

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

**IN RE: ESTATE OF SEYMOUR BAUM
Deceased.**

PROBATE DIVISION

ANNEEN NINA GLORIA BAUM,

Petitioner/Plaintiff,

Chief Judge John M. Harris

v.

**Case #: 05-2012-CP-048323
Case #: 05-2013-CP-028863**

DAVID A. BAUM, *et al.*,

Respondents/Defendants.

**PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S
OPPOSITION TO TERESA HOFFMAN'S EMERGENCY MOTION
TO QUASH TRIAL SUBPOENA AND SUBPOENA DUCES TECUM**

I, Anneen Nina Gloria Baum, being duly sworn, deposes and says:

1. I am the Petitioner/Plaintiff herein, presently without counsel. I submit this affidavit in opposition to Teresa Hoffman's emergency motion to quash the trial subpoena and subpoena *duces tecum* served upon her.

2. Ms. Hoffman's firm, which I retained in January 2014, wrote the original May 1, 2014 Motion for Relief from Court Orders Due to Respondent's Misrepresentation and Misconduct. Likewise, she wrote the August 5, 2014 Amended Motion, which was based on a "Procedural History" furnished to her, at my direction, by an independent reviewer of the record. In the absence of counsel, that same independent reviewer is assisting me in presenting this affidavit in opposition.

3. That Ms. Hoffman is an essential, material witness at the October 21, 2014 evidentiary hearing is evident from Mr. Hennessey's responses to both the original and

amended Vacatur Motions. Each is, in the main, an attack on me, NOT the attorneys I had retained in the good-faith belief that they would competently and properly handle my cases before the Court. Thus, Mr. Hennessey began his May 2, 2014 opposition to the original Vacatur Motion as follows:

“Like she did in the underlying litigation, Petitioner continues to abuse process by failing to follow procedure and by filing pleadings which are patently false. She has filed more than 18 sets of papers, pleadings, and motions in this case since this court dismissed this case for failure to serve.” (at ¶2, underlining added).

4. Virtually identical is Mr. Hennessey’s yesterday’s response to the Amended Vacatur Motion:

“Like she did in the underlying litigation, Petitioner continues to abuse process by failing to follow procedure and by filing pleadings which are patently false. She has filed more than 18 sets of papers, pleadings, and motions in this case since this Court dismissed her Amended Petition for failure to serve.” (at p. 2, underlining added).

Mr. Hennessey has followed this with a section entitled “Procedural and Factual History: Nina Has No One [to] Blame But Herself for the Dismissal” (at pp. 4-7) – upon which he bases his “Argument” (at pp. 7-14) and “Conclusion” (at pp. 14-15) – all materially relating to Ms. Hoffman’s conduct as my attorney, as to which I am in no way responsible. This includes her failure to undertake basic investigation of the facts and law, upon her retention, so as to immediately discern the fraud upon the Court being perpetrated by Mr. Hennessey – which I only began to understand upon her making the original May 1, 2014 Vacatur Motion – and then to more fully recognize by my independent reviewer’s “Procedural History”, one necessitated by Ms. Hoffman’s willful failure to provide me with her own “Procedural History” to account for what had happened before this Court.

5. Indeed, the unidentified “irreconcilable differences” cited by Ms. Hoffman’s motion to withdraw as the reason for her withdrawal as my counsel related,

primarily, to her REFUSAL to furnish this Court with evidentiary proof that I was in no way responsible for the failure of my predecessor attorneys, Kenneth Manney, Esq., Patrick Roche, Esq., and Mark Guralnick, Esq., to effect service of my Amended Petition and Amended Complaint and that I did everything I could to ensure their compliance with court orders. Such evidentiary proof was the mountain of my e-mails to these attorneys during their representation of me, which I furnished to Ms. Hoffman when I retained her in January 2014 and then furnished her again in April 2014, following this Court's April 2, 2014 order dropping parties and effectively ending my will contest. Ms. Hoffman's REFUSAL to provide them to the Court, then and thereafter, is all the more incomprehensible as her April 17, 2014 motion for clarification and rehearing was highlighting the dispositive significance of *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (1993), wherein the Florida Supreme Court stated:

“This Court is vitally concerned with the swift administration of justice at both the trial and appellate levels. In the interest of an efficient judicial system and in the interest of clients, it is essential that attorneys adhere to filing deadlines and other procedural requirements.^[fn] However, a fine, public reprimand, or contempt order may often be the appropriate sanction to impose on an attorney in those situations where the attorney, and not the client, is responsible for the error. To assist the trial court in determining whether dismissal with prejudice is warranted, we have adopted the following set of factors... : “1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration.” (at p. 818, underlining added).

