

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JOSEPH RAKOFSKY and RAKOFSKY LAW FIRM, P.C.,

Plaintiffs,

Affidavit of
Eric Turkewitz in Support of
Motion for Sanctions

-against-

Index # 105573/11

THE WASHINGTON POST COMPANY, et al.,

Defendants.

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Eric Turkewitz, being duly sworn, deposes and says:

1. I am an attorney admitted to practice law in New York as well as a defendant in this action along with 80 other lawyers, law firms, media companies, and John Doe / pseudonymous defendants. I am also local counsel, with Marc Randazza as *pro hac vice* counsel. Our client list of 35 entities (16 individuals) is contained in this affidavit's Rider.

2. This affidavit is made on personal knowledge and focuses on the plaintiffs' frivolous conduct in both starting this suit and maintaining it afterward. Specifically, it deals with actions they took, without any basis in fact or law, for the sole purpose of harassing, delaying, and burdening the defendants that I both stand with and represent.

3. While there are two plaintiffs, Joseph Rakofsky and his law firm, they are occasionally referred to in the singular as Joseph Rakofsky is believed to make all decisions for himself and the firm.

Case History

4. The Rakofsky plaintiffs started suit with their summons and complaint in May 2011. Less than a week later they filed an amended complaint and amended summons.¹

5. Acting both *pro se* and as counsel for the defendants identified in the Rider, I moved for the *pro hac vice* admission of Marc Randazza, as well as to extend and consolidate the date on which the many defendants would answer or move against the amended complaint.

6. Rakofsky, however, vigorously opposed Mr. Randazza's application to appear *pro hac vice*, filing both a lengthy opposition and a sur-reply. This conduct required Mr. Randazza to travel from Las Vegas to New York for a hearing in September 2011, wherein the *pro hac vice* motion was quickly granted.

7. At the conclusion of this hearing, Rakofsky asked for a stay of further proceedings so that he could obtain new counsel, since his original attorney quit right after this suit was started. That stay was supposed to dissolve in December 2011. It lasted, to our dismay, through March 2012.

8. Twice during this stay, though, the plaintiffs attempted to file documents in violation of it. First, in November 2011, they sought a partial lifting of the stay so that they (and only they) could file numerous motions, including a request for an order to show cause against Google and a proposed second amended complaint that was several hundred paragraphs long.

9. Not only were the attempted filings in violation of the stay, but Rakofsky had the additional problem that his corporate entity could not proceed *pro se*, as it would violate CPLR 321(a), and Rakofsky couldn't represent it as he is not admitted to practice law in New York. The corporate entity could not enter into even the most rudimentary procedural stipulation, as

¹ Exhibit K, on disc

there was no legal representative to bind it. But Rakofsky proceeded anyway, forcing more legal resources from the defendants.

10. Again in December 2011, Rakofsky filed a motion seeking a wide range of relief from the Court in violation of the stay and the fact that the corporate plaintiff had no legal representative. The plaintiffs requested that, once again, the stay be lifted just far enough for plaintiffs, and only the plaintiffs, to file numerous motions and obtain extraordinary relief. The first time I learned of this motion was in early January 2012, when I received the Court's order denying Rakofsky's motion as "incomprehensible."

11. Shortly thereafter in early 2012, Rakofsky petitioned the Appellate Division, First Department seeking the same relief that he was just denied here. We opposed the petition, and this too was subsequently denied.

12. We finally moved to dismiss in March, 2012, when the stay was lifted. Rakofsky opposed this motion in May 2012, and cross-moved for leave to file a second amended complaint. We filed a reply brief in support of our motion to dismiss and an opposition to Rakofsky's cross-motion.

13. The Court held oral argument on the many motions to dismiss that had been filed in this case on June 28, 2012. Mr. Randazza again flew in from Nevada. During the hearing, the Court *strongly* encouraged plaintiffs' counsel to discontinue the action, and recommended that Rakofsky withdraw his claims including negligence, injurious falsehood, and *prima facie* tort.

14. On July 1st, Joseph Rakofsky transmitted a letter to the Court citing cases that purportedly supported the negligence claim asserted in his proposed second amended complaint. To date, Rakofsky has not discontinued, withdrawn, or dismissed any of his claims against the defendants identified in this affidavit's Rider.

Rakofsky's Repeated Failings

15. Every time Rakofsky has attempted to serve any paper on the defendants, chaos has ensued. By way of example, and discussed more fully in my affidavit supporting my motion to dismiss on jurisdictional grounds (among other reasons), Rakofsky couldn't figure out how to serve the summons and complaint on me despite the clarity of the CPLR. Two copies of the summons and complaint² were handed to my receptionist on May 12, 2011. I was not served personally. But there was no follow-up service by regular mail as required by CPLR 308(2), rendering it defective as a matter of law.

