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Michael Ferguson, Benjamin Unger, Sheldon Bruck, Chaim Levin, Jo Bruck, Bella Levin, Plaintiffs, v. JONAH (Jews Offering New Alternatives for Healing f/k/a Jews Offering New Alternatives to Homosexuality), Arthur Goldberg, Alan Downing, Alan Downing Life Coaching, LLC, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - HUDSON COUNTY DOCKET NO. L-5473-12 Civil Action

DEFENDANTS BRIEF IN OPPOSITION TO PLAINTIFFS' MOTIONTO ENFORCE PERMANENT INJUNCTION AND FOR DEFAULT JUDGMENT

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PRELIMINARY STATEMENT

Plaintiffs' brief is a hodgepodge of baseless accusations. Despite having reviewed more than 70,000 documents produced by Defendants six months ago, Plaintiffs have no evidence that Defendants violated the Permanent Injunction.

Plaintiffs allege, for example, that Defendants have been referring clients to providers of Conversion Therapy, but the evidence simply does not support the allegation. Some of the very emails cited by Plaintiffs are not referrals at all. Others clearly predate the Permanent Injunction. Many do not involve Conversion Therapy. Most significantly, none of the referrals involve New Jersey clients or New Jersey therapists. And Plaintiffs' argument that an email violates the Permanent Injunction merely because it was ***sent*** from New Jersey is not supported by the text of the injunction.

Plaintiffs also argue that Defendants did not correctly calculate the refunds that JIFGA made last year. Here again, the evidence simply does not support the allegation. To the contrary, the evidence reflects that the refunds were correctly calculated.

Plaintiffs revisit the issue of whether JIFGA is an alter ego of JONAH yet fail to point to any activity that JIFGA engaged in that Jonah engaged in. Instead without any legal or factual basis that conflate the actions of Arthur Goldberg the individual with the corporate entity JIFGA.

Finally the Plaintiffs ask the Court to find that Elaine Berke violated the Permanent Injunction yet present not a scintilla of evidence relating to her engaging in any prohibited activities or even knowing that any of the alleged activities took place.

The relief sought by Plaintiffs – the dissolution of JIFGA and the payment of an enormous penalty – is not supported by the law or the evidence.

POINT ONE

THE DEFENDANTS DID NOT VIOLATE THE PERMANENT INJUNCTION BY MAKING THERAPY REFERRALS.

Plaintiffs allege that the Defendants violated the Permanent Injunction[1] by making referrals to providers of Conversion Therapy. The evidence, however, does not support Plaintiffs' allegations. Some of the alleged referrals did not come from the Defendants, some were not referrals at all, and some predated the Permanent Injunction. Moreover, many did not involve Conversion Therapy.

Most significantly, Defendants' referrals did not involve either New Jersey clients or New Jersey therapists. In particular, Defendants did not refer New Jersey clients to out-of-state therapists, nor refer New Jersey therapists to out-of-state clients. Although Plaintiffs allege that the referrals violated the Permanent Injunction if they were ***sent from*** New Jersey to out-of-state clients and therapists, the Permanent Injunction does not expressly prohibit such emails and is, at most, ambiguous on that point.[2]

A. Some of the Alleged Referrals Did Not Come from the Defendants.

Plaintiffs allege that the Defendants made a series of therapy referrals, but some of the alleged referrals did not come from the Defendants. For example:

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[1] "Order Granting Permanent Injunctive Relief And Awarding Attorneys' Fees" dated December 18, 2015. *See* Certification of Lina Bensman dated March 27, 2019 ("Bensman"), Exh. 2.

[2] Plaintiffs argue that "Defendants' continuing use of "@jonahweb.org" email addresses is an independent violation of the Permanent Injunction." Pb 15, n.18. Plaintiffs are incorrect. Defendants were ordered to stop using that email address within **180 days** of the Permanent Injunction, and they did so. Certification of Anthony Tawadrous, ¶¶ 3-5.

- Plaintiffs allege that "I.M." was referred to Morgan by Goldberg, based solely on the fact that I.M. appears as a "new" client in Morgan's invoices. Plaintiffs' Brief ("Pb") at 9, n. 10. But I.M. was not referred to Morgan by Goldberg. Certification of Arthur A. Goldberg dated May 2, 2019 ("Goldberg Cert.") at ¶5; Certification of Robert Morgan dated May 1, 2019 ("Morgan Cert.") at ¶1.
- Plaintiffs allege that "J.H." was referred to Vazzo by Goldberg, based solely on the fact that J.H. appears as a "new" client in Vazzo's invoices. Pb 9, n. 10, citing Bensman Exh. 17 at JIFGA-00039944-45. But J.H. was not referred to Vazzo by Goldberg. Goldberg Cert., ¶3b; Certification of Robert Vazzo dated May 2, 2019 ("Vazzo Cert.") at ¶1b.
- Plaintiffs allege that "R.R." was referred to Vazzo by Goldberg, based solely on the fact that R.R. appears as a "new" client in Vazzo's invoices. Pb 9, n. 10. But R.R. was not referred to Vazzo by Goldberg. Goldberg Cert., ¶4; Vazzo Cert., ¶2.

Thus, the fact that an individual appears as a client in Morgan's or Vazzo's invoices does not mean that the individual was referred by the Defendants, let alone by any particular Defendant.[3]

B. Some of the Alleged Referrals Were, In Fact, Not Referrals.

Some of the alleged referrals were not referrals at all, and therefore did not violate the Permanent Injunction. For example:

- Plaintiffs allege that Goldberg referred "Mr. N" to David Matheson. Pb 9. But Mr. N had met Matheson years earlier (at a JIM weekend in 2007). Bensman Exh. 29.

[3] Plaintiffs seek relief against Defendant Berk without any evidence that she violated the Permanent Injunction. In particular, Berk did not author any of the emails that Plaintiffs allege violated the Permanent Injunction. Since there is no evidence that Berk has done anything to violate the Permanent Injunction, Plaintiffs' motion as to Berk must be denied.

And Mr. N decided, of his own accord, to seek therapy from Matheson. *Id.* Mr. N asked Goldberg only for Matheson's contact information, and Goldberg provided Matheson's email address. *Id.* That did not violate the Permanent Injunction.

