

SOUTHERN CALIFORNIA

ATTORNEY MALPRACTICE

Fee Disputes

Clients claimed attorney fees were exorbitant

DECISION (P) **\$2,558,237**

CASE Gene Simpson, an individual, Donna Simpson, an individual, and C&W Parking Corporation, a Cal. Corporation, Plaintiffs, vs. Ronald S. Barak, an individual, The Law Offices of Ronald S. Barak, Defendants., No. BC 282616

COURT Superior Court of Los Angeles County, Los Angeles, CA

JUDGE Ernest Hiroshige

NEUTRAL(S) Lester Olson

of his billing records indicated that he spent 23 hours preparing a two-page motion in limine, 150 hours preparing a 113-page trial brief, 70 hours preparing a motion for summary judgment (that was never filed) and 32 hours preparing a motion for attorney fees before judgment was entered. Barak charged for secretarial overtime, billing the Simpsons a total of \$19,000 for his secretaries' services. Barak also billed the Simpsons for his associate's time, and at the associate's standard billing rate, when the associate was merely acting as a messenger. The filing of one document in court cost the Simpsons \$570 in legal fees. In total, Barak billed them nearly \$1.4 million in hourly fees, costs and interest charges.

On April 25, 2002, Barak and the Simpsons entered into a contingency agreement. The Simpsons claimed they were pressured into it after receiving repeated phone calls over the course of several days at their residence regarding the agreement, which did not include a provision for a credit.

Pursuant to a fine-print clause in the Simpsons' bills, Barak began "discounting" the fees attributable to his as-

...ce, stating Barak's ...
...able and that the con-
...tionable and violated
...rther claimed that Barak
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...ould have covered the
...ns. (Barak and his coun-
...n on the grounds that the
...; hence the references to
...spondents).

...ntended that the hourly
...ceable because Barak did
... Business and Professions
...ed the contingency fee
...e because it did not con-
...iable and not set by law"
... Code § 6147, that it was
...air and reasonable trans-

...mediate release of undisput-
...return of their files.

...d costs were reasonable.
...ons' idea to enter into a

... Los Angeles Airport called Auto Airport Parking. In 2001, they retained the legal services of Pacific Palisades attorney Ronald S. Barak to represent them in two separate unlawful detainer actions relating to eviction proceedings that had been commenced against them by their landlord, Kilroy Realty. (Barak had previously represented them in other litigation matters.)

Barak entered a cross-complaint against Kilroy Realty. The first unlawful detainer action proceeded to trial and a tentative decision in favor of the Simpsons was issued; leaving the second unlawful retainer action pending. Shortly after the tentative decision was issued, the Simpsons and Kilroy began talking settlement.

The Simpsons had signed an hourly fee agreement with Barak on Feb. 14, 2001, at a rate of \$400 per hour. Barak originally estimated the cost of litigation to be \$150,000. He did not produce a signed copy of the retainer agreement with his signature. The Simpsons continued to pay him on a monthly billing basis until they ran out of cash.

During the litigation, the Simpsons claimed that they continuously told Barak that they could not afford his fees and requested that he slow down his rapid billing pace. Summaries

...hourly fees and charges were unreason-
...tingency agreement was unconscionable
...California statutes. The Simpsons further
...failed to investigate and timely to
...Simpson's business insurance that
...defense of the unlawful detainer action
...sel filed a motion to compel arbitration
...agreement was binding and reasonable
...the parties herein as claimants and re-

In their complaint, the Simpsons contended the fee agreement was void and unenforceable because they did not sign the agreement, as required by Code § 6148. The clients contended the agreement was void and unenforceable because they did not sign the statement that "fees are negotiated in accordance with Business and Professions Code § 6147, that it was fair and reasonable and that it was not an unconscionable and that it was not an unconscionable action.

The Simpsons requested the immediate release of the client trust and return of their files.

Barak countered that all his fees and charges were reasonable. He contended that it was the Simpsons' idea to enter into a

contingency agreement and that he was resistant to the idea. Barak contended that the contingency agreement was a valid and binding agreement. Barak further contended that it was a surprise to him when Kilroy began settlement discussions in the seven-figure range.

As to the Simpsons' claim that Barak was negligent for failing to investigate whether such coverage existed, he contended that he asked the Simpsons whether their insurance policy covered wrongful detainer actions, but the Simpsons told him it did not and they refused to provide him with a copy of the policy.

Despite acknowledging that approximately \$700,000 belonged to the Simpsons under the settlement agreement, Barak contended that he was entitled to keep the entire \$2.3 million in the trust account until the arbitration was completed because he expected to prevail in the arbitration and feared that Simpson would spend the money and be judgment-proof. Barak also claimed that he was not required to return all of the Simpsons' original files to them at their request, but only those files which he deemed necessary for them to have.

INJURIES/DAMAGES The plaintiffs sought release of settlement funds and return of their files.

RESULT In October 2003, Judge Olson awarded \$2.55 million, including attorney fees, costs incurred and related interest charges and penalties, against attorney Barak.

The \$2.55 million amount represents \$1.6 million in the attorney's trust account and \$700,000 representing fees already paid to Barak. Olson determined Barak's fees to be approximately \$200,000 plus an allowance of \$60,000 for costs.

Of the original \$700,000: Barak was required to disgorge \$500,000 (since he was entitled to keep \$200,000 earned) and to pay \$548,000 in fees and costs (representing \$378,000 in attorneys fees paid by the Simpsons for the instant action plus \$170,000 in costs).

The hourly fee agreement was deemed voidable for Barak's failure to sign the agreement pursuant to Business and Professions Code § 6148.

The contingency fee agreement was voidable based on Code violations, unconscionability and its inherent unfairness and unreasonableness.

The award also found that Barak did not sign documents "under penalty of perjury" bearing his signature, but rather instructed his assistant to sign his name without informing the court and that this conduct was illegal and below the standard of care. However, no monetary damages were awarded for this conduct.

On Feb. 25, 2004, Judge Hiroshige confirmed Judge Olson's award, which Hiroshige then revised on Sept. 16, 2004, to reflect \$18,587.88 for the reasonable value of attorney fees and costs incurred by the Simpsons after Jan. 20, 2004.

PLAINTIFF

EXPERT(S) Mark Hagarty, landlord/tenant disputes,
San Diego, CA

Andre E. Jardini, attorney fees,
Glendale, CA
Kurt W. Melchior, attorney ethics,
San Francisco, CA

DEFENSE

EXPERT(S) Walter J. Lack, Esq., legal fees,
Los Angeles, CA
John J. Quinn, law firm, Los Angeles, CA

POST-TRIAL As of October 2004, the respondent entered a notice of appeal of the court's confirmation of the award.

EDITOR'S NOTE Defense counsel did not respond to a faxed draft of this report or a phone call.

—Liz Grisales