

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE14004731 DIVISION 05 JUDGE Martin Bidwill

Yaimi Gandul

Plaintiff(s) / Petitioner(s)

v.

Olympus Insurance Company

Defendant(s) / Respondent(s)

/

**ORDER GRANTING DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO
SECTION 57.105 FLORIDA STATUTES**

THIS CAUSE having come before the Court on February 28, 2020, on the Defendant's Motion for Sanctions Pursuant to Section 57.105, Florida Statutes, the Court, having reviewed the file, having heard the arguments of counsel, having considered opposing proposed orders, and being otherwise fully advised in the premises, hereby makes the following findings of fact and conclusions of law:

1. Erick Valdes, the "loss consultant" hired by Plaintiff's counsel ("The Strems Law Firm"), testified that he had been working as a consultant for Plaintiff's counsel since midyear of 2012 (Valdes depo. p. 9), approximately the same time he was released from federal prison where he was serving a thirty-three month sentence for conspiracy to commit fraud (Valdes depo., pp. 45, 193-96).
2. At the time Mr. Valdes was hired by Plaintiff's counsel in connection with this insurance claim, he was on supervised release from federal prison (Valdes depo., pp.72, 193-96).
3. At the time Mr. Valdes was hired by Plaintiff's counsel in connection with this insurance claim, he had surrendered his public adjusting license after he failed to comply with his continuing education requirements. (Valdes depo., pp. 57-58, 72).

4. Mr. Valdes testified that he performed the same duties in connection with the insurance claim at issue in this case as he would have performed as a public adjuster, except that he did not directly “sign up” Plaintiff as a client. (Valdes depo., pp. 23, 59).
5. This Court finds that Plaintiff’s counsel knew or should have known, at the time they hired Mr. Valdes to prepare an estimate and assist with Plaintiff’s insurance claim, that Mr. Valdes had been convicted of conspiracy to commit fraud, was on supervised release from federal prison, and no longer had a valid public adjusting license.
6. Further, Mr. Valdes testified that, after his release from federal prison, Plaintiff’s counsel represented him in two personal civil matters involving past due loans. (Valdes depo., pp. 69-70). Therefore, this Court finds that Plaintiff’s counsel knew of Mr. Valdes’s troubled financial condition.
7. Mr. Valdes testified that he was paid a flat fee for his consulting services. (Valdes depo., pp. 3-16). Therefore, the record does not support a finding that he was acting in his own interest and adversely to the interests of Plaintiff or his counsel. To the contrary, the record supports that, if successful, Mr. Valdes’s fraud would have directly benefited Plaintiff and his counsel.
8. Mr. Valdes testified that his estimate intentionally exceeded the true cost of repairs by twenty percent. (Valdes depo., pp. 100-02). If Plaintiff’s counsel had performed even the most basic investigation into the grounds for and veracity of Mr. Valdes’s estimate, they would have obtained actual knowledge that the estimate was false and fraudulent.
9. On the eve of Mr. Valdes’s deposition—before his testimony revealed the fraudulent nature of his estimate—Plaintiff’s counsel offered to withdraw Mr. Valdes as a witness in exchange for Defendant cancelling the deposition. (Oral statement of Plaintiff’s counsel at February 28, 2020 hearing). When Defendant proceeded with the deposition, Plaintiff’s counsel did not appear. (Valdes depo., p. 2).

10. Based upon the foregoing findings of fact, the arguments made at the February 28, 2020, hearing, and the record in this case, this Court finds that Plaintiff's counsel knew after Valdes's deposition, and after consulting Mr. Rafael Leyva (an additional expert who valued the loss at an amount approximately \$55,000 less than Valdes had), that the pending claim was based upon the submission of a fraudulent estimate. Therefore, plaintiff's counsel knew or should have known that application of then existing law to the facts of this case rendered the claim frivolous pursuant to the "concealment of fraud" provision of the insurance policy at issue. The abandonment of Valdes as a witness, and the listing of Leyva in his stead, did not cure the deficiency because by submitting the fraudulent estimate in support of the claim the plaintiff had essentially triggered a bar to recovery. Plaintiff's counsel knew or should have known this and nonetheless proceeded with the claim.
11. Plaintiff's counsel did not present a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success and, therefore, failed to satisfy the exception in section 57.105(3)(a), Fla. Stat.
12. Plaintiff's counsel failed to establish that they acted in good faith, based on the representations of their client and, therefore, failed to satisfy the exception in section 57.105(3)(b), Fla. Stat.

Therefore, it is hereby **ORDERED AND ADJUDGED** that the defendant's Motion For Sanctions is GRANTED. Plaintiff's counsel shall pay Defendant's reasonable attorney's fees incurred in this litigation, pursuant to section 57.105(1)(b), Fla. Stat. See *Davis v. Bailyson*, 268 So. 3d 762 (Fla. 4th DCA 2019), and section 57.105(3)(c), Fla. Stat. This Court will conduct an evidentiary hearing to determine the amount of Defendant's reasonable attorney's fees and shall enter a scheduling order setting forth the procedures for such hearing.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 09-17-2020.

CACE14004731 09-17-2020 11:31 AM


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Hon. Martin Bidwill

CIRCUIT JUDGE

Electronically Signed by Martin Bidwill

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