- Plaintiffs allege that Goldberg referred "Y.S." to Joe Nicolosi. Pb 9-10. But Y.S. wrote a letter to Nicolosi of his own accord, and merely asked Goldberg to forward that letter to Nicolosi because Y.S. did not have access to email. Bensman Exh. 30. Nicolosi then wrote a letter back to Y.S., and asked Goldberg to forward that letter to Y.S. via fax because Nicolosi believed that sending a fax to Israel "is a little tricky." *Id.* That did not violate the Permanent Injunction.
- Plaintiffs allege that Goldberg referred "E.F." (a JNARS listserv participant) to "D.S." Pb 10; Bensman Exh. 31. That exhibit, however, depicts a very different scenario. First, E.F. was a therapist, not a client, seeking a "female therapist" for an unidentified third party. Bensman Exh. 31. Second, Goldberg did not give E.F. the name of a "female therapist." Rather, he gave E.F. the name of a male therapist, D.S., who (Goldberg believed) might be able to recommend a female therapist, to E.F., for the third party. *Id.* That did not violate the Permanent Injunction.[4]

[4] Plaintiffs falsely allege that Goldberg "proactively sought out potential clients through his continued participation in several listservs with a mental health focus." Pb 10. Plaintiffs, however, present no evidence to support that accusation. The Settlement Agreement expressly permits Goldberg to hold "ordinary membership" in professional organizations (and even in Conversion Therapy-related organizations). Bensman Exh. 1, ¶4. Both Nefesh and JNARS (the listservs referenced at Pb 10) are respected mental health organizations, and Plaintiffs do not allege otherwise. And Plaintiffs present no evidence that Goldberg joined those organizations (or their listservs) in order to "[seek] out potential clients." Indeed, those listservs provide valuable information for mental health professionals, and only a small percentage of their postings concern potential client referrals. Goldberg Cert., ¶6. And to be clear, membership in those organizations is not limited to mental health professionals. *Id.*

Plaintiffs also allege that Goldberg "repeatedly" made therapy referrals over the telephone. Pb 8. But out of some 70,00 documents reviewed by Plaintiffs (Pb 4), they cite only six or seven emails that refer to telephone calls, and those emails are merely invitations to speak in the future, not evidence of an actual conversation. *See, e.g.,* Bensman Exh. 18 ("Is there a way we can speak by phone within the next day or two?"); Bensman Exh. 19 ("they can call me"); Bensman Exh. 20 ("Let's have a conversation."); Bensman Exh. 21 ("Is it possible for you to call me...?"); Bensman Exh. 22 ("Give me a call at your convenience.").

Plaintiffs argue that it is "obvious" that Goldberg was providing referrals on those calls (Pb 9), but that conclusion is anything but obvious. For most of those emails, there is no evidence that the invitation resulted in an actual conversation and, ***if*** a conversation occurred, there is no evidence of what was discussed. Indeed, only one exhibit contains evidence of an actual phone call concerning referrals (Bensman Exh. 23) and those referrals were to a married couple ("GA" and "JA") for couples' therapy, and not to address their sexual orientation. Goldberg Cert., ¶7.

C. Many of the Alleged Referrals Did Not Involve Conversion Therapy.

The Permanent Injunction prohibits the Defendants from engaging in Conversion Therapy, whether directly or through referrals. Bensman Exh. 2, ¶3. *See also* Settlement Agreement (Bensman Exh. 1), at p.1, fifth "Whereas" clause ("Whereas, the Permanent Injunction permanently enjoins Defendants from engaging in Conversion Therapy...").[5]

[5] Conversion Therapy is defined as therapy intended to change one's sexual orientation or same-sex attraction. Permanent Injunction, ¶3. The Permanent Injunction does **not** prohibit Defendants from referring an individual to a therapist just because the individual is LGBT. If that had been the intent of the Permanent Injunction, Plaintiffs' counsel could have simply drafted it accordingly. And it is no coincidence that the prohibited therapy is called "Conversion Therapy" in both the Permanent Injunction and the Settlement Agreement.

Plaintiffs allege that Defendants violated the Permanent Injunction by making referrals to therapists for Conversion Therapy. However, as to many of the alleged referrals, Plaintiffs failed to present evidence as to the type of therapy provided (or to be provided). Indeed, as to many of the alleged referrals, the type of therapy is unknown. *See, e.g.,* Bensman Exh. 24 ("You may hear from a fellow named Tim..."); Bensman Exh. 25 ("Thank you for the referrals."); Pb 9, n. 10 (four new clients allegedly appear in Morgan's and Vazzo's invoices).

Plaintiffs suggest that any therapy provided by Vazzo or Morgan must necessarily have been Conversion Therapy. Pb 6-9. But Plaintiffs offer no evidence for such an inference nor for an inference that Goldberg was involved in the determination of what therapy to provide. Moreover, Vazzo and Morgan have both submitted sworn certifications clearly stating that they provide therapy modalities other than Conversion Therapy, and in particular, that the individuals referred by the Defendants did not receive Conversion Therapy. *See* Certification of Robert Vazzo dated April 27, 2018, ¶¶ 4-5 ("I do not practice as a 'conversion therapist.'"); Certification of Robert Morgan, dated April 27, 2018, ¶5 ("I do not practice conversion therapy."). Indeed, the Court itself observed that, in light of those certifications, the Court could not assume that a client of Vazzo or Morgan was being treated for "same sex issues." Bensman Exh. 5 (transcript) at T24:12-16 ("THE COURT: … Am I to assume that anybody who has those problems always has the same sex issue? I don't think I can do that."); *id.* at 27:6-12 ("THE COURT: … [T]his is a licensed clinical social worker. He saying a little bit more than I didn't breach the agreement. He's specifying what the treatment is that he's giving. And he's specifically stating that this is not same sex attraction or conversion therapy. And he's listing what it is.").

Moreover, as to some of the alleged referrals, the evidence demonstrates that they did ***not*** involve Conversion Therapy. Indeed, many of the alleged referrals did not involve sexual orientation. For example:

- Plaintiffs allege that "J.H." was referred to Vazzo by Goldberg. Pb 9, n. 10, citing JIFGA-00039944-45. But J.H. (a woman) and her husband saw Vazzo, as a couple, for family therapy, and not to address their sexual orientation. Vazzo Cert., ¶1b.
- Plaintiffs allege that "R.R." was referred to Vazzo by Goldberg (Pb 9, n. 10) but Vazzo treated R.R.'s family (husband, wife, and children) for family therapy. Vazzo Cert., ¶2.
- Plaintiffs allege that "I.M." was referred to Morgan by Goldberg (Pb 9, n. 10), but Morgan treated I.M. for anxiety, depression, childhood trauma, and addictions, not for his sexual orientation. Morgan Cert., ¶2.
- Bensman Exh. 22 ("I was wondering if you know someone in Brazil that I can talk [to] about porn addiction.").
- The referrals that Goldberg made in Bensman Exh. 23 ("Suggestions from phone call") were to a married couple ("GA" and "JA") for couples' therapy, and not to address their sexual orientation. Goldberg Cert., ¶7.
- Bensman Exh. 32 (seeking therapist for woman with depression, low self-esteem, and issues surrounding her sexuality).
- Bensman Exh. 38 at -02 (issues with "former abuse").

