

FILED BY 773 D.C.
JUL - 9 2012
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60817-CIV-William

GEORGE R. SIMPSON

VS.

D. J. GROTHE, PRESIDENT OF JAMES RANDI
EDUCATIONAL FOUNDATION, JAMES
HAMILTON ZWINGE, AKA JAMES RANDI ,
JAMES RANDI EDUCATIONAL FOUNDATION

FRAUD; MISREPRESENTATION AND
BREACH OF CONTRACT;
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
MISFEASANCE; MALFEASANCE;
CONSPIRACY (SECT 1985 AND 1986);
ACTION FOR DAMAGES; AND
ACTION FOR SPECIFIC
PERFORMANCE

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' REPLY TO PLAINTIFF'S
MOTION IN APPLICATION FOR DEFAULT JUDGEMENT BECAUSE
DEFENDANTS PROVIDED FRAUDULENT SERVICE OF THE MOTION TO
DISMISS AND THEIR MOTION IN OPPOSITION**

Here comes Plaintiff George R. Simpson, Pro Se, and files this motion in opposition to Defendants' reply to Plaintiff's motion in application for Default Judgement (FRCivP Rule 55 (a), (b) (2).) because Defendants provided fraudulent proof of service of the Motion to Dismiss and their Motion in Opposition. Without service, the motions have not been filed.

Defendants' attorney denies that he fraudulently failed to serve Plaintiff with documents, but Defendants' attorney's denial is a lie, proven by attorney Holtmann's own words in his email to Plaintiff sent on June 30, 2012. In that email, attorney Holtmann states to Plaintiff Simpson that service was completed electronically, when in fact his "proof of service" in all three documents CERTIFIED that service was made to PO Box 775, Hampton Bays, NY 11946. Attorney Holtmann confirms in his email that his certified proof of service was a lie.

In attorney Holtmann's reply pleading, he does not even discuss that fatal statement, acting as if the email statement did not exist. Attorney Holtmann's dishonest, incomplete and nonspecific response is in violation of the Court's rules (requiring specificity and completeness of reply). The Court rules require a complete response to all accusations by Plaintiff, and attorney Holtmann simply ignored his own email statement, which Plaintiff Simpson presented as his main evidence against attorney Holtmann in his application for default motion (Exhibit 1, attached to the application for default motion).

Attorney Holtmann (against the Court rules) chose not to address Plaintiff Simpson's most important item of evidence, Defendants' attorney's statement in his email to Plaintiff Simpson.

Defendants' attorney says that they have filed three documents, implying that Plaintiff received one of the documents. Defendants' attorney wants the Court to believe that if they filed three documents, and one of them was received by Plaintiff and the other two were not, there must have been a failure of the mails in the other two documents.

In fact, Plaintiff did not receive any of the three documents.

All three of the Court documents were certified in proofs of service by attorney Holtmann as having been mailed at different times, but Plaintiff Simpson did not receive any one of the three documents.

Three documents not getting to their destination by the US Mails is less likely than getting hit by lightning – three times in the same place.

The documents were not mailed to Plaintiff Simpson, and attorney Holtmann's own words in his June 30, 2012 email confirm that.

Attorney Holtmann simply lied about his service of the three documents in Defendants' reply to Plaintiff's motion.

But Defendant's attorney fails to discuss the *evidence of his own words in his email to Plaintiff Simpson*, where he acknowledges that he had served by electronic means, not by Mail.

Certification of Proof of Service says that YOU (the person certifying the service) have affected service. How could attorney Holtmann say one thing in his email to Plaintiff Simpson, and now say something else?

A copy of the email in question was included as Exhibit 1 in Plaintiff's application for default judgement. This omission of a discussion of the email exchange not only points to the attorney as dishonest, but it is a violation of the FRCivP for specificity and completeness in pleadings.

The three Email sequence on June 30, 2012 follows:

Plaintiff Simpson wrote first:

“Attorney Holtmann:

This is to advise you that I did not receive service of both of the two pleadings you filed in the Simpson v Randi lawsuit. Your pleadings attached a proof of service, but I got no pleadings. Our mail is very reliable. Please acknowledge your receipt of this email.

George Simpson:

Defendants' attorney Holtmann replied:

"Mr. Simpson

The service of papers in Federal Court is through the electronic filing system. Once a pleading or motion is filed in that system, it automatically is sent, via e-mail, to all individuals or entities in the system. I will be sending you a letter and proposed motion for sanctions and will use this e-mail as the requirement under the rules is that I give you notice before a motion for sanctions is filed with court.

Attorney Holtmann:

Plaintiff Simpson responded:

"Read your proof of service. Last part – I am Pro Se, and "not authorized to receive electronic Notices of Electronic Filing" – also read the FRCivP on Pro Se. Please respond after cking this out.

