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Todd Belous, Esq.
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Re: Lewis v. Pierce Bainbridge, Putney Twombly, et al.
Index No. 652931/2019
Lewis v. Pierce Bainbridge, et al.
Index No. 155686/2019

Dear Mr. Belous:

We represent Don Lewis in the above referenced matter. As you know, we have amended the second New York action -- against his former firm, Pierce Bainbridge, John Pierce and Denver Edwards -- to add Putney Twombly and Michael Yim, Esq., individually, as additional defendants for their willing participation in a scheme to defame Mr. Lewis on a massive scale arising out of a sham "investigation" spearheaded by Mr. Yim. We write to (1) explore resolution of both claims against Putney Twombly and Mr. Yim; and (2) request a copy of the Yim "investigation" report

Factual Background

Mr. Lewis was an Equity Partner and Co-Founder of Pierce Bainbridge's New York office. On October 12, 2018, hours after demanding that illicit financial activity cease, he was falsely accused of sexual misconduct by a Pierce Bainbridge employee. Pierce Bainbridge General Counsel Carolyn Beck hired her personal friend Michael Yim, Esq. of Putney Twombly to "investigate" the misconduct allegations. For ease of reference, we have attached emails and letters with Mr. Yim as well as other documents which clearly demonstrate that Mr. Yim's sham investigation was deeply flawed. To put those documents in perspective, we have provided the following summary and analysis which clearly demonstrate that Mr. Yim failed to conduct a competent investigation because it would have interfered with his predetermined conclusion: a fabricated "credible" finding of sexual misconduct.

Mr. Yim's Failure To Afford Mr. Lewis Due Process As Required By State Law

Mr. Lewis requested that counsel appear with him during Mr. Yim's investigatory interview. Mr. Yim refused. We advised him that precluding Mr. Lewis from having an attorney of his choosing present during any such interview was in direct violation of New York Rules of Professional Conduct

4.2 and the ABA Model Rule 4.2 and the New York State mandatory sexual harassment guidelines. Mr. Yim again refused and bizarrely threatened that our continued efforts to seek due process for Mr. Lewis would be considered an attempt to interfere with his investigation. This prohibition was in extreme bad faith exacerbated by the fact that the demonstrably false allegations against Mr. Lewis were criminal in nature, a fact that Ms. Beck and Mr. Yim repeatedly used in an attempt to extort a settlement and an absurd lifetime gag order from Mr. Lewis, which he refused to accept because he did nothing wrong.

Despite Mr. Yim's bad faith, Mr. Lewis remained willing to answer any questions in writing. However, as noted in our letter of November 8, 2018 to Mr. Yim, our offer was also rejected.

Ultimately upon being pressed, Mr. Yim admitted that Mr. Lewis was not afforded "due process" and even admitted he was "biased." We never heard from Mr. Yim again, and notwithstanding these baseline flaws, Mr. Yim opined in writing that he was "fully confident in the process," wrapped up the investigation as final, and Pierce Bainbridge terminated Mr. Lewis on the basis of his "biased" but "credible" finding. Notwithstanding Mr. Yim's promises, we have never seen his final report.

The False Allegations

The False Accuser's story changed several times. Even more disturbing, however, is that Mr. Yim, who had advised his role was one of a "fact-finder," investigator, also changed his story several times about the timeline and withheld documents.

The Time of the Alleged Incident Immediately Destroyed Accuser's Credibility

The accuser alleged the sexual misconduct occurred in the office on Saturday July 7, 2018. Our client was repeatedly refused incredibly salient details such as time of occurrence. Mr. Lewis said from Day 1 that Mr. Yim's failure to allow him access to any materials and to provide sufficient information seriously undermined his ability to respond. Mr. Yim changed the alleged time of occurrence several times. He first refused to provide the time and answered, obtusely, by providing the date. He then advised prior counsel orally that the event occurred at 11 a.m. When advised that the alleged incident could not have occurred because Mr. Lewis was not in the office on the morning of July 7, Mr. Yim said he "misspoke." We then asked a third time in writing for the timeline to which he responded with a one-page entirely non-responsive document. With the investigation unraveling and us threatening to bring claims, we asked Mr. Yim a fourth time for a time of occurrence and after agreeing to review his interview notes, Mr. Yim finally admitted he never questioned the False Accuser about the timeline. The non-responsive document was one of two documents produced by Mr. Yim. Both were produced well after the fact, both were cherry-picked, both were produced to cover his clumsy tracks. We heard nothing thereafter.

Second Allegation of Misconduct Disproved

In an attempt to bolster her accusation of misconduct, the False Accuser alleged that Mr. Lewis acted inappropriately two weeks later when he allegedly invited her to his apartment to drop off Yankee tickets. Mr. Yim considered this to be a significant event. He was wrong.