In sum, with respect to many of the alleged referrals, Plaintiffs have failed to prove that they involved Conversion Therapy.

D. Some of the Alleged Referrals Predate the Permanent Injunction.

Some of the alleged referrals predate the Permanent Injunction. For example:

- Plaintiffs allege that "M.J." was referred to Vazzo by Goldberg. Pb 19, n.21, citing Bensman Exh. 62. But Exhibit 62 is clearly dated September 22, 2015.
- Plaintiffs allege that Goldberg referred Client 8 to Vazzo on December 31, 2015, less than two weeks after entry of the Permanent Injunction on December 18, 2015. Pb 6, citing Bensman Exh. 11. But the Permanent Injunction gives the Defendants **30 days** to cease JONAH's operations, specifically including the "provision of referrals." Permanent Injunction (Bensman Exh. 2) at ¶1. Since Exhibit 11 was sent within those 30 days, that email was outside the scope of the Permanent Injunction.
- Plaintiffs allege that "J.H." was a "new client" of Vazzo in May 2016. Pb 9, n. 10, citing Exhibit 17 (JIFGA-00036091-92). But J.H. was referred by Goldberg to Vazzo years before the Permanent Injunction. Goldberg Cert., ¶3a; Vazzo Cert., ¶1a.

E. The Alleged Referrals Did Not Involve the State of New Jersey.

The Permanent Injunction does not purport to reach all conduct in all places. Rather, Defendants are prohibited from engaging in Conversion Therapy "in or directed at New Jersey or New Jersey residents," whether "directly or through referrals." Permanent Injunction (Bensman Exh. 2), ¶3. Although Plaintiffs allege that the referrals violated the Permanent Injunction if they were ***sent from*** New Jersey to out-of-state clients and therapists, the Permanent Injunction does not expressly prohibit such emails and is, at most, ambiguous on that point.

1. The Referrals Did Not Involve New Jersey Clients or Therapists.

Defendants' referrals did not involve either New Jersey clients or New Jersey therapists. In particular, Defendants did not refer New Jersey clients to out-of-state therapists (or vice versa), nor refer New Jersey therapists to out-of-state clients (or vice versa). Goldberg Cert., ¶2.

For example, with respect to most (if not all) of the referrals, the putative client resided outside New Jersey. *See, e.g.,* Bensman Exhs. 11 and 13 (California); Bensman Exh. 18 (New York and Scotland); Bensman Exh. 20 (Toronto, Canada); Bensman Exh. 21 (Egypt); Bensman Exh. 22 (Brazil); Bensman Exh. 24 (Michigan); Bensman Exh. 29 (London); Bensman Exh. 30 (Israel); Bensman Exh. 31 (Israel); Bensman Exh. 32 (Los Angeles); Bensman Exh. 44 (Boston); Bensman Exh. 50 (Brazil); Bensman Exh. 51 (Norway); Goldberg Cert., ¶8 (S.M., referenced in Bensman Exh. 24, is from New York). There is no allegation, let alone evidence, that any of the therapy referrals involved a New Jersey resident.

Similarly, neither Vazzo nor Morgan reside in New Jersey. Vazzo Cert., ¶3 (Vazzo lives in Nevada, and lived there at the relevant time); Morgan Cert., ¶3 (Morgan lives in Texas and lived there at the relevant time); Bensman Exh. 23 (email from Goldberg with contact information for Vazzo and Morgan, noting that Vazzo is in California and Nevada, and that Morgan is in Texas).

2. The Permanent Injunction Does Not Prohibit Goldberg from Sending Referral Emails from New Jersey to Clients and Therapists in Other States.

As noted above, the provision of Conversion Therapy outside New Jersey is not prohibited, and referrals to therapists outside New Jersey are similarly not prohibited. *Id.* And that is how the Goldberg understood the Injunction. Goldberg Cert., ¶1. There is no dispute, for example, that Defendants are permitted to send an email referral from New York to a therapist in California concerning a client in Delaware.

Plaintiffs attempt to finesse the Permanent Injunction, arguing that it prohibits Goldberg from sending that same email if he happened to send it "from his desk at [his] New Jersey office." Pb 8. That argument is too clever by half; nothing in the text of the injunction suggests such a distinction. And it would have been simple enough for Plaintiffs' counsel to have drafted such a prohibition if that is what the parties intended. The actual text of the Permanent Injunction prohibits Defendants from ***engaging in Conversion Therapy*** "in or directed at New Jersey or New Jersey residents," whether "directly or through referrals." Permanent Injunction (Bensman Exh. 2), ¶3. Nothing in the text of the Permanent Injunction prohibits Defendants from making a referral, from New Jersey or otherwise, unless it concerns Conversion Therapy "in or directed at New Jersey or New Jersey residents."

Moreover, any ambiguity in the Permanent Injunction (as to geographic scope or otherwise) should be construed in favor of the Defendants. First, the order was drafted by Plaintiffs' counsel. *Roach v. BM Motoring, LLC*, 228 N.J. 163, 174 (2017) ("If the meaning of a provision is ambiguous, the provision should be construed against the drafter because, as the drafter, it chose the words that may be susceptible to different meanings.") (quotation omitted). Second, Plaintiffs bear the burden of proof on this motion. Third, the Supreme Court of New Jersey has cautioned that relief to litigants under this Rule is inappropriate where the underlying injunction is "too vague." *N.J. Dep't of Health v. Roselle*, 34 N.J. 331, 347 (1961) ("upon a litigant's application for enforcement of an injunctive order…, the restraint was too vague to sustain a finding of a violation on the record before us"). Fourth, the reach of the New Jersey Consumer Fraud Act is limited to conduct in the State of New Jersey, and the Permanent Injunction

should be construed consistent with the statute which the Defendants were found to have violated. The Permanent Injunction is therefore limited to the State of New Jersey.[6]

3. There is No Evidence that the Referral Emails were Sent from New Jersey.

Even if Plaintiffs' interpretation of the Preliminary Injunction were the correct one, Plaintiffs would still have to prove that the emails in question were sent from New Jersey. But Plaintiffs have no such evidence. To the contrary, Goldberg travels extensively and was not in New Jersey when many of the emails were sent. In the three years following the entry of the Permanent Injunction, Goldberg took more than 30 separate multi-day trips outside the State of New Jersey. Goldberg Cert., ¶9. For example:

- On December 31, 2015, when Exhibits 11 and 13 were sent, Goldberg was in New York housesitting for his daughter. Goldberg Cert., ¶9a.
- On April 9-10, 2017, when Exhibits 37-38 were sent, Goldberg was in Maryland for Passover. *Id.*, ¶9b.
- On July 16, 2017, when Exhibit 29 was sent, Goldberg was on vacation in Kentucky. *Id.*, ¶9c.

