

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

DOUGLAS GREENE)	
121 Shelly Marie Circle)	
Anchorage, AK 99515)	Civil Action No.
Plaintiff,)	<u>3:14-cv-619-R</u>
v.)	
FROST, BROWN & TODD, LLC;)	
MARK SOMMER, member;)	
TONY COLEMAN, member;)	
400 West Market Street,)	
32nd Floor)	
Louisville, KY 40202)	
Defendants.)	
)	

COMPLAINT

(Filed Sep. 9, 2014)

COMES NOW the Plaintiff, Douglas Greene, by and through counsel, Arnold L. Feldman, for his Complaint against the Defendants, Frost, Brown & Todd, LLC, Mark Sommer, and Tony Coleman, states and avers as follows:

1. The Plaintiff, Douglas Greene (hereinafter “Mr. Greene”), is, and at all times relevant herein, was a resident and citizen of the state of Alaska.
2. The Defendant, Frost, Brown & Todd, LLC (hereinafter “FBT”) does, and at all times

relevant herein, maintained its principal place of business in the state of Kentucky.

3. The Defendant, Mark Sommer (hereinafter “Mr. Sommer”) is, and at all times relevant herein, was a resident and citizen of the state of Kentucky and was a practicing attorney licensed by the Commonwealth of Kentucky.
4. The Defendant, Tony Coleman (hereinafter “Mr. Coleman”) is, and at all times relevant herein, was a resident and citizen of the state of Kentucky and was a practicing attorney licensed by the Commonwealth of Kentucky.
5. The matter in controversy in this proceeding exceeds the sum or value of \$75,000.00, exclusive of interest and costs.
6. In accordance with Title 28 of the United States Code, § 1332, this Court has jurisdiction over this civil action and venue is proper in this Court.
7. On or about December 13, 2012, Mr. Greene signed a retainer agreement with Mr. Sommer, who was then working at the Louisville, Kentucky firm of Bingham, Greenebaum & Doll, LLP (hereinafter “BGD”), to represent him regarding a Kentucky income tax audit and investigation. Please see the retainer agreement attached as Exhibit A.
8. On or about February 14, 2013, approximately two months after Mr. Greene retained Mr. Sommer to work on his tax matter, Mr. Greene received a letter from Mr. Sommer informing Mr. Greene that as of February 15, 2013, Mr.

Sommer was withdrawing as a member of BGD, and would begin practicing with the firm of FBT that same day. Please see the letter attached as Exhibit B.

9. On or about February 18, 2013, Mr. Greene signed a General Authorization for Release of ALL Legal Records, authorizing BGD to release all of his file materials to Mr. Sommer so that he could continue to represent Mr. Greene in his tax matter through Mr. Sommer's new firm, FBT. Please see the signed authorization attached as Exhibit C.
10. From February through October 1, 2013, Mr. Sommer continued to act on Mr. Greene's behalf in attempts to resolve Mr. Greene's tax matter. Please see letters from Mr. Sommer written on Mr. Greene's behalf in this regard attached as Exhibit D.
11. During this same period of time, in June of 2013, Mr. Greene became involved in a conflict with his employer, the United Parcel Service (hereinafter "UPS"), which culminated in Mr. Greene's discharge from the company.
12. On or about September 11, 2013, Mr. Coleman of FBT represented UPS in the discharge hearing of Mr. Greene.
13. On or about October 13, 2013, after becoming aware that Mr. Coleman and FBT represented UPS in his discharge, Mr. Greene sent Mr. Sommer a letter informing him that, due to this conflict of interest, he was ending their employment relationship and retaining new

representation regarding his tax matter. Please see the letter attached as Exhibit E.

14. On or about October 16, 2013, a hearing was conducted regarding Mr. Greene's discharge from UPS. UPS was represented in this hearing by various parties, including Mr. Coleman. Please see the first page of the 282 page transcript of this hearing attached as Exhibit F.
15. On or about January 13, 2014, Mr. Coleman sent a letter withdrawing himself and FBT from representation of UPS in connection with Mr. Greene's case, acknowledging the conflict between Mr. Sommer's representation of Mr. Greene in his tax matter, and Mr. Coleman and FBT's representation of UPS in their termination of Mr. Greene. Please see the letter attached as Exhibit G.
16. Under the Kentucky Bar Association Rules of the Supreme Court of Kentucky, SCR 3.130(1.7), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest, which exists in the instance where the representation of one client will be directly adverse to another client.
17. Under SCR 3.130(1.10), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so.
18. Pursuant to KRS § 411.165, if any attorney employed to attend to professional business neglects to attend to the business or attends

to the business negligently, after being paid for his services, he shall be liable to the client for all resulting damages and costs.

