APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of August, two thousand eighteen.

PRESENT:
BARRINGTON D. PARKER,
PETER W. HALL,
RAYMOND J. LOHIER, JR.,
Circuit Judges

Fougere Holcombe,
Plaintiff-Appellee,
v. 17-2758
Vladimir Matsiborchuk,
Interested Party-Appellant,

US Airways Group, Inc., US Airways, Inc., (US Airways), International Association of Machinists and Aerospace Workers, Loretta Bove, Beth Holdren,

Defendants.

FOR PLAINTIFF-APPELLEE: RAYMOND NARDO, Law Office of Raymond

Nardo, Mineola, NY.

FOR INTERESTED PARTY-APPELLANT: VLADIMIR MATSIBORCHUK, pro se, New York, NY.

Appeal from an order of the United States District Court for the Eastern District of New York (Townes, J.; Orenstein, M.J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the district court is AFFIRMED.

Fougere Holcombe retained an attorney, Appellant Vladimir Matsiborchuk, to represent her in a disability discrimination lawsuit against her former employer. After six years, Holcombe retained a new attorney. Matsiborchuk moved for fees and costs, and Holcombe moved to extinguish his lien. The district court determined that Holcombe had discharged Matsiborchuk for cause and extinguished his lien. Matsiborchuk, proceeding pro se, appeals. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review a district court's decisions on attorney's fees for abuse of discretion. Slupinski v.

First Unum Life Ins. Co., 554 F.3d 38, 47 (2d Cir. 2009). "A court abuses its discretion when

(1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions."

Id. (citation and internal quotation marks omitted).

The district court did not abuse its discretion by granting Holcombe's motion to extinguish Matsiborchuk's retaining lien and to deny Matsiborchuk's motion for attorney's fees. Under New York law, a client may discharge her attorney at any time, with or without cause. Garcia v. Teitler, 443 F.3d 202, 211 (2d Cir. 2006); Campagnola v. Mulholland, Minion & Roe, 555 N.E.2d 611, 614 (N.Y. 1990). When a client discharges her attorney for cause, "the attorney has no right to compensation or a retaining lien, notwithstanding a specific retainer agreement." Id. When the discharge is without cause, the attorney may recover fees on a quantum meruit basis. Id. "Poor client relations, differences of opinion, or personality conflicts do not amount to cause . . . ." Garcia, 443 F.3d at 212. But "impropriety or misconduct on the part of the attorney," id., or the violation of a disciplinary rule is sufficient to show just cause, Schultz v. Hughes, 971 N.Y.S.2d 536, 538 (2d Dep't 2013); see also Klein v. Eubank, 663 N.E.2d 599, 601 (N.Y. 1996) (attorneys may retain liens where their representation terminated and "there has been no misconduct, no discharge for just cause and no unjustified

abandonment by the attorney"). Improper threats to withdraw from representation or verbal abuse of a client can constitute misconduct. See Brooks v. Lewin, 853 N.Y.S.2d 286, 288 (1st Dep't 2008) (finding that attorney committed misconduct by threatening to withdraw from representation if client did not sign new retainer giving attorney additional compensation); Matter of Heller, 607 N.Y.S.2d 305, 308 (1st Dep't 1994) (suspending attorney for 5 years for verbally abusing clients, threatening them with harsh consequences if they discharged him, and failing to return unearned fees).

Here, the district court applied the correct legal standards. Although the district court relied primarily on non-binding authority to guide its examination of whether Holcombe discharged Matsiborchuk for cause, there was no error. The district court was correct that attorney misconduct, which includes the verbal abuse of a client or improper threats to withdraw, is sufficient to extinguish a lien.

Further, the district court's factual findings were not clearly erroneous. Holcombe testified, and documentary evidence corroborated, that Matsiborchuk was hostile and used insults such as "stupid" or "inept." He told Holcombe to obtain a law guardian or transfer her power of attorney because she was incapable of "functioning" in the case. Further, the evidence showed that Matsiborchuk sought to control the amount of her settlement demand and improperly threatened to withdraw from representing her in an attempt to control her decisions in the case.

Matsiborchuk argues that his suggestion that Holcombe obtain a law guardian or transfer her power of attorney and his threat to withdraw from the representation were not abusive, but rather ethical and proper. As the district court observed, however, the suggestion that Holcombe obtain a law guardian was made in an effort to force Holcombe to agree to his instructions or to give her power of attorney to someone more likely to be compliant. Moreover, while some of Matsiborchuk's threats to withdraw were based on the breakdown in communication, he also threatened to withdraw to force Holcombe to give him complete control over settlement.

