

This decision has been edited from the original version.

192 Misc.2d 628

District Court, Nassau County, New York.
Second District.

Herbert SUSSMAN, Plaintiff,

v.

Marcia GRADO, Doing Business as
Accutech Consulting Group, Inc.,
Defendant.

June 10, 2002.

Client sued independent paralegal to recover the amount of a judgment against a debtor, which the paralegal had failed to recover, plus the fee paid to the paralegal. The District Court, Nassau County, [Joel K. Asarch, J.](#), held that: (1) client failed to prove that he would have collected on the judgment but for an act or omission of an independent paralegal; but (2) paralegal crossed the line between filling out forms and engaging in the practice of law; and (3) in so doing, the paralegal violated the Business Law, thereby subjecting the paralegal to treble damages. Ordered accordingly.

Attorneys and Law Firms

****549 *629** Herbert Sussman, plaintiff pro se.
Marcia Grado, defendant pro se.

Opinion

[JOEL K. ASARCH, J.](#)

There is an unmet need for legal representation of a large portion of the state's population in civil proceedings. Despite laudable efforts by the practicing bar to provide free and reduced rate legal services to the public (*pro bono publico*), ****550** many people still cannot afford to obtain the assistance of counsel in civil cases. However, as the Ad Hoc Committee for Non Lawyer Practice of the New York State Bar Association found, "[t]he employment of

educated and trained legal assistants presents an opportunity to expand the public's accessibility to legal services at a reduced cost while preserving attorneys' time for attention to legal services which require the independent exercise of an attorney's judgment," *Guidelines for the Utilization by Lawyers of the Service of Legal Assistants*, NYSBA Subcommittee on Legal Assistants, 1997 (p. 1).

To help in the delivery of "high quality, cost effective legal services to the public," *Id.*, paralegals work under the supervision of attorneys, who are fully responsible for such representation. The paralegal does not practice law-an "act requiring the exercise of 'independent professional legal judgment,'" NYSBA Committee on Professional Ethics Opinion 304 (1973). In fact, a traditional paralegal may not practice law, [Judiciary Law sections 478 and 484](#).

When a paralegal declines to work under the direct supervision of an attorney, problems may occur. This small claims case, which the undersigned tried on April 9, 2002, emphasizes the problems involved.

Findings of Fact

The plaintiff had obtained a judgment against a debtor on November 14, 2001 for \$1,472.00. When the plaintiff attempted to ***630** enforce the judgment, he learned that there were two joint bank accounts at different banks in the names of the judgment debtor and his wife, for which the Sheriff's Department required a turnover order.

The plaintiff went to the defendant, "an independent paralegal" and president/sole shareholder of Accutech Consulting Group, Inc., and explained what he needed. He paid the defendant \$45 for the services. Despite the

defendant's claim that she did not know what a turnover order was, she accepted the case and the fee.

The plaintiff alleged that the papers prepared by the defendant were deficient and, as a result, the "Sheriff's Department closed the case". He sues to recover the amount of the judgment plus the fee paid to the defendant (which she admittedly would refund). In fact, by letter dated February 21, 2002, the defendant sent the plaintiff a check for \$45 (which he denied receiving), refunding the \$45 for the turnover order[.] . . .

[1] The fact that the Sheriff's Department closed the case with respect to the two joint bank accounts does not mean the judgment is unenforceable. Rather, if docketed properly, the small claims judgment acts as a lien on real property. . . . The plaintiff has failed to prove that but for the defendant's act or omission, he would have collected on the judgment, *see, e.g., Davis v. Klein*, 224 A.D.2d 196, 637 N.Y.S.2d 137 (1st Dept.), *aff'd* 88 N.Y.2d 1008, 648 N.Y.S.2d 871, 671 N.E.2d 1268 (1996). . . .

****551** [2] However, just because the plaintiff cannot recover the amount of the judgment from the defendant does not end this Court's inquiry. The defendant testified that she's a graduate from a paralegal certificate program and has been a paralegal for thirteen (13) years and she "help[s] a lot of people."

In response to the Court's question: "Do you work under the authority of an attorney?" The defendant answered: "I'm an independent. I assist the general public. I assist attorneys with work. And Mr. Sussman came to me of his own free will and asked me to do this work for him."

To this Court, there is a difference between assisting someone to fill out a form and preparing a form on a subject with which the "assistance" is unfamiliar. Instead of referring

this plaintiff to an attorney, the defendant allegedly asked three (3) attorneys about what a turnover order was ("none of them had ever heard of it") and called the Sheriff's office who informed her that "they needed something to direct the bank to research it's files and find out the assets of the debtor."

"So I prepared for Mr. Sussman the turnover order that you're looking at."

When asked by the Court how she got the form, the defendant answered: "I patterned it based upon what I know of other orders petitioning money from the court." . . . The papers were filed with the Court, but no action was taken on them, as the Clerk's office properly rejected the papers.

