



AlaFile E-Notice

02-CV-2016-901432.00

Judge: JAMES T. PATTERSON

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

CYNTHIA PHILLIPS V. PAUL AARON HERMAN ET AL
02-CV-2016-901432.00

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IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

PHILLIPS CYNTHIA,)	
Plaintiff,)	
)	
V.)	Case No.: CV-2016-901432.00
)	
HERMAN PAUL AARON,)	
LAW OFFICES OF PAUL A. HERMAN,)	
P.A.,)	
Defendants.)	

ORDER AWARDING DAMAGES

The Court hereby awards Ms. Phillips damages in the amount of \$3,583.38 for breach of the legal services contract; \$10,750.14, for mental anguish and emotional distress; and \$5,000 in punitive damages. The basis for these damage awards is provided below.

The legal representation at issue in the instant litigation between Cynthia L. Phillips and the Law Offices of Paul A. Herman, P.A. and Paul Aaron involved problems with three (3) of Ms. Phillips' credit card accounts: Bank of America (original balance: \$11,996.52), Citi Bank (original balance: \$13,018.14), and Chase (original balance: \$7,579.00). In her Complaint, Plaintiff asserted claims for alleged "Breach of Fiduciary Duty," and plead a cause of action against the defendants per the "Alabama Legal Services Liability Act." She sought compensatory and punitive damages.

A hearing was held May 12, 2017 in Courtroom 6300 to ascertain the nature and amount of damages, if any, to be awarded to Cynthia Phillips against the Law Offices of Paul A. Herman, P.A. and Paul A. Herman individually, pursuant to the default judgment granted against the Law Offices of Paul A. Herman, P.A. on March 23, 2017 (Doc. 73) and pursuant to the summary judgment granted against Paul Aaron Herman on March 10, 2017 (Doc. 59). Present for this hearing were Ms. Cynthia L. Phillips, her husband, their counsel Judson Crump, Esq., and Mr. Paul Herman *pro se*. Testimony was given by Ms. Phillips in direct and via cross examination. Mr. Herman gave his own testimony, primarily via his cross-examination of Ms. Phillips. Mr. Phillips did not testify.

It became clear via Ms. Phillip's testimony that the Law Offices of Paul A. Herman, P.A., which obviously operated under the Florida law license of Paul Aaron Herman, Esq., somehow facilitated the original contact that led to Ms. Phillips becoming their client (perhaps as explained by Mr. Herman, via some lead generation service). Ms. Phillips also testified that someone on behalf of that Firm represented to her that her debt from three accounts at issue (Bank of America, Citi Bank, and Chase) would be wiped away as if nothing had ever happened. Mr. Herman vigorously contested her contention that his office had contracted to erase all of Ms. Phillips debt for the three

subject accounts, and instead argued via his law Firm records (which he now apparently has possession of since his law license has been restored) that his Firm provided several opportunities for Ms. Phillips to settle two of her three problem credit card accounts for much less than face value.

With respect to services that were actually provided to Ms. Phillips during Mr. Herman's representation, she admitted that threatening calls to her home from collectors had ceased. With regard to her Citi Bank account, it originally had a debt of \$13,018.14 owed. It was shown by Mr. Herman, via his now available law firm call log records, that Ms. Phillips was offered an opportunity to settle her Citi Bank account for \$4,557.00 in December of 2013, but Ms. Phillips said it was "too early in the game" and she wanted to hold out for a better settlement. Mr. Herman's Firm ultimately negotiated a better settlement from Citi Bank in February of 2016: A payment by Ms. Phillips of \$3,905.00 would have taken care of this.

Ms. Phillips admitted on cross examination that she knew of some settlement opportunities regarding this account, but did not recall hearing of any specific amounts. However, had she taken Citi Bank's February 2016 offer to settle, it would have yielded a savings over her original debt of \$9,113.14—indicating that Ms. Phillips would have paid less than 1/3rd of her original Citi Bank debt, or 29.9% to be exact.*

[*The Court notes that this \$13,018.14 remains outstanding. However, Ms. Phillips said she has not been sued over this account to date, and no one could provide a status to the court regarding whether collection efforts were ongoing. Mr. Herman did point out his belief that enough time has passed without a bill from Citi Bank that its debt may not be collectible.]

As for Ms. Phillip's Chase account, \$7,579.00 was initially owed, and that account was resolved by Mr. Herman's office for a zero (\$0.00) payout. That yielded a savings of 100% of said debt.