Matsiborchuk argues that he did not interfere with Holcombe's right to accept a specific settlement offer and that he had merely expressed his legal opinion on the value of her damages.

Even if a general threat to dictate a settlement demand is not misconduct, Matsiborchuk's other violations, particularly his abuse and improper threats to withdraw, do constitute misconduct. See Brooks, 853 N.Y.S.2d at 288; Heller, 607 N.Y.S.2d at 308.

Matsiborchuk's arguments that the magistrate judge and district court violated his due process rights are meritless. The magistrate judge did not prevent him from testifying. Matsiborchuk never said that he intended to testify, and he responded that he did not have any witnesses when asked by the magistrate judge. He asserts the magistrate judge improperly ended his cross-examination for "laughing" at Holcombe, stating he did not actually laugh at her. The transcript shows, however, that

Matsiborchuk said "I'm laughing because I don't understand."

Nor did the magistrate judge improperly exclude evidence of Holcombe's relationships with her prior attorneys. To the extent he challenges an evidentiary ruling, this argument is meritless.

The magistrate judge did not abuse his discretion by excluding an exhibit that Matsiborchuk referred to as a list of attorneys, that was actually a collection of various letters and motions to withdraw by Holcombe's prior attorneys and a complaint Holcombe filed against one of those attorneys. See United States v. Vayner, 769 F.3d 125, 129 (2d Cir. 2014) (evidence must be authentic, and authenticity is determined by seeing if "the item is what the proponent claims it is." (quoting Fed. R. Evid. 901(a))); Cameron v. City of New York, 598 F.3d 50, 61 (2d Cir. 2010) (reviewing evidentiary rulings for abuse of discretion). Insofar as Matsiborchuk argues it was error for the district court not to address his argument that Holcombe had a history of being a poor client, the district court addressed the issue of Holcombe's behavior as a client and noted that Matsiborchuk could have moved to withdraw.

Matsiborchuk also argues that the magistrate judge improperly acted as a corroborating witness and inappropriately answered for Holcombe when she was being cross-examined. The magistrate judge's observation that Matsiborchuk's demeanor during the hearing was "combative" and "intimidating," corroborating Holcombe's testimony to that effect, was neither improper nor clearly erroneous because other evidence supported the magistrate judge's finding that Holcombe was

credible and Matsiborchuk was abusive. Cf. Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985) (a finding is clearly erroneous when the reviewing court "is left with the definite and firm conviction that a mistake has been committed" (citation and internal quotation marks omitted)). Further, the magistrate judge did not "answer" for Holcombe; he merely clarified whether Matsiborchuk had referred to a certain exhibit when Holcombe did not understand a question.

We have considered all of Matsiborchuk's remaining arguments and find them to be without merit. For the foregoing reasons, the order of the district court is AFFIRMED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x
FOUGERE HOLCOMBE,
Plaintiff, 08-CV-1593 (SLT) (JO)
- against -
US AIRWAYS GROUP, INC., et al.,
Defendants.
----------x

MEMORANDUM AND ORDER

TOWNES, United States District Judge:[1]

Attorney Vladimir Matsiborchuk represented plaintiff Fougere Holcombe in this action from its inception in mid-April, 2008 until late January 2014, when another lawyer, Raymond Nardo, filed Holcombe's consent to change attorneys. See Docket Entry ("DE") 110. After learning he had been fired, Matsiborchuk filed a motion requesting the Court's permission to withdraw as counsel and seeking to recover $4,398.58 for costs and disbursements, as well as $184,128.70 for his legal services under the theory of quantum meruit. See DE 114. The Court referred this motion to the Honorable Joan M. Azrack, then the magistrate judge assigned to this case. See DE 118.

After Judge Azrack recused herself, Magistrate Judge James Orenstein conducted a hearing with respect to the motion and issued a

[1] The Court gratefully acknowledges the assistance of a student intern, Charlie Lin of Columbia Law School, in the preparation of the Memorandum and Order.

Memorandum and Order both denying Matsiborchuk's motion and granting Holcombe's cross-motion to extinguish Matsiborchuk's charging lien, which had been filed during the pendency of Matsiborchuk's motion. See DE 215.

Matsiborchuk now objects to the magistrate judge's ruling on various grounds, which touch on almost all aspects of the ruling. See DE 216. The Court has conducted the de novo review required by Rule 72(b)(3) of the Federal Rules of Civil Procedure and, for the reasons set forth below, concurs with Judge Orenstein's finding that there was ample cause for Matsiborchuk's discharge.

