

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,

-against-

THE WASHINGTON POST COMPANY, et al.,

Defendants.

Turkewitz Reply Affidavit
Supporting Defendants'
Motion For Sanctions *and*
Opposing Plaintiffs' Cross-
Motion for Sanctions

Index # 105573/11

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Eric Turkewitz, an attorney admitted to practice law in the state of New York, a defendant in this action, and local counsel to the 35 defendants listed on the Rider, being duly sworn, deposes and says:

1. This reply affidavit, made on personal knowledge, is in further support of our motion for sanctions. It also opposes Rakofsky's cross-motion for sanctions against Marc Randazza. He has already litigated that issue and lost. *Three times*.

Reply For Our Motion for Sanctions

2. As set forth in my original affidavit supporting sanctions, Rakofsky finally admitted, in his memo of law opposing dismissal, that expressions of incompetence are matters of opinion (p. 47). He even underlined it for emphasis. Yet he persists, despite effectively conceding such claims are utterly frivolous. He does not dispute this in his opposition, or even address it.

3. He also argues that my claim of “deception” is defamatory.¹ As noted in my affidavit in support of sanctions, I had written on my blog that:

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.

4. In that initiating affidavit I placed before the court some of Rakofsky’s web copy to support my comment regarding deception (paragraph 23 and Exhibit J) and show his website claims of significant areas of expertise that he did not possess. In fact, he could not possibly possess it given that he had been admitted in New Jersey for just a year. But Rakofsky did nothing in his response to contest the assertion that he was deceptive in his legal marketing, effectively conceding that he was making claims of significant experience he did not have, in jurisdictions where he is not licensed.

5. In other words, it was impossible for him to win. This lawsuit, therefore, certainly fulfills the requirement that it has no basis in fact or law, nor can it be supported by a good faith argument for an extension, modification or reversal of existing law.

6. To the extent any of the defendants made claims regarding dishonesty, incompetence or ethics violations about Rakofsky, they were well within the facts to do so given his conduct. All of the claims detailed in the amended complaint, as summarized on pages three and four of the opposing memo of law, come clearly within the vast orbit of the First Amendment as statements of truth or matters of opinion.

¹ Goldsmith memo of law, p. 4 (18th cause of action)

7. The one statement potentially outside those that castigate him for dishonesty, incompetence and ethics violations is in the 21st cause of action, stating that “[Rakofsky] solicited himself for the case.” This statement, however, is supported by a Washington Post April 9, 2011 account of how Rakofsky obtained the Deaner case – by trolling the New York criminal court for clients (despite not being admitted here). The lede of the article:²

Henrietta Watson stood inside the downtown Manhattan courthouse waiting for one of her grandsons to be released from jail. A young lawyer approached and asked if he could help.

Watson and her husband declined. But the couple told the lawyer about another grandson in Washington, who was charged in the fatal shooting of a Virginia man. That case interested the lawyer, who gave Watson his card and introduced himself as Joseph Rakofsky, Watson said.

8. Because truth is an absolute defense in defamation cases, and opinions are protected, this matter never stood a chance and makes it ripe for sanctions. This is true both for a frivolous suit (CPLR 8303-a) and frivolous conduct (22 NYRR 130-1.1(c)). Rakofsky has placed the court in the position of making findings that he was practicing law in multiple jurisdictions without a license, that he was making false, deceptive or misleading advertising claims³ about his experience, and that his incompetence is not only protected opinion, but also provable fact.

9. These ethical problems, of course, are in addition to his having asked an investigator to trick a witness.

² Exhibit M

³ New York Rules of Professional Conduct, §7.1; New Jersey RPC §7.1

10. Rakofsky's decision to continue litigation against me (and my co-defendants) meets any definition of frivolous.

Opposition to Cross Motion

11. Rakofsky now complains, *for the fourth time*, about Marc Randazza's admission to practice *pro hac vice*. This complaint was rejected the first three times when Rakofsky used these arguments to object to Mr. Randazza's appearance at the request of the 35 defendants that we represent. Turning his objection into a strenuous objection almost two years later does not improve it.

12. The first effort was in front of Justice Emily Jane Goodman, who granted the motion to admit *pro hac vice* over Rakofsky's objection on September 15, 2011. Mr. Randazza was forced to fly in from Las Vegas for this hearing. Rakofsky argued his point to Justice Goodman. He lost.⁴

13. Had Justice Goodman believed that Mr. Randazza's conduct was questionable, she obviously would not have permitted him to practice law here.

14. Rakofsky's second attempt was in a long, rambling order to show cause for a wide variety of relief including an effort to lift the stay that he requested (but only for him) that also included the complaint about Randazza. Justice Goodman declined to sign the order, writing that it was "incomprehensible."⁵

15. Not willing to give up on what would be, in any other case, a routine matter, he tried a third time in the First Department via another order to show cause, again including this complaint as part of an attempt to lift the stay he

⁴ Exhibit N, Decision of Justice Goodman, September 23, 2011

⁵ Exhibit C of moving affidavit

requested (but only for him) and for a multitude of other relief. This was denied as well (Exhibit O).

16. Apparently believing that the best defense is an offense -- no matter how baseless it may be -- Rakofsky tries yet again, perhaps in the hope that repeating his vexatious grievance like some talismanic incantation might miraculously levitate him from the hole he continues to dig. But his objection does not improve with age; it merely multiplies the litigation, forces unnecessary legal costs, and further inundates the court. A frivolous motion for sanctions may itself be sanctionable conduct.

17. His gripe stems from a call his former counsel, Richard Bourzye, made to Mr. Randazza in which Rakofsky was illegally eavesdropping. This is a private dispute with Bourzye, who permitted it to happen and is no longer even involved with this case, and Mr. Randazza, who addresses the issue in his own papers in accordance with the wiretapping laws of other states. (See also, Exhibit L)

18. The most remarkable part of this colossal waste of time is that it would not help Rakofsky even if he could prevail, since it is impossible for him to state a claim given that no defamation occurred. All of the defendants' statements are true, or they are matters of opinion protected by the First Amendment.

19. But since I was present in court as local counsel the first time the issue of Mr. Randazza's *pro hac vice* admission came up, and he elects to bring it up again via cross-motion, I submit these additional facts for the court to consider in sanctioning Rakofsky for his conduct. At the time Rakofsky first objected to Mr. Randazza, he:

- A. Sought to file a different memo of law on the return date in room 130 than the one he had served on me and to which I had already responded; and
- B. Altered an affirmation by Mr. Bourzye that he had served on me regarding Mr. Bourzye s motion to be relieved as counsel, and tried to file it instead in the motion opposing *pro hac vice* admission.

20. Had I not been standing in court watching this misbegotten perversion of civil procedure -- taking an affirmation from one motion, altering it and trying to file it in another, after the documents had already been served -- I would not have believed it. This painful butchering of procedure is recited in my sur-reply to the *pro hac vice* motion (which I had permission to file), and is attached here as Exhibit P.

21. That document is pertinent to demonstrate not only Rakofsky's refusal to accept the concept of collateral estoppel, but it also has the dual purpose of further demonstrating that the opinions of incompetence made by so many were well earned.

Dated: New York, New York
February 27, 2013

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

Sworn to before me on the
27th day of February, 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