



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bilzin Sumberg And Partner Shed Sanctions Order

By **Nathan Hale**

Law360 (March 5, 2020, 10:24 PM EST) -- A Florida state judge has vacated a sanctions order against Bilzin Sumberg Baena Price & Axelrod LLP and partner Jose M. Ferrer, finding that the previous judge on the case denied them and their client due process and that their conduct, while "imperfect," did not warrant punishment.

Miami-Dade Circuit Judge Michael A. Hanzman lamented in an order on Wednesday that a routine commercial dispute between Harout Samra and Vicken Bedoyan — former partners in a Miami-based gold trading business — had "morphed into a barroom brawl" and described the sanctions dispute as an "unseemly sideshow."

"All counsel share responsibility for this fiasco as none of them exercised restraint or attempted to de-escalate this 'feud' and re-focus on the merits of the lawsuit," Judge Hanzman said. "This is unfortunate, but this nonsense is over and the case will now be brought to a swift conclusion on the merits."

Ruling on Samra, Bilzin Sumberg and Ferrer's motion for reconsideration, Judge Hanzman tossed Miami-Dade Circuit Judge Beatrice Butchko's finding in September that Ferrer and his Miami firm improperly used attorney-client privileged communications to file a bad-faith motion to strike their opponent's defenses ahead of a damages trial in the case.

Judge Hanzman also denied a renewed motion to disqualify Ferrer and his firm, saying that issue was mooted by their earlier voluntary withdrawal of their representation in the case.

While expressing reluctance to undo a colleague's order, Judge Hanzman found that many of Judge Butchko's findings of bad faith conduct were duplicative and addressed claims that were never raised in the sanctions motion. Judge Butchko had also exonerated Bedoyan's defense counsel from Gunster from any misconduct, even though that was not within the scope of the motion before her, and she granted opposing counsel attorney fees and costs, even though they were not seeking sanctions themselves.

In a scathing **51-page order** issued on Sept. 16, Judge Butchko found that it should have been obvious to Ferrer that secretly made recordings he received from a legal representative of Bedoyan's in Bolivia were privileged materials. She also said Ferrer acted in bad faith by making scandalous and baseless allegations that Bedoyan's Florida-based counsel, Angel A. Cortinas and Jonathan H. Kaskel of Gunster, participated in a scheme to bring trumped-up criminal child pornography charges against Samra in Bolivia to gain an advantage in their litigation in Miami.

But Judge Hanzman said that, although it was "a mistake" for Ferrer to take the more aggressive move of filing the motion to strike the defense's pleadings, rather than bringing the recordings to the attention of opposing counsel and the court — and arguably violated rules of professional responsibility — he "concludes, without hesitation, that Ferrer's conduct does not rise to a level of warranting sanctions."

There was no doubt that, after losing the liability trial in Samra's case, Bedoyan started a criminal proceeding in Bolivia against Samra and that Ferrer, with or without the recordings, had a right to

explore if that was an attempt to gain an advantage in the civil suit in Miami.

"Given these highly unusual and possibly dangerous circumstances, Ferrer's decision to review these materials is understandable and excusable, even if others might have proceeded differently, and that review confirmed Ferrer's fear and suspicion that Bedoyan was attempting to have his client arrested on serious criminal charges," Judge Hanzman said.

"And because these discussions [in the recordings] had nothing to do with the 'damages' phase of this case, Ferrer secured no tactical advantage in this proceeding by listening to them," he added.

Judge Hanzman also stressed that trial courts must exercise their sanctions powers with restraint and make sure that attorneys and parties facing potential sanctions are afforded "a real opportunity to be heard and present evidence, including any mitigating or excusing circumstances."

He said he agreed with Samra, Bilzin Sumberg and Ferrer that they were denied fundamental due process when Samra and his subsequent counsel were precluded from participating in the sanctions proceedings before Judge Butchko, so the sanctions order also had to be vacated on procedural grounds.

In a statement, Raoul Cantero of White & Case LLP, who served as outside counsel for Bilzin Sumberg and Ferrer along with Harley Tropin of Kozyak Tropin & Throckmorton, praised the reversal.

"Harley Tropin and I are gratified that Judge Hanzman has ended this ordeal for Jose and the Bilzin Sumberg firm. His well-reasoned and highly detailed opinion speaks for itself," Cantero said.

Bedoyan's sanctions motion was initially denied in August 2018 by Circuit Court Judge William L. Thomas, who was presiding over the case at the time, and that decision was upheld by the state's Third District Court of Appeal.

In his order, Judge Thomas said the defendants had not presented "even a scintilla of evidence" that the disputed recordings related in any way to the upcoming damages trial, and that they had "emphatically and repeatedly demanded" that the court not review them.

Judge Thomas had said the limited evidence before him prevented him from determining how the plaintiff's counsel obtained the recordings and whether the conversations were privileged, but added that he had remedied any potential harm by ruling that Samra would not be allowed to introduce any testimony or evidence regarding alleged misconduct by the defense at the damages trial.

But when the case was transferred to Judge Butchko, she agreed to review the issue. She did review the recordings and held multiple hearings on the dispute before issuing her order imposing sanctions.

In the underlying suit, first filed in 2014, Samra, a Miami gold dealer, alleged that Bedoyan stole his decades-old business away after he had brought Bedoyan on as an investor and they had expanded the company into a multimillion-dollar enterprise with an outpost importing gold from Bolivia.

Counsel for Bedoyan did not immediately respond to requests for comment.

Bilzin Sumberg and Ferrer are represented by Raoul Cantero of White & Case LLP and Harley Tropin of Kozyak Tropin & Throckmorton.

Samra is represented by Christopher J. King and Jose A. Ortiz of Homer Bonner Jacobs and Scott B. Cosgrove of Leon Cosgrove LLP.

Bedoyan is represented by Angel Cortiñas and Jonathan Kaskel of Gunster and Gonzalo Dorta of Dorta Law Group.

The case is Samra v. Bedoyan et al., case number 2014-22854-CA-43, in the Circuit Court for the Eleventh Judicial Circuit of Florida.

--Editing by Nicole Bleier.

All Content © 2003-2020, Portfolio Media, Inc.