6. Similarly, she was highlighting the dispositive significance of the Fifth District Court of Appeal's decision in *Pixton v. Scottsman*, 924 So.2d 37 (2006), based thereon. As stated in *Pixton*,

“A trial court’s failure to consider the *Kozel* factors in determining whether dismissal is appropriate is, by itself, a basis for remand for application of the correct standard. See *Ham v. Dunmire*, 891 So. 2d 492 (Fla. 2004); *Warren v. Shands Teaching Hospital & Clinics, Inc.*, 700 So. 2d 702, 705 (Fla. 1st DCA 1997). ... where the attorney is involved in the conduct to be sanctioned, a *Kozel* analysis is required before dismissal is used as a sanction. ... an evidentiary hearing is mandated to determine the clients’ involvement or complicity in the attorney’s conduct. See, e.g., *Schlitt v. Currier*, 763 So. 2d 491 (Fla. 4th DCA 2000). Lacking such involvement or complicity by the client, the attorney’s misconduct should not result in a dismissal of the action. E.g., *Rose v. Fiedler*, 855 So. 2d 122 (Fla. 4th DCA 2003). Indeed, this court has held that ‘[b]ecause dismissal is the ultimate sanction, it should be reserved for those aggravated cases in which a lesser sanction would fail to achieve a just result.’ *American Express Co. v. Hickey*, 869 So. 2d 694, 695 (Fla. 5th DCA 2004). Further, ‘it is essential that attorneys adhere to filing deadlines and procedural requirements, sanctions other than dismissal are appropriate in those situations when the attorney, and not the client, is responsible for the error.’ *Id.* at 695. Accordingly, we reverse and remand to the trial court for purposes of reconsideration under *Kozel*.” (at pp. 39-40, underlining added).¹

7. Certainly, it now appears that upon my retaining Ms. Hoffman, she did not even contact Messrs. Manney, Roche and Guralnick so as to additionally verify that their failure to effect service of my Amended Petition and Amended Complaint had NOTHING to do with me. This, notwithstanding I furnished her with a copy of e-mails I sent to those lawyers requesting that they provide her with all information and documents pertaining to my cases. My e-mail to Messrs. Manney and Roche, on January 29, 2014, was as follows:

“Dear Kenneth Manney and Patrick Roche
I am writing to advise you that Teressa Hoffman of Hoffman & Hoffman is my lawyer. I am requesting that you cooperate with her regarding any and all requests she has of you including but not limited to handing over my file and any and all correspondences you have had with The Gunster Firm, William Hennessey, any lawyer affiliated with my matter and the discussions Kenneth Manney represented he had with Chabad and the Hadassah lawyers. In addition please provide to Teressa Hoffman a detailed account as to WHY the parties were not properly served, or in the

¹ See “Procedural History” at pp. 24-25, 27-28, pertaining to Ms. Hoffman’s discussion of *Kozel* and *Pixton* in her April 17, 2014 motion for clarification and rehearing – and Mr. Hennessey’s response thereto.

alternative, IF the parties were served please provide to Teresa Hoffman the proof of service. Also provide all discovery and anything she asks for. Please accept this letter as full authority given to Teresa Hoffma.

Thank you.

Nina baum

Please respond to this email with confirmation that you will cooperate. thank you.” (Exhibit A-1, capitalization in the original).

My e-mail to Mr. Guralnick, less than 20 minutes later, was:

“Mr. Guralnick,

I am writing to advise you that Teresa Hoffman of Hoffman & Hoffman is my lawyer. I am requesting that you cooperate with her regarding any and all requests she has of you including but not limited to handing over my file and the discovery responses you represent you sent to Mr. Hennessey.

Please accept this letter as full authority given to Teresa Hoffman.

Thank You

Nina baum” (Exhibit A-2).

