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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2060-15T3

THE LAW OFFICES OF
BRUCE E. BALDINGER, LLC,

Plaintiff-Appellant,

v.

HENRY ROSEN,

Defendant-Respondent.

Argued March 28, 2017 – Decided April 28, 2017

Before Judges Fasciale and Gilson.

On appeal from the Superior Court of New
Jersey, Law Division, Morris County, Docket
No. DC-9056-14.

Howard A. Teichman argued the cause for
appellant.

Catherine M. Brown argued the cause for
respondent.

PER CURIAM

Plaintiff, The Law Offices of Bruce E. Baldinger, LLC
(plaintiff or Baldinger), appeals from two orders entered on
December 8, 2015, which granted summary judgment to defendant and
denied summary judgment to plaintiff. We affirm.

This appeal arises out of a dispute between a lawyer and his client concerning attorneys' fees. Defendant Henry Rosen (defendant or Rosen) retained Baldinger to represent him in disputes with a contractor involving work on defendant's home. The initial retainer agreement was for a flat fee of \$600. Plaintiff did the work for that fee and defendant paid the fee. Defendant and plaintiff then entered into a second retainer agreement, dated September 30, 2014 (the Retainer Agreement). Under the Retainer Agreement, plaintiff was to draft a complaint against the contractor. Defendant agreed to pay plaintiff an initial fee of \$1200 and, thereafter, he would pay hourly rates of \$400 for plaintiff's time, \$300 for an associate's time, and \$150 for a paralegal's time.

Defendant had the right to terminate the representation by plaintiff "at any time" and "for any reason." The Retainer Agreement also provided that defendant would be billed monthly, bills were payable "upon receipt[,]" and "[i]nterest at the rate of 1% per month [would] accrue on unpaid balances after thirty days." Finally, the Retainer Agreement stated: "If collection and judgment enforcement efforts are required, you agree to pay counsel fees along with costs of suit. Interest shall accrue at the rate of 1.5% monthly."

Plaintiff prepared the draft complaint and engaged in negotiation with the contractor. Defendant, however, became dissatisfied with plaintiff's representation and terminated plaintiff's services in October 2014. Thereafter, plaintiff requested defendant to pay for the services he rendered before he was terminated. Defendant had paid the initial fee of \$1200 and plaintiff claimed defendant owed an additional \$4308. Defendant, however, refused to pay those additional fees.

Plaintiff provided defendant with notice of his right to request fee arbitration as provided for under Rule 1:20A-6.1. Defendant then requested fee arbitration. Apparently, plaintiff was initially not aware of defendant's election, and on December 16, 2014, plaintiff filed a complaint in the Special Civil Part. That complaint, which was signed by plaintiff, sought \$4308 for prior fees, interest, attorney's fees, and costs of suit. When plaintiff learned that defendant had elected fee arbitration, he dismissed his complaint in the Special Civil Part.

The matter then proceeded to fee arbitration before a panel of three arbitrators. Plaintiff chose to be represented by separate legal counsel at the fee arbitration. Before the panel, plaintiff requested \$4308 in fees for representing defendant in

¹ Although the parties did not provide us with that notice, there is apparently no dispute that such notice was given.

the dispute with the contractor, interest on those fees, and attorney's fees of \$3660 incurred in connection with the fee arbitration. After hearing from the parties, and after considering the documents submitted at arbitration, the panel awarded plaintiff \$4631.10, which consisted of \$4308 for the balance of fees for the dispute with the contractor and \$323.10 in interest. The panel denied plaintiff's request for attorney's fees incurred in connection with the fee arbitration stating: "As to the request for counsel fees, the panel considers this request to be beyond the scope of the responsibilities of the panel and leaves the attorney to his remedies."

Defendant then filed a motion to reinstate his complaint in the Special Civil Part. As part of that motion, plaintiff requested an "amended" amount of attorney's fees incurred during the fee arbitration, plus the fees for filing the motion to reinstate the complaint. Thus, plaintiff sought \$4470 in attorney's fees and \$175.80 in costs.

Defendant paid the \$4631.10 fee arbitration award. Defendant initially did not respond to the reinstated Special Civil action complaint and a default judgment was entered. Thereafter, that default was vacated and a motion to dismiss was denied. Defendant then filed a motion for summary judgment and plaintiff cross-moved for summary judgment.

After hearing oral argument on the cross-motions for summary judgment, the Special Civil Part judge granted summary judgment to defendant and denied plaintiff's motion for summary judgment. The court explained the reasons for its decision on the record and issued two orders on December 8, 2015.

On appeal, plaintiff makes two arguments. First, he contends that the trial court erred in determining that attorney's fees are not available in fee arbitration proceedings. Second, he contends that his fee agreement was sufficiently clear to allow him to recover attorney's fees incurred in the fee arbitration. We disagree with plaintiff's second argument and, therefore, need not reach the first argument.

The only fees that are at issue on this appeal are the fees incurred by plaintiff during the fee arbitration. As already noted, the fee arbitration panel awarded plaintiff his fees for the representation of defendant in the dispute with the contractor. It is also undisputed that defendant paid that fee arbitration award.

Generally, attorney's fees are not recoverable unless there is a statutory right, rule of court, or a contractual right. N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 569-70 (1999); see also R. 4:42-9(a) (prohibiting, with exceptions, counsel fee awards). There is no statute or rule allowing

plaintiff to recover attorneys' fees. Consequently, plaintiff's claim is dependent on the Retainer Agreement. "[W]here attorney-fee shifting is controlled by contractual provisions, courts will strictly construe that provision in light of the general policy disfavoring the award of attorneys' fees." N. Bergen Rex Transp., supra, 158 N.J. at 570. As noted earlier, the Retainer Agreement provides: "If collection and judgment enforcement efforts are required, you agree to pay counsel fees along with costs of suit."

The plain and unambiguous language of that sentence does not include a fee arbitration proceeding. A fee arbitration proceeding is not a collection and judgment enforcement effort. Instead, fee arbitration was set up by our Supreme Court to promote "public confidence in the bar and the judicial system." Saffer v. Willoughby, 143 N.J. 256, 263 (1996). The fee arbitration process is designed to afford a client a "swift, fair and inexpensive" method to resolve fee disputes. Ibid. (quoting In re LiVolsi, 85 N.J. 576, 602 (1981)). Under Rule 1:20A-3(a)(1), the client has the exclusive right to submit a fee dispute to the committee for resolution. The lawyer is bound by the client's decision. The fee arbitration hearings are not a collection and judgment enforcement effort. Instead, they are an arbitration proceeding where the attorney has the burden to prove "the reasonableness of

the fees in accordance with R.P.C. 1.5 by a preponderance of the evidence." R. 1:20A-3(b)(1).

The Retainer Agreement between plaintiff and defendant did not refer to fee arbitration. Moreover, the record is clear in that defendant elected fee arbitration and paid the fee award. Thus, on the record before us, there is no proof that plaintiff had to engage in any collection and judgment enforcement efforts. In that regard, we note that plaintiff drafted the Retainer Agreement. Thus, it was plaintiff who stated that counsel fees would be paid for collection and judgment enforcement efforts. In other words, plaintiff elected to use the conjunctive "and" thereby limiting any attorney's fees to efforts that involved both the collection and judgment. Collection denotes that the amount being sought is not in dispute. Fee arbitration, however, requires the attorney to establish that the fees being sought are reasonable as a predicate to any fee arbitration award.

Having determined that plaintiff's agreement did not encompass fees incurred during a fee arbitration proceeding, we need not and do not decide the separate issue of whether such fees could be sought.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION