

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

----- X
MICHEL KADOSH, individually and on behalf of
213 W. 85th ST., LLC,

Plaintiff-Respondent,

NOTICE OF MOTION

-against-

NY County Clerk's
Index No. 651834/10

DAVID KADOSH, 114 W. 71ST ST., LLC
30 LEXINGTON AVE., LLC and
3D IMAGING CENTER, CORP.,

Appellate Division
Docket No. 2018-3037

Defendants-Appellants.

----- X
DAVID KADOSH, individually and as a member of
213 W. 85th ST., LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

PLEASE TAKE NOTICE, that upon the annexed the affirmation of David J. Aronstam dated August 8, 2018, the Amended Notice of Appeal and Pre-Argument Statement dated February 6, 2018, the Decision and Order of the Court below (Kornreich, J) dated November 3, 2017 and entered on November 2, 2017, upon the trial transcripts, the exhibits, and upon all of the papers and proceedings heretofore had herein, the Plaintiff- Respondent will move this Court, at the Courthouse, 27 Madison Avenue, New York NY 10010 on the 27th day of August, 2018 at 10:00am in the forenoon of that day or as soon thereafter as counsel may be heard, for an Order or Orders:

(A) Dismissing the appeal in its entirety on the basis that the Appellant stipulated in open court on the record to waive his right to appeal;

(B) Dismissing the appeal in its entirety on the basis that the notice of appeal was untimely filed;

(C) Granting sanctions to the Plaintiff-Respondent pursuant to Chief Administrator Rule § 130-1.1 on the grounds that it was brought to the attention of the attorney for the Appellant that the Appellant had waived his right to appeal;

(D) Staying all further proceedings in this appeal pending the determination of this motion; and

(E) Granting such other relief which is just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering papers, if any, shall be due at least seven (7) days before the return date of this cross-motion.

Dated: New York, New York
August 8, 2018

Yours, etc.,

David J. Aronstam
DAVID J. ARONSTAM, ESQ.
Attorney for Plaintiff-Respondent
85 Broad Street, 18th floor
New York, New York 10004
(212) 949-6210

TO: MARTINO & WEISS
Attorneys for Defendant-Appellant
800 Westchester Avenue, Suite 608-S
Rye Brook, New York 10573
(914) 668-5506

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

----- X
MICHEL KADOSH, individually and on behalf of
213 W. 85th ST., LLC,

Plaintiff-Respondent,

-against-

DAVID KADOSH, 114 W. 71ST ST., LLC
30 LEXINGTON AVE., LLC and
3D IMAGING CENTER, CORP.,

NY County Clerk's
Index No. 651834/10

Appellate Division
Docket No. 2018-3037

Defendants-Appellants.

----- X
DAVID KADOSH, individually and as a member of
213 W. 85th ST., LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

----- X
**AFFIRMATION IN SUPPORT OF PLAINTIFF-RESPONDENT'S MOTION
TO DISMISS THE APPEAL, FOR SANCTIONS AND FOR A STAY**

DAVID J. ARONSTAM, an attorney duly admitted to practice in the courts of New York
State, affirms the following under the penalties of perjury:

1. I am the attorney for the Plaintiff-Respondent in this appeal and I make this
affirmation in support of the Plaintiff-Respondent's motion to:

(A) Dismiss the appeal in its entirety on the basis that the Appellant stipulated in open
court on the record to waive his right to appeal;

(B) Dismiss the appeal in its entirety on the basis that the notice of appeal was untimely filed;

(C) Grant sanctions to the Plaintiff-Respondent pursuant to Chief Administrator Rule § 130-1.1 on the grounds that it was brought to the attention of the attorney for the Appellant that the Appellant had waived his right to appeal and the notice of appeal was filed late;

(D) Stay all further proceedings in this appeal pending the determination of this motion; and

(E) Grant such other relief which is just and proper under the circumstances.

2. I requested that the attorney for Appellant David Kadosh, Douglas Martino, withdraw this appeal because (a) Appellant unequivocally agreed not to appeal as part of a settlement made in open court and (b) Appellant filed the notice of appeal sixty days after receiving notice of entry of the paper appealed from. To date, Mr. Martino has refused to withdraw or dismiss this appeal, instead settling the trial transcripts and stating that he would file the brief this week.

3. Annexed hereto as Exhibit "A" is the Amended Notice of Appeal and the Pre-Argument Statement efiled in the Court below on February 6, 2018.¹

4. Annexed hereto as Exhibit "B", is the Decision and Order of the Court below dated November 3, 2017 from which this appeal is taken.

5. No background regarding this proceeding is necessary for the Court to decide this motion. In the middle of the trial of this protracted litigation between two brothers, a partial settlement was reached in open court and placed on the record. The settlement included an

¹ The notice of appeal is "amended" only because the appellant's first attempt to efile it was rejected by the clerk responsible for vetting efiled documents. No prior notice of appeal was ever filed.

agreement that neither side would appeal the decision of the Court below on the one issue left open for the Court below to decide.

The July 21, 2016 agreement in open court on the record

6. Annexed hereto as Exhibit “C” is a copy of the relevant portions of the trial transcript of July 21, 2016 in this proceeding (“Trial Transcript 7/21/16”). At page 4 of the transcript, the then attorney for Plaintiff, Paul Sarkozi, announces to the Court that the parties “have agreed upon an alternative proceeding” which he then goes on to detail to the Court.

7. At page 9 of Trial Transcript 7/21/16, lines 7 – 10, Mr. Sarkozi states:

“The Court, when the Court renders its decision as to how to allocate the funds, that decision, will, the parties have stipulated and agreed, will be final. That the parties are waiving all rights to appeal.”

8. After providing further terms of the agreement, Mr. Sarkozi asks “Is that correct, Mr. Perrone? Mr. Perrone, the then attorney for the Appellant answers “Yes. Yes, on behalf of my clients.” See Exhibit C, Trial Transcript 7/21/16, page 9 lines 15-17.

9. David Kadosh (and his wife Eryka) were then allocuted at pages 15- 18 of the Trial Transcript 7/21/16 and both agreed to the settlement.

The August 5, 2016 agreement

10. Then on August 5, 2016, an amendment to the settlement agreement was made in open court on the record. Attached is Exhibit “D” hereto is the entire transcript of the proceedings of August 5, 2016 (“Trial Transcript 8/5/16”).

11. The sum of \$7,039,442.02 was being held in escrow as the proceeds from the sale of the premises at 213 West 85th Street which was owned by the party 213 West

85th Street, LLC. Trial Transcript 8/5/16, page 2, line 19. Michel Kadosh, plaintiff-respondent, and David Kadosh, defendant-appellant, each owned 50% of the LLC.

12. The new agreement was to disburse the sum of \$2.7million to each of them from the escrow. Trial Transcript 8/5/16, page 3, lines 13-15. The entitlement to the balance of \$1,634,442.03 would be determined by the Court by a special procedure. Trial Transcript 8/5/16, page 3, line 16 – page 4, line 6.

13. Michel Kadosh and David Kadosh were allocuted simultaneously. Trial Transcript 8/5/16, page 6. At Trial Transcript 8/5/16, pages 7-9, standard allocutions are made of the parties that they understood and agreed with the settlement and had been given an opportunity to consult with counsel.

14. At Trial Transcript 8/5/16, page 10, lines 6-9, the following exchange takes place:

**“Mr. Sarkozi: And do you understand that you are
waiving any right to further evidence or appeal?
Mr. M. Kadosh: Yes.
Mr. D. Kadosh: Yes.”** (Emphasis provided.)

15. Thus, Appellant David Kadosh states under oath that he is waiving his right to appeal after stating that he agrees with the settlement terms, he understands the settlement terms and he had the opportunity to discuss the settlement terms with his attorney.

16. Despite the very clear waiver of the right to appeal, the attorney for David Kadosh has refused to withdraw this appeal.

The decision of the Court below

17. The Decision and Order of the Court below dated November 3, 2017 is attached hereto as Exhibit B. In the decision, the Court awarded the entire \$1,634,442.02 to Michel Kadosh, the plaintiff-respondent.

18. In the decision, at page 2, the Court points out that the claims between the parties were "released and resolved" "from the beginning of the world to today's date." This mutual release is further grounds as to why the appeal does not lie and should be dismissed.

Appellant's waiver of his right to appeal is binding

19. As the matter was stated in *People v. Ventura*, 139 A.D.2d 196, 202-03, 531 N.Y.S.2d 526, 530-31 (1st Dept. 1988):

While the Court of Appeals in *Williams* spoke of the People's "justification" for the waiver, in civil cases the Court of Appeals has required, not dissimilarly, that an agreement not to appeal be based upon some "consideration". In *Ogdensburgh & Lake Champlain R. R. Co. v Vermont & Canada R. R. Co.* (63 NY 176, 180) the court ruled that the right to appeal, though waivable, is nevertheless "a valuable right and the agreement to surrender it must be based upon some consideration or the facts must estop the party from exercising it." In *People v Stephens* (52 NY 306, 310) the court found sufficient consideration in the fact that in exchange for his consent not to appeal, the State Attorney-General procured from the adverse party a waiver of all claims for costs. Likewise, in *Townsend v Masterson, Smith & Sinclair Stone Dressing Co.* (15 NY 587) the court enforced a waiver of the right to appeal where both parties to the litigation, each of whom disputed certain rulings, mutually agreed to waive appellate review (*supra*, at 589-590).

