UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FARID POPAL,

Plaintiff,

-against-

HARVEY J. SLOVIS,

Defendant.

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12 Civ. 3916 (LGS)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

LORNA G. SCHOFIELD, District Judge:

Pro se Plaintiff Farid Popal brings this action to dispute the amount of fees paid to his former criminal defense attorney, Harvey J. Slovis. In 2005, Popal retained Slovis to represent him during a five-week criminal trial, in which Popal was ultimately convicted of murder. Slovis received $142,000 for the legal services he provided to Popal.

The Amended Complaint ("Complaint") alleges (1) breach of contract, (2) fraud, (3) undue influence and (4) breach of fiduciary duty. An important threshold issue at trial was to determine the terms of the parties' agreement as to the amount of legal fees and what they would cover. Popal alleges in substance that (1) he agreed to fees of $1,200 a day or $24,000 for 20 trial days; (2) he paid $25,000 for experts and investigators who were never retained and (3) Slovis essentially stole approximately $75,000 from the return of bail money posted for his brother that was supposed to serve only as security, in the event that Plaintiff did not pay Slovis' fees. Slovis denies Plaintiff's claims and asserts that he was owed $150,000, which was never paid in full.

After both parties waived their demands for jury trial, a two-day bench trial was held on January 20 and 21, 2015, at which Plaintiff commendably represented himself. Four witnesses testified -- Plaintiff; Defendant; Plaintiff's witness Jillian Harrington, his former appellate

attorney; and Defendant's witness Dennis Lemke, an attorney who practices criminal law and is a long-time professional friend and colleague of Defendant. Among the documents admitted into evidence were those evidencing payment of $142,000 to Defendant.

Based on the following findings of fact and conclusions of law, Defendant is entitled to retain the fair and reasonable value of the legal services he provided to Plaintiff in the amount of $105,000 and must refund Plaintiff $37,000.

FINDINGS OF FACT

Based on the evidence at trial, including credibility judgments of the witnesses, the following are the Court's findings of fact.

I. FAILURE TO AGREE ON TERMS OF THE ENGAGEMENT

Popal was arrested in 2002 in connection with the murder of a woman whom he had dated. In 2005, after having been represented by another lawyer, Popal contacted Slovis about acting as his trial attorney. The parties discussed their fee arrangement during their second in-person meeting, but they conversed through a glass screen. Slovis explained what he would charge to represent Popal for what he estimated would be a six-week trial, and Popal agreed.

If Slovis prepared a written agreement, he never provided it to Popal. In any event, Slovis does not have in his possession a written engagement letter reflecting the parties' agreement, even though he was legally required to prepare and maintain one. *See* N.Y. Comp. Codes R. & Regs. tit. 22, § 1215.1 (requiring attorneys "provide . . . client[s] a written letter of engagement before commencing the representation, or within a reasonable time thereafter"). Jillian Harrington, an attorney who represented Popal in his criminal appeal, obtained Popal's file from Slovis. The file was missing several documents and did not include a retainer agreement.

Because of miscommunication between the parties during their fee discussion and Slovis' failure to provide Popal with a written agreement, the parties thought that they had agreed to -- but never actually reached a meeting of the minds about -- the amount of legal fees and whether it was a flat fee regardless of the length of the trial, or a daily fee based on the number of trial days.

Popal agreed to pay legal fees of $50,000 for a six-week trial at a rate of $1,200 per day for 42 days. Popal further understood that, if the trial lasted less than six weeks, Slovis would refund Popal the fees on a pro rata basis.

Slovis understood that his legal services for trial would be a flat fee of $150,000, regardless of its length, in light of the complexity and seriousness of the case, and the time, effort and expertise required.

Slovis likely showed Popal a copy of his form engagement letter, judging from the similarity between Popal's understanding of their agreement and the language in one of the paragraphs in Slovis' form letter, but they nevertheless failed to reach a common understanding. Slovis typically uses a pre-printed letter of engagement with blanks that he fills in for his hourly rate, a flat fee, a retainer and a minimum fee. Although the fee amount depends on the client and type of case, Slovis has executed agreements with at least two clients that provide for a $750 hourly rate for court time, a flat fee of $150,000, a retainer of $5,000 and a minimum fee of $5,000. He believes that he executed the same form of agreement with Popal, with a $750 hourly rate, a flat fee of $150,000, a retainer of $25,000 and a minimum fee of $5,000.