I. Background

A. Facts

In mid-September 2003, Plaintiff Fougere Holcombe, represented by another attorney, commenced an action in this district against her employer, US Airways, and her union, the International Association of Machinists and Aerospace Workers ("IAMA W"). In that action, Holcombe v. US Airways Group, Inc., 03-CV-4785 (SLT) (JO) (the "2003 Action"), Holcombe alleged that defendants had discriminated against her based upon her disability and had retaliated against her when she complained of that discrimination. All of the facts set forth in the initial complaint in the 2003 Action were alleged to have occurred on or before March 4, 2003.

In September 2004, US Airways filed a voluntary petition for bankruptcy relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court of the Eastern District of Virginia (the "Bankruptcy Court"). Anticipating that

Holcombe's discrimination claim was likely to be resolved in the Bankruptcy Court, this Court stayed and administratively closed the 2003 Action in November 2004 pending the outcome of the bankruptcy proceedings.

Holcombe filed a proof of claim in the Bankruptcy Court for $60,475,000 in lost wages, pension benefits, and damages arising from the disability discrimination. In re US. Airways, Inc., 365 B.R. 624, 625 (Bankr. E.D. Va. 2007). However, in a Memorandum Opinion dated

April 2, 2007, the Bankruptcy Court dismissed that claim on the ground that the claim had already been discharged in a prior bankruptcy proceeding. Id. The Bankruptcy Court noted that the September 2004 filing was actually US Airways' second Chapter 11 petition. Id. The original petition had been filed in 2002, and the Chapter 11 plan had been confirmed in that case on March 18, 2003. Id The Bankruptcy Court reasoned that because the essential events giving rise to Holcombe's claim occurred prior to the confirmation of the plan, her claims were discharged when she failed to file a timely proof of claim in the first bankruptcy proceeding. Id at 631.

Three days after the Bankruptcy Court discharged Holcombe's claims, she reached out to Matsiborchuk. See DE 188, Exhibit 1-A. At the time, the two were both taking an online class run by James R. Hasse. At Holcombe's request, Hasse sent Matsiborchuk an email stating that Holcombe needed to find an attorney to handle her appeal of the Bankruptcy Court's dismissal of her claim and was hoping Matsibrochuk might have some contacts. Matsiborchuk subsequently began to represent Holcombe. Transcript of Jan. 18, 2017, Hearing ("Tr.

1/18"), pp. 16-17. Although they may not have executed a retainer agreement immediately, it is undisputed that Holcombe and Matsiborchuk signed a retainer agreement dated April 29, 2008. In that document, both parties agreed that: 1) Matsiborchuk would represent Holcombe in her claims "concerning [her] employment at US Airways," 2) Matsiborchuk would "not settle or compromise [Holcombe's] claims without [her] prior consent," 3)Holcombe would "be responsible for the expenses in the course of this case," 4) In return for his service, Matsiborchuk would retain a one-third share of the first six million dollars of any net recovery and twenty percent of any net recovery amount over six million dollars, and 5) The agreement would "be effective retroactively beginning April 11, 2007." DE 189, Exhibit 3, pp. 1-2.

In April 2008, Matsiborchuk moved to reopen the 2003 Action and filed a new case in this district: Holcombe v. US Airways Group, Inc., No. 08-CV-1593 (SLT) (JO). Matsiborchuk also provided legal assistance to Holcombe in her effort to appeal the Bankruptcy Court's dismissal of her claims in the U.S. District Court for the Eastern District of Virginia. Holcombe was obviously pleased to find an attorney who was willing to represent her on a contingency basis even though the bulk of her disability discrimination claims had already been dismissed. Accordingly, the initial communication between the two was cordial, with Holcombe repeatedly expressing her gratitude to Matsiborchuk. See, e.g., DE 216, Exhibit C, p. 6 (April 17, 2008, email) ("Great work! It's a masterpiece"); id., p. 2 (August 17, 2008, email) ("These are awesome and brilliant!!!!!!, especially the responses regarding the IAM - OH MY GOD!!!!!!!! What "teeth" you have! :) :)

:)");id., p. 7 (October 31, 2008, email) ("I just read the motion and the list of documents ... and I am so proud of you! This is amazing, I cried reading this. It gives me hope and I know how hard you are working.").