George Simpson"

Defendants' attorney's only mention of the email exchange is in his item # 7 on page 2 of his pleading, when he says:

"When the undersigned counsel was notified by e-mail that the pro se Plaintiff was not receiving certain documents, all of the above documents were resubmitted to his post office box."

That statement is also untrue and dishonest. The email exchange was on June 30, 2012 (a Saturday). The documents were received by Plaintiff by regular first-class mail on July 6, 2012, and the package was postmarked on July 3, 2012, the day that Plaintiff filed his motion for application for default. After the June 30, 2012 email exchange, attorney Holtmann took three days to mail the three documents to Plaintiff. (Copy of the Post Mark and envelope are attached herein as Exhibit 1)

The sequence of events show that Attorney Holtmann obviously waited until after Plaintiff's motion for the application of default was filed. He did not mail it out on Monday, July 2, as a diligent attorney would have – and as he said he sent it:

“when the undersigned counsel was notified...”

The above cited email exchange took place on Saturday June 30, 2012. Plaintiff Simpson never heard back from attorney Holtmann. Attorney Holtmann never responded to Plaintiff Simpson's request in the third email:

“Please respond after cking this out”

Attorney Holtmann did not answer the question about Pro Se's not being served electronically. He did not answer it in an email, and he did not answer it in his reply motion. Why not?

Attorney Holtmann never answers that question, and he is required to do so under the Court's rules requiring completeness and specificity in pleadings. His stance of silence is self-indicting of his actions, and lack of actions.

Six days after the June 30, 2012 email exchange, attorney Holtmann's "Defendants' reply to Plaintiff's motion in application for default ..." was filed July 6, 2012. Why didn't attorney Holtmann correct the record immediately?

Why did attorney Holtmann wait until Plaintiff filed another motion in application for default to correct the record regarding the mailing of service of the three documents, to file his motion to defend his actions?

The record speaks for itself. And it speaks loudly: Attorney Holtmann, in his email exchange to Plaintiff Simpson, acknowledges that he thought Plaintiff Simpson was being served automatically by his electronic filing of the three documents.

Then he waited to see what motion (if any) would be filed by Plaintiff. Even after Plaintiff filed his motion for application for Default, Defendants' attorney took three more days to file an answer. Attorney Holtmann does not explain these long time periods before taking action. By his silence on the actions and by the actions themselves, he is saying:

“We took all that time because we were deciding what to do. We decided to LIE”.

Who would think otherwise, after studying the record?

Furthermore, attorney Holtmann's email threatens sanctions against Pro Se Plaintiff Simpson, which he did not define, nor did he start proceedings for "sanctions":

"I will be sending you a letter and proposed motion for sanctions and will use this e-mail as the requirement under the rules is that I give you notice before a motion for sanctions is filed with court."

That threatening statement is a flagrant violation of the FRCivP rules against intimidation of a litigant opponent. It is against the rules for a haughty, dishonest attorney to try and scare his Pro Se opponent with a baseless statement like the one quoted above.

NOW THEREFORE: For the above stated reasons, Plaintiff requests that the Court issue a Default Judgement against Defendants, and in favor of Plaintiff.

Defendants have broken the rules regarding service, and they have tried to lie their way out of their actions. They have done so in a very obvious way. It is clear by a simple reading of the record, that they are LYING.

Lying in a Court pleading is a very serious matter. The American Bar Association Model Rules of Professional Conduct specify disbarment as the appropriate punishment for just one such lie.

DATED July 7, 2012

Respectfully submitted:

GEORGE R. SIMPSON, PROSE

By: 

George R. Simpson
PO Box 775
Hampton Bays, NY 11946
631-357-9502

CERTIFICATE OF SERVICE

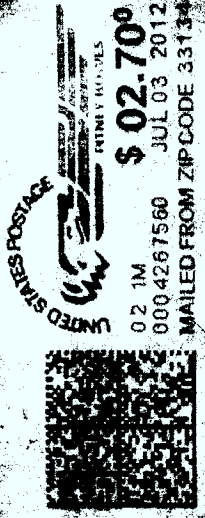
The undersigned hereby certifies that a true and exact copy of the foregoing pleading was served by mailing the same, postage prepaid, by hand delivery or by facsimile on the 7th day of July, 2012.

To: Wicker, Smith, O'Hara, McCoy & Ford, P.A.
Attorneys for the Defendants
2800 Ponce de Leon Boulevard
Suite 800
Coral Gables, FL 33134
Phone: (305) 448-3939

Via: Mail Fax Hand

A handwritten signature in black ink, appearing to be "RLB", is written over a horizontal line. The signature is stylized and cursive.

Exhibit 1



LAW OFFICES
ICKER, SMITH, O'HARA
McCoy & Ford, P.A.
REGIONS BANK BUILDING
300 PONCE DE LEON BOULEVARD
SUITE 800
PALM GABLES, FLORIDA 33101

George R. Simpson
Post Office Box 775
Hampton Bays, NY 11946