20. David Kadosh received the following consideration for agreeing not to appeal:

A. He received the sum of \$2.7million from the escrow of the building sale proceeds.

Trial Transcript 8/5/16, p. 3.

B. Michel Kadosh also agreed not to appeal and if the Court ruled in David's favor, David would not have to face an appeal. Trial Transcript 8/5/16, p. 10.

C. Documents were stipulated into evidence without any further testimony. Trial Transcript 8/5/16, p. 4.

D. Michel Kadosh gave up the right to cross-examine David Kadosh. Trial Transcript 8/5/16, p. 10.

21. Appellant David Kadosh thus received many items in consideration of his agreement not to appeal which is binding upon him.

The notice of appeal was untimely filed

22. Attached as Exhibit "E" hereto is the Notice of Entry of the Decision & Order of the Court below of November 2, 2017 which is the paper appealed from.

23. The then attorney for Michel Kadosh efiled the notice of entry on **November 6, 2017**. The then attorney for Appellant David Kadosh, Davidoff Hatcher & Citron, LLP did not file a notice of appeal, presumably because they knew full well that their client had agreed not to appeal.

24. The current attorney for David Kadosh, Douglas Martino, filed the Amended Notice of Appeal on **February 6, 2018**. See Exhibit A.

25. Pursuant to CPLR 5513(a), a notice of appeal must be filed within thirty days after receipt of notice of entry of the paper appealed from. CPLR 2103(b)(7) provides for electronic filing and service of the papers. See also 22 NYCRR § 202.5b, bb to the effect that electronic filing under the circumstances in the case at bar is good service.

26. Appellant having filed a notice of appeal for the first time on February 6, 2018, approximately sixty days after receipt of notice of entry, the appeal is untimely and should be dismissed.

27. “The power of an appellate court to review a judgment is subject to an appeal being timely taken...” *Hecht v. New York*, 60 N.Y.2d 57, 61, 467 N.Y.S.2d 187, 189, 454 N.E.2d 527, 529 (1983). Accordingly, the Court is without jurisdiction to hear this appeal and it should be dismissed.

Motion for sanctions

28. Movant respondent seeks sanctions against the appellant and his counsel pursuant to 22 NYCRR 130-1.1 (a) and (b) which provides in pertinent part:

“a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part...

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

...In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, **or was brought to the attention of counsel or the party.**” (Emphasis provided).

29. I have requested that Mr. Martino withdraw this appeal on several occasions. Initially on August 1, 2018 I advised him that his client had agreed not to appeal. Mr. Martino responded by stating that my “efforts would be better spent addressing the merits of the appeal rather than threatening attorneys.” See Exhibit “F”.

30. On August 3, 2018 I sent an email asking Mr. Martino to provide me with grounds as to why the appeal would not be dismissed and he responded by stating that he did not have to justify his position. See Exhibit “G”.

31. I then started drafting this motion and realized that the notice of appeal was not filed on a timely basis. On August 7, I sent another email to Mr. Martino requesting that he withdraw the appeal for this reason. Mr. Martino ignored this request, instead requesting that I adjourn the pre-argument conference currently scheduled for September 21, 2018. See Exhibit “H”.

32. To date, Mr. Martino has not withdrawn the appeal.

33. The prosecution of this appeal is entirely frivolous – it is untimely and the Appellant agreed not to appeal.

34. In light of the foregoing, movant is entitled to an award of sanctions in an amount to be determined by the Court. See *Levy v. Carol Mgmt. Corp.*, 260 A.D.2d 27, 34, 698 N.Y.S.2d 226, 232 (1st Dept. 1999) (among the factors the court considers is whether the conduct was continued when it became apparent, or should have been apparent, that the conduct was frivolous, or when such was brought to the attention of the parties or to counsel (22 NYCRR 130-1.1 [c])).

35. Part of the sanctions award should be the attorney’s fees incurred by plaintiff-respondent, Michel Kadosh, for having to make this motion to dismiss this frivolous appeal. I have been admitted since 1985 and as an experienced litigator in New York County, my hourly fee of \$500 is reasonable. See *DeRosa v. Chase Manhattan Mortg. Corp.*, 15 A.D.3d 249, 250, 793 N.Y.S.2d 1, 2 (1st Dept. 2005):

“Conduct which violates any of the three subdivisions [of Rule 130] is grounds for the imposition of sanctions. Here, counsel violated all three

sections, requiring the imposition of a harsher penalty.”

36. The prosecution of this appeal is clearly without merit, it is being prosecuted to harass the Respondent and it is being prosecuted despite Appellant being made aware of its frivolous nature. With respect, maximum sanctions should be imposed upon Appellant and his counsel.

Motion to stay

37. Movant seeks an order staying all proceedings in this appeal pending the decision on this motion. It would be patently unfair for plaintiff-respondent to have to engage in any other legal actions to defend the appeal under the circumstances. For instance, a pre-argument conference has been scheduled for September 21, 2018. See Exhibit “I”. It would be unfair for Respondent to have to pay me to attend that conference in light of the fact that the appeal has no merit.

38. Mr. Martino stated in his email of August 7 (Exhibit H) that he expects to file his brief this week. This would mean that Respondent would then have thirty days to file an answering brief.

39. Given the frivolous nature of this appeal, it would be prejudicial for plaintiff-respondent Michel Kadosh to have to incur further legal fees for brief writing and attending the pre-argument conference. With respect, a stay of all proceedings in this appeal pending the resolution of this motion should be granted.

WHEREFORE, it is respectfully requested that this Court enter an Order or Orders granting Plaintiff-Respondent’s motion to dismiss the appeal; granting Plaintiff-Respondent’s motion for sanctions; granting Plaintiff-Respondent’s motion for a stay of all proceedings; and granting such other and further relief as is just and proper under the circumstances.

Dated: New York, New York
August 8, 2018

Yours etc.,

David J. Aronstam
DAVID J. ARONSTAM, ESQ.
Attorney for Plaintiff-Respondent
Michel Kadosh
85 Broad Street, 28th floor
New York, New York 10004
(212) 949-6210

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:PART 54

-----X
MICHEL KADOSH, individually and as a
Managing member of 213 W. 85th ST., LLC,

Index No. 651834/2010

Plaintiff,

-against-

**AMENDED NOTICE OF
APPEAL**

DAVID KADOSH, 114 W. 71st ST., LLC,
30 LEXINGTON AVE., LLC & 3D IMAGING
CENTER, CORP.

Defendant.

-----X
DAVID KADOSH, individually and as a
Member of 213 W. 85th ST, LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third Party Defendant.

-----X

PLEASE TAKE NOTICE that DAVID KADOSH ("Defendant"),
by his undersigned attorneys, hereby appeals to the Appellate
Division of the Supreme Court of the State of New York, **First
Department**, from the Decision & Order by the Honorable Shirley
Werner Kornreich, Supreme Court of the State of New York County
of New York, in this action, dated November 3, 2017 duly
entered in the Office of the Clerk of New York County on
November 2, 2017, and served with Notice of Entry on November
on November 21, 2017. A copy of the Decision & Order with
Notice of Entry annexed hereto as Exhibit "A".


PLEASE TAKE FURTHER NOTICE that this appeal is from each and every portion of the Decision & Order that ruled against the defendant.

Dated: Rye Brook, New York
February 6, 2018

Yours, etc.

MARTINO & WEISS
Attorneys for DAVID KADOSH
800 Westchester Avenue
Suite 608-S
Rye Brook, New York 10573
(914) 668-5506

By:


DOUGLAS J. MARTINO

This Amended Notice of Appeal is filed to correct a reference in the original Notice of Appeal that the appeal is to the Appellate Division, Second Department.

This appeal is to Appellate Division of the First Department.

TO: PAUL D. SARKOZI
TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT, LLP
Attorneys for Plaintiff &
Third Party Defendant
900 Third Avenue
New York, NY 10022
(212) 508-6700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:PART 54

-----X
MICHEL KADOSH, individually and as a
Managing member of 213 W. 85th ST., LLC,

Index No. 651834/2010

Plaintiff,

-against-

PRE-ARGUMENT STATEMENT

DAVID KADOSH, 114 W. 71st ST., LLC,
30 LEXINGTON AVE., LLC & 3D IMAGING
CENTER, CORP.

Defendant.

-----X
DAVID KADOSH, individually and as a
Member of 213 W. 85th ST, LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third Party Defendant.

-----X

PLEASE TAKE NOTICE that DAVID KADOSH ("Defendant"),
by his undersigned attorneys, hereby sets forth the following
Pre-Argument Statement:

Name, address and telephone number of Counsel for Respondent.

PAUL D. SARKOZI
TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT, LLP
900 Third Avenue
New York, NY 10022

**Court and county, or administrative body, from which appeal is
taken:** Decision & Order of Supreme Court, New York County,
(Kornreich)

**State whether appeal is from an Order or a Final Judgment, and
the date:** Decision and Order dated November 3, 2017,

Notice of Entry: dated November 21, 2017

State whether there is any additional appeal pending in the same action: No

The date of entry of the order or judgment: November 21, 2017

State whether there is any related action or proceeding now pending in any court of this or any other jurisdiction, and if so, the status of any such case: Motion brought in Supreme Court New York County under Index 65163/10 by the Temporary Receiver for an Order approving and settling his account as Temporary Receiver; cross-motion for an Order determining the Temporary Receiver failed to faithfully discharge his duties

State the nature and object of the cause of action or special proceeding: contract

State as briefly as possible the result reached in the court of administrative body below: Moneys held in escrow directed to be delivered forthwith to Plaintiff Michel Kadosh..