By October 2009, however, their relationship had deteriorated to such a degree that Holcombe asked Matsiborchuk to contact an intermediary-a social worker of her acquaintance-who had agreed to assist in resolving their communication problems. See DE 189, Exhibit 3, p. 8 (October 19, 2009, email). In an October 19, 2009 email, Holcombe told Matsiborchuk that she needed to discuss some communication problems that had developed between them and requested that Ms. Margery Libin, her social worker, join their discussion. Id.Holcombe explicitly gave Matsiborchuk permission to speak in front of Ms. Libin. Id. However, Matsiborchuk initially refused to do so, opining that "such communications are illegal." Id., p. 7.

When Holcombe insisted, Matsiborchuk contacted Ms. Libin, then told Holcombe:

> Fleur, your behavior makes my work on your case impossible. You are intentionally taking my time to block my work on your case.
>
> Please be advised that if your behavior is aimed at my forceful withdrawal from your representation, my lien in your case is 33% of all proceeds received in this case.
>
> Please be also advised that I have the right to determine my financial interest in all none-monetary [sic] relief received in this case ...
>
> I have already invested two and a half years of my and my assistant's work in this matter. I

> have made a huge factual and legal development in this matter and have financial interest in this complex and protracted litigation.

Id., p.4

Anxious to protect his "financial interest," Matsiborchuk sought to usurp his client's authority to determine whether or not to settle and the terms of settlement. In his October 21,

2009, email, Matsiborchuk told Holcombe:

> Your interference with my work damages this matter causing losses to me and my interests in this litigation and I have the right to demand your compliance with my directions. In this respect, please be advised that as long as I am representing you, you are not free in your decisions regarding the resolution of the legal issues pertaining to this matter.

DE 189, Exhibit 3, p. 4.

When she rebuffed him for overstepping his authority, he impugned her sanity, encouraging her to obtain a legal guardian so that he would not have to deal with her anymore. On March 11, 2011, Holcombe informed Matsiborchuk that she was willing to settle her case for 3 million dollars. DE 216, Exhibit 2, p. 8. In his response, sent four days later, Matsiborchuk again asserted his right to determine the terms of settlement, and threatened her, stating:

> There are rules and procedures in determining a fair and reasonable settlement, and as I have said a million times before, I will determine whether a settlement is reasonable. If you disagree, I will immediately cease

representing you and place a lien on your claim. I spent four years on this case, the better part of which I had to deal with you as if you were an opposing party because of the way you chose to behave toward me.

This settlement is important for you more than for anyone else. You have repeatedly refused to uphold your obligations under our retainer agreement, even as I performed every one of my obligations in spite of the difficulties that your behavior imposed on my ability to act. You refused to even pay expenses and violated the retainer in other ways (for whatever reasons). Because of this, I suggest two options: (1) transfer your rights under the retainer to someone who will pay expenses and uphold the agreement, or (2) settle. You must understand that your decision to not pay expense [sic] and your failure to uphold the retainer agreement has very real consequences for you. One of the consequences that results from your decision to not uphold the retainer agreement is the imposition of further losses on me and ultimately on you. These losses may stem from a refusal to agree to a reasonable settlement. You may choose to refuse to settle and refuse to uphold our retainer agreement, but the consequences for you would be dire. Your interests are paramount, and it would simply be in your best interests to choose one of the two options enumerated above.

. . . I told you during our last conference that I believe you require a guardian. If you wish, you may give power of attorney-in-fact (which

> would include the right to sign a settlement agreement) to Michael.

DE 189, Exhibit 1, p. 1 (March 15, 2011, email).

Matsiborchuk also usurped his client's right to determine whether and how to appeal, filing a petition for rehearing and rehearing en banc without his client's permission. On September 24, 2012, Matsiborchuk notified Holcombe that he had filed a petition for rehearing and rehearing en banc on her behalf in the bankruptcy appeal pending before the Fourth Circuit. DE 189, Exhibit 4, pp. 1-2. Holcombe protested that Matsiborchuk had not given her an opportunity to review the document before filing. Id., p. 1. She further objected to an "inflammatory letter" that Matsiborchuk had sent to Chief Judge Traxler and the "inflammatory and accusatory approach" that Matsiborchuk had used when he addressed the court. Id.

On September 26, 2012, Matsiborchuk responded to Holcombe by claiming that he had discussed his submission with her husband, Michael, over the phone. DE 189, Exhibit 3, p. 1. He assumed the submission was acceptable because Holcombe never informed Matsiborchuk of any concerns regarding it. Id. Matsiborchuk then reiterated:

> You must comply with my legal decisions and you have no room for further discussion of that topic. If you don't accept the legal steps I consider as necessary and the legal work I have done, or, as you are saying, "my bad attitude," You must have changed your attorney. You accomplished that substitution many times in the past. ...

