

SCAN

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. PETER B. SKELOS,
Justice.

TRIAL/IAS PART 24
NASSAU COUNTY

In the Matter of the Application of
V.J. LONGHI ASSOCIATES, P.C. for the purpose of
fixing a legal fee between the parties in the uninsured
motorist claim on behalf of the ESTATE OF
JEAN-CLAUDE DOMINIQUE,

Petitioner,

MOTION # 01
INDEX # 19810/02
MOTION SUBMITTED:
MAY 1, 2003

-against-

CHARLES E. SLOANE, P.C.,

Respondent.

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....	1
Cross Motion/Answering Affidavits.....	2
Reply Affidavits.....	3

Petitioner moves for a judgment fixing the legal fees of the attorneys involved in litigating an uninsured motorist claim on behalf of the estate of Jean-Claude Dominique. The Hon. John B. Riordan of the Surrogate Court, Nassau County, has previously awarded Charles E. Sloane, P.C. fees and costs totaling \$35,562 for legal work performed in the underlying matter on behalf of the estate. The law office of V.J. Longhi Associates, P.C. claims that it is entitled to a portion of these fees for the work it did in prosecuting the uninsured motorist claim, first on behalf of Eliette Dominique, then on behalf of a competing claimant. For the reasons that follow, the application is denied.

On March 22, 1999, Jean Claude Dominique was struck by an uninsured automobile. He was hospitalized and remained comatose until his death on April 30, 1999. On March 31, 1999, while Mr. Dominique was still alive, a representative of Longhi Associates met with Eliette Dominique, Mr. Dominique's wife, at Kings County Hospital to have her execute a retainer agreement. Eliette retained the firm to represent her interests, and presumably those of her injured husband, in a lawsuit against those responsible for the injuries suffered by Jean-Claude Dominique. It appears that Longhi Associates commenced an uninsured motorist claim on or about that same day.

Shortly thereafter, the Longhi firm claims to have been approached by a second woman, Betsy Dominique, who also held herself out as Mr. Dominique's wife. She asserted that Mr. Dominique had divorced Eliette in 1982, and had married her in 1984. Betsy apparently produced documentary evidence in the form of a divorce decree and subsequent marriage certificate to support these contentions. Thereafter, a member of the Longhi firm apparently telephoned the client, Eliette Dominique, and informed her that the firm could no longer represent her interests. In his affirmation in support of the application, Morris Handler, Esq. of the Longhi firm states that Betsy Dominique "then retained this office to prosecute the uninsured motorist claim on behalf of her husband." On or about May 12, 1999, after Longhi Associates essentially fired her as its client in favor of Betsy Dominique, Eliette Dominique retained Charles E. Sloane, P.C. to represent her interests and those of the estate.

On July 23, 1999, Betsy was appointed executrix of Jean-Claude's estate by the Surrogate of Essex County, NJ -- where the decedent and Betsy allegedly lived. On August 23, 1999, Eliette was appointed executrix of Jean-Claude's estate by the Surrogate of Nassau County, NY, the

domicile of Eliette and the decedent. In light of the competing claims of survivorship, the Longhi firm commenced a petition in the Nassau County Surrogate's Court to revoke letters of administration issued to its former client. A hearing was held by the Surrogate to determine the status of the competing parties. Following testimony by the parties and handwriting experts, the Hon. C. Raymond Radigan determined that the 1982 divorce complaint was a forgery, held the resulting judgment of divorce invalid, and declared Eliette Dominique the true wife of the decedent with standing to represent the estate. When Charles E. Sloane, P.C. thereafter settled the uninsured motorist claim with Allstate, Judge Radigan awarded the firm appropriate fees and disbursements. Longhi Associates claims that it is entitled to a portion of these fees because it prepared and commenced the uninsured motorist claim, negotiated with the carrier, and eventually secured the settlement which resulted in Allstate's offer of \$100,000 to the estate.