As for her Bank of America account, testimony showed that Ms. Phillips owed \$11,996.52 around the time she secured the services of Mr. Herman's law Firm, and that per his legal services contract, Mr. Herman promised that if Ms. Phillips was sued over any of the three accounts at issue, he would secure and pay for a legal defense. He did not. Therefore, Mr. Phillips did not get the benefit of that portion of her legal services contract, and in fact incurred \$886.55 in expenses when she hired another attorney to handle that case. That retained attorney negotiated a favorable settlement of that debt for a payment of \$5,398.44. See Bank of America, N. A. v. Cynthia L. Phillips, CV 2016-901033.

Considering the above, it would appear that defendants "the Law Offices of Paul A. Herman, P.A." and "Paul Aaron Herman" did in fact fulfill some of their contractual obligations to then client, Cynthia L. Phillips, because they were able to negotiate the Citi Bank debt down to 29.9% of its original value, and were able to negotiate the Chase account down to a zero dollar payout. As for the Bank of America account, they

failed completely to uphold their obligation in that regard, because Ms. Phillips was sued and did in fact incur legal expenses in the amount of \$886.55 to negotiate settlement there.

If the Court were to take the \$7,500 in legal fees Plaintiff paid to Mr. Herman's Firm and add to that the \$39.99 per month for 15 months for "Credit report Violation Services" as was testified to in Court, it would yield a total legal fee paid to "the Law Offices of Paul A. Herman, P.A." and "Paul Aaron Herman" by Cynthia L. Phillips in the amount of \$8,099.85.

Considering that Mr. Herman's office negotiated a zero payout settlement in the Chase account, and that his office negotiated what would have been a 29.9% payout in the Citi Bank account—had Ms. Phillips accepted and paid that-- Mr. Herman would arguably have earned 2/3rds of his fee. Two-thirds times \$8,099.85 equals \$5,400.17. That would mean that Mr. Herman and his law office arguably did not earn \$2,698.83 of the legal fees charged to Ms. Phillips. Ms. Phillips also incurred legal fees in the amount of \$886.55 by having to hire a local attorney to do what she had already paid the defendants for. This \$2,698.83 in unearned fees, plus the \$886.55 in additional legal fees paid to handle the Bank of America litigation equals \$3,583.38. Ms. Phillips is therefore awarded compensatory damages of \$3,583.38 for breach of the legal services contract.

With respect to mental anguish and emotional distress claimed, it was made clear at hearing that some of the distress experienced by Ms. Phillips certainly predated her legal services contract with the defendants. However, there would certainly have been a measure of distress caused by pre-paying for legal services and then having to sue an out-of-state law firm and its principle because services paid for were not provided. Using the compensatory damages as a guidepost, Ms. Phillips is therefore awarded a three-times multiple of the unearned legal fee taken by defendants plus her additional legal expense, or \$10,750.14, for mental anguish and emotional distress.

As punishment for his wanton failure to abide by his contract and secure representation for Ms. Phillips when she was sued by Bank of America, she is also awarded \$5,000 in punitive damages.

Lastly, as for her contention that Paul Herman and his office promised that he would wipe away her credit card debt as if it had never existed, the Court specifically questioned Ms. Phillips on this. In context of what a reasonable person would believe today in this regard, the court finds that Ms. Phillips' reliance on any such promise from Paul Herman or his Firm was not reasonable. In Alabama—in the context of the law on fraud and what constitutes reasonable reliance on the representations and promises of others, courts have held:

"In as much as it is the policy of courts not only to discourage fraud but also to discourage negligence and inattention to one's own interests, the right of reliance comes with a concomitant duty on the part of plaintiffs to exercise some measure of precaution to safeguard their own interests. In order to recover for

misrepresentation, the plaintiff's reliance must have been reasonable under the circumstances." Torres v. State Farm Fire & Cas. Co., 438 So. 2d 757 (Ala. 1983); Woodlawn Fraternal Lodge No. 525 v. Commercial Union Ins. Co., 510 So. 2d 162 (Ala. 1987).

THEREFORE, Judgement is entered in favor of Cynthia L. Phillips and against Paul Aaron Herman and the Law Offices of Paul A. Herman, P.A. jointly and severally , in the total amount of \$19,333.52 together with costs of court, for which let execution lie.

DONE this 15th day of May, 2017.

/s/ JAMES T. PATTERSON
CIRCUIT JUDGE