

NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK - HONORABLE JUSTICE ANDREA MASLEY

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DONALD LEWIS,

Plaintiff,

Index No: 155686/2019

-against-

PIERCE BAINBRIDGE BECK PRICE &
HECHT LLP, JOHN MARK PIERCE,
DENVER G. EDWARDS, CAROLYNN K.
BECK, CHRISTOPHER LAVIGNE,
LITTLER MENDELSON, P.C., SYLVIA
JEANINE CONLEY, PUTNEY TWOMBLY
HALL & HIRSON LLP, MICHAEL YIM,
and JANE DOE,

Defendants.

AFFIRMATION IN OPPOSITION

Motion Sequence #9

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Ethan Leonard, an attorney duly admitted to practice before the Courts of this State,
affirms the following under penalties of perjury:

1. I am an attorney with The Law Offices of Neal Brickman, P.C., attorneys for Plaintiff herein. I am fully familiar with the facts and circumstances of this matter based upon files in my possession and communications with the Plaintiff. I respectfully submit this affirmation in partial opposition to Mukasey Frenchman & Sklaroff LLP's Order to Show Cause (1) seeking to leave to withdraw as counsel for the PB Defendants as required by Rule 1.16(b)(1), and as permitted pursuant to Rules 1.16(c)(5), 1.16(c)(7) and 1.16(c)(12); and (2) staying this action for a further thirty (30) days to allow the Pierce Bainbridge Defendants (the "PB Defendants") to obtain new counsel.

2. Plaintiff does not oppose the Mukasey's firm's withdrawal, but does oppose any additional stay to find new counsel (because, *inter alia*, PB likely will, as it has routinely done, represent itself) and respectfully requests that the Court explore *in camera* what ethical violations

would result from the Mukasey firm's continued representation of the PB Defendants.

3. Plaintiff is requesting such an *in camera* review because we have strong reason to believe -- based on information provided to us by former and current employees and partners of PB -- that PB has misled this Court and, in the process, corrupted these proceedings.

4. Specifically, we have reason to believe that both the motion to compel arbitration and the motions to dismiss have been based, in material part, upon false affidavits and falsehoods presented to the Court with the express intent on the part of the PB Defendants to deceive this Court and improperly influence these proceedings.

5. Among other items, it has been communicated that the PB Defendants were aware of their arbitration obligations well before December 2019, in direct contravention of the specific representations to this Court, and only chose to make such knowledge public after their LA Action against Mr. Lewis had been discharged against them in Mr. Lewis's favor.

5. Mr. Mukasey, in his motion to withdraw, cites to Rule 1.16(b)(1) as mandating his firm's withdrawal. That section provides that withdrawal is compelled when "(1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law." In order to preserve the integrity of these proceedings and ensure that both the Court's prior and future rulings are proper and based on complete and accurate facts, it is imperative that the Court understand what ethical violations compel the Mukasey firm's withdrawal.

6. As noted above, we have been led to believe -- based on information provided to us by former and current employees and partners of PB -- that the PB Defendants have destroyed pertinent and material evidence; have manufactured false "evidence" so as to inappropriately

bolster their defenses in the matters in which they appeared before this Court; and mislead the Court as to when they were aware of the arbitration provisions that were part of the recent motions before the Court.

7. Given these new circumstances, it is clear not only that the Court should conduct an *in camera* review of the bases for the Mukasey firm's instant Order to Show Cause, but also re-consider the motions recently decided concerning arbitration, and, depending what is learned from the *in camera* review, potentially adjourn any determination on the pending motions to dismiss as to Putney and Littler to allow for interim discovery or an opportunity to submit supplemental filings.

8. Given the apparent reality that – in accord with common sense as the Court itself noted during oral argument on the motions to compel arbitration – the PB Defendants were aware of the arbitration provisions from very early on, but only brought them to the Court's attention directly after learning that their California action had been dismissed, it is clear that remedial action is warranted.¹

9. This is especially so now that there is additional corroboration for Plaintiff's assertions that the PB Defendants' filed the LA Action, a clearly sham litigation, solely to defame him, and, when that action failed, they immediately moved to compel arbitration so as to eliminate the public forum in which Mr. Lewis could clear his name.

10. Rule 3.3 – as referenced in Mr. Mukasey's moving papers – mandates that:

¹ Just as these allegations by Plaintiff have now been corroborated, Plaintiff's allegations of financial impropriety which go to the heart of his case are being borne out by recent disclosures from various current and former partners of PB, as well as third parties who also, like Mr. Lewis, have been damaged by the bad faith actions of the PB Defendants.

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

11. While withdrawal does not remove all obligations between a client and its former counsel, it is clear that Ethical Rule 3.3(c) requires that the duties of remediation and/or disclosure to the Court “apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.” As such, at a minimum, *in camera* review of the bases for the mandated withdrawal is warranted.

12. In addition, it is clear that no further extension of time for the PB Defendants to find new counsel is warranted.

13. First, the Mukasey firm indicated its intention to withdraw on March 9, 2020, and Lewis indicated that he would not oppose the withdrawal itself. By the current oral argument date, April 16, 2020, the PB Defendant will have already had over thirty-five (35) days to retain new counsel. No further extension is warranted or equitably justifiable.

14. Second, and relatedly, given the current State-wide directives, the time before the current order to show cause can be determined will provide even more time than under normal circumstances and an additional thirty (30) days would not serve the ends of justice or equity.

15. Third, PB is a litigation boutique, although with fewer attorneys than it once had, but which has represented itself on numerous occasions, including in both the initial New York

action (not ultimately served or further pursued) and the LA action against Mr. Lewis. There is no reason to believe at this juncture that they would not simply represent themselves herein.

16. Fourth, and also dispositively, Mr. Mukasey's moving papers provide no legal authority for supporting a stay, nor do they provide any "good cause," much less any "excellent reason" as required under CPLR 2201.

WHEREFORE, it is respectfully requested that the Court enter an Order:

- a. Denying any additional extension of time for the PB Defendants to obtain new counsel;
- b. Directing that Mr. Mukasey reveal to the Court, *in camera*, the mandatory basis for his withdrawal under Rule 1.16(b)(1); and
- c. For any such other or further relief for Plaintiff as this Court may deem fit and proper.

Dated: New York, New York
April 2, 2020



Ethan Leonard, Esq.