The truth is that on Friday July 20, Beck posted in a firm-wide email that she was giving away two Yankee tickets. Lewis said he would take them. At around 11:20 a.m., the False Accuser sent Mr. Lewis a private Slack message offering to bring the tickets to his apartment. Mr. Lewis thanked her but said he would pick up the tickets in the office; she offered again to drop them off during her lunch hour; she asked his floor and buzzer number, but Mr. Lewis said he would come downstairs to meet her. He waited outside his building, she handed him the tickets and went on her way.

Incredibly, Mr. Yim withheld this single-page Slack exchange between the False Accuser and Lewis which alone torpedoed her claim. Would any reasonable person – or unbiased investigator – believe that thirteen days after she allegedly locked herself away from her alleged assaulter in the office bathroom, the False Accuser would voluntarily put herself in harm’s way in his apartment? It wasn’t until we threatened suit that Mr. Yim miraculously turned over the exculpatory one-page document, which could have been uncovered immediately after she made the false allegation. Moreover, General Counsel Beck also had contemporaneous texts on her personal phone from Mr. Lewis which stated the False Accuser “graciously offered to walk him the tickets.” There is very little chance that Ms. Beck did not share this significant fact with Mr. Yim. Indeed, Mr. Yim and Ms. Beck essentially doctored evidence and conducted the investigation in a manner that is akin to fraud on the Court. They manufactured this part of the false story, notwithstanding a one-page withheld document that completely exposed their lie.

Mr. Yim’s Extortionate Threats of Potential Criminal Charges

Mr. Yim repeatedly made threats of potential criminal charges by the accuser if Mr. Lewis did not resolve the matter to the firm’s satisfaction. Egregiously, these threats by Mr. Yim were couched with language about needing to “appease [the accuser]” and “[the accuser] needs to feel safe in her job.” Furthermore, as you know, Mr. Yim’s threats of potential criminal proceedings violated RPC 3.4. When we advised Mr. Yim of his unethical behavior, he never responded. We note that such threats may potentially constitute criminal activity under the Hobbs Act. See *United States v. Thompson*, 647 F.3d 180, 186–187 (C.A.5 2011) (a person’s labor is property capable of being extorted); *United States v. Coffey*, 361 F.Supp.2d 102, 108–109 (E.D.N.Y.2005) (the right to pursue a lawful business is extortable property under the Hobbs Act).

The threats were not limited to criminal prosecution, however. Throughout subsequent settlement negotiations, suggestions of “Career Killer” and repercussions of the “MeToo” environment were thrown around. The purpose of these threats was to keep Mr. Lewis from making his claims public and exposing the financial malfeasance and dysfunction at the firm. The fact that no one once said there was a “credible finding” to bolster those threats creates a strong appearance that your client is either lying now or was afraid to stand by its bogus findings and hoped the deception would never be uncovered; the same reason it was never shared with Mr. Lewis.

Yim Ignored the False Accuser’s History

Mr. Yim failed to conduct even a basic investigation into the background of the accuser after issues were flagged by Mr. Lewis. Mr. Yim could have learned in less than a day that the accuser maintained two names, REDACTED REDACTED

partner, David Hecht; and was called a “liar” by others in the firm. This cursory investigation would have also revealed that she made her false allegations a day after e-mails were circulated indicating her job was in jeopardy or, at least, that the firm was considering hiring a new person to supervise her. Your client did not even bother to investigate the suspicious timing of her false accusation.

Both your firm and Pierce Bainbridge claimed in court filed documents that Mr. Lewis put the accuser in harm’s way by revealing she had two names. As it turns out, the firm’s bookkeeper knew, multiple partners knew and when the bookkeeper communicated the same to Mr. Lewis in September, she categorized it as “trivia” with no admonitions about privacy or confidentiality.

Even more egregiously, a ten-second google search would have revealed a Twitter page under her original name with a photograph and a comment indicating where she worked and her work e-mail address. Both names appear on a couchsurfing.com page with a photo. So, if she was hiding as you and PB speciously suggest, she was doing so in plain sight; and she herself had revealed both names to the world.

Another significant fact was what appears to be the accuser’s Facebook posting days after Mr. Lewis was placed on administrative leave: “I’m cashing in tonight.” Strangely, the accuser deleted her Facebook sometime thereafter.

When the accuser’s checkered background is compared to the unblemished background and stellar reputation of a member of the bar, with two degrees from Harvard, who has never been accused of anything like this in his life and who just two weeks earlier was nominated Assigning Partner and Co-Chair of Diversity and Inclusion, it comes up woefully short. We would be interested in whether Mr. Yim took all, or even any of these details, into account – or simply ignored them – in concluding there was a “credible” finding of wrongdoing in the never produced investigation report.