Slovis' form engagement letter provides in relevant part:

> [O]ur fees will be charged as indicated below: . . .
>
> On the basis of our time charges as follows:
> ___ per hour for the services of _____,

___ per hour for the services of _____.

A flat fee of $_____ for all services within the scope of our representation as set forth above. In consideration of our services, *in matters in which the fee is based on time charges*, we shall require a retainer of $_____ of which the first $_____ shall constitute our minimum fee for the services to be rendered. The retainer is to be applied to our time charges. Our minimum fee is intended to operate as follows:

a. The time initially expended on your matter will be charged against the minimum fee. However, *if your matter is concluded, whether by settlement or by judicial action, in less time than would be required to expend the minimum fee on the basis of time alone, we shall retain the minimum fee* and there would be no refund of any part of the minimum fee. An additional retainer may be required as time charges warrant.

b. If our relationship is terminated in less time than would be required to expend the minimum fee on the basis of time alone, without your matter having been concluded by settlement or judicial action, then we shall not retain the entire minimum fee. Rather, in that event a fair and reasonable fee will be determined in accordance with legally accepted standards and only such portion of the minimum fee as represents such fair and reasonable fee would be retained.

(italics added, underlining in original). Paragraph (a) in substance says that, in a case with a minimum fee of $5,000, if the matter concluded before $5,000 in fees accrued on an hourly basis (or before 6.7 hours in the case of an hourly fee of $750), then Slovis would be entitled to retain the minimum fee, but no more. Slovis' form agreement seems to suggest that if Slovis spent any amount of time in excess of 6.7 hours on such a case, then the client would owe the entire flat fee of $150,000.

Popal's jury trial was held in New York Supreme Court for Queens County from approximately March 1, 2006, to approximately April 5, 2006. The trial was conducted Monday through Thursday for five weeks. The parties agree that the trial was completed in 20 trial days.

Popal believed that Slovis was entitled to $24,000 in legal fees, at a rate of $1,200 per day for 20 trial days. Slovis believed that he was entitled to a flat fee of $150,000.

II. SUMMARY OF PAYMENTS TO DEFENDANT

The following payments were made to Slovis for Popal's legal fees, for a total of $142,000:

- $25,000 by cashier's check dated July 29, 2005, made out to Slovis and signed by Popal's former domestic partner Estorei Omarzad;
- $10,000 by check dated September 27, 2005, and from Omarzad to Slovis;
- $15,000 by check dated February 10, 2006, from Omarzad to Slovis;
- $12,000 by wire transfer on March 27, 2006, from Popal's business, Gear to Gear Transmission, to Slovis;
- $7,500 by wire transfer on March 27, 2006, from Omarzad to Slovis; and
- $72,500 in or around May 2006, pursuant to an August 2005 assignment to Slovis of bail held for Plaintiff's brother, who also had been arrested in connection with the murder and whose bail money was released in May 2006.

A. Bail Money

After Popal had arranged for the first payment of $25,000, Popal agreed that Slovis could execute a letter of "attachment," which would allow Slovis to collect bail money posted for Plaintiff's brother in the event that Plaintiff could not pay Slovis the outstanding amount of his fees. Popal's brother also had been arrested in connection with the murder, but was released on $75,000 bail. Slovis prepared a Bail Assignment form and sent it to Popal's mother and stepmother, who are both unable to read English. His stepmother signed a cover letter dated August 4, 2005, and an Assignment of Bail dated August 19, 2005, at Popal's instruction. Both

documents erroneously stated that the assignment was for services rendered by Slovis for the person held on bail, "Farhad Frank Popal," rather than services for that person's brother, Plaintiff Farid Popal. Both Popal and Slovis understood that the release of the bail money was contingent on Plaintiff's brother appearing for court as required, and that Slovis could not get the bail money until Plaintiff's brother had fulfilled his bail conditions.

Plaintiff arranged to have Slovis paid another $25,000 between September 2005 and February 2006, completing the payments for what Popal thought was Slovis' $50,000 fee.

