

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-002029

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent

v.

Irene Santacroce, Appellant
Estate of Doris Holt, Appellant
Rodney Lail, Appellant

and

James B. Spencer, Appellant, *Pro Se*

JOINT RETURN ON JOHN RAKOWSKY'S

MOTION FOR COSTS

The motion for costs by John Rakowsky, (hereinafter Respondent), is both untimely, baseless and nothing more than a waste of this courts time for a number of reasons.

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First and foremost, the Order under Appeal that was issued by Judge Seals was dated August 3, 2011. This Honorable Court's ruling on this Order will impact any and all subsequent actions taken by the lower court. Therefore, this motion is premature by Respondent.

Second, Respondent knows full well that the parties named in the action before this court were not parties in the underlying action. As an example, the Resolution Settlement Corp. (RSC) was not named as a party to the underlying action and brought a civil action in Nevada Federal District Court because it was not named. **See Attachment A, point 22.** There is no legitimate way they can be a party in this action before this Honorable Court when they were never named as a party to the underlying action. It appears this court may have been misled, in any event Respondent is naming parties in this motion that were not a party to the underlying lawsuit.

The Respondent brought this interpleader action as a direct consequence of his failure to keep the not keep proper records required to document the distribution of any settlement proceeds under South Carolina Local Federal Rule 83.1.08. This section states that when the same counsel or counsels represent more than one party, an informed agreement of written consent signed by each represented party is required, stating the terms of the settlement, when an aggregate settlement is involved, which includes the distribution of the aggregate settlement among the

parties. This requirement for the counsel(s) to have written authority to settle a case is to protect the individual party's rights. There was no such agreement in the present case. This is also codified under South Carolina Rule 407 1.8(g).

Furthermore, Respondent claimed in his interpleader filing that he did not know who the remaining money belonged to that was advanced for court costs by his seven individual clients. Clearly under the South Carolina Rules of Professional Conduct he was required to maintain records to know, Rule 1.15 states,

“A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation. A lawyer shall comply with Rule 417, SCACR (Financial Recordkeeping).”

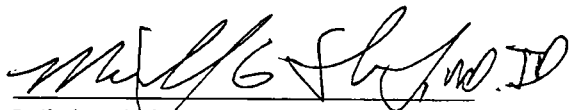
Now Respondent wants to be paid for bringing a lawsuit against defendants for Respondent's failure to comply with his own ethical obligations and court rules.

CONCLUSION

This motion should be dismissed with prejudice and attorney fees should be awarded by this Honorable Court to Appellants for having to respond to this baseless motion. This motion is nothing more than a further attempt on the part of the Respondent and his counsel to enrich themselves at the expense of their Pro Se clients who have taken advantage of at every step of this proceeding.

This August 27, 2015,

By:



Michael G. Sribnick, M.D., J.D., LLC

3 Kenilworth Avenue

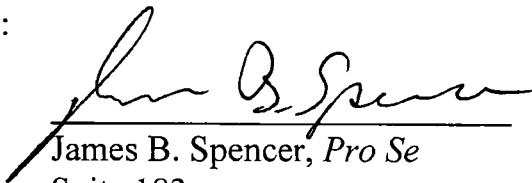
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ATTACHMENT "A"

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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 ~~CENTER FOR LEGAL REFORM~~, a Nevada
13 Non-Profit Corporation as Successor-in-
14 interest to Resolution Settlement Corporation,
15 a former Nevada Corporation,

16 Plaintiff,

17 v.

18 JOHN RAKOWSKY, an individual; and Doe I-X

19 Defendants.

Case No.

COMPLAINT AND JURY DEMAND

20 Plaintiff, Center for Legal Reform, by and through its counsel, Guinness
21 Ohazuruike, Esq. of Guinness Law Firm, hereby alleges against Defendant,
22 John Rakowsky, as follows:

23 PARTIES

- 24 1. Plaintiff, Center for Legal Reform, is a Nevada non-profit corporation and
25 successor-in-interest to Resolution Settlement Corporation, a former Nevada
26 corporation, herein after referred to as "RSC".
27 2. Defendant, John Rakowsky, is an individual domiciled in the State of South
28 Carolina, and at the relevant time, hereto, was practicing as an attorney at law.
3. Defendants Doe I-X are individuals, entities, and corporations, and the true names
and capacities, are unknown to Plaintiff, who therefore sues these Defendants by
such fictitious names. Plaintiff alleges that each Defendant, designated as a Doe,
is specifically responsible in part for the conduct alleged herein that wrongfully

1 injured Plaintiff and the proximate cause of damage thereby to the Plaintiff, as
2 alleged herein. Plaintiff shall seek leave of this court to amend the Complaint to
3 substitute the true names and the capacities of each Doe Defendant when that
4 name is ascertained.

5 JURISDICTION

6 4. This Court has subject matter jurisdiction over this action, pursuant to 28
7 U.S.C. §1332, because complete diversity of citizenship exists between the parties
8 in this action and the amount in controversy exceeds \$75,000, exclusive of interest
9 and costs.

10 5. This Court may also exercise pendant jurisdiction over Plaintiff's state law claims
11 arising under the common law of Nevada, and which arise from a common
12 nucleus of operative fact pursuant, to 28 U.S.C. Section 1367.

13 VENUE

14 6. Venue is proper in the United States District Court for the District of Nevada,
15 pursuant to 28 U.S.C. Section 1391(b), wherein Plaintiff resides and Defendants
16 regularly conducted business in these matter and where all the alleged wrongful
17 conduct occurred and by virtue of a Nevada choice of law forum agreed to by the
18 parties.

