

## Wrongful Discharge Supports Claim In Quantum Meruit

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Adhering to a decision by the Court of Appeals in *Pain Services P.C. v. Quadrino & Schwartz*, 370 F.3d 259 (2d Cir. 2004), Judge Shira Scheindlin has confirmed the right of a lawyer who was discharged without cause in a contingent fee case to recover in quantum meruit for his services. *Dweck Law Firm v. Mann*, S.D.N.Y. No. 03 Civ. 8967 (SAS).

Mann retained the Dweck firm (Dweck) to pursue a claim for wrongful discharge, harassment, and age and gender discrimination against her former employer, First Union National Bank (Bank). Under the retainer agreement, Dweck received a retainer of \$12,500 which was to be applied against a contingent fee of one third of any recovery.

Acting under the agreement, Dweck entered into negotiations with the Bank and received a settlement offer of \$1 million, plus outplacement services. Mediation followed and resulted in an increased offer of \$1,035,000. Dweck recommended that Mann accept this offer, but Mann rejected it in the belief that her claim was worth more. A few days later, she wrote a letter to Dweck terminating the representation. At the time, Dweck had received only the original retainer of \$12,500.

Mann later retained a new lawyer who instituted an action against the Bank for \$4 million in damages. The matter will be tried in November. In the meantime, Dweck sued for its fees based on quantum meruit. The Court of Appeals in *Pain Services*, supra, enunciated the governing law:

[I]f a lawyer is discharged for cause, he or she is not entitled to legal fees. If the lawyer is discharged without cause and prior to the conclusion of the case, however, he or she may recover either (1) in quantum meruit, the fair and reasonable value of the services rendered, or (2) a contingent portion of the former client's ultimate recovery, but only if both of the parties have so agreed...

Recovery on a quantum meruit basis is called for even where the attorney discharged without fault was employed under a contingent fee contract.

Under these guidelines, Judge Scheindlin proceeded to consider the following factors: (1) the difficulty of the matter; (2) the nature and extent of the services rendered; (3) the quality of performance by counsel; (4) the qualifications of counsel; (5) the amount at issue; and (6) the results obtained (to the extent known). (See, *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 148 (2d Cir. 1998)). Also, the court took into account the fact that the retainer provided for a fee contingent on recovery.

In computing a fee in quantum meruit, the federal district courts are permitted to use the so-called lodestar method. In a lodestar analysis, the court estimates the attorney's fees by "multiplying the number of hours reasonably expended on the litigations times a reasonable hourly rate. The hourly rate is to be

calculated according to the prevailing market rates in the relevant community." *Arbor Hill Concerned Citizens Neighborhood Ass'n. v. County of Albany*, 369 F3d 91 (2d Cir. 2004).

Once the calculation is completed, the court will compute interest on the award from the date of discharge. A "quantum meruit action is essentially an action at law...Thus, the court is required to award interest" pursuant to section 5001 of New York's Civil Practice Law and Rules.

Judge Scheindlin found that Dweck had kept no contemporaneous time records with respect to its negotiations with the Bank. Jack Dweck, a partner in Dweck, testified that the firm had spent 400 hours in drafting documents and correspondence, attending meetings, negotiating with the Bank, preparing for and attending the mediation session, and communicating with Mann both personally and by telephone. Because Mann was a "high maintenance" client, Jack Dweck handled the matter almost exclusively. He estimated that 95% of the firm's time was contributed by him. His hourly rate was \$350.

Judge Scheindlin found Jack Dweck's testimony as to time spent credible but unreliable because of the lack of recordkeeping. Considering all the factors, including the fact that Mann was probably a demanding client, Judge Scheindlin concluded that Dweck could not have spent more than 300 hours in all in Mann's behalf. Of the 300 hours, Judge Scheindlin attributed 95% or 285 hours to Jack Dweck and 5% or 15 hours to his son, a member of the firm.

Using the lodestar method, Judge Scheindlin awarded Dweck a fee of \$153,562. The lodestar analysis (reasonable fee times hours worked) yielded the sum of \$102,375. To this sum, Judge Schendlin added a factor of 50%, bringing the fee to \$153,562. The 50% factor was added "because of the risk involved in contingency representation" (citing *Ruggiero v. R.W. Gross Plumbing and Heating, Inc.*, 641 N.Y.S.2d 189 (3d Dept. 1996)).

Judge Scheindlin then subtracted the original retainer of \$12,500 from the award and added interest from March 22, 1999, the date on which the firm was discharged. Interest amounted to \$83,115. The court directed judgment in favor of Dweck in the amount of \$224,177.