

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:
HON. EDWARD W. MC CARTY, III
Justice.

LYSAGHT, LYSAGHT & KRAMER, P.C.,

TRIAL/IAS, PART 2
NASSAU COUNTY

Petitioner(s),

against

DECOLATOR, COHEN & DiPRISCO, LLP,

Repondent(s).

INDEX NO. 17599/06

MOTION DATE: 11/9/06
MOTION SEQ. #001-002

The following papers read on this motion:

- Order to Show Cause.....X
- Petition.....X
- Notice of Cross Motion.....X
- Affirmation in Opposition.....X
- Reply Affirmation.....X

Order to show cause by petitioner for judgment pursuant to Judiciary Law Section 475, following a hearing, determining and enforcing petitioner's charging liens for attorneys' fees, and cross motion by respondent for an order pursuant to CPLR 3212 and 3211(a)(2), (5) and (7) dismissing the petition as time barred, for laches and waiver, and/or as an improper attempt to consolidate multiple fee dispute applications, are decided as set forth herein.

Petitioner claims that it has charging liens on the settlement proceeds of fourteen different personal injury actions commenced by it in Supreme Court, Nassau County from 1994 through 2000. Due to the disbarment of petitioner's principals on September 18, 2000, these personal injury actions and the right to the fees therefrom were transferred from petitioner to Trager, Cronin and Byczek, LLP as part of a sale of a substantial part of petitioner's law practice. Thereafter, the plaintiffs in those personal injury actions discharged Trager, Cronin and Byczek, LLP and retained respondent Decolator, Cohen & DiPrisco, LLP to represent them in each of the respective personal injury actions. Subsequent thereto, Trager, Cronin and Byczek, LLP, assigned back to petitioner its rights to the liens on these personal injury actions, as part of a settlement of a breach of contract action between petitioner and Trager, Cronin and Byczek, LLP.

Petitioner now seeks a hearing to determine the amount of the charging liens which it now once again holds in each of the fourteen personal injury actions.

Respondent opposes this request and cross moves to dismiss the petition as time barred on the ground of laches or waiver. Respondent also claims that petitioner is improperly attempting to consolidate its requests for fee determinations in these fourteen unrelated personal injury cases.

At the outset, it should be noted that 22 NYCRR 691.10(b) provides, in relevant part, that a disbarred attorney may be compensated on a quantum meruit basis for legal services rendered prior to the effective date of the disbarment. The amount and manner of payment of such compensation is to be fixed by the Court upon application.

Specifically, both the Appellate Division, First and Second Departments have held that petitioner is entitled to fees in matters that it had commenced prior to its principals' disbarments. (See, *Decolator, Cohen & DiPrisco, LLP v. Lysaght, Lysaght & Kramer, P.C.*, 304 AD2d 86 and *Casey v. Ruffino*, 306 AD2d 304.)

Judiciary Law Section 475 codifies an attorney's right to a charging lien in New York and provides, in relevant part, that:

From the commencement of an action... in any court... the attorney who appears for a party has a lien upon his client's cause of action...which attaches to a verdict, report, determination, decision judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien.

Judiciary Law Section 475 does not provide for a specific statute of limitations for enforcement of an attorney's charging lien. In the absence of a specified statute of limitations, the six year statute of limitations of CPLR 213(1) would be deemed to apply.

Since Judiciary Law Section 475 provides that the attorney's lien comes into being from the commencement of an action, the statute of limitations for enforcing such lien may be deemed to begin to run when the underlying action is commenced. In that case, petitioner's claims for charging liens in any of the subject underlying personal injury actions commenced more than six years prior to October 26, 2006, the filing date of the petition herein, would be time barred. This would include all of the subject underlying personal injury actions, with the possible exception of *Mendez v. Verlin*, Index No. 15658/2000. However, since that action was discontinued because the plaintiff's injuries did not qualify as serious injuries under the Insurance Law, there are no proceeds to attach with a charging lien in any event.

Even if this Court were to take a more expansive view and deem that the statute of limitations did not commence to run until a fund became available for the charging lien to attach to, only nine of the fourteen subject underlying personal injury actions resulted in funds available for petitioner's charging liens. And of those nine, eight were settled more than six years before the petition herein was filed and are thus barred by the statute of limitations. The only one of the underlying personal injury actions which was resolved within six years prior to the filing of the petition herein was *Skewes v. Infranca*, Index No. 15593/1995, in which defendant's motion to set aside the jury's verdict was decided July 16, 2001.

Even if petitioner's claims to enforce its charging liens were not barred by the applicable statute of limitations, they may still be barred by petitioner's failure to enforce its liens within a "reasonable time". In both *Kaplan v. Reuss*, 113 AD2d 184, *aff'd* 68 NY2d 693 and *Harley & Browne v. Ressler & Ressler*, 957 F. Supp. 44, the Appellate Division, Second Department and the United States District Court for the Southern District of New York, respectively, refused to enforce charging liens created by Judiciary Law Section 475 because of the attorneys' delay in seeking to enforce their liens.

In *Harley & Browne v. Ressler & Ressler, supra.*, the petitioner attorney only delayed twenty-seven months in seeking to enforce his lien. Petitioner herein waited far longer than that without seeking enforcement of its liens in these fourteen underlying personal injury actions.

Petitioner's inordinate and insufficiently explained delay in seeking to enforce its charging liens in all of the underlying personal injury actions herein, effectively waives such claims.

Petitioner argues that the doctrine of equitable estoppel should prevent its claims from being time barred. However, petitioner has not demonstrated any fraud or deception on the part of respondent which would warrant application of this doctrine to salvage its liens.

Since this Court has determined that petitioner's application to enforce its charging liens is untimely, it need not reach the issue as to whether petitioner's attempt at consolidating its liens in fourteen different personal injury actions in this single proceeding was proper or not. Moreover, the Court need not reach the issue as to how petitioner's compensation should be determined, since the liens which would form the basis of such compensation have been deemed time barred.

Respondent's cross motion is granted. The petition is dismissed. This concludes this proceeding.

Date: 1-19-2007

ENTERED EDWARD W. McCARTY III

J.S.C.

JAN 23 2007

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NASSAU COUNTY
COUNTY CLERK'S OFFICE