF THE LAW:

1. A charging lien is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit. It serves to protect the rights of the attorney. *Worley v. Phillips*, 264 So.2d 42 (Fla. 2nd DCA 1972). The action is equitable in nature.
2. The First District Court Of Appeal in *Sohn v. Brockington*, 371 So.2d 1089 (Fla. 1st DCA 1979) held that when an attorney is discharged before he or she has completely performed under a contingent contract the recovery is limited only to quantum meruit. If the attorney seeks the fee at the time of the occurrence of the contingency, the court may in its discretion decide that the attorney's impact on the actual outcome of the litigation is an essential factor which must be considered in determining the value of the services rendered. When the displaced attorney or the court elects to measure the value of the attorney's services by the amount recovered, it is absolutely imperative that the court determine what impact, if any, the attorney's

services prior to the discharge had on the ultimate recovery.

3. The holding in *Sohn* was altered slightly in *Rosenberg v. Levin*, 409 So.2d 1016 (Fla. 1982) when the Florida Supreme Court adopted the "California view" when it held that the cause of action for quantum meruit arises only upon the successful occurrence of the contingency and the discharged attorney must wait until the conclusion of the case to determine the cause of action. If the claim is not successful, then the discharged attorney recovers nothing.
4. In *The Law Office Of James E. Dusek, P.A. v. T.R. Enterprises*, 644 So.2d 509 (Fla. 1st DCA 1994), the appellate court in reversing and remanding the claim back to the JCC for a determination of the value of the lien, directed the JCC to "[d]etermine to what extent, if any, appellant's alleged thirty hours of work on the claimant's behalf benefited the claimant by laying a predicate for the settlement ultimately reached after the claimant engaged successor counsel."
5. When an attorney withdraws from representation upon his own volition, and the contingency has not occurred, the attorney forfeits all rights to compensation. *See Faro*

v. Romani, 641 So.2d 69 (Fla. 1994). However, if the client's conduct makes the attorney's continued performance of the contract either legally impossible or would cause the attorney to violate an ethical rule, that attorney may be entitled to a fee when the contingency of an award occurs. *Id.*

6. If an attorney retained on a contingency fee contract is discharged for cause the lawyer's quantum meruit fee is to be an amount equal to the reasonable value of the services rendered prior to discharge and limited to the maximum contract fee. *See Rosenberg v. Levin*, 409 So.2d 1016 (Fla. 1982). In calculating the reasonable value of the discharged attorney's services, the trial court can consider the totality of the circumstances surrounding the professional relationship between the attorney/ client, and other facts such as time, the recovery sought, the skill demanded, the results obtained, and the contract itself.

In making my findings of fact, I have carefully considered and weighed all of the evidence presented to me. Based upon the evidence, I make the following findings of fact:

1. I have jurisdiction over the subject matter and the parties.

2. I find that the claimant and the firm entered into a contingency fee contract when they signed the retainer agreement. I find that under this contract, the firm would not be paid by the claimant unless and until benefits were secured on his behalf.

VOLUNTARY WITHDRAWAL:

3. I find, based upon the greater weight of the evidence, that the firm withdrew from its representation when it filed its Motion To Withdraw on February 5, 2013, citing irreconcilable differences. Because this was voluntary withdrawal on the firm's part, I find that under *Faro v. Romani*, 641 So.2d 69 (Fla. 1994) the firm has no right to a charging lien.
4. In making this finding, I conclude that this motion does not allege that the firm was discharged by the claimant. Rather, it indicates that the firm was seeking to withdraw because of irreconcilable differences. While no attorney should be compelled to continue to represent a client with whom such irreconcilable differences have developed, the issue is whether in such circumstances the withdrawing attorney has a right to a charging lien.
5. On that issue, I find that the firm's withdrawal was not due to the claimant's conduct which made the attorney's

continued performance of the contract either legally impossible or would cause the attorney to violate an ethical rule. See *Faro v. Romani*, 641 So.2d 69 (Fla. 1994). During the hearing, Ms. Navarro testified that these irreconcilable differences were because the claimant was not cooperating by attending his deposition of mediation. The claimant testified that he was unwilling to attend the deposition or mediation conference when he learned that an attorney from the firm would not be attending these events in person but rather telephonically. The claimant expressed his disagreement on this because he felt that he needed an attorney in person with him for these events and was not comfortable with telephonic representation.

6. I find the claimant's testimony on this issue to be credible and believable. I accept his testimony that he was led to believe that when he retained the firm that he would be provided with local representation which I construe to mean that an attorney would be attending the events in person rather than telephonically. I find that his unwillingness to attend these events with telephonically representation is reasonable and

consistent with his expectations of the type of legal representation which he was going to receive.