Thus, there is no evidence that the people involved (Goldberg, the client, or the therapist) were in the State of New Jersey. Plaintiffs, therefore, have failed to prove a violation of the Permanent Injunction.

In sum, the evidence does not support Plaintiffs' allegation that the Defendants violated the Permanent Injunction by making therapy referrals.

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[6] Defendants welcome efforts to clarify the Permanent Injunction, but such clarification must precede enforcement. *Roselle*, 34 N.J. at 347 (reversing relief ordered by the Appellate Division; "the specificity which the Appellate Division ordered should have been the attribute of the original judgment itself.").

POINT TWO

GOLDBERG DID NOT VIOLATE THE PERMANENT INJUNCTION BY PARTICIPATING IN THE JIM WEEKEND.

Plaintiffs allege that Goldberg violated the Permanent Injunction by attending a JIM weekend in Pennsylvania, by soliciting someone to attend, and by socializing with participants afterwards. Pb 11-12. None of those allegations violates the Permanent Injunction.

As Plaintiffs acknowledge, the event took place in Pennsylvania. Pb 11. Since the Permanent Injunction applies only in New Jersey, Goldberg's participation in the weekend did not violate the Permanent Injunction.

Plaintiffs argue that the Permanent Injunction applies because ***one*** of the "registered participants" ("E.C.") was identified in an email as a resident of New Jersey. Pb 11, citing Bensman Exh. 37. Plaintiffs' argument fails, for several reasons.

First, the email is hearsay. While the emails may be admissible to show what Goldberg told others and what others told him, the contents of the emails are classic hearsay and are not admissible to prove the truth of the statements made therein. N.J.R.E. 801(c), 802.[7] Thus, Exhibit 37 is not admissible to prove where E.C. lived. Since Exhibit 37 is the only evidence submitted by Plaintiffs as to E.C.'s residence, Plaintiffs have failed to prove that E.C. resided in New Jersey.

[7] The Rules of Evidence are fully applicable to this motion. N.J.R.E. 101(a)(2) ("These rules of evidence shall apply in all proceedings, civil or criminal, conducted by or under the supervision of a court."); *North Jersey Media Group Inc. v. State of New Jersey*, 451 N.J. Super. 282, 300 (App. Div. 2017) ("the [trial] court's denial of plaintiff's Rule 1:10–3 motion rested on an impermissible basis. The court denied the motion because it [relied on a certification that] was not based on [the affiant's] personal knowledge and, therefore, the record is bereft of any ***competent*** evidence supporting the court's determination") (emphasis added).

Second, E.C. is listed only as someone who ***signed up*** for the event. Bensman Exh. 37 at -02. Plaintiffs offer no evidence as to whether EC actually attended.

Third, Goldberg was not acquainted with E.C., does not know if they ever met or even spoke, did not (and does not) know if E.C. was from New Jersey, and did not solicit E.C. to attend the event. Goldberg Cert., ¶10. Moreover, the weekend was a series of group events, and Goldberg has no recollection of any personal interaction with E.C. *Id.*, ¶10.

Plaintiffs also argue that Goldberg violated the Permanent Injunction by indirectly soliciting "S.M." to attend. Pb 11; Bensman Exh. 37 (email from Goldberg advising the event coordinator to contact S.M.). But Goldberg was not in New Jersey when he sent that email, taking it outside the scope of the Permanent Injunction. Goldberg Cert., ¶9b (Goldberg was in Maryland at the time). And S.M. was not from New Jersey. *Id.* at ¶8. Moreover, Goldberg was very clear that S.M. ought to attend the event to deal with "former abuse and/or self-understanding." Bensman Exh. 38 at -02. Thus, Goldberg's emails concerning SM did not violate the Permanent Injunction.

Plaintiffs also allege that Goldberg violated the Permanent Injunction by joining a Facebook group for participants in the JIM event and by attending a "reunion" (dinner at a restaurant in New York City — *see* Bensman Exh. 44) for the participants. Pb 12. Neither of those actions violates any aspect of the Permanent Injunction.

In sum, Goldberg's participation in the JIM weekend did not violate the Permanent Injunction.

POINT THREE

JIFGA CORRECTLY REFUNDED THE FEES IT RECEIVED, INCLUDING FROM CLIENT 8.

As the Court is aware, the 2018 motion practice led JIFGA to agree to refund the therapy fees it had received. Indeed, the Court specifically ruled that Defendants had the right to effect such a cure. Bensman Exh. 5 (transcript of 5-11-18) at T31:8-9 ("THE COURT: … would it not cure the breach if they refunded their referrals?"); *id.* at T35:13-14 "THE COURT: Well, why wouldn't it be cured if they returned the money?"); *id.* at T39:5-7 ("THE COURT: … I will allow 30 days to the defendant *[sic]* to cure the breach regarding the payments."); *id.* at T43:25 – 44:1 ("I think it's curable."); *id.* at T44:9-11 ("THE COURT: … I think that the defendants' *[sic]* [are] entitled to 30 days to cure the breach."); Bensman Exh. 7 (Order dated 5-15-18) at ¶ 1 ("Defendants have until June 11, 2018 to cure …").

In furtherance of that ruling, JIFGA did, in fact, refund all of the therapy fees that JIFGA had received. Specifically, on June 6, 2018, JIFGA refunded more than $50,000 — $46,042.68 to nine different clients plus $4,282.50 to Morgan and Vazzo. Goldberg Cert., ¶11.[8]

Plaintiffs challenge the calculation of the refunds made by JIFGA with respect to Client 8. Specifically, Plaintiffs argue that JIFGA received $2,985.00 with respect to Client 8 but refunded only $175.00. Pb 6-7. Plaintiffs are mistaken.

