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Attorney Fees Knocked Down in Dog Barking Case

A Manhattan judge has cut to $60,000 the $114,000 in fees requested by real estate attorney Adam Leitman Bailey and his firm for working on a $70,000 settlement in a lawsuit over a noisy dog.

The underlying case involves a tenant, Andrew Stein, the former Manhattan borough president, who rented a unit in an Upper East Side co-op building. He brought two dogs with him, whose barking became a nuisance to other residents. In 2003, the co-op board, led by its president Dennis Herman, hired Nessenoff & Miltenberg and sued Stein over the dogs. The suit also came to involve Stein's alleged parking in the building driveway against co-op rules.

In February 2006, Stein moved out, but the litigation continued over fines and legal fees that the co-op wanted to collect. Nessenoff billed more than $100,000 from 2006 until April 2009, when the co-op retained Adam Leitman Bailey, P.C. as its new counsel. At that time, there was a standing offer from Stein to settle the case for $35,000, but the co-op was seeking close to $500,000.

In May 2009, Justice Edward Lehner dismissed the co-op's claims related to parking and attorney fees. Stein immediately withdrew his $35,000 settlement offer.

In July 2009, Dennis Herman said in an email to Bailey and other attorneys at the firm that he was concerned about what he called "excessive and duplicative" billing.

In October 2009, shortly before trial was scheduled to begin, the case settled for $70,000. Bailey's firm asked for more than $98,000 in fees, in addition to $15,000 already paid, for a total of close to $114,000. Herman and the co-op then sued the firm, seeking a judgment that the fee was excessive. Bailey's firm counterclaimed to recover the outstanding fees.

A non-jury trial over fees was held in June, July and October of last year. Herman testified that Bailey told him the work would cost at most $50,000, while Bailey has testified that he was "95 percent" sure he made no such promise, according to the decision issued Jan. 13.

Herman claimed that he never authorized Bailey's firm to prepare the case for trial, which made up much of the bill. Bailey has maintained that his firm was, in fact, authorized to do that work.

Bailey also said that he had advised Herman "50 times" to settle the case for a "nominal amount," according to the decision, though he admitted he did not put that advice in writing because it was "not something I would email." He said that "the goal coming in" was to settle the case, but that this goal "got lost."

In his ruling in *Board of Managers of 60 E. 88th St. v. Bailey*, 104571/11, Acting Supreme Court Justice Arthur Engoron (See Profile) praised the work of Bailey and his partners, and said that their hourly billing rates were justified.

He called Colin Kaufman, who is co-chair of the firm's litigation department and handled the trial preparation work, an "excellent, experienced trial attorney."

He also said that Jeffrey Metz, an attorney at the firm who worked on the settlement, was an "excellent, experienced appellate attorney (whom this Court has known professionally for many years)."

Nonetheless, the judge found the $114,000 request excessive. "The latter phases of a dog-barking case that never went to trial should not be that expensive," he said.

"A case that had been extensively litigated for years by another firm, and that was essentially ready for trial when inherited, and that settled without a trial, should not cost a king's ransom," Manhattan Acting Supreme Court Justice Arthur Engoron wrote. "Furthermore, the factual and legal issues were not that complicated: the building had ear-witnesses to the barking, and the by-laws allowed the building to impose fees."

The judge said the co-op would have come out ahead financially if it had simply accepted the original $35,000, or dropped the case entirely, without retaining Bailey.

Engoron also made much of the firm's "Gets Results" marketing slogan. "If you hire the firm that 'Gets Results,' you expect hard-nosed attorneys with a practical approach, not gold-plated preparation for a trial that should not have been that complicated, never was imminent, and never occurred."

The judge said that both parties were at fault for the litigation's cost, "but defendant the more so."

The judge knocked the fees down to $60,000, including the $15,000 already paid.

Bailey said he was considering an appeal.

"[The judge] said that our hourly rate was fair," Bailey noted. "He praised all of our attorneys that were involved in the case."

"His view, and he says himself it was a toss-up, was that we were not authorized to prepare for trial," Bailey said. "We disagree because I got verbal authorization to do the work I needed to do to win the case."

Bruce Lederman, of D'Agostino, Levine, Landesman & Lederman, represents the co-op.

"I think it was a well-written decision by the judge who listened carefully to the evidence and reached a thoughtful decision," he said. "The decision recognizes that attorneys have a duty to keep in mind what's involved in a case before pursuing a no-expense-spared approach before trial."

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