19 GENERAL ALLEGATIONS

20 7. Plaintiff is informed and believes and thereon alleges, that Defendants, at all times
21 relevant hereto, acted in concert with some individuals, entities, and corporations,
22 the true names and capacities are unknown to Plaintiff.

23 8. Plaintiff's predecessor-in-interest, RSC, was involved in the business of providing
24 funds for litigation expenses to litigating parties and attorneys.

25 9. In March 2005, Defendant contacted RSC, stating he was coming to Las Vegas to
26 negotiate a case representation for Southern Holdings, Inc., a Nevada corporation.

27 10. Defendant represented that he had the requisite license or permission to practice
28 as an attorney in federal courts in the District of Nevada.

- 1 11. Defendant stated, that based on his extensive personal experience in federal
2 courts including civil RICO litigation, that the case had great potential for verdict for
3 his prospective client.
- 4 12. At a conference attended by other investors, Defendant met with RSC executives
5 and represented that he had secured representation of the plaintiffs in the case
6 and that he was seeking financing for the case.
- 7 13. While Defendant was in Las Vegas, Nevada on or about March 2005, Defendant
8 entered into a funding agreement with RSC, whereby RSC agreed to provide initial
9 funding in the amount of \$45,000.00 and agreed to provide an additional
10 \$25,000.00 in funds for the non-lawyer litigation expenses, on or before June 30,
11 2005. None of the \$70,000 in funding was to be used for lawyer compensation
12 expenses.
- 13 14. In return for the investment, RSC was entitled to a payment of \$70,000.00 in
14 "security interests" (equivalent to funds advance by RSC) and from proceeds
15 (being the gross recovery less attorney fees as applicable, estimated at 40%), plus
16 monthly payments of \$4,500.00, beginning the first day of the month following the
17 advancement of the final payment of \$25,000.00 per the agreement.
- 18 15. In addition to other terms of the agreement, Defendant personally and specifically
19 agreed (1) to abide by the ministerial terms of the funding agreement; (2) to
20 provide RSC full accounting of the sources and uses of all litigation funds; (3) to
21 disburse amount recovered from the litigation, in accordance with the agreement
22 (4) in the event of any dispute in any manner related to the agreement including,
23 but not limited to, regarding disbursement of monies, to interplead any amount
24 recovered from the litigation; (5) that all disputes over the funding, any proceeds,
25 and/or related to any aspect of the entire agreement would be interplead and/or
26 litigated in Nevada Courts.
- 27 16. On or about March 22, 2005, RSC transferred the sum of \$45,000.00 from a local
28 Nevada bank account into, what Defendant stated was, his "trust account", with
Security Federal Bank in South Carolina.
17. On or about July 1, 2005, Defendant received a second payment, a check in the
amount of \$25,000.00, drawn on Nevada Colonial Bank, which Defendant

1 deposited again, into what he stated was his "trust account" with Security Federal
2 Bank of South Carolina.

3 18. In the Fall of 2006, RSC began to express concern about the actions of
4 Defendant, constantly seeking additional funding from RSC, without providing
5 explanations for why additional funds were needed.

6 19. In 2008, RSC requested, in writing, a full accounting of the \$70,000.00 it had so far
7 contributed towards the Southern Holdings, Inc. litigation.

8 20. Defendant, through retained counsel Desa Ballard, responded in writing that all the
9 litigation funds have conflicting claims, thereby refused to provide an accounting of
10 the use of funds, as required under the contract.

11 21. Defendant, through counsel Desa Ballard, filed an interpleader action over the
12 litigation funds in South Carolina courts.

13 22. Defendant did not include RSC in the interpleader action and RSC never had the
14 opportunity to file a claim for its funds.

15 23. Defendant used his position, as a local judge in South Carolina, to breach his
16 obligation, under contract, to provide a complete accounting for the use of funds.

17 24. Defendant's failure to provide an accounting for use of the litigation funds is also in
18 violation of the Nevada Rules of Professional Conduct.

19 25. Defendant settled the Southern Holdings Inc. case, without the client's consent,
20 and eventually withdrew from representation, without advising RSC of his
21 withdrawal, as required under the funding contract.

22 26. During discovery in the interpleader case filed by Defendant, Defendant denied
23 knowledge of any and all funds provided by RSC.

24 27. As a result of discovery requests in the Interpleader case concerning Defendants
25 handling of the litigation funds advanced to Defendant by RSC, in 2010 Defendant
26 changed the legal designation of the account into which he deposited the money
27 he obtained from RSC to a trust account in an act of obstruction of justice to
28 conceal the true nature of the account the money was deposited into.

28 28. Defendant misappropriated the litigation funds, provided by RSC, for the Southern
Holdings case for non lawyer expenses by depositing the funds into his personal
account instead of a trust account.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 27, 2015, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **JOINT RETURN ON JOHN RAKOWSKY'S
MOTION FOR COSTS**

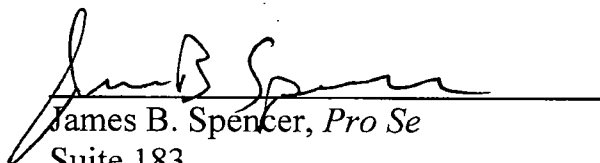
Parties Served:

Desa Ballard, Esquire
Ballard and Watson, Attorneys at Law
PO Box 6338
West Columbia, SC 29171

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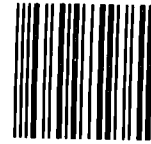
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