Was the Defendant Practicing Law?

The American Bar Association has defined an independent paralegal as "a person who is not supervised by a lawyer, provides services to clients with regard to a process in which the law is involved, is not functioning at the time as a paralegal or a document preparer, and for whose work no lawyer is accountable," ***632** *Nonlawyer Practice in the United States: Summary of the Factual Record before the American Bar Association Commission on Nonlawyer Practice* (1994). However, New York State bar associations have not recognized the "legal technician/independent paralegal" for reasons obvious from this case—the independent paralegal, working without the supervision of an attorney, may cross the line between assisting a person in need to hurting a person in need through lack of knowledge and supervision, *see e.g. N.Y. County Lawyers Association Ethics Committee opinion 641* (1975), *Association of the Bar of the City of New York Ethics Committee opinion **552* 1995–11 ["Supervision within the law firm thus

is a key consideration.”].

Even the National Association of Legal Assistants, Inc. recognizes that a “legal assistant may perform any task which is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, as assumes professional responsibility for work product,” Canon 2. “The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession,” *Stokes v. Village of Wurtsboro*, 123 Misc.2d 694, 474 N.Y.S.2d 660 (Supreme Court Sullivan County, 1984). . . .

[3] [4] The defendant has, in this Court’s opinion, crossed the line between filling out forms and engaging in the practice of law by rendering legal services, *Judiciary Law 478*; *People v. Jakobowitz*, 184 Misc.2d 559, 710 N.Y.S.2d 844 (Supreme Court Bronx County, 2000). . . . “The practice of law involves the rendering of legal advice and *633 opinions directed to particular clients (citations omitted),” *Matter of Rowe*, 80 N.Y.2d 336, 590 N.Y.S.2d 179, 604 N.E.2d 728 (1992). “[W]hen legal documents are prepared for a layman by a person in the business of preparing such documents, that person is practicing law whether the documents be prepared in conformity with the law of New York or any other law,” *In re Roel*, 3 N.Y.2d 224, 165 N.Y.S.2d 31, 144 N.E.2d 24 (1957), *app. dismissed*, 355 U.S. 604, 78 S.Ct. 535, 2 L.Ed.2d 524 (1958). This Court finds that the

defendant used independent judgment on a subject with which she had insufficient knowledge. . . . [T]he defendant herein purported to “give personal advice on a specific problem” with respect to the turnover proceeding vis a vis the plaintiff’s judgment, *Id.* at 28 A.D.2d 161, 175, 283 N.Y.S.2d 984 (dissent by Justice Stevens, adopted by the Court of Appeals majority).

[5] Regardless of her intentions to help the plaintiff, this independent paralegal operated without the supervision of an attorney. She tried to create a legal document without the required knowledge, skill or training. As a result the plaintiff may **553 have lost the ability to execute against two bank accounts. Just as a law school graduate, not admitted to practice law, cannot undertake to collect overdue accounts on behalf of prospective clients, [see Nassau County Bar Association Ethics Committee opinion 3 (1980)], so is an independent paralegal barred from attempting to collect a judgment.

. . . Section 484 of the Judiciary Law is designed “to protect the public in this State from ‘the dangers of legal representation and advice given by persons not trained, examined and licensed for such work, whether they be laymen or lawyers from other jurisdictions’,” *El Gemayel v. Seaman*, 72 N.Y.2d 701, 536 N.Y.S.2d 406, 533 N.E.2d 245 (1988).

[6] This Court finds that the actions of the defendant constituted a deceptive act “likely to mislead a reasonable consumer acting reasonably under the circumstances,” *Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank, NA*, 85 N.Y.2d 20, 623 N.Y.S.2d 529, 647 N.E.2d 741 (1995) and that “the acts or practices have a broader impact on consumers at large,” *Id.* Such action by the defendant in accepting the task to prepare a turnover proceeding when she was not qualified or

legally able to prepare the necessary papers violated [section 349 of the General Business Law](#). Here, the Court finds that the accepting of the assignment was misleading in a material respect to the consumer and that the consumer was injured-he was unable to collect his judgment from the two restrained bank accounts, *see McDonald v. North Shore Yacht Sales, Inc.*, 134 Misc.2d 910, 513 N.Y.S.2d 590 (Supreme Court Nassau County 1987). Accordingly, the Court finds that the plaintiff is entitled to treble damages, [Gen. Bus. Law 349\(h\)](#), in the sum of \$135.00.

The Court is sending a copy of this decision to the New York State Attorney General's Office for consideration in his discretion as to whether any action should be taken against the defendant pursuant to sections 476-a(1) and/or [485 of the Judiciary Law](#); *see People v. Romero*, 91 N.Y.2d 750, 675 N.Y.S.2d 588, 698 N.E.2d 424 (1998).

The Court finds for the plaintiff against the defendant in the sum of \$135.00, *see Spivak v. Sachs, supra*.

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