> I firmly reject your pervert [sic] views and corrupt practice that you employed in this case. I reject all your bizarre and violent allegations contained in your latest communications. You have received your flight benefits and I will demand my compensation, since, at your request, I invested a considerable amount of time in the prosecution of that issue. I confirm my lien on your case.

Id. He threatened legal action if she failed to accede to his dictates, saying: "If you wish, our legal dispute with respect to our respective obligations under our agreement, my lien and my right to be compensated for my work will be resolved in court." Id.

On October 5, 2012, Matsiborchuk again emailed Holcombe, threatening her about the dire consequences of his withdrawal and repeating his earlier assertion that she needed a legal guardian:

> One cannot guarantee (under any circumstances) that you will win your case, but you can damage it even more by demonstrating to the courts again and again your inability to maintain a normal attorney-client relationship even with an attorney who has defended your rights diligently for only an indefinitely remote possibility of being compensated for the enormous amount of work performed....
>
> The formal procedure of my withdrawal from your representation in court will require revealing the basis for that withdrawal: I am aware that you are familiar with that procedure....

> If you have difficulties with making personal decisions due to health reasons, you may also seek an appointment of Law Guardian for you - the person who will officially make legal decisions on your behalf and who will perform necessary contacts with your attorney regarding your case.

DE 189, Exhibit 2, pp. 1-2 (emphasis in original).

On October 9, 2012, more than a year before Holcombe formally discharged Matsiborchuk, she emailed him to protest his abusive language and improper threats:

> You also assert that terms of agreement stem only from you., [sic] and that my function is solely to "comply." So, ou [sic] purposely intimidate to make any discussion impossible, and I am put in the impossible position of Risk in replying. Your emails are a reflection of your behavior, not mine.... Each time you behave in a belligerent, unprofessional manner, additional time is needed to diffuse the situation before there is any possibility of discussion.... You completely distort my own case evidence documentation and communication which is confidential information, privileged and confidential for the sole purpose of protecting me, not to harass, threaten, or humiliate me. To apply a false meaning to it and make it Public as somehow necessary to include with court filings raises serious ethical questions.... You have threatened, coerced, and bullied me with withdrawal and suing me at every juncture, to ensure that you can do whatever you want through leveraging fear. You also make

> outrageous insults, claiming that there is something wrong with me; that I am incompetent or have cognitive impairment; and in need of a legal guardian. You are in no way qualified, nor is it appropriate for you to make such statements. As an attorney, I know it is not your area, but would hope you know the process for such a determination, and you are way out of bounds as my legal representative for making such statements. I have asked you to stop with these sort [sic] of devices, and insist on it again....
>
> We can speak when it is a good time to do so; not when you order it, and only if it could be productive, which means it is equitable, respectable, mature, and fair; without recording it, behaving belligerently or by throwing insults.

DE 189, Exhibit 5, p. 3.

On October 10, 2012, Matsiborchuk replied to Holcombe with a long email entitled "Disengagement," where he attempted to justify his suggestions about a legal guardian and further criticized Holcombe's behavior:

> In your communication, you made unintelligible and incoherent statements, proclaiming that, by making such warnings to withdraw, I allegedly "threatened to sue" you and somehow "coerced and bullied" you. These statements are false and I firmly reject them.
>
> ... You are mistaken in alleging that I was not trained in the fields of forensic psychiatry, forensic psychology and forensic medicine. My training in the Soviet Union included

instruction in these areas. See attached translation of the transcript of my diploma and its evaluation made in the State of New York. I am not trained to cure the problem, but I am definitely trained to determine its existence and identify it. My advice to you is based on my desire to help you, not to insult you. Moreover, you requested help from your social worker at some point, and insisted on her presence during one of our meetings. Thus, your present reaction is inadequate.

. . . You misstated the purpose of appointing a Guardian. Below, I provide the definition thereof from Black's Law Dictionary:

Guardian, n. I .One who has the legal authority and duty to care for another's person or property, esp. because of the other's infancy, incapacity or disability. A guardian may be appointed either for all purposes or for specific purpose ... "

- So, appointment of a Guardian does not speak directly about mental disability; rather, it speaks to any kind of disability or physical incapacity. There is nothing humiliating about that. In fact, you have already used the help of your husband when you stated that you cannot speak with me over the telephone ....

To say that I allegedly "refused" to speak with you is the most strange and incredible statement that I have ever heard from any of my clients. You rejected several of my proposals to meet. None of my clients have ever behaved like you have.