16. Before responding to the initial pleading, I received an amended complaint³ (but not the amended summons) that was dated and postmarked May 16, 2011. Since an amended complaint supersedes the original, a plaintiff must serve the amended pleading in the same fashion as the original as per CPLR 304.⁴

17. But in trying to serve the amended pleading, the plaintiffs *again* failed to use a method of service approved by the Legislature under CPLR 308; Rakofsky simply served the amended complaint by certified mail on May 16th. This is not a recognized method of service in New York.

18. Rakofsky then filed, many months later and beyond the statutory time period, an affidavit of service stating that substituted service was made on my office on May 12, 2011 (four days before it was even signed). He also failed to indicate the follow-up mailing required by CPLR 308(2), essentially admitting that service had failed.

19. Given that I had a publicly available address for my law firm, and a receptionist willing to accept papers, service should have been a breeze.

² DeVoy Affidavit, Exhibits A, B

³ DeVoy Affidavit, Ex. C

⁴ *Halmar Distribs., Inc. v. Approved Mfg. Corp.*, 49 AD 2d 841 (1st Dept. 1995)

20. The cascade of simple service errors continued in Rakofsky's failure to properly serve opposition papers to the many motions to dismiss. This court was abundantly clear, for example, that the deadline for serving opposing papers to the defendants' dismissal motions was May 18, 2012.

21. When the plaintiffs finally served their opposing papers on me, however, they were late. I received copies of the memos of law opposing the Washington Post and Reuters on May 24th, with the package postmarked May 22, 2012. In addition, the papers made reference to other memos of law for our co-defendants, yet Rakofsky inexplicably failed to serve me with copies of those other memos he referenced.

22. A box of 10 new memos of law opposing the other motions to dismiss was finally sent May 24th.

23. The content of the memos was remarkable for this concession: Rakofsky conceded that the allegations of incompetence were, as a matter of law for all defendants, mere opinion. On page 47 of the Rakofsky Memo of Law related to my group of defendants he finally admitted – after we spent substantial time defending this matter:

“Whether Mr. Rakofsky was, in fact, incompetent is not itself an issue as to which Plaintiff alleges he was defamed by Defendants. This would be a matter of opinion that would be neither provably true nor provably untrue.” (Emphasis in original.)

Given that accusations of incompetence against Rakofsky was the entire premise of his defamation action against me, and so many others, this was quite astonishing to admit at that late stage. The defamation case against me, after all, merely alleges my clear opinion of his

incompetence. As quoted in the amended complaint, he cites this April 5, 2011 blog comment of mine as the basis of his entire claim against me:⁵

Ethics also comes into play with deception, as evidenced by one **Joseph Rakofsky**, a New York lawyer with scant experience, but whose website sung his praises in oh so many ways. Then he got a real client. Defending a murder case. Which of course, he was utterly incompetent to do and after being exposed in the *Washington Post*, the story is now buzzing around the blogosphere (Gamso; Bennett; Elefant; Greenfield; Tannebaum; Mayer; Koehler, Above the Law).

The “deception” references Rakofsky’s own description of himself on websites.⁶ Despite barely any experience, and having conceded in the Deaner trial that this was his very first trial of any kind, Rakofsky wrote in a website advertisement -- with an address in Connecticut where he is not licensed, wherein he pitched his legal services in New York City where he is also not licensed -- that he had:

an extensive and intricate understanding of legal procedures and loopholes, as well as federal and state trial experience, especially in all areas of white collar crime including: *Embezzlement *Tax Evasion* Identity Theft * Securities & Bank Fraud * Grand Larceny * Drug Trafficking

24. But while Rakofsky finally conceded that his incompetence was a matter of opinion, he nevertheless continued the claim in his cross-motion to amend the complaint a second time (paragraph 345). Mr. Rakofsky then proceeded to claim \$10,000,000 in damages (just against me) for a defamation claim that he *already acknowledged was without merit*.

25. In sum, Rakofsky seemed to have made every conceivable mistake in trying to start and maintain a lawsuit, and then continued making mistakes once it started, including the continuation of a claim that he conceded was utterly without merit.

⁵ Lawyers and Advertising (The New Frontier); *New York Personal Injury Law Blog*, <http://www.newyorkpersonalinjuryattorneyblog.com/2011/04/lawyers-and-advertising-the-new-frontier.html> (last accessed Dec. 26, 2012).