JIFGA received a single payment from Client 8 (actually, from his mother) – $260.00 on or about July 8, 2016. Goldberg Cert., ¶12. Of that $260.00, $85.00 was returned 3 days later, on July 11, 2016. *Id.* The balance – $175.00 – was refunded by JIFGA to Client 8's mother on June 6,

[8] Plaintiffs argue that the refunds to those nine clients "did not … reflect the full amounts owed" (Pb 19) but Plaintiffs fail to explain how the refunds were miscalculated. To be sure, if Defendants learn that the refunds were in fact miscalculated, the error will be promptly corrected.

2018. *Id.* Some of Client 8's therapy fees were paid directly to Vazzo; as noted above, referral fee payments received from Vazzo and Morgan were refunded to Vazzo and Morgan. Goldberg Cert., ¶13. Thus, contrary to Plaintiffs' arguments, JIFGA refunded all of the money it received from Client 8.

In their 2018 motion, Plaintiffs had complained that ***JIFGA*** had received therapy fees from JONAH clients. As a result of that allegation, Goldberg instructed JIFGA's bookkeeper to review ***JIFGA's*** financial records to determine the extent of those payments. Plaintiffs did not allege, however, that ***JONAH*** had received therapy fees after the entry of the Permanent Injunction and, at that time (2018), Goldberg did not recall that JONAH had received therapy fees in the months between the entry of the Permanent Injunction (in December 2015) and JONAH's dissolution (in August 2016). Goldberg therefore did not instruct the bookkeeper to review ***JONAH's*** financial records at that time. Goldberg Cert., ¶14.

When Plaintiffs' motion was filed on March 27, 2019, and in light of the allegation in Plaintiffs' Brief that JIFGA had miscalculated the refund to Client 8, JIFGA undertook to review its financial records a second time. In the course of that re-review, Defendants discovered that, in addition to the fees received by ***JIFGA*** after the Permanent Injunction was entered, ***JONAH*** had also received some therapy fees in the few months after the Permanent Injunction was entered and before the dissolution of JONAH. Specifically, from the date of the Permanent Injunction through June 2016, JONAH received $14,071.00 from eleven clients (including $1,225.00 from Client 8's mother) plus $822.50 from Vazzo and Morgan. Goldberg Cert., ¶15.

Those fees were refunded in their entirety on April 25, 2019 (within 30 days of Defendants' receipt of Plaintiffs' Brief). Goldberg Cert., ¶16. All eleven of those clients were clients of

JONAH prior to 2016. Goldberg Cert., ¶15. Thus, the refund of those fees effectuates a cure pursuant to the Settlement Agreement.

Plaintiffs allege that the Defendants failed to refund the fees from certain clients. Pb 19, n.21, citing Bensman Exhs. 17 and 26. But the fees for N.S. were paid by H.E. (*see* Bensman Exh. 26 at JIFGA-00065749) and were included in the refund to H.E. Goldberg Cert., ¶16. Similarly, the fees paid by B.A. were refunded to B.A. *Id.* And the fees for S.M. were never received and therefore never refunded. *Id.*, ¶17.

As to balance of the clients listed in Plaintiffs' footnote 21, the invoices clearly reflect that the fees were paid to Vazzo and Morgan (not to the Defendants),[9] and as noted above, any referral fees paid by Vazzo and Morgan to the Defendants have been refunded to Vazzo and Morgan. *Supra*, n. 7.

In sum, all therapy fees received by the Defendants after entry of the Permanent Injunction have been timely refunded.

[9] *See* Bensman Exh. 17 at JIFGA-00039945 (fees for J.H. #1 and J.H. #2 were paid directly to "Robert [Vazzo]"); Bensman Exh. 26 at JIFGA-00065749 ("M.F. "paying me directly"); *id.* (J.C. #1 "pays me directly"); *id.* (same as to J.C. #2); Bensman Exh. 26 at JIFGA-00066859 (same as to I.M.); Bensman Exh. 26 at JIFGA-00066976 (same as to E.F.).

POINT FOUR

PLAINTIFFS HAVE NOT PROVEN THAT JIFGA IS AN ALTER EGO OF JONAH

In Plaintiffs first motion to hold Arthur Goldberg in default of the settlement agreement they alleged that JIFGA was a continuation of JONAH. In response the Defendants presented evidence that JIFGA did not have the same purpose as JONAH but that in fact JIFGA's purpose has nothing to do with the commercial promotion of "conversion therapy". As stated in the organizations mission statement:

> The Jewish Institute for Global Awareness seeks to globally provide humanity with greater awareness of the existence of these universal values, principles that are dependent upon Biblical teachings. These are root ethical values that Jews, Christians and Muslims, who represent more than 50% of the world's population, can act upon within their own religious traditions. The great Eastern religions, Hinduism and Buddhism, also have, at their root, a primordial link to these core values. In fact, going back to Noah, these values are part of a legacy for all humanity to follow.
> The Jewish Institute for Global Awareness (JIFGA) teaches that by understanding, internalizing and following a set of Divinely-ordained moral imperatives and universal ethics known as the Seven Noahide Laws, the world can produce more just societies …

Numerous examples were produced in the Defendants response to the Plaintiffs first motion illustrating the activities JIFGA engages in in furtherance of its mission statement. Bensman Exh. 4 at 2-7. Defendants will not burden the Court with a reiteration of those examples.

Plaintiff now renews that application yet they produce no evidence that JIFGA has engaged in commercial activity to promote "conversion therapy". There is no evidence that the purpose of JIFGA is the same purpose as JONAH. There is no doubt that JIFGA has been involved in issue advocacy that the Plaintiffs most likely disagree with but it is not the same activity that JONAH was engaged in nor is it activity

prohibited to the Defendants who run JIFGA. In fact as shown in Defendants response to the previous motion issue advocacy was specific carve out in the settlement. Bensman Exh. 4 at 8-12. Plaintiffs have made offers of proof that purport to show that Arthur Goldberg violated the settlement agreement. However, even if that is true, there is no evidence that he used JIFGA as his platform to do this. No evidence is presented that referrals were made using JIFGA emails or that requests for referrals came in through JIFGA. As demonstrated above no evidence has been presented that JIFGA received fees for conversion therapy referrals made after JIFGA's formation. JIFGA did not promote experiential weekends. JIFGA did not rent space to counselors or have "conversion therapy activities on its premises. These are all the things that JONAH did. Whatever Arthur Goldberg did or did not do, JIFGA has done none of the things that JONAH did.