> . . . You should look for another attorney immediately. According to your communication below, you are dissatisfied with my services, you intend to disregard my advice and you do not trust me anymore. You have clearly discharged me. Under these circumstances, I can no longer continue to represent you in your legal matters...

DE 189, Exhibit 5, pp. 1-2. Despite what he said in the email, Matsiborchuk did not petition the Court to grant him leave to withdraw from representing Holcombe.

Indeed, Matsiborchuk continued to represent Holcombe for more than a year before Holcombe informed Matsiborchuk that she had discharged him. See DE 114. In a letter dated December 24, 2013, Holcombe's current counsel, Raymond Nardo, informed Matsiborchuk that Holcombe had discharged him for cause. A stipulation to substitute counsel bearing Holcombe's signature was attached to Nardo's Letter. The letter also provided a list of reasons for the discharge:

> [You] have filed documents in [Holcombe's] case without her approval and consent ... you have suggested that she obtain a Law Guardian because she is incapable of making decisions due to some incapacity you diagnosed based on your alleged training in the Soviet Union, you have accused the court of fraud and collusion, you have accused Ms. Holcombe of colluding with courts against you, and you have asked her to pay for your wife's services as your legal assistant. She also had to pay a lien of $2,000 from a personal injury

> case to an attorney your referred for expenses allegedly incurred in this federal matter.

DE 114, Exhibit 3, p. 1. Although Matsiborchuk confirmed receipt of this letter in his January 27, 2014, reply to Nardo, Matsiborchuk declined the substitution of counsel and contended that he had already disengaged Holcombe in October 2012 by written notice. Id, Exhibit 4, pp. 1-3. However, Matsiborchuk first petitioned the Court for permission to withdraw in February 25, 2014. By that time, Nardo had already filed a notice of consent to change attorney dated January 27, 2014, and the court had already acknowledged the substitution of counsel in its February 6, 2014, order. See DE 110.

B. Procedural History

Matsiborchuk's February 25, 2014, motion not only sought permission to withdraw as counsel, but also included a request for compensation. DE 114. That motion incorporated a request for a retaining lien in the amount of$4,398.58 and a charging lien of $184,128.70 on the basis of quantum meruit. Id., p. 2.

The Court referred Matsiborchuk's motion to withdraw and request for compensation to Judge Joan Azrack, then a magistrate judge, who had been assigned to supervise discovery in his action. DE 118. Matsiborchuk immediately sought Judge Azrack's recusal from the motion, alleging that Judge Azrack "impermissibly prejudged her opinion" and "attempted to punish [Matsiborchuk] for noncompliance with her prejudged opinion" that Matsiborchuk should have brought his motion in state courts. DE 119, p. 2. None of Matsiborchuk's arguments for recusal persuaded Judge Azrack. Nonetheless, she found sua sponte that her involvement in settlement negotiations required her

recusal from the fact-finding as to whether Matsiborchuk was terminated for cause. DE 134. The matter was then re-assigned to Judge Orenstein. Id.

On September 30, 2014, the Court denied Matsiborchuk's request for a retaining lien and his request for a charging lien without prejudice to renew after the conclusion of the underlying litigation. DE 136. Matsiborchuk then filed a motion for reconsideration, which the Court denied on October 21, 2014. DE 137; DE 138. Despite this denial, Matsiborchuk continued to resist court orders compelling him to produce Holcombe's case file to Nardo. Judge Orenstein had to issue three more orders, the last of which warned Matsiborchuk that the judge's next step would be an order to show cause why he should not be adjudged in contempt of the Court's lawful authority. Matsiborchuk finally turned over Holcombe's case file to Nardo on November 5, 2014, more than a month after the denial of Matsiborchuk's retaining lien. See Orders dated October 30, November 3, November 4, 2014; DE 145.

After the underlying employment action was settled, Holcombe moved to extinguish the charging lien. DE 185. Judge Orenstein scheduled "an evidentiary hearing on the issue of termination for cause" for January 18, 2017. Order dated November 22, 2016. Two days before the scheduled hearing, Matsiborchuk renewed his motion to withdraw and his request for compensation. DE 196. On the eve of the hearing, Matsiborchuk moved to disqualify Nardo on the basis of an alleged conflict of interest and dumped thousands of pages of documents on the record. DE 197; DE 198; DE 199; DE 200; DE 201; Tr. 1/18, p. 9. Matsiborchuk's tactics did not delay

the hearing. Judge Orenstein denied the motion to disqualify Nardo after Holcombe waived the alleged conflict of interest, Tr. 1/18, pp. 5-6, and the hearing proceeded as scheduled.

Nardo called Holcombe as his first and only witness. Holcombe testified that Matsiborchuk was "belligerent and nasty" and called her "inept," "senseless," and "inadequate." Tr. 1/18, p. 21. Furthermore, Holcombe testified that she felt "frightened" when Matsiborchuk repeatedly suggested to her that she needed a legal guardian to make decisions for her due to her "incompetence." Tr. 1118, pp. 23-24. While Nardo was conducting the direct examination of Holcombe, Matsiborchuk laughed at her testimony and Judge Orenstein warned Matsiborchuk not to do so. Id., p. 32.

At the close of the initial session of the hearing, Judge Orenstein specifically asked Matsiborchuk whether he had any witnesses. Matsiborchuk replied that he had none and requested only an hour to complete his cross-examination of Holcombe. Id., pp. 64-65. Judge Orenstein scheduled the hearing to resume on February 3, 2017. Id., p. 65.

Two days before the hearing was to resume, Matsiborchuk moved to disqualify Judge Orenstein based on his alleged bias and prejudice toward Matsiborchuk. DE 204. On February 3, 2017, Judge Orenstein denied this motion. Transcript of Feb. 3, 2017, Hearing ("Tr. 2/3"), pp. 7- 11. Matsiborchuk then continued his cross-examination but could not finish it within the allotted time. He asked for another 30 to 40 minutes to complete his cross-examination of Holcombe. Id.,p. 59. Judge Orenstein

granted that request and continued the hearing until February 24, 2017. Id.

On February 22, 2017, Matsiborchuk again moved to disqualify Judge Orenstein. DE 206. On February 23, 2017, Judge Orenstein denied the motion. Later that same day, Matsiborchuk filed a letter addressed to Chief Judge Carol Amon, alleging that Judge Orenstein's denial manipulated the substance of Matsiborchuk's motion and precluded his rights of appeal. DE 207. Having no authority over this case, the Chief Judge took no action.

The cross-examination of Holcombe resumed on February 24, 2017. During that cross-examination, Matsiborchuk again laughed at Holcombe, prompting Judge Orenstein to direct Matsiborchuk to stop laughing. Transcript of Feb. 24, 2017, Hearing ("Tr. 2/24"), p. 45. Matsiborchuk laughed at Holcombe on two subsequent occasions, despite Judge Orenstein's repeated instructions that he not do so. When he laughed at Holcombe for a third time, Matsiborchuk attempted to defend his actions, saying, "I'm laughing because I don't understand." Id., p. 48. Judge Orenstein then terminated the hearing, but invited the parties to submit post-hearing briefs by March 27, 2017. Id., p. 49. Holcombe timely submitted her brief. Matsiborchuk's brief was filed on the day after the deadline.

Judge Orenstein considered both submissions in rendering his decision. In a Memorandum and Order dated March 29, 2017, Judge Orenstein concluded that Holcombe justifiably terminated Matsiborchuk for at least three independently sufficient causes. First, Judge Orenstein found that Matsiborchuk treated Holcombe in an abusive and

disrespectful manner. Holcombe v. US Airways Grp., Inc., No. 08-CV-1593 (SLT) (JO), 2017 WL 1184104, at *4 (E.D.N.Y. 2017). In making this finding, Judge Orenstein relied principally on Holcombe's uncontroverted testimony at the hearing, in which she described Matsiborchuk's misbehavior, including "name-calling, insults, and questioning her mental competence." Id. Judge Orenstein credited this testimony, noting that the contemporaneous email records and Matsiborchuk's behavior during the hearing in front of him strongly corroborated Holcombe's testimony. Id. At Second, Judge Orenstein found that Matsiborchuk interfered with Holcombe's right to settle. Id. at *6-7. Judge Orenstein focused on Matsiborchuk's March 15, 2011, email, in which he threatened to abandon Holcombe's case if she refused to comply with his judgment about reasonableness of Holcombe's settlement demand. Id. Judge Orenstein found that Matsiborchuk's improper threat "justified termination for cause not only because of its abusive nature, but independently because it interfered with Holcombe's right to settle." Id.

Third, Judge Orenstein found that Matsiborchuk threatened to withdraw on multiple other occasions, and that these threats constituted "misconduct warranting discharge for cause." Id. At *7. Judge Orenstein referred to at least three emails, sent in 2009 and 2012, where Matsiborchuk demanded Holcombe's compliance with his dictates and warned about the negative consequences of his withdrawal. Id.