B. Payment of Experts

When they first met, Slovis represented to Popal that he worked with a team of experts and investigators, whom Popal believed would be called in his defense. Popal continued to believe that Slovis was consulting with experts and investigators during the trial. Popal believed that Slovis required a $25,000 payment to compensate them and arranged to have the last two payments made, totaling $19,500, on March 27, 2006, during the trial. Slovis then confronted Popal about his failure to pay the balance of $5,500 for the investigators and experts. Slovis told Popal that, without the full payment of $25,000, Popal had placed himself at risk of conviction. Popal was unable to pay the remaining $5,500.

Slovis testified that he never intended and never agreed to call expert witnesses or hire investigators. Before trial commenced, Slovis had determined that no expert witnesses or investigators were necessary to advance an effective defense. Slovis did not call any expert witnesses, and Popal acceded to this strategy. The trial concluded on or around April 5, 2006.

C. Post-Trial Release of the Bail Money to Slovis

In or around May 2006, after Plaintiff's trial, his brother's bail money was released, and Slovis collected $75,000, pursuant to the Bail Assignment, less a $2,500 fee paid to the New

York City Finance Commissioner. Popal apparently learned that Slovis was to collect the bail money only after it had been released.

III. DEFENDANT'S EXPERIENCE AS A CRIMINAL DEFENSE LAWYER

Slovis has operated his own law practice since 1979, specializing exclusively in criminal trial work and pleas. Over the course of his career, he has tried at least 500 criminal trials, including at least 75 murder trials. He has had a successful track record in obtaining favorable outcomes for his clients, and he has appeared in the media as a criminal law expert on several occasions. Slovis has represented several celebrities and other high-profile public figures. The fees that Slovis charges his clients are substantial; his standard fees for murder trials lasting more than a month have ranged from $150,000 to $300,000.

In his career, Slovis has never received any sanction or disciplinary action in any court or disciplinary body. With the exception of Popal, none of Slovis' former clients has filed a complaint alleging that he had stolen client funds.

CONCLUSIONS OF LAW

I. BREACH OF CONTRACT

As the testimony at trial demonstrated that there was no meeting of the minds between the parties, no valid contract was formed. Accordingly, Plaintiff's breach of contract claim is dismissed.

To prevail on a breach of contract claim, a plaintiff must first prove that the parties formed a valid contract. *See Harris v. Seward Park Hous. Corp.*, 913 N.Y.S.2d 161, 162 (1st Dep't 2010) (noting that elements of breach of contract "include the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages"). For a valid contract to exist, there must have been a "meeting of the minds" between the parties

regarding essential terms of the transaction. *See Cent. Fed. Sav., F.S.B. v. Nat'l Westminster Bank, U.S.A.*, 574 N.Y.S.2d 18, 19 (1st Dep't 1991) (citing *Joseph Martin, Jr., Delicatessen, Inc. v. Schumacher*, 52 N.Y.2d 105 (1981)). "A term is 'essential' . . . if it seriously affects the rights and obligations of the parties." *Miller v. Tawil*, 165 F. Supp. 2d 487, 494 (S.D.N.Y. 2001) (quoting *Ginsberg Mach. Co. v. J. & H. Label Processing Corp.*, 341 F.2d 825, 828 (2d Cir. 1965)). "As price is an essential ingredient of every contract for the rendering of services, an agreement must be definite as to compensation." *Cooper Square Realty, Inc. v. A.R.S. Mgmt., Ltd.*, 581 N.Y.S.2d 50, 51 (1st Dep't 1992).

It is clear that, here, no meeting of the minds occurred concerning legal fees -- an essential term of the parties' purported agreement. Popal and Slovis each credibly testified as to a vastly different understanding of the amount of legal fees, and whether they had agreed to a "flat fee," or a daily fee. They also failed to reach agreement on whether any of the amount paid was to cover fees for experts or investigators. As the parties contemplated differing amounts of fees, compensation structures and services included in the agreement, a valid contract was never formed. Because a contract between the parties did not exist, Plaintiff's breach of contract claim is dismissed.

II. FRAUD

As Plaintiff has failed to establish a prima facie case of fraud, Plaintiff's fraud claim is dismissed.