19. In his letter withdrawing FBT from representation of UPS, Mr. Coleman attributed the failure of FBT to recognize this enormous conflict of interest sooner to an “error” in their firm’s database. This admitted failure by FBT to maintain accurate client records and failure to take appropriate precautions to avoid conflicts of interest, and their failure to accurately update their firm database concerning their representation of clients to the point that the firm could not ethically rely on this inaccurate database to check for conflicts, is a gross violation of FBT’s, Mr. Coleman’s, and Mr. Sommer’s duty to Mr. Greene.
20. Mr. Greene’s clear statement of the conflict in his letter terminating his employment of Mr. Sommer on October 13, 2013 provided both Mr. Sommer and Mr. Coleman with actual and imputed knowledge of the conflict of interest created by their simultaneous representation of Mr. Greene and of UPS. Notwithstanding, Mr. Coleman represented UPS in Mr. Greene’s hearing on October 16, 2013, well after he had clearly received actual and imputed knowledge of the conflict.
21. Furthermore, Mr. Coleman had actual and imputed knowledge of the conflict for three months prior to his withdrawal from the representation of UPS on January 13, 2014.

22. As Mr. Greene's attorney and legal representative, the Defendant, Mr. Sommer, owed Mr. Greene a duty of good faith and professionalism in the handling of his case. FBT's representation of UPS was directly adverse to the representation of Mr. Greene, and Mr. Sommer and Mr. Coleman failed to comply with their ethical and legal obligations to their existing client, Mr. Greene, when they undertook the representation of UPS in Mr. Greene's discharge from employment.
23. Mr. Coleman and Mr. Sommer were negligent and otherwise breached duties owed to Mr. Greene to exercise the ordinary care of a reasonably competent attorney acting in the same or similar circumstances when they failed to adequately check for conflicts and failed to adequately maintain records of current clients when undertaking the representation of UPS.
24. Mr. Coleman's knowledge of Mr. Greene's personal affairs must be imputed to UPS, and the knowledge of Mr. Greene's personal tax matters by UPS and Mr. Coleman, while representing UPS in the termination of Mr. Greene [sic], biased UPS against Mr. Greene.
25. But for the negligence of Defendants, Mr. Greene's personal matters would not have been known to UPS and used against him in his termination matter, and Mr. Greene would have been more likely successful in mediating his conflict with UPS and avoiding termination.

26. But for the conflict of interest, Mr. Greene's dispute with the Kentucky Department of Revenue would have been more vigorously pursued by Mr. Sommer and more expeditiously resolved.
27. As a direct, proximate, and foreseeable result of the negligence and breach of other duties owed by Defendants to Mr. Greene, Mr. Greene was terminated from his employment by UPS, and suffered great inconvenience, embarrassment, and loss of personal reputation.
28. As a direct, proximate, and foreseeable result of the negligence and breach of other duties owed by Defendants to Mr. Greene, Mr. Greene incurred additional costs of hiring new counsel to represent him in his tax matter, requiring substantial time and effort to review documents and get up to speed and creating an additional delay in resolving the matter.
29. As a direct result of the Defendants' intentional and reckless conduct in their extreme and outrageous disregard for their duties to Mr. Greene, their failure to safeguard knowledge of his personal matters, and simultaneous representation of Mr. Greene and his employer UPS during a time of great stress and conflict for Mr. Greene as he was terminated from his job, Mr. Greene suffered severe emotional distress.
30. As a direct result of the negligence of Defendants, Mr. Greene incurred damages including

but not limited to the amount of lost wages; all of the expenses incurred in fully pursuing his Kentucky tax matter and in hiring new counsel; damages for inconvenience, embarrassment, loss of personal reputation, and extreme emotional distress; and applicable interest.

WHEREFORE, the Plaintiff, Mr. Greene, demands judgment against Defendants, Mr. Sommer, Mr. Coleman, and Frost, Brown & Todd, LLC, in an amount that will fully and fairly compensate Mr. Greene as a result of the negligence and other acts and omissions of the Defendants. Plaintiff also demands judgment against the Defendants for all costs associated with the prosecution of this civil action including reasonable attorney's fees as well as all other relief that this Honorable Court deems just and appropriate. Plaintiff demands a trial by jury upon all issues so triable.

Respectfully submitted,

/s/ Arnold L. Feldman
Arnold L. Feldman, JD ATP
Attorney for Plaintiff
PO Box 756
Narberth, PA 19072

[Exhibits Omitted]
