

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Frederick W Rosenberg Pro Se

Plaintiff

Vs

Index 613299/2024

COMPLAINT FOR DEFAMATION

Nelson Mullins Riley & Scarborough LLP
330 Madison Ave, 27 Floor
New York, NY 10017

Plaintiff demands a Trial by Jury

Defendant

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, Frederick W Rosenberg, respectfully shows and alleges
as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter because a substantial part of the events or omissions giving rise to the claims occurred in this state, and the Defendant is licensed to practice in and does business in the State of New York at its Manhattan Location
2. The Plaintiff is a resident of East Hampton NY, Suffolk County.

3. Venue is proper in Suffolk County and this Court under C.P.L.R. § 503 because Plaintiff resides in Suffolk County and the events or omissions giving rise to the claims in the lawsuit occurred in Suffolk County.

Background and Discussion:

4. On May 21, 2024, the Defendant, through its partner Mark Raymond willfully published a Cease-and-Desist letter,(Letter), addressed to the Plaintiff, Frederick Rosenberg, falsely alleging libel and defamation, by sending a hundred or more copies of the Letter to the Piaba Board of Directors, and to the “Diogenes Mailing List”, primarily attorney colleagues of PIABA, the Public Investors Advocate Bar Association, of which I am a long-standing member. The letter is attached as Exhibit 2.
5. The Letter contained material omissions and misstatements and extracted the single word, “Problem” out of context, and misconstrued it upon which its false allegations were predicated. The letter falsely alleges that I lied, and literally demanded a preposterous laundry list of actions be taken under threat of a libel suit filed against me. All of the Letter’s allegations are false and defamatory. Publishing those mere allegations as demonstrable fact was libelous, unfounded, and intended specifically to damage my reputation in the Legal community.
6. My comment on the Piaba-List serve is a confidential communication and attorney discussion and not Public. Benson received this post in violation of List-Serve rules from an as yet unidentified source. The entirety of my post was in response to a recommendation posted by

Piaba member Steven Buchwalder. Only the word “Problem” was Quoted in the Letter, which intentionally omitted the complete text of my comment. The full text was

“One problem with Benson however, he has in the past been reluctant to produce his numbers in spreadsheet form if needed. And if deeper analysis is needed there's nothing to work with. His numbers are good and reliable, and his reports and charts are accurate. Fred 9/21/2023”

7. In addition to intentionally omitting my complete statement, Mr. Raymond failed to incorporate the context of the post, the entire tree of exchanges on the list in his Letter as well. The contextual email is attached as Exhibit 3.
8. Everything I wrote in my response was factually accurate and in no way defamatory or libelous.
9. As is evident from the 8-point demand, either I must humiliate myself on the Piaba list-serve or face a libel lawsuit, a demand from an Attorney that borders on extortion. At no time prior to receiving the Cease-and-Desist letter, did the Defendant’s attorney, Mark Raymond, ever contact me to resolve Mr. Benson’s allegations and instead issued an ultimatum on May 21,2024 without prior notice or discussion.
10. Benson’s damage claim is vaporous and unsupported in every way. Upon information and belief, Benson has not spoken with or communicated with the referenced Board Member to confirm his allegation and he has no basis whatsoever for the damages other than speculation. In fact there are multiple reasons that Attorneys do not engage Mr. Benson, for example, 1) He’s an expat located in Asia not subject to US legal remedies should errors occur, 2) attorneys are reluctant to send personal client financial information to Asia and abroad. 3) As described in the email post from attorney Buchwalder, Benson will not testify or appear at the hearing and a second testifying expert must be retained to present damages at substantial additional cost in complex cases. 4) there are many capable domestic US

experts who support Piaba through advertising who have personal connections with the attorney. 5) Investors often express reservations about sending their financial information abroad and generally prefer US analysts.

11. Furthermore, the Defendant's have no way of knowing the number of expert recommendations sent to the Board Member off-list as is the customary practice. On information and belief, the board member received several recommendations off list. It is a fantasy and utter speculation that but for my post, the Board Member would have retained him. That simply is not true. Without confirmation from the Board member the damages allegation is mere speculation insufficient to support damages.
12. The Defendant was negligent in composing a misleading communication knowingly intended for publication, which was false and defamatory. The full text of my post was always available, and I was always available to discuss.
13. The Defendant is a well-regarded national firm and communications on their letterhead carry the weight and credibility of the Firm adding to the gravity of the allegations. Defendant was reckless in publishing mere unproven and false allegations as a demonstrable fact to PIABA Board members and the Diogenes client list of Attorneys.
14. Should the Defendant have determined not to sue, the Letter remains outstanding in the legal community to do further damage.
15. There is no way to know at this point whom or how many attorneys Benson has sent the letter to beyond his client list, or the number of attorneys in a firm who received the Letter internally. The number could grow geometrically over time intentionally causing me substantial financial and reputational distress in my profession.
16. My comment in response to the Buchwalder post was that in the past Benson was reluctant to produce his numbers in spreadsheet form which was problematic in analyzing the

numbers. This statement was followed by the following, “his numbers are good and reliable, and his charts and reports are accurate.” For list-serve attorneys, the post was no more than a caveat and fully appropriate as a comment. In context, the use of the word “Problem” is proper, familiar, and Immaterial as to Libel.