In the case *Marshak v. Treadwell,* 595 F.3d 478, (3d Cir. 2009) which Plaintiffs cite in support of its motion, the Court, citing *Bowen Engineering v. Estate of Reeve,* 799 F. Supp. 467 (D.N.J. 1992), stated that "liability should be imposed on a new corporation when "the purchaser holds itself out to the world as the effective continuation of the seller."" *Marschak* Supra. at 490. In no way shape or form has JIFGA every held itself out as a continuation of JONAH and Plaintiffs have presented no evidence that it has. Its purpose and its activities are completely different from the activities of JONAH and this part of Plaintiffs motion is merely an attempt to shut down speech and activities that they disagree with.

Finally as also pointed out in Defendants response to the prior motion the transfer of assets from JONAH to JIFGA was part of JONAHS dissolution plan and was

voluntarily disclosed to the Plaintiffs in August of 2016 and they did not object at that time. Bensman Exh. 4 at 13, 14.

POINT FIVE

PLAITIFFS HAVE PRODUCED NO EVIDENCE THAT ELAINE BERK IS IN VIOLATION OF THE PERMENANT INJUNCTION

Though Plaintiffs have included Elaine Berke as a party who they are seeking relief against there is scant mention of her in their Brief. This is not surprising considering the evidence they have presented to the Court.

After reviewing over 70,000 emails the Plaintiffs have not produced one bit of evidence that even remotely suggests that Elaine Berk engaged in providing conversion therapy services, made any conversion therapy referrals has had anything to do with conversion Therapy. Further Plaintiffs have failed to show that Elaine Berk was even aware that Arthur Goldberg engaged in any of the activities which Plaintiffs claim is a violation of the permanent injunction. There is simply no basis for finding that Elaine violated the permanent injunction.

POINT SIX

PLAINTIFFS ARE NOT ENTITLED TO THE GARGANTUAN AWARD THEY SEEK.

As demonstrated above, the Defendants did not violate the Permanent Injunction. However, even if this Court were to find that Goldberg violated the Permanent Injunction, the draconian relief sought by Plaintiffs would be inappropriate.

Plaintiffs argue that, if the Defendants violated the Permanent Injunction, then they (the Defendants) are required to pay the "Breach Damages" specified in Paragraph 6 of the Settlement Agreement. Pb 19; Plaintiffs' proposed order at ¶6. The amount is staggering.[10] Nothing alleged by the Plaintiffs – even if proven true – would justify such an immense award.

First, relief under Rule 1:10 is not for the purpose of punishment but rather a coercive measure to facilitate the enforcement of a court order. *P.T. v. M.S.*, 325 N.J. Super. 193, 220 (App. Div. 1999) (reversing relief). The Breach Damages clearly go beyond the scope of relief permitted under the Rule. Similarly, the Breach Damages are completely disproportionate to the alleged violation of the Permanent Injunction.

Second, Plaintiffs' argument rests, in significant part, on the Settlement Agreement. *See, e.g.,* Pb at 1 ("Defendants have continually breached the December 2015 settlement agreement …"). But relief under Rule 1:10 is limited to violations of a court order; breach of a settlement agreement is excluded from the scope of the Rule. *Haynoski v. Haynoski*, 264 N.J. Super. 408, 414 (App. Div. 1993) (relief under the Rule is not available where the settlement agreement was not incorporated into an order).

[10] We refrain from identifying the amount of the Breach Damages in this brief because it is arguably confidential. *See* Settlement Agreement, ¶10.

Third, Goldberg did not willfully breach the Permanent Injunction. Although a willful violation is not a prerequisite to relief under the Rule, it is certainly an appropriate factor. *See P.T. v. M.S.*, *supra* (reversing relief in part because violations were not willful). Goldberg believed, in good faith, that his actions complied with the Permanent Injunction. Goldberg Cert., ¶1. There is, for example, a good-faith dispute as to the scope of the Permanent Injunction including, most notably, a dispute concerning its geographic reach, and relief under Rule 1:10 is inappropriate where the injunction is too vague. *Roselle, supra.*

For all of these reasons, the Breach Damages are not an appropriate means to "coerce" Defendants' compliance with the Permanent Injunction. *P.T., supra.*

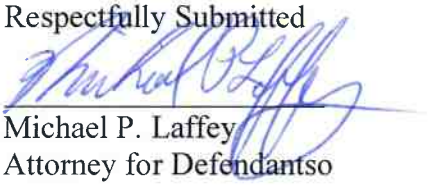
Plaintiffs also seek an award of attorneys' fees under the Rule. But such an award is purely discretionary. Rule 1:10-3 ("The court in its discretion may make an allowance for counsel fees…"). Moreover, an award of attorneys' fees under the Rule requires a finding of ***willful*** non-compliance. *Park 50 Group, LLC v. Weehawken Township*, 2011 N.J. Tax Unpub. LEXIS 1, *5 (N.J. Tax Court 2011) ("On the issue of counsel's fees, an award is appropriate, according to the comments to R. 1:10-3, where a party ***willfully*** fails to comply with an order or judgment.") (emphasis added), quoting Pressler & Verniero, *Current N.J. Court Rules*, comment 4.4.5 to R. 1:10-3 (2011) ("a party who ***willfully*** fails to comply with an order or judgment … is properly chargeable with his adversary's enforcement expenses."). Here, Plaintiffs have failed to prove a willful violation of the Permanent Injunction.

Under all of these circumstances, the relief sought by Plaintiffs should be denied.

CONCLUSION

For all of the reasons set forth above, Plaintiffs' motion should be denied in its entirety.

Respectfully Submitted



Michael P. Laffey
Attorney for Defendantso

Park 50 Group, LLC v. Weehawken Twp.

Tax Court of New Jersey

November 2, 2011, Decided

Docket No. 002507-2007

Reporter
2011 N.J. Tax Unpub. LEXIS 1 *

Park 50 Group, LLC v. Weehawken Township

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS. PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Core Terms

refund, attorney's fees, sanctions, certifications, taxpayers, judgments, parties, orders, funds, forwarded

Counsel: **[*1]** Steven R Irwin, Esq., The Irwin Law Firm, PA., West Orange, New Jersey.