Failure to Inform Lewis of Investigation Findings

Mr. Yim promised in an email on November 7, 2018, that his final report would be provided to us. However, despite his assurance, Mr. Yim has refused to provide the report. His excuse? Mr. Lewis was not employed at Pierce Bainbridge and therefore there was “no obligation” to provide him – or his attorneys – with a copy of the report. We once again request a copy of Mr. Yim’s flawed report and identification of the “conduct that constituted retaliation against two partners” and the names of those partners. (See LAC, ¶ 27).

Spoilation of Evidence By The False Accuser

By letter dated November 8, 2018, we informed Mr. Yim that the False Accuser’s on-line activity undermined her credibility. If he had done a competent investigation, he would have already known this. Even worse, Mr. Yim made affirmative statements about the need to appease the False Accuser. Incredibly, although we had provided her on-line activity to Mr. Yim, he ignored it, but worse, days later, the False Accuser deleted the posts. Both Putney Twombly and PB are disingenuously defending the wrongful termination action by asserting in their motions to dismiss that Mr. Lewis put the False Accuser at risk by revealing she had two names, despite the fact that Mr. Yim was advised they were on her twitter page, couchsurfing.com, and known by Pierce Bainbridge co-

workers. If one searches her original name, the search reveals both names, and a search of both names reveals her “couchsurfing.com” page.

Notice of Misconduct Was Provided But Mr. Yim Never Responded

By letter dated November 8, 2018, we catalogued Mr. Yim’s misconduct – at least the misconduct of which we were aware. We pointed out a bevy of major deficiencies in his investigation and told him that we strongly believed he had altered or destroyed documents. Mr. Yim’s failure to respond is telling. There are very few lawyers who would be on a receiving end of such a letter who would have failed formally to respond; it appears instead, Mr. Yim tried to sneak in a bogus “credible” finding to appease his friend Beck.

Mr. Yim Insists on an Improper Lewis Lifetime Ban on Speaking with Pierce Bainbridge Employees

Mr. Yim insisted that, as part of any settlement with Pierce Bainbridge, Mr. Lewis would have to agree to a lifetime ban prohibiting him from speaking with any employee of Pierce Bainbridge, including longtime friends. The process was so obviously corrupt, and the desire so strong to silence Lewis and cover-up the financial fraud, that Beck and Pierce Bainbridge tried to accomplish what Mr. Yim could not get done, and attempted to hold dominion over our client’s inalienable rights in their termination letter, stating:

“You may not communicate with any other employees of the firm, except that you may contact me via email for management of administrative issues related to your termination.”

Default Judgment -v- Negotiate Findings In Mere Hours

Mr. Yim’s improper conduct continued when Mr. Lewis changed counsel and retained Mr. Brickman. The day after receiving Mr. Lewis’s strong denial letter, which included the absolute refutation of the second incident, and notification that Mr. Lewis was retaining new counsel, Mr. Yim’s initial call to new counsel offered nominal severance pay, a lifetime gag order and that a “default judgment” would go in the file that no one would ever see. Counsel informed Mr. Yim that Mr. Lewis would agree to nothing that did not include clearing his name. Mere hours later, incredibly Mr. Yim telephoned prior counsel and offered an opportunity for Mr. Lewis and his counsel to “negotiate the language of the investigations findings so that there would hopefully be no conclusion by the firm that Mr. Lewis had committed a sexual assault, only that it had been alleged.” This is yet another example of Mr. Yim’s inappropriate conduct and complete lack of the required impartiality and/or competence to perform the investigation.

Mr. Yim’s Finding Of Credible Allegation Results in Massive Defamation of Mr. Lewis

Pierce has used Mr. Yim’s sham “credible finding” to smear Mr. Lewis in the press on a massive scale. Pierce has characterized him an “Extortionist”, “Terrorist”, “Credibly Accused Sexual Assaulter” and “Credibly Accused Sex Predator,” based on Mr. Yim’s sham investigation for which he and Putney Twombly bear tremendous responsibility. To be clear, Mr. Lewis learned for the first time the alleged “credible” finding in the Los Angeles sham complaint. Rather than doing the right

thing and disavow the allegations, Putney Twombly has stood behind them and by doing so increased the exposure of Mr. Yim and the firm exponentially.

