

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO.:

NATALY MINKINA, M.D., :

Plaintiff, :

v. :

LAURIE A. FRANKL, ESQ. :

JONATHAN J. MARGOLIS, ESQ. :

RODGERS, POWERS & :

SCHWARTZ, LLP :

Defendants. :

1st AMENDED COMPLAINT

Parties

1. Plaintiff Nataly Minkina, M.D. is a citizen of the Commonwealth of Massachusetts residing 25 Baker Circle, Chestnut Hill, Norfolk County, Massachusetts 02467.
2. Defendant Laurie A. Frankl, was at all relevant times, an attorney practicing law at the law firm of Rodgers, Powers & Schwartz, LLP, 18 Tremont Street, Boston, Suffolk County, Massachusetts 02108.
3. Defendant Jonathan J. Margolis, was at all relevant times, an attorney practicing law at the law firm of Rodgers, Powers & Schwartz, LLP, 18 Tremont Street, Boston, Suffolk County, Massachusetts 02108.
4. Defendant Rodgers, Powers & Schwartz, LLP is a law firm partnership with principal offices at 18 Tremont Street, Boston, Suffolk County, Massachusetts 02108.

Background

5. On or about June 4, 2002, plaintiff Nataly Minkina (“Minkina”) signed a contract to become employed as a medical doctor with Medical Care of Boston Management Corp., d/b/a Affiliated Physicians Group (“APG”) in the Brookline/Boston area beginning September of 2002.

6. In September 2002, Minkina began practicing at APG's Chestnut Hill location and shortly thereafter she noticed intermittent exhaust fumes in her office which caused her to suffer, among other things, nausea and headaches.
7. The fumes also impacted her employment and her professional relationship with APG.
8. After Minkina brought the matter to APG's attention she requested that APG abate or remediate the condition. Minkina and APG spent the next several months trying to resolve the issues involving, and arising out of, the exhaust fumes.
9. Throughout 2003, Minkina and APG attempted to resolve the growing dispute between them which by then included allegations against APG of discrimination and retaliation.
10. Minkina and APG were unable to resolve their disputes, and on December 17, 2003, Minkina filed a complaint against APG with the Massachusetts Commission Against Discrimination ("MCAD").
11. After Minkina's repeated proposals for resolving her disputes with APG were rejected, Minkina's employment with APG ended on November 12, 2004 and shortly thereafter Minkina removed the MCAD matter to Suffolk Superior Court.

Facts

12. At all relevant times, defendants Laurie A. Frankl ("Frankl"), Jonathan J. Margolis ("Margolis") and Rodgers, Powers & Schwartz, LLP ("RPS") provide, among other services, legal counsel to clients regarding employment disputes.
13. In May 2005, Minkina retained the services of defendant RPS to prosecute Minkina's claims against APG that were pending in the Superior Court. RPS was recommended to Minkina by her litigation attorney at the time, Andrew Crouch.
14. As part of RPS's representation, Minkina met with defendants Frankl and Margolis regarding the prosecution of Minkina's case against APG.
15. Frankl was assigned to be the RPS attorney primarily responsible for litigating Minkina's case.
16. Soon after Minkina retained services of defendants Frankl and Margolis APG filed a motion with the court to compel arbitration.
17. Shortly thereafter, Frankl went on medical leave for the next several months and was unable to work on Minkina's case until the new year.
18. Margolis assured Minkina that despite Frankl's absence, that he would continue to work on Minkina's case.

19. During Frankl's absence, Margolis was preoccupied with his own case load (three scheduled trials) and throughout the remainder of 2005, only a minimal amount of work was performed on Minkina's case by RPS attorneys with discovery incomplete.
20. When Frankl returned to work on Minkina's case in mid-January 2006, discovery was incomplete and needed to be extended.
21. On January 31, 2006, Frankl filed Minkina's motion to extend discovery, which was necessitated by RPS's failure to complete discovery and despite the case being over a year old.
22. Since the November of 2005 hearing on APG's motion to compel arbitration and dismiss the Superior Court action, Minkina discussed opposing the motion with Frankl and Margolis. With the motion, RPS's discovery on behalf of Minkina essentially ceased.
23. As prepared and argued by RPS, Minkina's opposition to APG's motion, neglected to raise important arguments that might have succeeded if raised, namely that an improper termination of Minkina's employment negates the validity of the employment contract's arbitration clause. Additionally, RPS attorneys neglected to raise four other important issues:
 - a) APG terminated Minkina's contract in September of 2004 under pretext of closing its Pond Avenue office where Minkina was transferred against her will and in retaliation for filing a motion to enjoin the transfer;
 - b) On or about September 17, 2004, two weeks before Minkina's termination APG filed a reply to Minkina's amended complaint with MCAD arguing that Minkina did not suffer any adverse employment action from the transfer into the Pond Avenue office despite the fact and APG's own admission that decision to terminate her contract was made on or about August 26, 2004;
 - c) Minkina's significant financial hardship of litigating first in the MCAD and then in Superior Court;
 - d) Minkina's financial burden associated with the arbitration filing which would require her to incur tens of thousands of dollars of additional fees in order to vindicate her rights.
24. As a result, APG was able to prevail on its dilatory motion, which was filed more than a year after Minkina removed the MCAD matter to Superior Court.
25. Upon the advice of RPS, Minkina filed a G.L. c. 231 § 118 appeal to a single Appeals Court justice. The Section 118 appeal was denied on April 10, 2006.