State as briefly as possible the grounds for seeking reversal, annulment or modification." New York County, (Kornreich) which erroneously concluded that the issues involved in this Decision

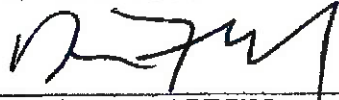
were subject to a Stipulation of Settlement and did not require a "second" decision. In awarding the entry of the amount in dispute to Appellee, the Court ignored those sums of money indisputably due and owing to Appellant, reflecting the court's failure to consider and evaluate the evidence.

Dated: Rye Brook, New York
February 6, 2018

Yours, etc.

MARTINO & WEISS
Attorneys for DAVID KADOSH
800 Westchester Avenue
Suite 608-S
Rye Brook, New York 10573
(914) 668-5506

By:


DOUGLAS J. MARTINO

TO: PAUL D. SARKOZI
TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT, LLP
Attorneys for Plaintiff &
Third Party Defendant
900 Third Avenue
New York, NY 10022
(212) 508-6700

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:PART 54

-----x
MICHEL KADOSH, individually and as a
Managing member of 213 W. 85th ST., LLC,

Index No. 651834/2010

Plaintiff,

-against-

NOTICE OF ENTRY

DAVID KADOSH, 114 W. 71st ST., LLC,
30 LEXINGTON AVE., LLC & 3D IMAGING
CENTER, CORP.

Defendant.

-----x
DAVID KADOSH, individually and as a
Member of 213 W. 85th ST, LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third Party Defendant.

-----x
IN THE MATTER OF THE APPLICATION OF
DAVID KADOSH,

Petitioner,

Index No. 650048/2013

-against-

FOR THE JUDICIAL DISSOLUTION OF
213 W. 85th ST., LLC,

Respondent.

-----x

PLEASE TAKE NOTICE that the within is a true copy of
the Decision & Order of the Honorable Shirley Werner Kornreich,

dated, filed and entered in the office of the Clerk of the
within named Court on November 3, 2017.

Dated: Rye Brook, New York
November 21, 2017

Yours, etc.

MARTINO & WEISS
Attorneys for DAVID KADOSH
800 Westchester Avenue
Suite 608-S
Rye Brook, New York 10573
(914) 668-5506

By: 

DOUGLAS J. MARTINO

TO: PAUL D. SARKOZI
TANNENBAUM HELPERN
SYRACUSE & HIRSCHTRITT, LLP
Attorneys for Plaintiff &
Third Party Defendant
900 Third Avenue
New York, NY 10022
(212) 508-6700

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54**

-----X
**MICHEL KADOSH, individually and as a
managing member of, 213 W. 85TH ST., LLC,**

Plaintiff,

Index No.: 651834/2010

DECISION & ORDER

-against-

**DAVID KADOSH, 114 W. 71ST ST., LLC, 30
LEXINGTON AVE., LLC, & 3D IMAGING
CENTER CORP.,**

Defendants.

-----X
**DAVID KADOSH, individually and as a member
of 213 W. 85th ST., LLC,**

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

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**IN THE MATTER OF THE APPLICATION OF
DAVID KADOSH,**

Petitioner,

Index No. 650048/2013

-against-

**FOR THE JUDICIAL DISSOLUTION OF
213 W. 85TH ST., LLC,**

Respondent.

-----X
SHIRLEY WERNER KORNREICH, J.:

I. Introduction

At their core, these actions involve the relationship of two brothers, Michel and David

Kadosh, who went into business together. After years of litigation and numerous attempts to resolve the matters, the actions were settled on July 21, 2016, in the midst of a 23-day bench trial that spanned a year. All of the claims, counterclaims, third-party claims, and all claims "whether stated or unstated" "from the beginning of the world to today's date" were released and resolved between the brothers and their entities by agreeing to release a portion of millions of dollars held in escrow (by Robert L. Lewis, the court-appointed Temporary Receiver) to be divided equally between David and Michel Kadosh, and to hold the remainder of the escrow money awaiting a non-appealable, final decision of the Court. It was explicitly agreed, on the record, that the decision would not be a "reasoned one" -- one containing findings of fact. Further, the parties agreed that David Kadosh would be permitted to put his testimony on the record and would not be cross-examined. David, Michel and David's wife, Eryca Kadosh, who was a principal of some of his entities, were fully allocated.

The next day, on July 22, 2016, in the midst of David's testimony, an issue arose as to the amount in the escrow account.¹ In reaching the settlement, the parties had assumed that the amount was \$900,000 more than it was. To explain, the parties thought \$7.9 million was available in the escrow account for distribution through the settlement. In reality, \$7,034,442.02 was then available. The original settlement contemplated the release of \$7.2 million to be divided by the brothers and, after decision of the court, release of the remaining \$700,000. After further discussion, negotiation and contemplation over a nearly two-week period, on August 2, 2016, the parties modified the settlement to permit a distribution to both brothers of \$5.4 million (\$2.7 million to each) and the balance of \$1,634,442.02 (or whatever remained in escrow) to be

¹ Michael Kadosh raised the issue, and in keeping with the distrust the brothers felt toward each

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distributed in accordance with the court's final determination. Michel and David Kadosh again were allocuted, and the trial continued.

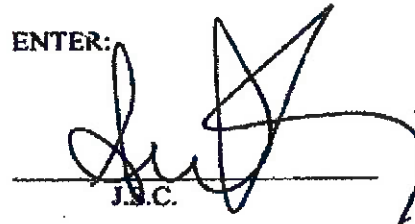
II. Final Decision

After reviewing the transcript, the relevant evidence, counsels' post-trial submissions, and the court's extensive notes, as well as making credibility determinations, the court awards \$1,634,442.02, or if a different amount remains in the escrow account held by Mr. Lewis, it awards the remainder of the escrow account, to Michel Kadosh. Accordingly, it is

ORDERED that the money remaining in the escrow account held by the Temporary Receiver in this matter, Robert L. Lewis, 7 Penn Plaza, suite 1602, New York, N.Y. (212-721-7353), is to be released and given to Michel Kadosh, a/k/a, Michel Kadoe to be paid in a manner specified by Michel Kadosh.

Dated: November 3, 2017

ENTER:



J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C.

other which was manifest throughout these proceedings, felt that he had been duped by David.

EXHIBIT B

FILED: NEW YORK COUNTY CLERK 11/02/2017 02:40 PM

NYSCEF DOC. NO. 467

INDEX NO. 651834/2010

RECEIVED NYSCEF: 11/02/2017

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54**

-----X
MICHEL KADOSH, individually and as a
managing member of, 213 W. 85TH ST., LLC,

Plaintiff,

Index No.: 651834/2010

DECISION & ORDER

-against-

DAVID KADOSH, 114 W. 71ST ST., LLC, 30
LEXINGTON AVE., LLC, & 3D IMAGING
CENTER CORP.,

Defendants.

-----X
DAVID KADOSH, individually and as a member
of 213 W. 85th ST., LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

-----X
IN THE MATTER OF THE APPLICATION OF
DAVID KADOSH,

Petitioner,

Index No. 650048/2013

-against-

FOR THE JUDICIAL DISSOLUTION OF
213 W. 85TH ST., LLC,

Respondent.

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SHIRLEY WERNER KORNREICH, J.:

I. Introduction

At their core, these actions involve the relationship of two brothers, Michel and David

Kadosh, who went into business together. After years of litigation and numerous attempts to resolve the matters, the actions were settled on July 21, 2016, in the midst of a 23-day bench trial that spanned a year. All of the claims, counterclaims, third-party claims, and all claims "whether stated or unstated" "from the beginning of the world to today's date" were released and resolved between the brothers and their entities by agreeing to release a portion of millions of dollars held in escrow (by Robert L. Lewis, the court-appointed Temporary Receiver) to be divided equally between David and Michel Kadosh, and to hold the remainder of the escrow money awaiting a non-appealable, final decision of the Court. It was explicitly agreed, on the record, that the decision would not be a "reasoned one" -- one containing findings of fact. Further, the parties agreed that David Kadosh would be permitted to put his testimony on the record and would not be cross-examined. David, Michel and David's wife, Eryca Kadosh, who was a principal of some of his entities, were fully allocated.

The next day, on July 22, 2016, in the midst of David's testimony, an issue arose as to the amount in the escrow account.¹ In reaching the settlement, the parties had assumed that the amount was \$900,000 more than it was. To explain, the parties thought \$7.9 million was available in the escrow account for distribution through the settlement. In reality, \$7,034,442.02 was then available. The original settlement contemplated the release of \$7.2 million to be divided by the brothers and, after decision of the court, release of the remaining \$700,000. After further discussion, negotiation and contemplation over a nearly two-week period, on August 2, 2016, the parties modified the settlement to permit a distribution to both brothers of \$5.4 million (\$2.7 million to each) and the balance of \$1,634,442.02 (or whatever remained in escrow) to be

¹ Michael Kadosh raised the issue, and in keeping with the distrust the brothers felt toward each

distributed in accordance with the court's final determination. Michel and David Kadosh again were allocuted, and the trial continued.