Summary of Mr. Yim's Investigation Flaws

Simply stated, Mr. Yim was grossly negligent in failing to conduct any semblance of an investigation within the guidelines of New York State's "Sexual Harassment Policy for All Employers"¹ which specifically mandates "**All persons involved**, including complainants, witnesses and alleged harassers **will be accorded due process**, as outlined below, to protect their rights to a fair and impartial investigation." (Emphasis supplied). A summary of Mr. Yim's misconduct is as follows:

1. He failed to afford any due process to Mr. Lewis as required by State law and RPC's;
2. He failed to interview Mr. Lewis;
3. He failed to establish the timeline of events despite multiple requests;
4. He failed to provide a summary of prior relevant incidents which included the Yankee ticket incident discussed in detail above;
5. He failed to provide exculpatory documents;
6. He failed to consider exculpatory evidence;
7. He failed to consider the adverse impact of the exculpatory evidence on the accuser's credibility;
8. He engaged in spoliation by permitting deletion of critical on-line materials shortly after they were reported; then signed off on a complaint filed with the NYC court directly undermined by the deleted materials.
9. He failed to respond to charges that key documents were altered and/or destroyed;
10. He refused to provide documents, particularly exculpatory documents;
11. He failed to respond to our November 8, 2018 "Investigation Flaws" Letter;
12. He permitted the False Accuser to have access to view Pierce Bainbridge's e-mails during the investigation;
13. The False Accuser was allowed to contact Mr. Lewis's former employer, in writing, to report that he was on administrative leave;
14. He repeatedly made threats of potential criminal charges by the False Accuser if Mr. Lewis did not resolve the matter to the firm's satisfaction;
15. He failed to provide the written documentation of the investigation; and
16. He has refused to provide the report of his sham investigation on the basis that he was not obligated to do so.
17. He made a "credible" finding notwithstanding all of the above, that has been the foundation and catalyst to defame our client on a massive public scale.

After reviewing all of these failings, a reasonable person could only conclude, as we have, that Mr. Yim (1) utterly failed to conduct an investigation; (2) was wedded to a preordained conclusion of a "credible finding" of sexual misconduct to assist his friend Beck and her firm; (3) deprived Mr. Lewis of basic due process; and (4) violated the RPC's, and engaged in potentially criminal behavior, by making extortionate threats of criminal prosecution in the context of civil litigation, in exchange for Mr. Lewis surrendering his livelihood. Mr. Yim's professional and ethical wrongdoing allowed Pierce Bainbridge to use his sham conclusion to mount a smear campaign against Mr. Lewis. The massive

¹ Effective October 9, 2018.

public defamation of Mr. Lewis has resulted in immense damage to his reputation which has, and will continue to have, lifelong professional and personal repercussions for which we seek not only compensatory but punitive damages.

Demand for the Putney Investigation Report and Related Materials

On November 7, 2018, Mr. Yim promised that we would receive a copy of the investigation report. Thereafter, Mr. Yim refused to communicate with us despite our repeated requests for the report and his promise to produce a copy of the report. Six months later we learned for the first time from a reporter who read the *pro se* Pierce Bainbridge Complaint filed in Los Angeles County on May 15, 2019, that Mr. Yim had issued a report on November 30, 2018 which contained an alleged “credible” finding of sexual assault. (LAC ¶ 27). According to the LAC, the “report” also alleged that Mr. Lewis:

- obstructed an internal investigation of credible allegations of sexual assault (¶ 1);
- threatened to retaliate against the False Accuser if she reported the alleged sexual assault (¶17; 19);
- made “retaliatory comments” to the False Accuser (¶ 21); and
- retaliated not only against the False Accuser but two of the Firm’s partners (¶27).

We reiterate our demand for a copy of the “investigation” report completed by Putney Twombly on November 30, 2018, as well as all related materials, including but not limited to Mr. Yim’s contemporaneous interview notes, Slack messages, drafts of the report, the firm’s hard drives and all litigation hold letters which were issued by Pierce Bainbridge and/or Putney Twombly . We also reiterate our November 2018 demands that Mr. Yim and Putney Twombly comply with their requirements to maintain and preserve all potentially relevant information. See *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003); *Voom HD Holdings LLC v. EchoStar Satellite LLC*, 2012 WL 265833 (N.Y.A.D. 1 Dept. 2012).

Conclusion

Mr. Lewis’s response to Putney Twombly’s motion to dismiss is due in early August, and we intend to lay out all of these issues in detail in the opposition. In the interim, we request that you advise Putney Twombly’s malpractice insurance carrier of the new civil action against the firm and Mr. Yim. Cynthia Fitzgerald, one of Mr. Lewis’s colleagues, is working with me on this matter. She will reach out to you directly to explore the possibility of an early resolution of this matter. Should you wish, instead, to discuss and/or resolve this matter directly with me, do not hesitate to reach out to me.

Very truly yours,



Neal Brickman

c: Donald Lewis, Esq.
Cynthia Fitzgerald, Esq.