26. Even after the matter was ordered to arbitration, Frankl still assured Minkina that the arbitration would be “very costly” for APG, implying that this would increase the pressure on APG to resolve the case.
27. In a letter dated May 19, 2006, Frankl again assured Minkina that the arbitrator’s fees would be paid by APG (both Frankl and Margolis advised Minkina from the very beginning of RPS’s representation that APG would be responsible for arbitration costs and that Minkina would only pay a small filing fee (\$150). Based on that continued advice, Minkina allocated significant resources to appeal APG’s motion to compel arbitration).
28. In reliance on Frankl’s assurances, Minkina decided against further appeals of the Superior Court’s order regarding arbitration, instructed RPG to proceed with the arbitration.
29. On May 22, 2006, Frankl began preparing Minkina’s claim for arbitration.
30. On May 23, 2006, Frankl notified Minkina that she had erred about APG being required to pay for the arbitrator. In fact, Minkina and APG would be required to split the costs of the arbitrator with Minkina having to pay approximately \$30,000 in unanticipated arbitration fees. Responding to Minkina’s displeasure with this late development, attorney Frankl “advised” her to find new representation.
31. Also, on May 23, 2006, Frankl essentially advised Minkina to reverse her decision to proceed with arbitration.
32. On May 24, 2006, when Minkina complained to Margolis about the quality of the legal services she was receiving from RPS, Margolis gave Minkina as a reason for the slow pace of work, that he and Frankl had been involved in a three week trial.
33. Margolis then unilaterally declared that RPS will withdraw from representing Minkina.
34. Margolis’ unilateral action was against Minkina’s expressed request to be represented by RPS.
35. As a result of RPS’s unilateral withdrawal of its representation, Minkina was forced to retain new counsel and incur legal fees that she would not have had if RPS had not unilaterally withdrawn.
36. RPS’s unilateral withdrawal of its representation and abandonment caused Minkina severe emotional distress which caused and exacerbated Minkina to sustain, among other abnormalities, headaches, anxiety, gastrointestinal discomfort and esophageal spasms.
37. The matter was formerly filed with the American Arbitration Association (“AAA”) on October 26, 2007 and a hearing was conducted on June 2nd and 3rd and September 15, 2008.

38. On March 4, 2009, the AAA found in favor in Minkina and against APG and awarded Minkina \$102,456.05, not including her attorney fees.

COUNT I
(Professional Negligence v. Defendants)

39. Minkina incorporates by reference each of the allegations and statements contained in the preceding paragraphs.
40. Frankl, Margolis and RPS in connection with their representation of Minkina owed her a duty of reasonable care.
41. Frankl, Margolis and RPS breached their duty of reasonable care to Minkina by failing to ascertain in 2005, that the Minkina-APG contract would effectively require Minkina to fund one-half of the fees associated with the arbitration.
42. Frankl, Margolis and RPS breached their duty to Minkina by failing to timely advise Minkina in 2005 that the Minkina-APG contract would effectively require Minkina to fund one-half of the fees associated with the arbitration.
43. As a result of the breach of duty of Frankl, Margolis and RPS, Minkina has sustained damages.

COUNT II
(Negligent Misrepresentation v. Frankl)

44. Minkina incorporates by reference each of the allegations and statements contained in the preceding paragraphs.
45. Frankl in connection with her representation of Minkina, supplied false information to Minkina.
46. When Frankl supplied false information to Minkina, Frankl failed to exercise reasonable care.
47. The false information was for Minkina's guidance with regard to Frankl's representation.
48. Minkina justifiably relied on Frankl's false information, causing and resulting in pecuniary loss to Minkina.

COUNT III
(Breach of Fiduciary Duty v. Defendants)

49. Minkina incorporates by reference each of the allegations and statements contained in the preceding paragraphs.
50. Frankl, Margolis and RPS in connection with their representation of Minkina owed her a fiduciary duty.

51. As a result of the unilateral withdrawal of Frankl, Margolis and RPS from representing Minkina, and other acts and omissions, Frankl, Margolis and RPS breached their duty to Minkina.
52. As a result of Frankl, Margolis and RPS's breach of their fiduciary duty, Minkina has sustained damages.

COUNT IV
(Negligent Infliction of Emotional Distress v. Defendants)

53. Minkina incorporates by reference each of the allegations and statements contained in the preceding paragraphs.
54. Frankl, Margolis and RPS in connection with their representation of Minkina owed her a duty of reasonable care.
55. As a result of the unilateral withdrawal of Frankl, Margolis and RPS from representing Minkina, and other acts and omissions, Frankl, Margolis and RPS breached their duty to Minkina and caused her severe emotional distress.
56. Minkina's emotional distress is manifested by objective symptomatology of physical harm.
57. Any reasonable person would have suffered emotional distress as a result of the acts and/or omissions of the defendants.

WHEREFORE, the plaintiff, Nataly Minkina, requests that the Court:

- A. Enter judgment for plaintiff on each of the Counts I through IV of the Complaint, in such amounts as the jury shall deem to be appropriate;
- B. Enter judgment for plaintiff on each of the Counts I through IV of the Complaint together with interest costs and attorneys fees;
- C. Award such other relief this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS.

NATALY MINKINA
By her attorneys,

Christopher Maffucci, BBO #645972
Matthew Lunenfeld, BBO #
CASNER & EDWARDS, LLP

Dated: July ____, 2009

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