

SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

P R E S E N T :

**HON. IRA B. WARSHAWSKY,
Justice.**

TRIAL/IAS PART 8

GALASSO, LANGIONE & BOTTER, LLP (formerly known
as GALASSO, LANGIONE, LLP), as Escrow Agent
for STEPHEN BARON on SIGNATURE BANK Account
No. [REDACTED]

Plaintiffs,

INDEX NO.: 010038/2007
MOTION DATE: 11/13/2009
MOTION SEQUENCE: 013 and 014

- against -

ANTHONY P. GALASSO and SIGNATURE BANK,

Defendants.

GALASSO, LANGIONE & BOTTER, LLP, PETER J.
GALASSO, Individually, JAMES R. LANGIONE, Individually,
GALASSO LANGIONE & BOTTER, LLP as Escrow Agents on
SIGNATURE BANK Account No. [REDACTED] and Account No.
1522351639, and M & T BANK Account No. [REDACTED] on
behalf of STEPHEN BARON, ADELE BABRIZIO, THERESA
HALLORAN and THE ESTATE OF GEORGE CAROLL,

Plaintiffs,

- against -

INDEX NO.: 019198/2007

SIGNATURE BANK, M & T BANK, ANTHONY GALASSO,
DANIEL SAMELA, CPA, CHRISTINE GALASSO, MATTHEW
MANZELLA, JEANNE MANZELLA, ROBERT FRESELLA,
DONNA FRESELLA and "JOHN & JANE DOES 1 - 10"

Defendants.

SIGNATURE BANK,

Plaintiff

INDEX NO.: 014211/2007

- against -

GALASSO, LANGIONE & BOTTER, GALASSO and
LANGIONE, LLP, PETER J. GALASSO & JAMES LANGIONE,
LLP, PETER GALASSO, and JAMES LANGIONE,

Defendants.

WENDY BARON and STEPHEN BARON,

Plaintiffs,

INDEX NO.: 001510/2009

- against -

ANTHONY GALASSO, GALASSO, LANGIONE, LLP,
GALASSO, LANGIONE & BOTTER, llp, GALASSO,
LANGIONE, CATTERSON & LoFRUMENIO, LLP,
PETER GALASSO, individually, JAMES LANGIONE,
individually, SIGNATURE BANK, M & T BANK, and
GC LAWCONDO, LLC,

Defendants.

The following papers read on this motion:

Notice of Motion, Affirmation & Exhibits Annexed	1
Notice of Cross Motion, Affirmation & Exhibits Annexed	2
Affirmation in Reply and in Opposition to Cross Motion of Mark E. Goidell, Esq.	3
Reply Affirmation in Opposition to Plaintiff's Motion and in Support of Defendant's Cross Motion of Thomas F. Liotti, Esq. & Exhibit Annexed	4

PRELIMINARY STATEMENT

Counsel for Plaintiffs moves to confirm the report of Court Attorney/Referee

Thomas V. Dana, which, as modified, awarded Plaintiff \$6,553.75. Former counsel for Anthony

P. Galasso, Christine Galasso, Matthew Manzella, Jeanne Manzella, Robert Fresella, and Donna Fresella cross-moves to disaffirm the Report of Referee Thomas Dana dated September 30, 2009.

BACKGROUND

This action involves the claimed misappropriation of approximately \$4,000.000 from the escrow account of Plaintiff law firm. Defendant Anthony P. Galasso ("Anthony") is the brother of the first-named member of the firm and is alleged to have looted the escrow funds maintained on behalf of Stephen Baron at Signature Bank. Thomas Liotti ("Liotti") was sanctioned by this Court for frivolous conduct in seeking to consolidate the actions with an action pending in another part in which he is the party Defendant based upon alleged defamation by him of the Plaintiff law firm. By Order dated February 6, 2009, this Court directed that the matter be set down for a hearing on costs and fees before Court Attorney/Referee Thomas Dana. Liotti's motion to renew and reargue the motion leading to the February 6, 2009 decision, which motion was denied by Order dated June 29, 2009.

The matter was scheduled for a hearing on July 23, 2009, at which time Liotti failed to appear. He subsequently claimed lack of notice of the hearing date, and it was rescheduled for September 3, 2009. The parties appeared on that date and counsel for Plaintiffs testified to his experience, usual hourly billing rates, and the time expended in defense of the consolidation motion. Court Attorney/Referee Dana awarded Plaintiffs fees and costs in the sum of \$6,878.75. Liotti moved to revoke the award of Referee Dana and requested a new hearing. By Order dated October 7, 2009 this Court denied the motion, except to the extent that it concluded that one hour expended on a hearing on July 23, 2009 was not attributable to the motion to consolidate, and reduced the award to \$6,553.75.

DISCUSSION

Confirmation of Reports of Referees is governed by Civil Practice Law and Rules § 4403 which provides as follows:

Rule 4403. Motion for new trial or to confirm or reject or grant other relief after reference to report or verdict of advisory jury

Upon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to

report; may make new findings with or without taking additional testimony; and may order a new trial or hearing. The motion shall be made within fifteen days after the verdict or the filing of the report and prior to further trial in the action. Where no issues remain to be tried the court shall render decision directing judgment in the action.

Standard of Review

The Court is not bound by the Report of the Referee, but it must be afforded great weight, particularly on the issue of credibility, since the Referee is in the best position to determine those issues. (*Weistrop v. Necchi Sewing Mach. Sales Corp.*, 30 Misc.2d. 174 [1st Dept. 2007]); (*Namer v. 152-54-56 West 15th Street Realty Corp.*, 108 A.D.2d 705 [1st Dept. 1985]). The Order of February 6, 2009 referred to the Referee only the issue of fees and costs incurred by Plaintiffs' attorney in responding to the consolidation motion. The Report of September 30, 2009 succinctly concluded that counsel for Plaintiff expended 20.75 hours, billed at \$325 per hour (\$50 per hour less than his usual rate of \$375), which Referee Dana found reasonable based upon his 26 years of experience and the volume of papers with which he was forced to contend in connection with the motion for consolidation. Where the determination of the Referee finds support in the record, it should be affirmed.

Counsel for Defendants vehemently opposes the motion to confirm, and seeks to set aside the Referee's finding. Unfortunately, the bases for the claim are an ad hominem attack on the Referee, which is totally inappropriate, comments on the qualifications of the Justices before whom this and the defamation matter are pending, and a litany of the good works and favorable results achieved by counsel in other unrelated matters. For some reason, known perhaps only to him, he has elucidated the Court on some of the hardships of his life, such as caring for elderly parents, their battles with Alzheimer's Disease, his learning at age 60 that he was adopted.

The issue before this Court is whether the recommendation by the Referee is substantiated by the record. The transcript, annexed to the cross-motion in Exh. "A" makes it abundantly clear that the findings as to the amount of costs and fees is fully warranted.

The motion to confirm the Report of the Referee dated September 30, 2009 is granted.

Submit Judgment in accordance with the foregoing.

This constitutes the Decision and Order of the Court.

Dated: January 20, 2010


J.S.C.

ENTERED
JAN 22 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE