

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

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	:	Index No. 105573/2011
JOSEPH RAKOFSKY, and RAKOFSKY LAW FIRM, P.C.,	:	
	:	<b><u>AFFIRMATION OF</u></b>
Plaintiffs,	:	<b><u>MARK D. HARRIS</u></b>
	:	
- against -	:	
	:	
THE WASHINGTON POST, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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Mark D. Harris, an attorney in good standing admitted to practice in the Courts of the State of New York, hereby affirms under penalties of perjury that:

1. I am an attorney with Proskauer Rose LLP, attorneys for defendants the American Bar Association, Debra Cassens Weiss and Sarah Randag (collectively, the “ABA Defendants”). This affirmation is submitted in support of the ABA’s motion for costs and reasonable attorney’s fees pursuant to CPLR § 8303-a and NYCRR § 130-1.1(a).

2. Plaintiffs initiated this action on or about May 11, 2011 by filing a complaint asserting two causes of action for defamation and violation of Sections 50 and 51 of the New York Civil Rights Law, against over seventy entities, including the ABA Defendants. Plaintiffs’ initial complaint asserted claims based on a report by *The Washington Post* of a felony murder trial defended by Mr. Rakofsky, which ended abruptly when the presiding Judge declared a mistrial at an April 1, 2011 hearing. A true and correct copy of the transcript of the April 1 hearing is attached as Exhibit 1.

3. On or about May 16, 2012, Plaintiffs filed an Amended Complaint, changing none of the substantive allegations but asserting two new causes of action for intentional

infliction of emotional harm and intentional interference with contract, and adding seven new defendants.

4. Within the first few months of the case, Plaintiffs' then-attorney, Richard D. Borzouye. Esq., made a motion to withdraw as counsel, which was granted by the Court, the Honorable Justice Emily Jane Goodman presiding, in an Order dated July 22, 2011 and filed July 28, 2011. The Court's Order also stayed the case until September 14, 2011 to permit Plaintiffs the opportunity to find new counsel. A true and correct copy of the Court's July 28 Order is attached hereto as Exhibit 2.

5. The Court later extended the Stay Order indefinitely, at a conference held on September 15, 2011. A true and correct copy of the Court's September 15 Order and a transcription of the Order is attached hereto as Exhibit 3.

6. Despite a stay being in effect, Plaintiffs continued to engage in motion practice, including an October 13, 2011 Order to Show Cause, an October 24, 2011 motion for twelve various orders (including discovery orders and orders to amend the complaint, for default judgment, and for sanctions), and a December 23, 2011 Order to Show Cause (which also sought twelve separate orders).

7. The Court dismissed Plaintiffs' December 23 Order to Show Cause as "incomprehensible" by Order dated January 3, 2012. A true and correct copy of the January 3 Order is attached hereto as Exhibit 4.

8. Following denial of his December 23 motion, Mr. Rakofsky filed for appellate intervention pursuant to CPLR 5704(a) to the Supreme Court of New York, Appellate Division First Department. The application was denied. A true and correct copy of the Order of the Appellate Division is attached hereto as Exhibit 5.

9. In or about March 2012, this case was transferred from Justice Goodman's docket to the docket of the Honorable Justice Shlomo S. Hagler. At the time of the transfer, the stay was still in place.

10. On March 21, 2012, the Court held a case management conference at which new counsel for Plaintiffs, Matthew Goldsmith, was present. Mr. Goldsmith represented to the Court at that time that he had been retained for approximately one week.

11. At the conclusion of the March 21, 2012 conference, the Court lifted the stay and set a briefing schedule for defendants' motions to dismiss and Plaintiffs' cross-motion to amend their complaint.

12. The ABA Defendants moved to dismiss the Complaint on March 28, 2012.

13. On or about May 9, 2012, Plaintiffs filed a cross-motion to amend their complaint. In support of the motion, Plaintiffs' counsel, Mr. Goldsmith, submitted an affirmation, a true and correct copy of which is attached hereto as Exhibit 6.

14. On or about May 16, 2012, Plaintiffs opposed the motions to dismiss filed by the ABA Defendants and other defendants. Plaintiffs' counsel again submitted an affirmation, a true and correct copy of which is attached hereto as Exhibit 7.

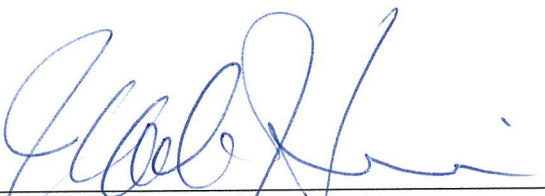
15. On June 28, 2012, the Court held oral argument on defendants' motions to dismiss Plaintiffs' Amended Complaint and cross-motion to amend. A true and correct copy of the transcript of the oral argument is attached hereto as Exhibit 8.

16. On July 5, 2012, Plaintiffs' counsel sent defendants' counsel by email a copy of a letter addressed to this Court dated July 1, 2012. A true and correct copy of the email received from Plaintiffs' counsel on July 5, 2012, which includes an attachment titled "Letter Judge Hagler July 1.pdf", is attached hereto as Exhibit 9.

17. As of the date of this affirmation, Plaintiffs have not withdrawn any of their claims, nor has Plaintiffs' counsel sought to withdraw from the case.

18. I understand from conversations with other defendants that Mr. Rakofsky has offered to dismiss the action against any defendant for a payment of \$5,000.00 and that a number of defendants have accepted the offer.

New York, New York  
November 28, 2012



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Mark D. Harris