Richard P. Venino, Esq., Law Director, Township of Weehawken, Weehawken, New Jersey.

Judges: Christine M. Nugent, J.T.C.

Opinion by: Christine M. Nugent

Opinion

This constitutes the court's decision on the motion for relief brought pursuant to *R. 1:10-3*, wherein plaintiff seeks to compel defendant's compliance with the prior court order to pay the refund owing to plaintiff, and, both monetary sanctions and an award of attorney's fees. Payment of the refund was made before the return date of this motion which rendered as moot that relief. Regarding the remainder of the relief sought, the request for attorney's fees is granted and plaintiff's request for sanctions is denied, for the reasons that follow.

Findings of Fact and Procedural History

Plaintiff filed a direct appeal with the Tax Court challenging the 2007 assessment on the subject property and the parties settled the matter in November 2008. It was agreed between the parties that a refund would be paid. Due, in part, to a confluence of errors initiated by defendant's actions, payment was delayed.

The 2008 stipulation of settlement required that all refunds "shall be made payable to, and forwarded **[*2]** to, 'The Irwin Law Firm, P.A., as attorneys for Park 50 Group, LLC'". It provided that interest would be waived on condition that the refund was paid within 120 days of the date of entry of the judgment. At the end of the 120-day period, defendant advised plaintiff that the taxes on the subject property were delinquent, and rather than issue a refund, it intended to credit the refund against the balance of the taxes owed. In response, by letter dated May 1, 2009, plaintiff informed defendant that it had sold the property on December 27, 2007, and advised that the taxes were current at the time of the sale. It further explained to defendant that the refund of one taxpayer could not be applied to the arrears of another. Plaintiff advised that unless payment was forthcoming, it would file a motion to compel the payment, which motion was filed by plaintiff in June 2009. Subsequent thereto, based upon defendant's representation that the refund would issue promptly, plaintiff agreed to withdraw the motion.

A refund check was issued by defendant in January 2010 but mailed to the subject property address rather than, as called for in the stipulation of settlement, to the plaintiff's attorney. **[*3]** The check found its way to the subsequent owner of the property, NYC View Terrace, LLC, (NYC) and was endorsed by NYC. Capital One then cashed the check, and, despite the defendant's request, NYC did not return the money. The plaintiff and the defendant cooperated in an effort to obtain return of the funds from the bank; however, such efforts were also unsuccessful. Capital One denied defendant's claim of improper payment and claimed that the plaintiff and NYC were the same entity. Defendant investigated the claim by the bank and was unable to verify the accuracy of the statement.

Plaintiff filed a second motion to compel payment in November 2010 and requested that the court order the defendant to pay the refund owed, no later than January 3, 2011. The motion papers also sought interest at a rate of 5% to run from May 9, 2009 through January 3, 2011. On December 8, 2010, the court granted plaintiff's requested relief.[1]

When timely payment was not made, plaintiff filed the within motion in aid of litigant's rights. By way of this motion plaintiff seeks an order for payment of the refund and interest, and the imposition of a per-diem monetary sanction of 10% of the outstanding balance until receipt of the payment due, and the payment of reasonable attorney's fees. Prior to the return date, defendant forwarded payment in the amount of $4,848.81, which includes interest in the amount of 5% calculated to April 1, 2011. What remains for the court to determine is whether plaintiff is entitled to attorney's fees and per-diem monetary sanctions pursuant to R. 1:10-3, and if so, in what amount.

Conclusions of law

When a party fails to abide by an order of the court, the other party may seek relief through R. 1:10-3. The rule states, in relevant part,

> Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action . . .The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule.

The Tax Court is vested with full authority to impose **[*5]** sanctions in an appropriate case. *Trisun Corp. v. Town of W. New York*, 341 N.J. Super. 556, 559, 19 N.J. Tax 494, 775 A.2d 642 (App. Div. 2001). The Tax Court "must possess the power to enforce its own judgments," *Arrow Mfg. Co. v. West New York*, 321 N.J. Super. 596, 599, 729 A.2d 1061 (App. Div. 1999). The power to impose sanctions is inherent in the authority of the court. *Ritter v. Clinton House Rest.*, 64 F. Supp. 2d 374 (D. N.J. 1999). As noted in the rule, the determination of a fee is within the discretion of the court.

On the issue of counsel's fees, an award is appropriate, according to the comments to R. 1:10-3, where a party willfully fails to comply with an order or judgment. Those comments provide the following:

> Although the so-called American rule, still followed in New Jersey, continues to require each party to bear his own attorney's fees except as otherwise provided by R. 4:42-9, this rule provision allowing for attorney's fees recognizes that as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses. The authority to grant fees under this rule applies only to violations of orders and judgments, not to settlements agreements that have not been so memorialized.

See Pressler & Verniero, *Current N.J. Court Rules*, comment 4.4.5 to R. 1:10-3 (2011). New Jersey Courts based their **[*6]** understanding of "willful neglect" on the definition provided by the Third Circuit Court of Appeals, in *East Wind Industries, Inc. v. United States of America*, as cited by the Tax Court in *Trisun*:

> A definition of "willful neglect" was provided by the Supreme Court in [*United States v. Boyle*, 469 U.S. 241, 105 S. Ct. 687, 83 L. Ed. 2d 622 (1985)] which found that the phrase "willful neglect," as used in section 6651(a)(1), had been construed over the years to mean "a conscious, intentional failure or reckless indifference." Stated another way, the taxpayer must show that the failure to file a return timely was the result "neither of carelessness, reckless indifference, nor intentional failure."
>
> *Trisun Corp. v. Town of W. New York*, 18 N.J. Tax 533, 538 (2000), *aff'd in part and rev'd in part*, 341 N.J. Super. 556, 19 N.J. Tax 494, 775 A.2d 642 (App. Div. 2001) (citing *East Wind Industries, Inc. v. United States of America*, 196 F.3d 499, 504 (3d Cir. 1999)).