17. Publishing the Cease-and-Desist letter to 100+ attorneys in PIABA and the Diogenes client list was clearly intended to cause injury to my reputation and lost credibility among lawyer clients and colleagues without any judicial determination. Publication of the Letter was ethically dubious and gratuitous, reckless, libelous, defamatory, and thoroughly preventable with due care.
18. The defendant’s client, Thomas Benson, lives in Asia as the Defendant was aware when the Letter was Drafted and filing suit as threatened would require Benson’ presence in court which is unlikely given the distance, the low claimed damages, the costs of counsel and travel. It is doubtful Benson ever intended to file a suit or prosecute it when the letter was sent and the letter was merely an attempt to intimidate and extort. This makes the defamatory Letter’s publication to over 100 attorneys both extortionate and libelous per se.
19. I am 79 years old, having spent over 45 years in the securities industry, both as a practicing attorney and since my retirement from practice in 2010, providing litigation consulting services to attorneys and as a testifying witness in securities and insurance cases. I do not do scheduling of accounts and do not compete in any way with Mr. Benson. I’ve authored multiple articles in bar journals and I’m an editor of the Piaba Bar Journal. Currently I’m retained in 4 matters where my analysis and testimony will be required. My resume is attached as Plaintiff’s Exhibit 1.

20. It is entirely foreseeable and unavoidable that the Cease-and-Desist letter will wind up in the possession of opposing counsel for cross and Voir Dire and it will chill attorneys from retaining me. There can be no question that was the intent when published to attorneys.
21. Damages: Given the proliferation of documents across the internet with at least 100 + practicing attorneys presently possessing the letter, a mere retraction is insufficient, and the negative effects will be felt for years. My average billing on cases is between \$35,000 and \$60,000 per year with a foreseeable impairment loss of income of \$200,000 to \$300,000 over the next 5-7 years as a direct consequence of the Letter's publication.
22. The Defendant, Nelson, Mullins, Riley & Scarborough LLP, and its Partner, Mark Raymond's publication of false and defamatory statements was malicious, willful, wanton, and done with reckless disregard for the rights of the Plaintiff, Frederick W Rosenberg. As such, the Plaintiff is entitled to an award of punitive damages.
23. **WHEREFORE**, Plaintiff prays that the Court enter judgment in his favor and against Defendant, containing the following relief:
- a. A declaratory judgment that the actions, conduct and practices of Defendant complained of herein violate the laws of the State of New York and County of Suffolk, New York.
 - b. An injunction and order permanently restraining Defendant and its partners, officers, owners, agents, successors, employees, and/or representatives, and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the policies and practices complained of herein.

- c. An order requiring Defendant and its partners, officers, owners, agents, successors, employees and/or representatives, to publish a bold face retraction of the Letter in the same manner and form as originally published.
- d. An award of damages against Defendant in an amount to be determined at trial, to compensate Plaintiff for all monetary and/or economic damages.
- e. An award of \$300,000 damages against Defendant, or any jointly or severally liable entity or person, or in an amount to be determined at trial to compensate the Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his emotional distress.
- f. An award of \$300,000 for any and all other monetary and/or non-monetary losses suffered by Plaintiff, including, but not limited to loss of income, reputational harm, and harm to professional reputation, in an amount to be determined at trial.
- g. An award of treble exemplary damages in the amount of \$900,000 and any applicable penalties and/or liquidated damages in an amount to be determined ultimately at trial.
- h. An award of costs that Plaintiff has incurred in this action, including, but not limited to, expert witness fees, as well as Plaintiff's reasonable attorneys' fees and costs to the fullest extent permitted by law; and,
- i. Such other and further relief as the Court may deem just and proper.

Frederick W Rosenberg Pro se

Date May 31, 2024

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

May 30,2024

_____ Date May 31,2024
Frederick W Rosenberg Pro se

VERIFICATION

Frederick Rosenberg deposes and says:

I am the plaintiff in the above-entitled action. I drafted the foregoing complaint and its contents thereof and attest to the Truth of the same to my knowledge and belief, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

_____ Date June 1,2024
Frederick Rosenberg Pro Se