The application is denied. The evidence supports petitioner's contention that it performed much of the legal work that resulted in the settlement offer by Allstate. However, much of this work was done in violation of petitioner's ethical obligations under the Code of Professional Responsibility. As such, the Longhi firm has abdicated its right to collect any fees for this work.

Pursuant to Judiciary Law §475, an attorney who appears for a party has a lien upon his client's cause of action. However, "where an attorney withdraws without good cause, his or her lien is automatically forfeited" (*Lansky v Easow*, 304 AD2d 533, 534, citing *Klein v Eubank*, 87 NY2d 459; *Hae Sook Moon v City of New York*, 255 AD2d 292). Similarly, "an attorney who engages in misconduct by violating the Disciplinary Rules is not entitled to legal fees for any services rendered" (*Shelton v Shelton*, 151 AD2d 659; see also *Matter of Winston*, 214 AD2d 677; *Pessoni v Rabkin*, 220 AD2d 732).

Here, it appears that Longhi Associates abandoned its original client, Eliette Dominique, when it discovered the existence of another claimant who it believed to be the true surviving spouse.¹ While this may have constituted good cause for withdrawal, there is no evidence that the firm sought a consent to withdraw or a court order permitting the withdrawal as required by CPLR § 321(b). Rather, it appears that the firm simply telephoned Eliette Dominique and informed her that it could no longer represent her interests. Petitioner compounded this professional lapse by taking on the rival claimant as its client. In so doing, it crossed the line of acceptable conduct by attorneys.

The Code of Professional Responsibility requires lawyers to exhibit unswerving loyalty to one's client and zealous advocacy on the client's behalf (*see In re Allboro Waterproofing Corp v Dionysios Vlachos*, 224 BR 286, 291; 22 NYCRR §1200.32). As such, the general rule is that a lawyer cannot simultaneously serve clients with differing interests (*Kittay v Kornstein*, 230 F3d 531, 537). Indeed, Disciplinary Rule 5-105 requires that "[a] lawyer shall decline proffered employment" and "shall not continue multiple employment" if "the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected" by the acceptance of employment or representation of another client, "or if it would be likely to involve the lawyer in representing differing interests" (22 NYCRR §1200.24[1][a],[b]). The Code defines "differing interests" to include "every interest that will adversely affect the judgment or the loyalty

¹ The court expressly rejects petitioner's contention that it was hired by the estate of Jean-Claude Dominique on March 31, 1999. Significantly, Mr. Dominique did not die until April 30, 1999. Moreover, the retainer agreement that Eliette Dominique executed on March 31, 1999 specifically reads: "I hereby retain you to represent *me* in a lawsuit against a deft. to be named, and others who might be responsible for any injuries which Jean-Claude Dominique suffered on or about March 22, 1999."

of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest” (22 NYCRR §1200.1). While there are exceptions to this rule (*see* 22 NYCRR §1200.24[1][c]), none are relevant here. It is clear that the Longhi firm acted in violation of DR 5-105 when it agreed to represent the “differing interests” of Betsy in her competing claim against Eliette for the title of surviving spouse.

Even if the court were to accept petitioner’s argument that the attorney-client relationship between Longhi Associates and Eliette Dominique was properly terminated by virtue of the firm’s self-sanctioned withdrawal, the fact remains that the firm’s subsequent representation of Betsy Dominique is in direct violation of Disciplinary Rule 5-108 of the Code of Professional Responsibility. That stricture is clear: “a lawyer who has represented a client in a matter shall not, without the consent of the former client after full disclosure thereafter represent another person in the same or substantially related matter in which that person’s interests are materially adverse to the interests of the former client” (22 NYCRR §1200.27[a][1]). Here, there is no allegation that Eliette knowingly waived the obvious conflict that arose from petitioner’s representation of a competing claimant in the same action. Petitioner’s violation of this most basic of ethical considerations renders it ineligible for any compensation.

For the foregoing reasons, the petition is denied. This constitutes the decision and order of the court. The matter shall be marked disposed.

Dated: October 3, 2003

ENTERED


PETER B. SKELOS, J.S.C.

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