"To establish a prima facie case of actual fraud, a plaintiff must present proof that (1) the defendant made material representations that were false, (2) the defendant knew the representations were false and made them with the intent to deceive the plaintiff, (3) the plaintiff justifiably relied on the defendant's representations, and (4) the plaintiff was injured as a result

of the defendant's representations." *Cohen v. Houseconnect Realty Corp.*, 734 N.Y.S.2d 205, 206 (2d Dep't 2001) (citing *Channel Master Corp. v. Aluminum Ltd. Sales, Inc.*, 4 N.Y.2d 403 (1958)). Fraud must be proven by clear and convincing evidence. *See Banque Franco-Hellenique de Commerce Int'l et Mar., S.A. v. Christophides*, 106 F.3d 22, 25 n.2 (2d Cir. 1997) (quoting *Abrahimi v. UPC Constr. Co.*, 638 N.Y.S.2d 11, 13 (1st Dep't 1996)).

Here, Popal alleges that Slovis falsely represented that Slovis would (1) hire expert witnesses and investigators and (2) return $75,000 in bail money to Popal. Slovis credibly testified that he made no such representations. Furthermore, Popal failed to present sufficient evidence to rebut the likely scenario that the parties simply misunderstood one another. Plaintiff thus has failed to prove -- whether by preponderance of the evidence or clear and convincing evidence -- that Slovis made material representations that were false. Plaintiff also has failed to prove that Slovis made such representations with the knowledge that they were false and with the intent to deceive Popal. Accordingly, Plaintiff's fraud claim is dismissed.

III. UNDUE INFLUENCE

Popal has likewise failed to establish a prima facie case of undue influence, and this claim is also dismissed.

"In New York, a plaintiff alleging undue influence must establish: (1) the existence and exertion of an influence; (2) the effective operation of such influence as to subvert the mind at the time the transaction occurred; and (3) the execution of the transaction that, but for undue influence, would not have happened." *Abercrombie v. Andrew Coll.*, 438 F. Supp. 2d 243, 273 n.27 (S.D.N.Y. 2006). "The nature of undue influence, however, often prevents direct proof on the issue; it thus may be demonstrated by circumstantial evidence." *Medeiros v. John Alden Life Ins. Co. of N.Y.*, No. 88 CIV. 4399 (KMW), 1990 WL 115606, at *4 (S.D.N.Y. Aug. 10, 1990)

(citing *In re Walther's Will*, 188 N.Y.S.2d 168, 172 (1959)). Undue influence exists "where, by reason of lack of understanding, absence of independent advice, improvidence, unnaturalness of the trust, mental and physical condition of the [party], and the like, it is clear that the [party] would not have [acted] of his own free will." *Kazaras v. Mfrs. Trust Co.*, 164 N.Y.S.2d 211, 220 (1st Dep't 1957), *aff'd*, 4 N.Y.2d 930 (1958). "Where there are significant disputed issues of fact regarding . . . the circumstances surrounding the execution of a document, the question of undue influence is for the fact finder." *Medeiros*, 1990 WL 115606, at *4 (citing *In re Pollock*, 64 N.Y.2d 1156 (1985)).

Here, Plaintiff alleges that, as a result of Slovis exerting undue influence, Plaintiff agreed to assign his brother's bail money to Slovis. Although the testimony suggests Slovis encouraged Plaintiff and his family to assign his brother's bail money, this does not rise to the level of undue influence. Even assuming, arguendo, that Slovis had represented that the bail money would serve only as collateral until Popal paid the balance of legal fees, Plaintiff failed to show that he would not have made the bail assignment, but for Defendant's undue influence. The testimony and evidence presented at trial at most show that Slovis was intent on assuring that he was paid the fee that provided "[d]isinterested advice, and even pressure" that "no matter how bad, [must] not be confused with undue influence." *Kazaras*, 164 N.Y.S.2d at 221. Plaintiff has failed to show that Slovis committed anything "tantamount to a species of cheating." *Id.* Popal's undue influence claim therefore fails.

IV. BREACH OF FIDUCIARY DUTY

Finally, Popal's breach of fiduciary duty claim must be dismissed for two reasons. First, this claim is duplicative of his breach of contract and fraud claims. Second, Plaintiff has failed to establish a prima facie case.

A court may dismiss a claim as duplicative if "relying on the same alleged acts, [the claim] simply seek[s] the same damages or other relief already claimed in a companion [] cause of action." *Hall v. EarthLink Network, Inc.*, 396 F.3d 500, 508 (2d Cir. 2005) (citations omitted); *accord Cerberus Int'l, Ltd. v. BancTec, Inc.*, 791 N.Y.S.2d 28, 30 (1st Dep't 2005) (affirming dismissal of implied covenant of good faith and fair dealing claim as duplicative of contract claim).

