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Supreme Court, Appellate Division, Third Department, New York

In the Matter of STEVEN KENNEDY, Claimant

v.

NEW YORK CITY DEPARTMENT OF CORRECTIONS, Respondents

WORKERS' COMPENSATION BOARD, Respondent

RELLA & ASSOCIATES, P.C., Appellant

June 30, 2016

Facts: The claimant's attorneys, Rella & Associates, filed a claim on behalf of their client and submitted a motion for change of venue that was supported by a handwritten note signed by the claimant requesting that his hearings be held in White Plains. A Workers' Compensation Law Judge denied the change of venue request, noting the claimant lived in Brooklyn and therefore that was the proper venue. The Judge found the request was frivolous and was without reasonable grounds. The Judge noted identical requests had been filed by Rella & Associates in the past. A penalty was imposed under Section 114-a(3)(ii) in the amount of \$500.00. The Board agreed to increase the penalty to \$750.00 pursuant to that same section because the conduct of Rella & Associates in filing identical improper and groundless applications for venue changes despite prior adverse Board rulings was an aggravating factor. Rella & Associates filed a Notice of Appeal from the Board Decision but never perfected the appeal and did not pay the penalty.

Thereafter, there was a fee application submitted for services rendered in the amount of \$15,215.00 and after a hearing, the Workers' Compensation Law concluded that Rella's failure to pay the penalty was a dilatory tactic. The fee was reduced to \$10,000.00. On Rella's appeal, the Board further found that Rella had exaggerated the work performed and further reduced the fee to \$5,000.00 based upon exaggeration of the work performed and the failure to pay the \$750.00 penalty. Rella appealed.

Holding: Affirmed

Discussion: The Court held that a penalty pursuant to Section 114-a(3)(ii) is appropriate if a change of venue request is submitted without reasonable grounds. The Court noted there was no stay in the obligation to pay the penalty of \$750.00. It was noted that Rella never perfected the appeal. Regarding the attorney's fee reduction, the Court noted that fees are based on services provided and not on amounts of award. The Court noted that as the Board has the right to approval counsel fees and in this case, given the finding of engagement in dilatory tactics, the further reduction to \$5,000.00 was appropriate. The Court also found that the failure to pay the penalty for 18 months was indeed a dilatory tactic and the Board acted within its discretion and authority regarding the issue of further fee reduction.

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