QUANTUM MERUIT RECOVERY BASED UPON CLAIMANT'S DISCHARGE:

7. As an alternative finding, I find based upon the greater weight of the evidence that the firm's services prior to the discharge did not have any impact on the ultimate recovery. Thus, under *The Law Office Of James E. Dusek, P.A. v. T.R. Enterprises*, 644 So.2d 509 (Fla. 1st DCA 1994), I find that the firm is not entitled to a quantum meruit recovery from this settlement.
8. This finding is based in part upon the lack of sworn testimony as to just exactly what legal services were provided by the firm prior to discharge and how those services affected the value of the settlement ultimately secured for the claimant by Donald Van Dingenen at the mediation. The record evidence reflects that the firm filed 3 petitions which were abandoned by the firm when it voluntarily withdrew them after the E/C raised the defense of fraud. Thus, at the time of its withdrawal, the claimant was not receiving any benefits and had no petitions pending.
9. There was no testimony that the firm had received a settlement offer before its withdrawal. The greater

weight of the evidence does not establish that Mr. Donald Van Dingenen utilized the firm's legal work product to secure the settlement offer of $5,000.00 at the mediation held on June 25, 2013 for which the firm should equitably be entitled to compensation.

7. Rather, it appears that the firm, who has no attorneys practicing in an office located in the Orlando Florida area, whose offices are in Broward County, Florida, solicited the claimant in Central Florida through a mailed brochure which resulted in the claimant retaining the firm. Legal pleadings then were filed on the claimant's behalf seeking medical benefits, some of which at the time the claimant was already receiving. At some point, a disagreement developed between the firm regarding the telephonic nature of the representation. This disagreement was compounded by the defenses raised by the E/C regarding fraud. It appears that when these defenses were raised, the firm voluntarily withdrew the pending petitions and then withdrew from its representation. The claimant was then left unrepresented with no benefits being voluntarily paid. Through the efforts of Mr. Donald Van Dingenen, as successor counsel,

he promptly secured a reasonable settlement when he appeared in person for a mediation conference.

REASONABLE VALUE OF SERVICES BASED UPON TOTALITY OF CIRCUMSTANCES:

8. Based upon the greater weight of the evidence, and the holding in *Rosenberg v. Levin*, 409 So.2d 1016 (Fla. 1982), I find that based upon the totality of the circumstances that the firm has not established by competent substantial evidence a factual basis to support its claim for a quantum meruit recovery. This finding is based in part upon the absence of testimony, from an attorney who had personal knowledge of the services rendered, to establish how the claimant benefited from its legal services or the nature of the services which were provided.
9. It is also based in part upon the circumstances where it appears that an out of the area law firm attempted the handle ongoing litigation in the Orlando area without committing to one of its attorneys attending the events in person. This telephonic representation caused a disagreement to develop between the claimant and the firm which hampered the legal representation and negatively affected the attorney/client relationship. This resulted ultimately in the firm withdrawing the pending petitions

and then withdrawing from representation; leaving the claimant receiving no ongoing benefits or legal representation. Based upon these facts, equity does not favor the firm's request for payment.

COSTS:

10. Based upon the greater weight of the evidence and upon the totality of the circumstances that the firm has not established by competent substantial evidence a factual basis to support its claim for a recovery of its costs. As mentioned above, the motion is unverified and no affidavit was filed which provides evidentiary support for the specific costs outlined. Ms. Navarro had no personal knowledge about the specific costs as she had not personally handled the claim. The undersigned could not visualize the file in the firm's possession because they attended the hearing telephonically. Essentially, I have an unverified cost ledger attached to the unverified motion.

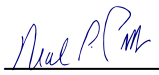
11. The burden of proof was upon the firm to establish its cost's lien. For reasons spelled out in paragraph 10 above, I find that competent substantial evidence does not support the award of specific costs being claimed.

12. Because I am awarding no cost under the charging lien, I do not resolve the issues relating to the costs which are outlined in the retainer agreement. This is a contractual issue between the claimant and the firm should the firm pursue a breach of contract action against the claimant in another jurisdiction.

Wherefore, it is hereby

CONSIDERED, ORDERED, and ADJUDGED that the Motion For Determination Of Lien, filed with DOAH on July 5, 2013, by Scott J. Sternberg & Associates, P.A. as prior counsel for the claimant, is hereby denied. Based upon the above findings, I conclude that such firm does not have a charging lien against the settlement proceeds.

DONE AND MAILED this 31st day of October, 2013, in Orlando, Orange County, Florida.



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