Here, Popal alleges that Slovis committed a breach of fiduciary duty by failing to return excess legal fees, by advising Popal to assign his brother's bail money to Slovis and by obtaining the bail money after the end of trial. With respect to the legal fees, Popal's breach of fiduciary duty claim relies on the same facts and seeks the same relief as his breach of contract claim, and with respect to the bail money, this claim likewise duplicates his fraud claim. Consequently, Popal's fiduciary duty claim is dismissed as duplicative as a matter of law. *See Snyder v. Wells Fargo Bank, N.A.*, 594 F. App'x 710, 713 (2d Cir. 2014) (summary order) (affirming dismissal of breach of fiduciary duty claim as duplicative of breach of contract claim); *Mill Fin., LLC v. Gillett*, 992 N.Y.S.2d 20, 25 (1st Dep't 2014) ("Where a good faith claim arises from the same facts and seeks the same damages as a breach of contract claim, it should be dismissed."); *Cerberus*, 791 N.Y.S.2d at 30; *see also Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 196 (S.D.N.Y. 2011) ("In New York, a cause of action for breach of fiduciary duty which is merely duplicative of a breach of contract claim cannot stand." (internal quotation marks and alteration omitted)).

Even if this claim were not dismissed as redundant, Popal has failed to sustain his burden of proof at trial. "The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3)

damages directly caused by the defendant's misconduct." *Varveris v. Zacharakos*, 973 N.Y.S.2d 774, 775 (2d Dep't 2013); *accord Trautenberg v. Paul, Weiss, Rifkind, Wharton & Garrison L.L.P.*, 351 F. App'x 472, 474 (2d Cir. 2009) (summary order).

Apart from his failure to produce a copy of the parties' letter of engagement, Plaintiff presented insufficient evidence at trial to prove, by a preponderance of the evidence, that Slovis committed misconduct tantamount to a breach of fiduciary duty. It is clear from the testimony and evidence presented at trial that there was never a meeting of the minds between the parties. Nevertheless, Plaintiff's testimony that Slovis intentionally misled Plaintiff cannot be credited; Plaintiff's allegations are merely speculative and are not corroborated by other evidence in the record. Accordingly, Plaintiff's breach of fiduciary duty claim must be dismissed.

V. QUANTUM MERUIT

As there was never a meeting of the minds between the parties on their fee agreement, no binding contract was formed. In the absence of an agreement, Slovis is entitled to compensation for the fair and reasonable value of legal services he provided, and Popal is entitled to a refund of any money that he paid in excess of the fair and reasonable value of Slovis' services.

The "letter of engagement" rule in New York law "requires attorneys to provide all clients with a written letter of engagement explaining the scope of legal services, the fees to be charged, billing practices to be followed, and the right to arbitrate a dispute." *Seth Rubenstein, P.C. v. Ganea*, 833 N.Y.S.2d 566, 570 (2d Dep't 2007) (citing N.Y. Comp. Codes R. & Regs. tit. 22, § 1215.1). Section 1215.1, however, "contains no express penalty for noncompliance" and "was not [meant] to address abuses in the practice of law, but rather, to prevent misunderstandings about fees . . . between attorneys and clients." *Id.* Accordingly, New York courts have held that an attorney's noncompliance with section 1215.1 does not preclude the

recovery of legal fees in quantum meruit. *See Nabi v. Sells*, 892 N.Y.S.2d 41, 43 (1st Dep't 2009); *Nicoll & Davis LLP v. Ainetchi*, 859 N.Y.S.2d 368 (1st Dep't 2008) ("Plaintiff law firm's failure to comply with the rules on retainer agreements does not preclude it from suing to recover legal fees for services provided." (citation omitted)); *Seth Rubenstein*, 833 N.Y.S.2d at 570 ("If the terms of a retainer agreement are not established, or if a client discharges an attorney without cause, the attorney may recover only in quantum meruit to the extent that the fair and reasonable value of legal services can be established."). In the absence of a written fee agreement, a client who has paid legal fees greater than the fair and reasonable value of legal services is entitled to a refund of the excess amount paid. *See Cass & Sons v. Stag's Fuel Oil Co.*, 601 N.Y.S.2d 803 (2d Dep't 1993).