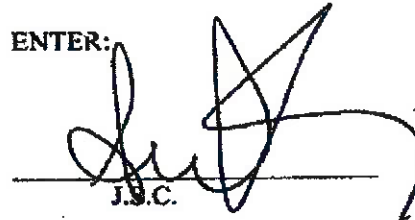
II. Final Decision

After reviewing the transcript, the relevant evidence, counsels' post-trial submissions, and the court's extensive notes, as well as making credibility determinations, the court awards \$1,634,442.02, or if a different amount remains in the escrow account held by Mr. Lewis, it awards the remainder of the escrow account, to Michel Kadosh. Accordingly, it is

ORDERED that the money remaining in the escrow account held by the Temporary Receiver in this matter, Robert L. Lewis, 7 Penn Plaza, suite 1602, New York, N.Y. (212-721-7353), is to be released and given to Michel Kadosh, a/k/a, Michel Kadoe to be paid in a manner specified by Michel Kadosh.

Dated: November 3, 2017

ENTER:



J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C.

other which was manifest throughout these proceedings, felt that he had been duped by David.

EXHIBIT C

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: TRIAL TERM PART 54

4 - - - - - X
5 MICHEL KADOSH,
6 and
7 213 WEST 85TH STREET, LLC,

8 Plaintiffs,

9 - against -

INDEX NUMBER:
651834/2010
Non-Jury Trial

10 DAVID KADOSH,
11 114 WEST 71ST STREET, LLC,
12 30 LEXINGTON AVENUE, LLC,

13 Defendants.

14 - - - - - X
15 60 Centre Street
16 New York, New York
17 July 21, 2016

18 BEFORE:

19 HONORABLE SHIRLEY WERNER KORNREICH, Justice.

20 APPEARANCES:

21 TANNENBAUM, HELPERN, SYRACUSE & HIRSCHTRITT, LLP
22 Attorneys for the Plaintiffs
23 900 Third Avenue
24 New York, New York 10022
25 BY: PAUL D. SARKOZI, ESQ.
26 DAVID HOLAHAN, ESQ.

DAVIDOFF HUTCHER & CITRON LLP
Attorney for the Defendants
200 Garden City Plaza, Suite 315
Garden City, New York 11530
BY: FRANK L. PERRONE, JR., ESQ.
EDWARD D. BAKER, ESQ.

MARGARET BAUMANN
OFFICIAL COURT REPORTER

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK: TRIAL TERM PART 54

4 - - - - - X
5 IN THE MATTER OF THE APPLICATION OF

6 DAVID KADOSH,

Petitioner,

INDEX NUMBER:

- against -

650048/2013

7 FOR THE JUDICIAL DISSOLUTION
8 OF 213 WEST 85TH STREET, LLC,
9 Respondent.

- - - - - X

10 60 Centre Street
11 New York, New York
12 July 21, 2016

13 BEFORE:

HONORABLE SHIRLEY WERNER KORNREICH, Justice.

14 APPEARANCES:

15 DAVIDOFF HUTCHER & CITRON LLP
16 Attorney for the Petitioner
17 200 Garden City Plaza, Suite 315
18 Garden City, New York 10138
19 BY: FRANK L. PERRONE, JR., ESQ.
20 EDWARD D. BAKER, ESQ.

21 TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT, LLP
22 Attorney for the Respondent
23 900 Third Avenue
24 New York, New York 10022
25 BY: PAUL D. SARA KOZI, ESQ.
26 DAVID HOLAHAN, ESQ.

MARGARET BAUMANN
OFFICIAL COURT REPORTER

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Proceedings

M O R N I N G S E S S I O N

THE COURT: Mr. Kadosh, you want to take the
witness stand.

I want you to have a seat, Mr. Kadosh. I remind
you you are still under oath.

We're going to continue with the direct
examination.

D A V I D K A D O S H , resumes the stand.

MR. PERRONE: Your Honor, I need 30 seconds just to
find my space.

MR. SARKOZI: Your Honor --

THE COURT: Do you want to --

MR. SARKOZI: Could we have a very short recess
now? I'm sorry.

(Pause.)

MR. SARKOZI: Thank you, I apologize for that.

THE COURT: No, no, it is what it is.

You could step down for a moment.

THE WITNESS: We're never going to finish this.

(Brief recess.)

(Lunch recess.)

Proceedings

A F T E R N O O N S E S S I O N

THE COURT: We want to put something on the record what I believe amounts to a partial settlement.

MR. SARKOZI: Your Honor, in the recess that we have had since we were going to proceed this morning, the parties and counsel for the parties have conferred, and we have agreed upon an alternative proceeding that -- procedure that will allow this matter and all claims and all counterclaims and third-party claims and defenses on claims, counterclaims and third-party claims to all be resolved through the following procedure:

First, the parties stipulate that with the exception of \$700,000, all of the funds that are currently being held in escrow by Mr. Louis as the liquidator receiver, all other of those funds will be distributed in the following manner:

Half of that amount will be distributed to Michel Kadosh.

The balance of that amount will be held at this time pending further instruction from counsel for David Kadosh as to how that 50 percent shall be distributed, but that half shall be allocated to David Kadosh.

THE COURT: So let me be clear.

How much is in the escrow, do we know approximately? Is it about 7.9?

1 Proceedings

2 MR. PERRONE: I believe it is about 7.9.

3 THE COURT: A little more given interest or
4 whatever, a little less. About \$7.9 million. And this is
5 from the sale of West 85th Street?

6 MR. SARKOZI: Correct.

7 MR. PERRONE: 213 West 85th Street.

8 THE COURT: \$700,000 of that amount will continue
9 in escrow with Mr. Louis. The remainder will be divided
10 50/50 between David Kadosh and Michel Kadosh.

11 Michel Kadosh's 50 percent will be released
12 immediately to him. Is it going to be by check or?

13 MR. SARKOZI: You want it check or wire?

14 Check is fine I'm told.

15 THE COURT: By check.

16 MR. SARKOZI: Yes.

17 THE COURT: The other half, that is of the I guess
18 it is approximately 7.2 million, will be released to David,
19 but David will instruct Mr. Louis how to release it.

20 And these instructions will come to Mr. Louis how?

21 MR. PERRONE: He will receive a written letter from
22 our firm that is signed off on by both my managing partner
23 and David Kadosh.

24 THE COURT: And that could be hand delivered,
25 essentially e-mailed, fax.

26 MR. PERRONE: Absolutely.

Proceedings

THE COURT: And that will instruct him what to do with David's half --

MR. PERRONE: Correct.

THE COURT: -- of the money.

As I said earlier, \$700,000 of these monies will still stay in escrow.

MR. SARKOZI: As to those \$700,000.

(Counsel conferring with client.)

MR. SARKOZI: Okay, I apologize.

As to the amounts that are to be allocated to Mr. Kadosh, Mr. Michel Kadosh, rather than having a check that is paid directly to Michel Kadosh, we will have instructions that Michel Kadosh directly can provide to Mr. Louis by letter.

THE COURT: Again, either hand delivered, or e-mailed -- well, I guess both of these should be signed in some way so we know for sure it is from them.

MR. SARKOZI: With a copy to counsel.

THE COURT: And each counsel would have a copy of each?

MR. PERRONE: Yes.

MR. SARKOZI: Okay.

Thank you.

As to the remaining \$700,000, that amount will be held in escrow pending a determination by the Court as to

1 Proceedings

2 how that \$700,000 should be distributed, either to
3 Dr. Kadosh or Michel Kadosh in what amount?

4 THE COURT: Or divided.

5 MR. SARKOZI: However, that shall be divided based
6 on the Court's consideration of the evidence that has been
7 adduced thus far in trial as amplified only further by the
8 direct examination of Dr. David Kadosh.

9 Michel --

10 THE COURT: And your client is giving up his right
11 to cross-examine David Kadosh?

12 MR. SARKOZI: You are absolutely correct, your
13 Honor.

14 Michel Kadosh is waiving his right to
15 cross-examination.

16 David Kadosh is waiving his right to put on any
17 further witness. Michel Kadosh is waiving any right to any
18 rebuttal case.

19 All evidence will be concluded in this case upon
20 the conclusion of the direct examination of David Kadosh.

21 I understand that the Court has indicated that it
22 would like a submission of no more than two pages.

23 THE COURT: No more than a two-page letter from
24 each side. That is it.

25 MR. SARKOZI: And those two pages need to be given
26 to the Court by? Let's give it a time?

Proceedings

(Counsel conferring with counsel.)

MR. SARKOZI: Fifteen days after the conclusion.

THE COURT: Okay.

MR. SARKOZI: Hold on.

Tomorrow is the 22nd.

THE COURT: The 22nd, tomorrow is July 22nd.

MR. PERRONE: What is two weeks from that?

THE COURT: Two weeks from that is August 5th, it is a Friday.

MR. PERRONE: You want to do it that Monday?

MR. SARKOZI: August 9th.

MR. PERRONE: The 9th.

MR. SARKOZI: August 9th.

THE COURT: August 9th.

August 9th by 5:00. You could E-file that, you don't have to deliver a copy, E-file it. It's only two pages, that is fine.

MR. SARKOZI: Thank you, your Honor.

