

**BEFORE THE COMMITTEE ON ARBITRATION
OF THE LOS ANGELES COUNTY BAR ASSOCIATION
ATTORNEY-CLIENT MEDIATION AND ARBITRATION SERVICES
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

MANDATORY FEE ARBITRATION

In the Matter of the Fee Arbitration)	Case No. M-263-16-JB
Between:)	
)	
THEODORE HORWITH)	FEE ARBITRATION
Applicant)	FINDINGS AND AWARD
)	
v.)	DATE: July 21, 2017
)	
GEOFFREY SINDON, ESQ.)	
Respondent)	
_____)	

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INTRODUCTION

MEDIATION & ARBITRATION
SERVICES

Identification of Parties

The Applicant Theodore Horwith is the Client and was present. Applicant was represented by Michael Jay Berger, Esq.

The Respondent Geoffrey Sindon, Esq. is the Attorney and was present.

Binding/Non-Binding

The Arbitration is Binding.

Responsible Attorney

Pursuant to Business and Professions Code 6203(d), the responsible attorney in this matter is Geoffrey Sindon, Esq.

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Arbitration Hearing

A fee arbitration hearing between Applicant and Respondent was held on July 21, 2017, before a panel of arbitrators: Linda McLarnan-Dugan, Esq., Panel Chair, Newel Lee Straus, Esq., Attorney and William Selditz, Lay Arbitrator

Fee Incurred and Amount in Dispute

1.	The amount the Client claims should have been charged:	\$211,000.00
2.	The amount that the Attorney claims should have been charged:	\$431,855.48
3.	The amount that the Client has paid the attorney:	\$211,000.00
4.	If there was a written fee agreement, under the agreement, what fees were charged:	\$431,855.48
5.	Amount of the filing fee:	\$5,000.00

Statement of Facts/Issues in Dispute

Applicant retained Respondent to represent him in Trust Litigation matters in which Applicant was both the defendant as well as the cross-complainant which had been going on for several years prior to Respondent being retained by Applicant.

The matters placed at issue by the Application, Respondent's Attorney Reply and the testimony of the parties, are the following:

1. The nature of the Written Fee Agreement between the parties. Determination of whether Respondent violated B&PC Section 6148, therefore making the Written Fee Agreement voidable at the Applicant's election.
2. The services performed by the Respondent and the reasonable fees and costs due Respondent, if any, over the Two Hundred Eleven Thousand Dollars (\$211,000.00) Client has already remitted to Attorney.

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FINDINGS

Statement, Stipulations, Reasoning and Determination of Questions Submitted

[Business and Professions Code §6203(a)]

1. What was the nature of the written fee agreement between the parties? Did Respondent violate B&PC Section 6148 and/or breach the terms of the Written Fee Agreement? If so, was the Written Fee Agreement voided at the Applicant's election?

On January 27, 2012, Applicant and Respondent entered into a Written Fee Agreement which provided that:

- (1) Respondent would provide legal services to Applicant in the matters entitled In Re: Matter of Horwith Trust of 1988; and Horwith v. Riker.
- (2) Applicant would pay Respondent \$350.00 per hour in fees together with costs incurred. Should Respondent seek to raise his hourly fee, Respondent would give Applicant a written 30 day notice prior to the raise.
- (3) Respondent would provide Applicant with a monthly statement as to the services performed, the time spent, and the fees incurred.
- (4) Any modification to the Agreement required a writing executed by both parties setting forth the modification.

Pursuant to Business and Professions Code §6148, an attorney who contracts to represent a client in which it is reasonably foreseeable that the total expense to a client, including attorney's fees, will exceed one thousand dollars (\$1,000), the contract for services must be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract, signed by both the attorney and the client, to the client. The written contract shall contain all of the following:

- (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees and charges applicable to the case.
- (2) The general nature of the legal services to be provided to the client.
- (3) The respective responsibilities of the attorney and the client as to the performance of the contract.

In addition, Section 6148 provides that "[a]ll bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs."

There is no dispute that a Written Fee Agreement was entered into by and between

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Applicant and Respondent. Further there is no dispute as to the provisions contained in the Written Fee Agreement. Respondent failed to provide Applicant with billing statements in a timely manner which clearly stated the basis upon which the bills were based. The billing statement that was ultimately produced by Respondent, as set forth more fully below, contained block billing and changes in Respondent's hourly rate that were not agreed to between the parties in writing. Respondent did not comply with B&PC §6148 and furthermore, by not providing billing statements in a timely manner, breached the terms of the Written Fee Agreement. Without a valid and binding written fee agreement, the issue becomes the reasonable value of services under a quantum meruit theory.

Under the statute, failure to comply with any provision of B&PC §6148 renders the fee agreement voidable at the option of the client, and the attorney shall thereupon be entitled to collect a reasonable fee. In this instance Respondent failed to abide by the terms of the Written Fee Agreement and follow the provisions of B&PC §6148. The client elected to void the Written Fee Agreement during the Arbitration hearing.

2. What were the services performed by the Respondent and the reasonable fees and costs due Respondent, if any, over the Two Hundred Eleven Thousand Dollars (\$211,000.00) Client already remitted to Attorney?

Applicant acknowledged that he and Respondent had executed the Written Fee Agreement on January 27, 2012 which provided that Respondent would represent Applicant in the Matter of Horwith Trust of 1988; and, Horwith v. Riker. Applicant acknowledged that he was to pay Respondent Three Hundred Fifty Dollars (\$350) per hour in fees and was responsible for all costs associated with the handling of the litigation.

Applicant acknowledged that he and Respondent discussed that Applicant would pay Respondent Five Thousand Dollars (\$5,000) per month towards the fees and costs incurred pursuant to an exchange of emails. Both Applicant and Respondent acknowledged that a written amendment to the Agreement was never prepared and executed by the parties. Both Applicant and Respondent acknowledge that Applicant paid Respondent Five Thousand Dollars (\$5,000) per month from January 30, 2012 until September 30, 2015.

Respondent acknowledged that without giving Applicant a 30 day written notice Respondent increased the amount of fees being charged Applicant from Three Hundred Fifty Dollars (\$350) to Three Hundred Seventy-five Dollars (\$375) per hour approximately sixty (60) days after entering into the Written Fee Agreement.

Respondent further acknowledged that he did not prepare monthly billing statements showing the worked performed, the hours worked, the costs incurred, and any balance owing. Respondent testified that when he was notified that Applicant had filed for a fee dispute arbitration, Respondent went back through his file and prepared monthly statements. When

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questioned, Respondent acknowledged that he did not bring any of the paperwork he had used to prepare the statements.

A review of Respondent's statements clearly showed that Respondent had block billed, therefore one could not determine what time was spent on each item per day. Further, throughout Respondent's statements it was obvious that Respondent estimated the amount of time he spent on a specific task(s), sometimes showing more than 24 hours billed in one day.

Applicant further argued that Respondent stated he would file Petitions or Motions seeking relief and/or attorney's fees; but that Respondent either failed to file or filed late. Applicant therefore questions the value of the services Respondent provided.

Due to Respondent's failure to keep accurate billing records, which were prepared at the time the services were performed; Respondent's own statements that he only created the statements after he learned that Applicant had filed the within matter with the Los Angeles County Bar; and, without any backup information to verify the billing produced by Respondent for the arbitration hearing, it is impossible to determine any additional amounts that Respondent would be due.

AWARD

The hearing panel finds that the total amount of fees, costs or both which should have been charged in this matter is:

\$211,000.00

Of which Applicant is found to have paid:

\$211,000.00

Subtotal:

\$0.00

Pre-award Interest is not applicable.

The filing fee was paid to the Program by Client.

The filing fee is allocated:

Client

\$2,500.00

Attorney

\$2,500.00

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ACCORDINGLY, the following award is made:

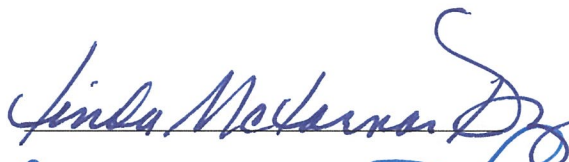
Geoffrey Sindon, Esq. shall pay to Theodore Horwith
fifty percent (50%) of the previously paid filing fee equal to: \$2,500.00

Except as set-forth above, nothing further shall be paid by either
Theodore Horwith or Geoffrey Sindon, Esq.

This award is:

Binding: Either party may convert said award into a judgment pursuant to the
provisions of section 6200 and following of the Business and Professions Code and/or
Section 1280 and following of the Code of Civil Procedure of the State of California.

Linda McLarnan-Dugan
Panel Chair



August 14, 2017

Newel Lee Straus, Esq.
Attorney Arbitrator



August 14, 2017

William Selditz
Lay Arbitrator



August 14, 2017