The Tax Court in that case found that the town acted willfully in failing to make payment of the refund and interest to taxpayers on various judgments, as ordered by the court. The court entered numerous judgments and a series of orders directing payment by a date certain. After the town's failure to comply the taxpayers filed a motion for attorney's fees and sanctions pursuant

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[1] The date May 9, 2009 was agreed upon by the parties as the first date on which interest would begin to run. The parties had forwarded to the court an executed Consent Order for payment of the refund and interest, however this court signed and entered the order included **[*4]** with the motion papers.

to R. 1:10-3. Certifications indicating that the town was faced with serious budget deficits from the time the judgments were entered, and that the **[*7]** town was required to pass bonding ordinances to provide the necessary funds to cover the deficits, were submitted to the court. However, the certifications indicated that the main reason for the non-payment was because municipal officials had assumed that all monies had been paid when in fact they had not. The Tax Court awarded the attorney's fees and set forth the following rationale:

> The municipality's certifications do not establish justification for not having fully complied with this court's judgments and orders. Assuming that payments had been made, the municipality's conduct, at the very least, falls within the scope of "reckless indifference," even if not a "conscious intentional failure." The relevant municipal officials are entrusted with the diligent and responsible handling of taxpayer's funds, including both funds to be received and funds to be returned to taxpayers by reason of overpayment of taxes. This court finds said failure to comply to be willful. Sanctions in the form of counsel fees are warranted in these matters.
>
> *Trisun, supra, 18 N.J. Tax at 538*.[2]

In the present matter, there were no certifications or evidence of any other nature submitted in opposition to the motion with an explanation for the delay in payment, which extended nearly three months, from January 3, 2011 until March 25, 2011. In fact counsel noted that he was unable to provide "a good reason" for the defendant's delay in making payment but alluded to the fact that "cash flow is difficult". Had plaintiff not filed the within motion, it is unclear when payment may have been made since it appears that the filing of the motion seeking sanctions essentially provided defendant with the impetus to act.

The Tax Court succinctly described the duty of public officials "entrusted with the diligent and responsible handling of taxpayer's funds". I conclude that, given the absence of any other explanation, defendant exhibited reckless indifference toward its responsibility to provide taxpayer's refund for three months after the order to compel was entered, if not an intentional failure to do so. The fact that payment was finally made, prior to the **[*9]** motion date, does not excuse defendant's failure to appreciate both its obligation owed to the taxpayer as well as the need to abide by the orders and judgments of the court. Accordingly, I find that plaintiff is entitled to an award of attorney's fees in an appropriate amount.

Plaintiff supplied a certification of legal services with the original motion papers. At oral argument counsel indicated that additional attorney time had been expended in this case. Thereafter a supplemental certification was supplied to the court.[3] With regard to the amount of the fee to be awarded to plaintiff, this court does not find it appropriate to provide relief for plaintiff's attorney time spent prior to this motion, since I do not find that defendant's actions during that period were willful, for the reasons that follow.

It is undisputed that defendant's initial error in sending the check to the property address rather than to plaintiff's attorney, as called for in the stipulation, **[*10]** triggered the attendant confusion. While plaintiff expended costs in its efforts to obtain payment during that time, the delay was not entirely due to defendant's error. After issuance of the check it was reasonable for defendant to believe that the money had been refunded to plaintiff based on the bank's advice that plaintiff and NYC were the same entity. Defendant was likewise justified in taking the time to follow up with reasonable efforts to investigate the claim rather than immediately issuing a second check given the information received from the bank. As such, some of the delay was beyond defendant's control when the parties became ensnared in the bank's administrative red tape.

A review and comparison of both certifications is necessary in making the determination of an appropriate award. The time period in the first certification begins with December 30, 2008, when counsel forwarded the judgment to the tax assessor and before the refund was due, through December 10, 2010. Counsel certified to attorney time in the amount of $4,150.00, which included the time spent on the motions to compel. The

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[2] The Appellate Division reversed and remanded the *Trisun* matter as to denial of the taxpayers request for sanctions, and reiterated **[*8]** that the Tax Court has the ability to award both counsel fees and sanctions on a motion brought under R. 1:10-3. *Trisun Corp. v. Town of W. New York, supra, 341 N.J. Super. at 558* (citing the holding in *Arrow Mfg. Co. v. West New York, supra, 321 N.J. Super. 596, 729 A.2d 1061*).

[3] Defendant did not object to the substance of the certifications but argued against imposition of attorney's fees, and that an award of attorney's fees, if any, should be limited to the time expended on the present motion.

supplemental certification indicated attorney time from March 1, 2011 through April **[*11]** 26, 2011 for a total amount of $3,300.00. Approximately 3.2 hours were billed to the associate for preparation of the motion at a rate of $375.00 per hour. An additional 2.2 hours were billed to the partner for time spent to argue the motion, at a rate of $500.00 per hour and, while not indicated in the certification, likely included time for travel to and from the court as well as the time actually spent in court.

In making a determination as to the appropriate amount to be awarded, the court considers the following circumstances. Notably, at oral argument plaintiff's counsel emphasized that the within motion was essentially brought as a means of enforcing the principle that the orders and judgments of the court must be honored by the parties, aside from a means of reimbursement for legal fees occasioned by defendant's conduct. And, there was no opposition provided to the court from defendant as to the reasonableness of the fee set forth in plaintiff's certifications. However the court also considers the representations of counsel made during argument before the court that what occurred is an aberration on defendant's part. While the court accepts the representations of counsel, I **[*12]** find that an award is warranted in these particular circumstances to avoid parties from willfully flouting the orders and the judgment of the court. The court is acutely mindful of the fact that the attorney fee ordered to be paid in this matter will be borne by the taxpayers who were not responsible for the delay.[4] Considering all of the circumstances presented to the court, I find that a fee in the total amount of $700.00 is appropriate.

Plaintiff requests that the court impose an additional per diem money sanction upon defendant for its failure to comply with the court's order and judgment. While the court does possess the power to impose sanctions, it elects not to do so at this juncture, for several reasons. Despite payment being late, defendant has paid plaintiff all monies owed. This matter is before the court on an application in aid of litigant's rights. An award of sanctions now would be akin to a punishment for past non-compliance and not in aid of **[*13]** litigant's rights. *Trisun Corp., supra, 341 N.J. Super. at 559*. ("An award of sanctions 'is an entirely proper tool to compel compliance with a court order.' *Franklin Twp. v. Quakertown, 274 N.J. Super. 47, 55, 643 A.2d 34 (App. Div. 1994)*.")

Plaintiff's motion for relief is granted. Defendant is to pay to plaintiff attorney's fees in the amount of $700.00 within 30 days of the Order entered and forwarded to the parties on this date, in accordance with this opinion.

Very truly yours, /s/ Christine M. Nugent

Christine M. Nugent, J.T.C.

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[4] There was nothing in the record to indicate that counsel for the defendant in any way caused delay in payment of the refund, but that rather that it is attributable to defendant dragging its feet in the process of making payment.