The parties have indicated and consented that the Court's decision does not need to be a reasoned decision or written decision. That the Court simply can, upon receiving these submissions and --

THE COURT: Of course, the Court is going to, and I'll say this on the record, review, and I have a lot of transcripts, and I have notes on all of the testimony, is

Proceedings

going to review all of that. I have, I think it is something like ten evidence books, and I will use -- I will look at the evidence, not the entire books, but what was introduced, and I am going to have to base my decision on what is coming.

MR. SARKOZI: The Court, when the Court renders its decision as to how to allocate the funds, that decision will, the parties have stipulated and agreed, will be final.

That the parties are waiving all rights to appeal.

That, and further, the parties have agreed to waive all claims that they have whether stated or unstated against each other, and to release each other from all claims from the beginning of the world to today's date.

Is that correct, Mr. Perrone?

MR. PERRONE: Yes. Yes, on behalf of my clients.

MR. SARKOZI: I believe that summarizes the stipulation of the parties as to the scope of this agreement.

And, we are prepared, if the Court would like to confirm for the Court on the record with our clients that we have explained this agreement to them, what they have, what they are waiving, that they have had an opportunity to discuss.

THE COURT: Yes, I'd like each of the clients allocuted. And just to make sure, this has been a very

Proceedings

lengthy proceeding, and it is going to continue for a short while through the direct of David Kadosh, but it is important, I think, that each of the litigants, Michel Kadosh and David Kadosh, be sworn in and allocuted as to the settlement.

And I do want to say for the record that there have been literally hours and probably days throughout this proceeding of settlement negotiations, and these last several appearances, counsel, both counsel have worked extraordinarily hard to achieve some kind of resolution that they each thought was in the best interest of their clients.

They have taken hours to speak to not only the clients, Michel and David, apart by each of the attorneys, and explain everything to each of them, but also have spoken, with their client's permission, to their client's wives who have been here pretty much throughout the proceedings.

MR. SARKOZI: Thank you.

And the one thing I would just ask as well because, if it is all right with you too, if the Court thinks it is appropriate, but I think because Miss Eryca Kadosh is also here in her capacity as a client, it may make sense, I don't know whether her testimony is necessary, it is on behalf of 3D Imaging or not, but I just want to make sure there is finality on that aspect of it.

1 Proceedings

2 MR. PERRONE: Your Honor, I have no problem
3 allocuting Mrs. Kadosh. She is the vice president of the
4 corporation. David is the president. He is going to
5 allocute on the behalf of the entity. If the Court wants
6 her to confirm, I have no problem with that.

7 MR. SARKOZI: I think because they are present and
8 have counsel.

9 THE COURT: Okay.

10 MR. SARKOZI: Perhaps, I should start with Michel.

11 THE COURT: Michel, could you stand up. You don't
12 have to take the witness stand, just raise your right hand.

13 Just swear him in.

14 M I C H E L K A D O S H, called as a witness in
15 behalf his own behalf, residing at 6 West 82nd Street,
16 Apartment Ground Floor, New York, New York 10024, having
17 been first duly sworn, was examined and testified as
18 follows:

19 THE WITNESS: I do.

20 THE CLERK: State your name and address for the
21 record, spell both your first and last name.

22 THE WITNESS: Michel Kadosh.

23 Seven West 82nd, Apartment Ground Floor, New York,
24 New York 10024.

25 THE COURT: And you have to keep your voice up in
26 answering. Okay.

Proceedings

DIRECT EXAMINATION

BY MR. SARKOZI:

Q Michel, Tannenbaum Helpen have been representing you for the last few years on this matter. Yes?

A Yes.

Q Over the course of those years worked on the preparation of this case for trial, correct?

A Yes.

Q And we have, over the course of that period of time, discussed with you how the court proceedings would work and what your rights were and what your risks were?

A Right.

Q We have discussed that numerous times both before and during the course of this trial, correct?

A Correct.

Q We have with your permission reached an agreement with the other side as to the alternative proceeding that I have just put on the record and which the Court has further explained.

Did you hear that?

A Yes.

Q Did you understand that?

A Yes.

Q Have you had the opportunity to discuss that, the proceeding and the procedure and this approach to resolution with your counsel?

1 Proceedings

2 A Yes.

3 Q Have you had the opportunity to discuss it both with
4 me, Paul Sarkozi, and with my colleague, David Holahan?

5 A Yes.

6 Q Are you satisfied that you understand what the
7 agreement is?

8 A Yes.

9 Q And, we have -- do you understand that in reaching this
10 agreement, you are waiving all rights to appeals that you may
11 have of whatever the Judge may decide?

12 A Yes.

13 Q Do you understand that you are waiving, as part of this
14 agreement, all claims that you have had against David Kadosh?

15 A Yes.

16 Q Do you understand -- and when I say as to David Kadosh,
17 as against David Kadosh or any of David Kadosh's companies?

18 A Yes.

19 Q Do you agree to release against David Kadosh and any of
20 David Kadosh's companies as well as against Eryca Kadosh, any
21 claims that you may have against them from the beginning of the
22 world to today's date?

23 A Yes.

24 Q Do you understand that as part of this proceeding you
25 are giving up the right to have me cross-examine David Kadosh?

26 A Yes.

1 Proceedings

2 Q Do you understand you are giving up the right to put on
3 any rebuttal witnesses?

4 A Yes.

5 Q Do you understand that you have had the right, as I
6 mentioned to you, to speak to other counsel about this if you
7 wanted to get another opinion?

8 A Yes.

9 Q Are you comfortable with proceeding -- sorry.
10 Do you agree to proceed with the agreement that I have
11 put on the record with the Court?

12 A Yes.

13 MR. SARKOZI: Your Honor, is there anything further
14 you need for allocution?

15 THE COURT: I just want to very briefly say, have
16 you been satisfied with your counsel's representation?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Okay.

19 All right. Let's allocute David Kadosh.

20 MR. SARKOZI: I'm sorry, one other thing that Mr.
21 Perrone just recommended that we add.

22 Q And do you understand that this decision of this Court
23 as to how to distribute the \$700,000 will be binding and final?

24 A Yes.

25 MR. SARKOZI: Thank you.

26 THE COURT: Okay.

1 Proceedings

2 (Witness excused.)

3 THE COURT: David Kadosh, raise your right hand.

4 D A V I D K A D O S H, called as a witness in
5 behalf of the defendant, having been first duly sworn,
6 residing at 1118 Harbor Road Hewlett, New York 11517, was
7 examined and testified as follows:

8 MR. D. KADOSH: I do.

9 E R Y C A K A D O S H, called as a witness in
10 behalf of the defendant, having been first duly sworn,
11 residing at 1118 Harbor Road, Hewlett, New York 11517, was
12 examined and testified as follows:

13 MRS. KADOSH: Yes, I do.

14 THE CLERK: Please state your name and address to
15 the record, both first and last names.

16 THE COURT: Both of you, okay.

17 MRS. KADOSH: 1118 Harbor Road, Hewlett, New York
18 11517.

19 MR. D. KASOSH: David Kadosh, 1118 Harbor Road,
20 Hewlett, New York 11517.

21 THE COURT: Okay. Do you want to allocute them?
22 They have to keep their voice up.

23 MR. PERRONE: David and Eryca, I'm going to address
24 you both at the same time. I'm just going to ask that you
25 each respond to my inquiries individually. Okay.

26 You understand my name is Frank Perrone. I'm a

Proceedings

member of Davidoff Hutcher & Citron, your attorney for the better part of two and a half years now in connection with this proceeding.

MRS. KADOSH: Yes.

MR. PERRONE: And I have been lead trial attorney since the commencement of this trial. I've been working with you throughout the trial, and we have discussed the issues of the trial. We have discussed the court proceedings. We have discussed all of your rights, all of the potential outcomes in the proceeding in connection with the claims that have been brought against you and your entities and your counterclaims.

Do you understand that?

MR. D. KADOSH: Yes.

MR. PERRONE: And you have heard this afternoon that Michel Kadosh's counsel has placed on the record a settlement in the form of an alternative proceeding that we have discussed, correct?

MR. D. KADOSH: Yes.

MR. PERRONE: And have you had sufficient time to discuss this alternative proceeding with me as you understand exactly what the alternative proceeding encompasses?

MR. D. KADOSH: Yes.

THE COURT: Do you understand?

1 Proceedings

2 MRS. KADOSH: Do I have to say yes to everything
3 also?

4 THE COURT: Yes, yes, you should.

5 MRS. KADOSH: Yes, I understand.

6 MR. PERRONE: Have any of the questions I've asked,
7 would you have answered "no" to any of the prior questions?

8 MRS. KADOSH: I'm good with everything so far.

9 MR. PERRONE: And are you both satisfied with your
10 understanding of the alternative proceeding and the
11 agreement that was placed on the record?

12 MR. D. KADOSH: Yes.

13 MRS. KADOSH: Yes.

14 MR. PERRONE: And do you understand that by
15 accepting this alternative proceeding that you are waiving
16 certain rights that you have with respect to your defenses
17 and to claims that have been brought against you and with
18 respect to the claims that you have brought as counterclaims
19 in this proceeding?

20 MR. D. KADOSH: Yes.

21 MRS. KADOSH: Yes.

22 MR. PERRONE: And do you understand that you are
23 also waiving all other claims against Michel Kadosh and any
24 of his entities and Renata Kadosh and any entities she may
25 own, have an interest in from the beginning of the world,
26 beginning of time until today?

1 Proceedings

2 MRS. KADOSH: Yes.

3 MR. D. KADOSH: Yes.

4 MR. PERRONE: And do you understand that as part of
5 this alternative proceeding you will not be calling any
6 additional witnesses in connection with your claims and
7 counterclaims?

8 MR. D. KADOSH: Yes.

9 MRS. KADOSH: Yes.

10 MR. PERRONE: Have you been satisfied with the
11 representation that you have received from myself, from my
12 colleague, Ed Baker, and from the other attorneys at our
13 firm that have worked with you on this case?

14 MR. D. KADOSH: Yes.

15 MRS. KADOSH: Yes.

16 (Witnesses excused.)

17 THE COURT: Okay.

18 Both the allocutions of all three parties is
19 accepted by the Court. Okay.

20 So, at this point we have a partial settlement. To
21 some degree it is really a settlement of the case and the
22 last piece will be decided by this Court.

23 The only thing left at this point that still has to
24 be done at trial is to finish the direct examination of
25 David Kadosh.

26 So let's see if we could do as much as possible

1 D. Kadosh - Direct/Mr. Perrone

2 with the remainder of the day.

3 MR. PERRONE: Your Honor, may I?

4 THE COURT: You may.

5 Have a seat, Mr. Kadosh, and I remind you you are
6 still under oath.

7 D A V I D K A D O S H, resumes the stand.

8 DIRECT EXAMINATION (Continued)

9 BY MR. PERRONE:

10 Q When we broke, when we last took testimony from you we
11 were discussing certain work that Michel Kadosh had done at your
12 buildings located at 30 Lexington Avenue and 114 West 71st
13 Street, correct?

14 A Yes.

15 Q And we had discussed that Michel Kadosh had done
16 certain work at 114 West 71st Street, for approximately how many
17 months?

18 A I'd say about five to six months.

19 Q And when he completed the work that he had done at 114
20 West 71st Street, at that point he went and began doing some
21 work at 30 Lexington, correct?

22 A Yes.

23 Q And approximately how long did he work at 30 Lexington?

24 A About three to four months.

25 Q Now, when Michel Kadosh completed his work at 30
26 Lexington, did there come -- well, withdrawn.

EXHIBIT D

1

1
2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF NEW YORK : CIVIL TERM : PART 54

4
5 MICHAEL KADOSH, 213 WEST 85TH
6 STREET, LLC,

7 Plaintiffs

8 - against -

Index Number
651834/2010

9 DAVID KADOSH, 114 WEST 71st STREET,
10 LLC, 30 LEXINGTON AVENUE, LLC,
11 Defendants

12 60 Centre Street
13 New York, New York

14 August 5 , 2016

15 B E F O R E :

16 HONORABLE SHIRLEY WERNER KORNREICH, Justice

17 A P P E A R A N C E S :

18 Attorneys for Plaintiff:

19 TANNENBAUM HELPERN SYRACUSE &
20 HIRSCHTRITT, LLP
21 900 Third Avenue
22 New York, New York 10022
23 By: PAUL D. SARKOZI, ESQ.

24 Attorneys for Defendant:

25 DAVIDOFF HUTCHER & CITRON, LLP
26 200 Garden city Plaza - Suite 315
Garden City, New York 11530
By: FRANK L. PERRONE, ESQ.

DENISE WILLIAMS, RPR
Official Court Reporter

dw

-Proceedings-

THE COURT: At this point after several hours of discussions involving the litigants and their attorneys and the Court the litigants at this point and the parties wish to amend their settlement agreement, and this has been, as I said at the beginning, after much negotiation and discussion. Who is going to put the amendment on the record?

MR. SARKOZI: Let me, Your Honor.

There had been an issue with respect to the amount that was being held in escrow. We have spoken to Robert Lewis who has contacted the bank to get what the amount currently is.

THE COURT: And Mr. Lewis is the escrowee and was the receiver.

MR. SARKOZI: Correct. There is currently --

THE COURT: I should say escrow agent.

MR. SARKOZI: Yes. There is currently in escrow the amount of \$7,039,442.02. There is outstanding a check of \$5,000 for, I believe, for the fidelity bond, which would, once that amount clears, leave \$7,034,442 --

THE COURT: No -- you mean 43.

MR. SARKOZI: No. No. No. Once the check is cleared it will reduce.

THE COURT: Oh, it's reducing. It's not adding.

MR. SARKOZI: No, it will reduce. Its payments

dw

1 -Proceedings-

2 from the escrow account. The amount will be once that
3 check clears \$7,034,442.02.

4 THE COURT: Okay.

5 MR. SARKOZI: After much discussion the parties
6 have reached the following modification to their prior
7 stipulation that was on the record: Now knowing the
8 amounts that are in escrow, the parties have agreed that
9 2.7 million will be distributed as the parties will direct.
10 The Court, as was the case previously --

11 THE COURT: So, you mean 2.7 million to each.

12 MR. SARKOZI: To each.

13 THE COURT: Each one will get 2.7 million and it
14 will be distributed as was set forth in this settlement.

15 MR. SARKOZI: Correct.

16 The balance which is \$1,634,442.02 will be the
17 pool of funds that will remain for the Court following the
18 conclusion of David Kadosh's direct testimony and
19 submissions by the parties that the Court will determine
20 how those funds should be distributed.

21 There are two other slight modifications and they
22 are as follows: One, with permission of the Court, instead
23 of two-page submissions, five-page submissions.

24 THE COURT: Post-trial submissions.

25 MR. SARKOZI: Post-trial submissions.

26 THE COURT: Okay.

dw

1 -Proceedings-

2 MR. SARKOZI: And then the other is that the
3 parties have stipulated to the admission and the
4 introduction into evidence of all of the documents that
5 they had in what the Court has stipulated to be admitted.
6 What I mean by that is the parties move into evidence --

7 THE COURT: Things that haven't been admitted
8 thus far?

9 MR. SARKOZI: But have been stipulated pursuant
10 to the pre-trial arrangement.

11 THE COURT: But there are a lot of documents in
12 and you are saying everything, everything in all of the --

13 MR. SARKOZI: No, that has been marked as
14 stipulated, and we will provide the Court --

15 MR. PERRONE: Yes.

16 MR. SARKOZI: -- with a listing of those
17 additional documents that have not yet been admitted
18 into --

19 THE COURT: I understand what you are saying. So
20 anything that has been stipulated in that hasn't been
21 admitted thus far goes into evidence without any testimony?

22 MR. SARKOZI: With the caveat, because
23 understanding the burden that that could impose on the
24 Court, that only for purposes of allowing the parties in
25 their post-hearing submissions if there are items that the
26 parties need to bring to the Court's attention. The

dw

1 -Proceedings-

2 parties do not expect the Court to read through all of the
3 exhibits and try to make heads or tails of it. It's just
4 that if there was something that's stipulated into
5 evidence --

6 THE COURT: Evidence that you need to refer to in
7 your briefs.

8 MR. SARKOZI: Correct.

9 THE COURT: You can do so.

10 MR. SARKOZI: That's correct. Just for that
11 purpose.

12 THE COURT: Okay.

13 MR. SARKOZI: So, Mr. Perrone, have I accurately
14 recounted to your understanding, then we will go to the
15 parties in a moment, the modification of the prior
16 stipulation that was allocuted on the record?

17 MR. PERRONE: Yes, Your Honor. That's my
18 understanding.

19 MR. SARKOZI: At this point, with the Court's
20 permission, I just think it would be useful for us to
21 allocute the clients to make sure they are clear and are
22 fully entering into, with the advice of counsel, the
23 modification upon which this matter will get resolved.

24 THE COURT: Okay.

25 MR. SARKOZI: May I start with --

26 THE COURT: Do you want him under oath?

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1 -Proceedings-

2 MR. SARKOZI: I do want the parties under oath.

3 THE COURT: Can you put him under oath.

4 THE CLERK: Please raise your right hand, sir.

5 M I C H A E L K A D O S H, after having first been
6 duly sworn by the Court Clerk, was examined and testified
7 as follows:

8 THE CLERK: Please state your name and address
9 for the record, spelling both for the reporter.

10 MR. M. KADOSH: Michel Kadosh, 7 West 82nd Street
11 apartment ground floor, New York, New York, 10024.

12 MR. PERRONE: Your Honor, I'm just wondering
13 maybe to expedite it since I was going to ask the same
14 questions we can have David put under oath, he can direct
15 the questions to both parties.

16 THE COURT: Sir, can you stand up. Raise your
17 right hand.

18 D A V I D K A D O S H, after having first been duly
19 sworn by the Court Clerk, was examined and testified as
20 follows:

21 THE CLERK: State your name and address for the
22 record, spelling both.

23 MR. D. KADOSH: David Kadosh, D-a-v-i-d, Kadosh,
24 K-a-d-o-s-h. Address is 1181 Harbor Road, Hewlett, New
25 York, 11557.

26 MR. SARKOZI: With both of your permissions I'm

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-Proceedings-

going to refer to you by your first names. I know
you're --

MR. D. KADOSH: David.

MR. SARKOZI: -- doctor, but if it's all right,
David.

MR. D. KADOSH: That's fine.

MR. SARKOZI: Michel and David, do you both
understand that based on the information we have received
from the escrow agent, Mr. Lewis, that the amount available
for distribution in the escrow is \$7,034,442.02?

MR. M. KADOSH: I do.

MR. D. KADOSH: Yes.