"The determination of reasonable counsel fees is a matter within the sound discretion of the trial court . . . ." *Shrauger v. Shrauger*, 537 N.Y.S.2d 84, 85 (3d Dep't 1989). "In general, in order to determine what fee would be reasonable, the court uses a lodestar method, in which the hours reasonably spent by counsel, as determined by the Court, are multiplied by the reasonable hourly rate." *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 841 (2d Cir. 1993) (internal quotation marks, alteration and citations omitted). In determining the fair and reasonable value of legal fees, courts look to "such pertinent factors as the nature of the litigation, the difficulty of the case, the time spent, the amount of money involved, the results achieved and amounts customarily charged for similar services in the same locality." *Nabi*, 892 N.Y.S.2d at 44 (internal quotation marks omitted). The terms of an invalidated retainer agreement "may 'be taken into consideration as a guide for ascertaining quantum meruit.'" *Liddle & Robinson, LLP v. Garrett*, 720 F. Supp. 2d 417, 425 (S.D.N.Y. 2010) (quoting *Tillman v. Komar*, 259 N.Y. 133, 135 (1932)).

"Under New York law, although attorneys' fees may be awarded in the absence of adequate contemporaneous time records, a court should not award the full amount requested." *Schafrann v. Karam*, No. 01 CIV. 0647 (KNF), 2003 WL 289620, at *6 (S.D.N.Y. Feb. 10, 2003), *aff'd*, 81 F. App'x 391 (2d Cir. 2003). "However, even if contemporaneous records are not required under New York law, courts cannot rely on records that are admittedly speculative to set compensation." *Id.*

Here, Slovis did not produce, and apparently did not maintain, any contemporaneous time records of the work he performed on Popal's case. Nonetheless, the parties do not dispute that Slovis conducted Popal's trial over the course of 20 trial days. Neither party testified to how many hours the trial lasted each day, but it is reasonable to assume that Slovis worked seven hours daily. In the absence of any contemporaneous time records to account for his work, Slovis therefore is entitled to compensation for 140 hours of work.

Slovis testified that the letter agreement he prepared for Popal specified that, in the event Slovis was terminated before the end of trial, he would be entitled to compensation at an hourly rate of $750 for court appearances. Given Slovis' experience and evidence that Slovis charged the same hourly rate in other cases (albeit only in case of termination), this hourly rate is a fair and reasonable basis for compensation in quantum meruit.

Slovis is therefore entitled to compensation in the amount of $105,000 for his work representing Popal. Popal is entitled to a refund of the money that he paid in excess of this amount.

VI. COLLATERAL ESTOPPEL

After summations, counsel for Slovis argued that Popal's claims were barred by collateral estoppel, as other tribunals had previously refused to consider Popal's allegations. On the

record, the Court noted that Slovis had not previously raised this argument before, whether in a dispositive motion or otherwise, and that Slovis had not affirmatively pled the defense of collateral estoppel in his Answer. Defendant's argument that Plaintiff's claims are barred by collateral estoppel is rejected as waived.

Collateral estoppel is an affirmative defense that must be pleaded by a defendant in responding to the complaint. *Leather v. Eyck,* 180 F.3d 420, 424 (2d Cir. 1999) (citing Fed. R. Civ. P. 8(c)); *see also Rienzi v. Rienzi*, 808 N.Y.S.2d 116, 117 (2d Dep't 2005) (failure to plead collateral estoppel as affirmative defense results in waiver).

Here, Defendant not only failed to plead collateral estoppel in his Answer, but raised the argument only after the parties' summations at trial. Accordingly, Defendant has waived collateral estoppel as a defense, and this argument is rejected.

CONCLUSION

For the foregoing reasons, Plaintiff's breach of contract, fraud, undue influence and breach of fiduciary claims are dismissed. Defendant is entitled to retain the fair and reasonable value of the legal services provided to Plaintiff, in the amount of $105,000. As Defendant received $142,000 from Plaintiff, Plaintiff is entitled to a refund in the amount of $37,000.

Based on these findings of fact and conclusions of law, the Clerk of Court shall enter judgment consistent with this opinion. The Clerk of Court is further directed to mail a copy of this Opinion to Plaintiff.

SO ORDERED.

Dated: April 27, 2015
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE