

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

436

CA 23-00203

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, BANNISTER, AND GREENWOOD, JJ.

ARTHUR SAMODOVITZ, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

UNITED HEALTH SERVICES HOSPITALS, INC.,
LEVENE, GOULDIN & THOMPSON AND ELIZABETH
SOPINSKI, DEFENDANTS-RESPONDENTS.
(ACTION NO. 1.)

ARTHUR SAMODOVITZ, PLAINTIFF-APPELLANT,

V

LEVENE, GOULDIN & THOMPSON AND JORDAN
CHARNETSKY, DEFENDANTS-RESPONDENTS.
(ACTION NO. 2.)

ARTHUR SAMODOVITZ, PLAINTIFF-APPELLANT PRO SE.

BARCLAY DAMON, LLP, ALBANY (MARK T. WHITFORD, JR., OF COUNSEL) FOR
DEFENDANT-RESPONDENT UNITED HEALTH SERVICES HOSPITALS, INC.

LEVENE GOULDIN & THOMPSON, LLP, VESTAL (JARED R. MACK OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS LEVENE, GOULDIN & THOMPSON, ELIZABETH SOPINSKI
AND JORDAN CHARNETSKY.

Appeal from an order of the Supreme Court, Broome County (Jeffrey A. Tait, J.), entered February 2, 2022. The order directed plaintiff to pay \$17,789.62 to defendant United Health Services Hospitals, Inc., and to pay \$15,447.08 to defendant Levene, Gouldin & Thompson.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by reducing the award of attorney's fees and costs payable to defendant United Health Services Hospitals, Inc. to \$10,000 and to defendant Levene, Gouldin & Thompson to \$10,000, and as modified the order is affirmed without costs.

Memorandum: Plaintiff commenced these actions sounding in fraud and negligence and seeking damages arising from allegedly false affidavits filed by defendant Levene, Gouldin & Thompson (LGT), a law firm, on behalf of its client, defendant United Health Services Hospitals, Inc. (UHS), in a previous action between UHS and plaintiff. Supreme Court dismissed the actions, found them to be frivolous, and awarded attorney's fees and costs to UHS in the amount

of \$17,789.62 and to LGT in the amount of \$15,447.08. Although we reject plaintiff's contention that the court abused its discretion in finding the actions frivolous, we agree with plaintiff that the court erred in awarding costs and fees pursuant to 22 NYCRR 130-1.1 rather than CPLR 8303-a (see *Neroni v Follender*, 137 AD3d 1336, 1339 [3d Dept 2016], appeal dismissed 27 NY3d 1147 [2016], rearg denied 28 NY3d 1024 [2016]; see generally *Pilatich v Town of New Baltimore*, 188 AD3d 1386, 1387-1388 [3d Dept 2020]; *Patane v Griffin*, 164 AD2d 192, 197 [3d Dept 1990], lv denied 77 NY2d 810 [1991]). Moreover, inasmuch as "[b]y the express terms of CPLR 8303-a (a), an award [to a successful party] of costs and reasonable [attorney's] fees for frivolous litigation may not exceed [\$10,000]" (*Pilatich*, 188 AD3d at 1388; see *Zysk v Kaufman, Borgeest & Ryan, LLP*, 53 AD3d 482, 483 [2d Dept 2008]), we further agree with plaintiff that the awards must be reduced. We therefore modify the order by reducing the "award to a total of \$20,000, representing \$10,000 for" UHSH and \$10,000 for LGT (*Pilatich*, 188 AD3d at 1389).

Entered: July 28, 2023

Ann Dillon Flynn
Clerk of the Court