MR. SARKOZI: Have you been -- have you had any
opportunity to consult with Counsel today about the terms
of the modified settlement that have just been put on the
record?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Are you satisfied with -- that you
understand the terms that have been explained to you by
Counsel?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And I will get more specific, but
do you agree to the terms that I have just laid out with

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-Proceedings-

Mr. Perrone, for the Court what the modification of the settlement is?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And are you satisfied with the terms of the modification that have been put on the record as the way to resolve this matter without further opportunity to appeal or to obtain additional evidence or to obtain a detailed reason decision from the Court?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: I believe you both have been given the opportunity to think about this further and or consult other counsel. Are you comfortable now at this moment on the record proceeding with this modification to the settlement as has been set forth?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that of the amount remaining in escrow 2.7 million will be distributed pursuant to the directions previously given to the Court as soon as that order will be entered?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: To each of you.

dw

-Proceedings-

MR. M. KADOSH: Yes.

MR. SARKOZI: 2.7 to you, Michel, and 2.7 to you, David. You understand that?

MR. M. KADOSH: Yes.

MR. SARKOZI: You understand that?

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that the amount that will be available for the Court's consideration in terms of how to allocate the remainder based on the evidence she's heard and what's been presented to her and what will be presented to her as we finish your direct examination and the introduction of other exhibits will be the basis for her determination as to how to allocate the remaining amount?

MR. D. KADOSH: Yes.

MR. SARKOZI: Yes?

MR. M. KADOSH: Yes.

MR. SARKOZI: And do you agree to that?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that remaining amount will now be -- will be approximately 1. -- \$1,634,442.02?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

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-Proceedings-

MR. SARKOZI: And are you satisfied with that amount as being the amount that's before the Court?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And do you understand that you are waiving any right to further evidence or appeal?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that the post-hearing submissions have been enlarged from two pages to five pages?

MR. D. KADOSH: Yes.

MR. M. KADOSH: Yes.

MR. SARKOZI: Do you agree with that?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And do you understand that the evidence that the Court may consider is the evidence that has been adduced to date plus the continuation of evidence that comes in through David Kadosh's direct testimony plus the evidence that the parties had stipulated to admission prior to the beginning of this case?

MR. M. KADOSH: Yes.

MR. PERRONE: And just --

MR. SARKOZI: Hold on one second.

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-Proceedings-

MR. D. KADOSH: Yes.

MR. PERRONE: In addition any exhibits that may not have been stipulated to but the Court may consider during David's testimony and may be introduced pursuant to the Court's ruling will also be considered.

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: And do you understand that beyond that no additional evidence will be admitted for the Court's consideration?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand there will be no further witnesses called?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Do you understand that David will not be subject to cross-examination?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Is there any reservation you have whatsoever about proceeding with this agreement?

MR. M. KADOSH: No.

MR. D. KADOSH: No.

MR. SARKOZI: So, are you both committed to

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-Proceedings-

proceeding with this agreement to resolve this matter?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

MR. SARKOZI: Are you satisfied that you have been advised by Counsel?

MR. M. KADOSH: Yes.

MR. D. KADOSH: Yes.

THE COURT: At this point the Court is going to accept the modification of settlement. The settlement has been entered twice in open court and is accepted by the Court and is the settlement of this case. We will end the case with the direct of David Kadosh, it hasn't happened as yet, and we will then submit the five-page letters. I am going to write an order today ordering the release of the \$2.7 million to each of the parties.

MR. SARKOZI: As directed.

MR. PERRONE: In the prior agreement.

THE COURT: Well, the prior order did, but I never filed the prior order so it hasn't been -- it never was filed, so I am going to redo that order and it will be the order which will take into account the modifications.

MR. SARKOZI: Thank you, Your Honor.

MR. PERRONE: Judge, do we need to select a date to complete?

THE COURT: We do and I don't know when. You are

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-Proceedings-

going to have to call Michael upstairs.

MR. SARKOZI: Your Honor, on behalf of I think both Counsel and all the parties we thank the Court for the time and its effort that it has engaged in to try to get -- help the parties come to this point --

THE COURT: It has been a very difficult case and I know how hard it is for both of the parties and I just wish them both the best of luck and I hope they can get through this and continue with their lives. It's so important to just go on and put this whole litigation, hopefully, soon behind them.

MR. SARKOZI: Thank you.

MR. M. KADOSH: Thank you, Your Honor.

MR. PERRONE: Thank you.

* * *

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE STENOGRAPHIC MINUTES IN THESE PROCEEDINGS.



DENISE WILLIAMS, RPR

Official Court Reporter

dw

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
MICHEL KADOSH, on behalf of himself and as a
managing member and in the right of
213 WEST 85TH STREET LLC,

Plaintiff,

- against -

DAVID KADOSH, 114 WEST 71ST STREET, LLC,
30 LEXINGTON AVENUE, LLC, and 3D IMAGING
CENTER CORP.,

Defendants.
----- X

DAVID KADOSH, on behalf of himself and as a
member and in the right of 213 WEST 85TH
STREET, LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.
----- X

: Index No. 651834/2010

: (Kornreich, J.)

: **NOTICE OF ENTRY**

PLEASE TAKE NOTICE that the annexed is a true copy of the Decision & Order of the Supreme Court of the State of New York, New York County, signed by Hon. Shirley Werner Kornreich on November 2, 2017 and entered in the Office of the Clerk of the Supreme Court of the State of New York, New York County, on November 2, 2017.

Dated: New York, New York
November 6, 2017

TANNENBAUM HELPERN SYRACUSE
& HIRSCHTRITT LLP

By: /s/ David D. Holahan
Paul D. Sarkozi
David D. Holahan

900 Third Avenue
New York, New York 10022
Phone No. (212) 508-6700
*Attorneys for Plaintiffs and Third Party
Defendant*

SERVICE LIST (VIA NYSECF)

To: Frank J. Perrone, Esq.
Davidoff Hutcher & Citron LLP
605 Third Avenue
New York, New York 10158

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
MICHEL KADOSH, individually and as a
managing member of, 213 W. 85TH ST., LLC,

Plaintiff,

Index No.: 651834/2010

DECISION & ORDER

-against-

DAVID KADOSH, 114 W. 71ST ST., LLC, 30
LEXINGTON AVE., LLC, & 3D IMAGING
CENTER CORP.,

Defendants.

-----X
DAVID KADOSH, individually and as a member
of 213 W. 85TH ST., LLC,

Third-Party Plaintiff,

-against-

MEK ENTERPRISES, LTD.,

Third-Party Defendant.

-----X
IN THE MATTER OF THE APPLICATION OF
DAVID KADOSH,

Petitioner,

Index No. 650048/2013

-against-

FOR THE JUDICIAL DISSOLUTION OF
213 W. 85TH ST., LLC,

Respondent.

-----X
SHIRLEY WERNER KORNREICH, J.:

I. Introduction

At their core, these actions involve the relationship of two brothers, Michel and David

Kadosh, who went into business together. After years of litigation and numerous attempts to resolve the matters, the actions were settled on July 21, 2016, in the midst of a 23-day bench trial that spanned a year. All of the claims, counterclaims, third-party claims, and all claims “whether stated or unstated” “from the beginning of the world to today’s date” were released and resolved between the brothers and their entities by agreeing to release a portion of millions of dollars held in escrow (by Robert L. Lewis, the court-appointed Temporary Receiver) to be divided equally between David and Michel Kadosh, and to hold the remainder of the escrow money awaiting a non-appealable, final decision of the Court. It was explicitly agreed, on the record, that the decision would not be a “reasoned one” – one containing findings of fact. Further, the parties agreed that David Kadosh would be permitted to put his testimony on the record and would not be cross-examined. David, Michel and David’s wife, Eryca Kadosh, who was a principal of some of his entities, were fully allocated.

The next day, on July 22, 2016, in the midst of David’s testimony, an issue arose as to the amount in the escrow account.¹ In reaching the settlement, the parties had assumed that the amount was \$900,000 more than it was. To explain, the parties thought \$7.9 million was available in the escrow account for distribution through the settlement. In reality, \$7,034,442.02 was then available. The original settlement contemplated the release of \$7.2 million to be divided by the brothers and, after decision of the court, release of the remaining \$700,000. After further discussion, negotiation and contemplation over a nearly two-week period, on August 2, 2016, the parties modified the settlement to permit a distribution to both brothers of \$5.4 million (\$2.7 million to each) and the balance of \$1,634,442.02 (or whatever remained in escrow) to be

¹ Michael Kadosh raised the issue, and in keeping with the distrust the brothers felt toward each

distributed in accordance with the court's final determination. Michel and David Kadosh again were allocated, and the trial continued.

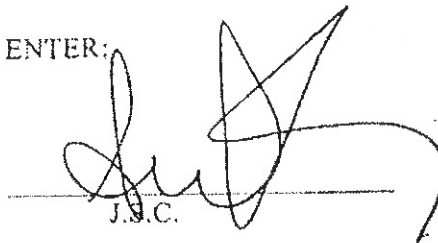
II. Final Decision

After reviewing the transcript, the relevant evidence, counsels' post-trial submissions, and the court's extensive notes, as well as making credibility determinations, the court awards \$1,634,442.02, or if a different amount remains in the escrow account held by Mr. Lewis, it awards the remainder of the escrow account, to Michel Kadosh. Accordingly, it is

ORDERED that the money remaining in the escrow account held by the Temporary Receiver in this matter, Robert L. Lewis, 7 Penn Plaza, suite 1602, New York, N.Y. (212-721-7353), is to be released and given to Michel Kadosh, a/k/a, Michel Kadoe to be paid in a manner specified by Michel Kadosh.