⁶ Ex. J, Rakofsky web ads from Connecticut, Washington DC and New Jersey

26. These errors were documented to support the opinion that Rakofsky was incompetent. As Judge Jackson said about him in the underlying Deaner trial, “It was apparent to the Court that there was not a good grasp of legal principles and legal procedure...” In the event Rakofsky would try to claim that competence was a matter of fact, not opinion, we were preparing to argue truth as an absolute defense.

27. As a result of the conduct of the plaintiffs, there has been a very substantial waste of resources in dealing with, and constantly responding to, his errors.

28. As of oral argument in June, I have logged 140 hours of legal time defending this case as local counsel.

29. Finally, true and correct copies of the following documents are attached to this motion as exhibits, described as follows:

- a. Transcript excerpts from this Court’s June 28, 2012 hearing in this matter, are attached hereto as Exhibit A.
- b. Joseph Rakofsky’s letter to Judge Hagler, dated July 1, 2012, is attached hereto as Exhibit B.
- c. This Court’s January 3, 2012 order, denying plaintiffs’ motion as “incomprehensible” is attached hereto as Exhibit C.
- d. Marc Randazza’s June 17, 2011 reply affidavit in support of his motion for pro hac vice admission and extension of time, attached hereto as Exhibit D.
- e. The April 1, 2011 transcript in *United States v. Deaner*, Criminal Action No. 2008-CF1-30325 (D.C. Superior Ct.), attached hereto as Exhibit E.
- f. The March 31, 2011 transcript in *United States v. Deaner*, Criminal Action No. 2008-CF1-30325 (D.C. Superior Ct.), is attached hereto as Exhibit F.

- g. Joseph Rakofsky's March 31, 2011 Facebook status update, which reads "1st-Degree Murder...MISTRIAL!" is attached hereto as Exhibit G.
- h. A redacted copy of Joseph Rakofsky's October 6, 2010 e-mail to an investigator in the Deaner case, wherein Rakofsky uses the word "trick" (commonly referenced as the "trick e-mail") is attached hereto as Exhibit H.
- i. A copy of Joseph Rakofsky's June 9, 2011 e-mail to Michael Doudna, which was submitted to this Court as an exhibit to his motion to dismiss and motion for sanctions, is attached hereto as Exhibit I.
- j. Rakofsky websites -- Connecticut, Washington DC, New Jersey -- as Exhibit J.
- k. Summons and complaint and amended summons and amended complaint, as Exhibit K, on disc.

Dated: New York, New York
January 2, 2013

/s/ _____
Eric Turkewitz, *pro se* and as counsel
to the defendants listed on the Rider

Sworn to before me on the 2nd day of January, 2013:

NOTARY PUBLIC

Rider:

Parties represented by Marc Randazza (*pro hac vice*) and Eric Turkewitz (local counsel)

Writer/Defendant	Associated Entities	Amended Complaint ¶¶	Jurisdiction, per Amended Complaint	Total Defendants
Eric Turkewitz	The Turkewitz Law Firm	47-48; 172	Washington, DC	2
Scott Greenfield	Simple Justice NY, LLC blog.simplejustice.us Kravet & Vogel, LLP	19-21; 148-152; 212	New York	4
Carolyn Elefant	MyShingle.com	16-17; 146-147; 201	Washington, DC	2
Mark Bennett	Bennett And Bennett	32-33; 160; 206	Texas	2
Eric L. Mayer	Eric L. Mayer, Attorney-at-Law	22-23; 153; 203	Kansas	2
Nathaniel Burney	The Burney Law Firm, LLC	82-83; 193-194; 198	New York	2
Josh King	Avvo, Inc.	78-79; 202	Washington State	2
Jeff Gamso		24-25; 154	Ohio	1
George M. Wallace	Wallace, Brown & Schwartz	57-58; 180-181	Florida	2
“Tarrant84”	Banned Ventures Banni	65-67; 185	Colorado	3
Brian L. Tannebaum	Tannebaum Weiss	55-56; 179	Florida	2
Colin Samuels	Accela, Inc.	80-81; 192; 199	California	2
John Doe #1	Crime and Federalism	26-27; 155-157	Unknown	2
Antonin I. Pribetic	Steinberg Morton	51-52; 175; 205	Canada	2
Elie Mystel	AboveTheLaw.com; Breaking Media, LLC	9-11; 143; 200	New York	3
David C. Wells	David C. Wells, P.C.	12-13; 182;	Florida	2
16 individuals				35 entities