8. Nor does it appear that, upon retention, Ms. Hoffman undertook the most elementary review of the documents in the record – as she would have discovered the devastating facts set forth by the “Procedural History” of my independent reviewer as to the continuum of fraud, misrepresentation, and other misconduct being employed by Mr. Hennessey to mislead the Court into rendering and adhering to its April 2, 2014 order dropping parties.

9. In *DeClair v. Yohanan*, 453 So. 2d 375, 377 (1984), the Florida Supreme Court quoted the U.S. Supreme Court in *United States v. Throckmorton*, 98 U.S. 61, 65-66, 25 L. Ed. 93 (1878), as to the “definition of extrinsic fraud”:

“Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court... or where an attorney fraudulently...assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client’s interest to the other side”. (underlining added).

10. Time does not permit a fuller recitation of Ms. Hoffman’s inexplicable behavior with respect to my cases before this Court and the Fifth District Court of

Appeal, giving rise to the possibility that, notwithstanding her purported representation of me, she, in fact, was colluding with Mr. Hennessey in the fraud, misrepresentation, and other misconduct perpetrated by him and his client that is the subject of the October 21, 2014 evidentiary hearing. This includes her recommendation to me that I not only request that the Court cancel the evidentiary hearing of my Amended Vacatur Motion, but that I withdraw the Amended Vacatur Motion – and, additionally, that I withdraw the affidavits I have filed with the Court annexing the “Procedural History” and the chains of e-mails with my Messrs. Manney, Roche, and Guralnick.

11. No attorney who was not seriously compromised and conniving at my defeat would make such recommendations and I am separately furnishing in substantiation, the “Procedural History” and e-mail chains which Ms. Hoffman finds so objectionable, but without denying or disputing their accuracy in any respect.

12. I have already expressly requested that these be incorporated by reference, as a supplement to my Amended Vacatur Motion – and I will, likewise, separately furnish to the Court my affidavit, sworn to on October 14, 2014, making such express request (at ¶13) and additionally discussing (at ¶¶17-27) the dispositive significance of *Kozel* and *Pixton* – cases Mr. Hennessy altogether conceals in his further fraud upon this Court, purporting, by his yesterday’s opposition to my Amended Vacatur Motion, that “The dismissal in this case was unquestionably supported by both the facts and the law.” (at p. 2).

13. It must be noted that notwithstanding Ms. Hoffman’s motion purports (at ¶7) that she has had “less than two (2) weeks notice” of the October 21, 2014 evidentiary hearing on my Amended Vacatur Motion, Mr. Hennessey stated, in a September 3, 2014 e-mail, “we will be calling Ms. Hoffman on several key points.” (Exhibit B-1). Apparently, Mr. Hennessey is ready to forgo those “several key points” as he has today

informed the Court: “My client does not intend to call Mrs. Hoffman as a witness at the hearing and will not be seeking to compel her attendance. We do not object to the relief requested by Mrs. Hoffman.” (Exhibit B-3).

14. Finally, and further reinforcing the necessity that Ms. Hoffman be required to testify is that my two other prior attorneys, Messrs. Manney and Guralnick, who I have, likewise, subpoenaed as witnesses and who Ms. Hoffman had been planning to call to testify (Exhibit B-2), are each dodging service.

15. Should the Court be inclined to grant Ms. Hoffman’s motion, I respectfully request an evidentiary hearing or, at very least, a telephonic hearing, so that the Court may properly determine that she is a material witness, with key records in her possession that I do not have. Ms. Hoffman was representing me during a critical time in this litigation and it is essential that she furnish the necessary testimony and documents for the evidentiary hearing on the Amended Vacatur Motion that she filed.

s/

ANNEEN NINA GLORIA BAUM

Mailing Address:

229 East 85th Street, Unit/Box #1361
New York, New York 10028

E-Mail Address: anbb@me.com

Telephone: 917-971-8763

Sworn to before me this
16th day of October 2014

Notary Public


ANNEEN NINA GLORIA BAUM

Mailing Address:
229 East 85th Street, Unit/Box #1361
New York, New York 10028

E-Mail Address: anbb@me.com
Telephone: 917-971-8763

Sworn to before me this
17th day of October 2014


Notary Public

PHILIP L. RODMAN
Notary Public, State of New York
No. 02RO5071425
Qualified in Westchester County
Commission Expires *January 13, 2015*