Dated: November 3, 2017

ENTER:



J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C.

other which was manifest throughout these proceedings, felt that he had been duped by David.

EXHIBIT F

Subject: Re: Appeal papers misdirected
Date: Thursday, August 2, 2018 at 8:37:17 AM Eastern Daylight Time
From: DOUGLAS J. MARTINO
To: David Aronstam
CC: Sarkozy, Paul D.
Attachments: image001.jpg

Counselor:

Your email of August 1st is acknowledged.

May I suggest that your efforts would be better spent addressing the merits of the appeal rather than threatening attorneys.

Douglas J. Martino
Martino & Weiss
800 Westchester Avenue
Suite 608-S
Rye Brook, N. Y. 10573
(914) 668-5506
Cell: (914) 588-8985
Fax: (914) 668-5219
Doug@Martinoweiss.com

On Aug 1, 2018, at 11:49 AM, David Aronstam <dja@aronstamlaw.com> wrote:

Doug:

I am going to move to dismiss the appeal and seek sanctions based on your client's unequivocal agreement not to appeal.

I never say that I'm going to be successful but I suggest that you read the court transcripts carefully before perfecting this appeal.

Under the sanctions rules, when counsel has been made aware that filing a court paper is frivolous, the likelihood of sanctions increases if counsel does indeed go ahead with the filing:

Chief Administrator Rule 130-1.1(3):

"In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the (1) circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was

continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.” (Emphasis provided)

David J. Aronstam
Attorney at Law
85 Broad Street, 28th floor
New York NY 10004
(212)949-6210 t
(917)720-9896 f
www.aronstamlaw.com

This electronic message transmission contains information from a law firm which may be confidential or privileged.

From: "Sarkozi, Paul D." <Sarkozi@thsh.com>
Date: Wednesday, August 1, 2018 at 11:40 AM
To: "doug@martinoweiss.com" <doug@martinoweiss.com>
Cc: David Aronstam <dja@aronstamlaw.com>
Subject: Appeal papers misdirected

Doug:

Pursuant to the Substitution of Counsel/Consent to Change Attorney e-filed on June 25, 2016 (Dkt No. 549), a copy of which is attached, David Aronstam has replaced our firm in representing Michel Kadosh. For some reason Appellate Innovations sent your proposed record on appeal to my office instead of to Mr. Aronstam. Please ask Appellate Innovations to serve Mr. Kadosh's proper counsel.

Best regards,
Paul Sarkozi

Paul D. Sarkozi
Tannenbaum Helpert Syracuse & Hirschtritt LLP
900 Third Avenue
New York, New York 10022
Email: sarkozi@thsh.com
Tel: (212) 508-7524
Fax: (212) 937-5207

www.thsh.com

<image001.jpg>

Notice: This message, and any attached file, is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply e-mail and delete all copies of the original message. Thank you.

EXHIBIT G

Subject: Re: Appeal papers misdirected

Date: Friday, August 3, 2018 at 11:39:16 AM Eastern Daylight Time

From: DOUGLAS J. MARTINO

To: David Aronstam

Mr. Aronstam:

At this juncture I do not believe necessary or appropriate to justify to you the actions we have taken in representing our client.

Douglas J. Martino
Martino & Weiss
800 Westchester Avenue
Suite 608-S
Rye Brook, N. Y. 10573
(914) 668-5506
Cell: (914) 588-8985
Fax: (914) 668-5219
Doug@Martinoweiss.com

On Aug 3, 2018, at 11:29 AM, David Aronstam <dja@aronstamlaw.com> wrote:

Mr. Martino:

It's very puzzling why you expect me to ignore your client's agreement not to appeal.

I am curious to know how you are going to respond to my motion seeking to dismiss the appeal based on your client's agreement not to appeal.

Perhaps if you provide me with law that my motion will fail, I will not make the motion.

David J. Aronstam
Attorney at Law
85 Broad Street, 28th floor
New York NY 10004
(212)949-6210 t
(917)720-9896 f
www.aronstamlaw.com

This electronic message transmission contains information from a law firm which may be confidential or privileged.

From: "DOUGLAS J. MARTINO" <doug@martinoweiss.com>

EXHIBIT H

Subject: Appeal Mediation/Conference

Date: Tuesday, August 7, 2018 at 4:24:51 PM Eastern Daylight Time

From: DOUGLAS J. MARTINO

To: David Aronstam

Counsel:

I received correspondence from the Appellate Division 1st Department regarding a pre-argument mediation proceeding, scheduled for September 21, 2018.

I sent in a request to adjourn that conference, as I will not be available on that day.

The court telephoned my office this afternoon and the Master Judge suggested that I obtain a stipulation from opposing counsel extending the time to file our brief. This will enable the conference to take place.

If we file our brief this week as intended, the conference will not take place, as it is intended to occur before the filing.

If you are agreeable to extend the deadline to November 21, 2018, I will prepare a stipulation for your signature and advise the court and it will schedule a pre-filing conference.

Douglas J. Martino
Martino & Weiss
800 Westchester Avenue
Suite 608-S
Rye Brook, N. Y. 10573
(914) 668-5506
Cell: (914) 588-8985
Fax: (914) 668-5219
Doug@Martinoweiss.com

On Aug 7, 2018, at 11:36 AM, David Aronstam <dja@aronstamlaw.com> wrote:

Mr. Martino:

In drafting the motion to dismiss the appeal and for sanctions against you, I see that the prior attorney for Michel Kadosh served notice of entry of the decision from which you appeal on Nov 6, 2017 (efile Docket # 468) on the prior attorney for David Kadosh.

Your notice of appeal was filed on Feb 6, 2018 which is untimely pursuant to CPLR 5513 and CPLR 2103(b)(7). The Appellate Division thus does not have jurisdiction.

Obviously, David Kadosh's prior attorney did not file a notice of appeal because they knew full well that the parties agreed not to appeal.

Thus I am giving you another opportunity to withdraw your appeal before I file the motion.

David J. Aronstam
Attorney at Law
85 Broad Street, 28th floor
New York NY 10004
(212)949-6210 t
(917)720-9896 f
www.aronstamlaw.com

This electronic message transmission contains information from a law firm which may be confidential or privileged.

From: "DOUGLAS J. MARTINO" <doug@martinoweiss.com>
Date: Friday, August 3, 2018 at 11:39 AM
To: David Aronstam <dja@aronstamlaw.com>
Subject: Re: Appeal papers misdirected

Mr. Aronstam:

At this juncture I do not believe necessary or appropriate to justify to you the actions we have taken in representing our client.

Douglas J. Martino
Martino & Weiss
800 Westchester Avenue
Suite 608-S
Rye Brook, N. Y. 10573
(914) 668-5506
Cell: (914) 588-8985
Fax: (914) 668-5219
Doug@Martinoweiss.com

On Aug 3, 2018, at 11:29 AM, David Aronstam <dja@aronstamlaw.com> wrote:

Mr. Martino:

It's very puzzling why you expect me to ignore your client's agreement not to appeal.

I am curious to know how you are going to respond to my motion seeking to dismiss the appeal based on your client's agreement not to appeal.

EXHIBIT I

Supreme Court of the State of New York
Appellate Division - First Department
Pre-Argument Office of the Special Masters
27 Madison Avenue
New York, NY 10010-2201
212-340-0539

Tracy Crump
Clerk, Special Master's Program
212-340-0513

August 2, 2018

Martino & Weiss
Douglas J. Marino, Esq.
800 Westchester Avenue
Suite 608-S
Rye Brook, NY 10573-

Tannenbaum Helpert Syracuse & Hischtritt
Paul D. Sarkozi, Esq.
900 Third Avenue
New York, NY 10022-

Re: Michael Kadosh
v. David Kadosh
Index # 651834/10

Dear Counselors:

You are hereby informed that a pre-argument conference in the above-referenced matter has been rescheduled for September 21, 2018, at 11:00 AM.

The conference will be held at the **Courthouse Annex located at 41 Madison Avenue (26th Street), 26th Floor, New York, New York.**

If you are seeking an adjournment, your request must be made at least three business days prior to the scheduled conference. You may make this request by faxing a letter to the attention of Special Master Judge Jacqueline W. Silbermann at 212-618-7989, and to your adversaries.

Very truly yours,



Susanna Rojas
Clerk of the Court

AFFIRMATION OF SERVICE

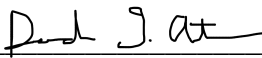
DAVID J. ARONSTAM, an attorney admitted in New York State, affirms the following under penalties of perjury: I am not a party to the action, am over 18 years of age and reside at New York, New York. On August 9, 2018, I served the attached

NOTICE OF MOTION & SUPPORTING PAPERS on:

DOUGLAS MARTINO, ESQ.
Attorney for Appellant David Kadosh
800 Westchester Ave, Ste 608-S
Rye Brook, New York 10573

by depositing a true copy thereof by Fedex overnight delivery enclosed in a pre-paid wrapper in an official depository under the exclusive care and custody of the Fedex Service within New York State.

Dated: New York, New York
August 9, 2018



DAVID J. ARONSTAM