Lastly, Judge Orenstein pointed out other misconduct that did "not independently suffice to warrant" a discharge for cause, but served to "bolster

resolution of the motions in Holcombe's favor." Id. at *8. This misconduct included Matsiborchuk's disruptive tactics through the course of this litigation and his advice to Holcombe not to retain counsel or to appear at a deposition in the bankruptcy case. Id. Based on all the grounds discussed above, Judge Orenstein granted Holcombe's motion to extinguish the charging lien and denied Matsiborchuk's motion for compensation in quantum meruit. Id.

On April ~2, 2017, Matsiborchuk filed objections to Judge Orenstein's Memorandum and Order. Several of these objections raise due process arguments relating to the manner in which Judge Orenstein conducted the hearing. Most notably, Matsiborchuk alleges that Judge Orenstein prevented him from presenting witnesses or from completing his cross-examination of Holcombe. DE 216, pp. 3-4. In addition, Matsiborchuk, who is visually impaired, alleges that the judge deprived him of a sighted assistant and thereby impeded his cross-examination. DE 204, p. 2.

Other objections imply that Judge Orenstein was biased against Matsiborchuk. For example, Matsiborchuk claims that the judge deliberately misrepresented the length of time that Matsiborchuk represented Holcombe so as "to falsely limit[] the time and scope of Matsiborchuk's representation" and to avoid any discussion of Holcombe's behavior with her prior attorneys. Id., p. 2. Matsiborchuk also complains that Judge Orenstein credited Holcombe despite the lack of corroborating testimony or emails, disregarded proof which contradicted her characterizations of Matsiborchuk and which evidenced Holcombe's own abusive behavior, and

"cherry-picked" evidence that supported the judge's preconceived conclusions. Id., pp. 4-11.

The remaining objections principally relate to Judge Orenstein's conclusion that there was cause for Matsiborchuk's discharge. In contesting the conclusion that Matsiborchuk engaged in abusive behavior, Matsiborchuk points to emails in which Holcombe "expressed delight" with Matsiborchuk's performance and in which Holcombe was "abusive" to Matsiborchuk and her prior attorneys. Id., pp. 12-13. He questions the veracity of Holcombe's claims of abuse, asserting that she recounted the allegedly abusive behavior for the first time two and one-half years after she discharged Matsiborchuk and that she failed to call third-party witnesses, such as her own husband, to corroborate her claims. Id., p. 5. He accuses Judge Orenstein of taking portions of the voluminous email exchanges between Matsiborchuk and Holcombe out of context and notes that Holcombe did not obtain a new lawyer for more than a year following their vitriolic email correspondence of October 2012. Id., pp. 5-11. He also asserts that Judge Orenstein's observations regarding Matsiborchuk's behavior toward Holcombe at the evidentiary hearing constitutes "after-acquired evidence" which cannot be considered in determining whether the discharge was for cause. Id., p. 13.

With regard to Judge Orenstein's finding that Matsiborchuk's March 15, 2011, email interfered with Holcombe's right to settle her case, Matsiborchuk asserts that he was merely communicating his "professional legal assessment" regarding a "hypothetical demand" that Holcombe had proposed earlier. Id., p. 14. Matsiborchuk further claims that Holcombe's settlement demand was so

"objectively frivolous" and "unreasonable" that he could not have advanced it without incurring sanctions under Fed. R. Civ. P. l l. Id., pp. 14-15. Matsiborchuk also objects to Judge Orenstein's conclusion that he improperly threatened to withdraw from the case. Id., p. 16. He argues that Holcombe's "refusal to cooperate with [him]" constituted a reasonable cause for him to withdraw and that he emailed Holcombe to "advise her of his intent to withdraw from her case." Id., pp. 17-18.

II. Discussion

A. Jurisdiction

Preliminarily, the Court notes that it has jurisdiction to adjudicate, the fee dispute between Matsiborchuk and Holcombe. Federal courts "have independent authority to regulate attorney admission and withdrawal, and ancillary to that, the authority to determine attorney's fee disputes and regulate attorney's fee liens." Rivkin v. A.J Hollander & Co., No. 95-CIV-9314 (DAB) (AJP), 1996 WL 633217, at *2 (S.D.N.Y. 1996). New York Judiciary Law§ 475 ("Section 475") "governs attorneys' charging liens in federal courts sitting in New York." ItarTass Russian News Agency v. Russian Kurier, Inc., 140 F.3d 442, 448 (2d Cir. 1998). A lien created by Section 475 is fully enforceable in federal court "in accordance with its interpretation by New York courts." Id. at 449 (quoting In re Chesley v. Union Carbide Corp., 927 F.2d 60, 67 (2dCir.1991)).

B. Standard of Review

The Court's order referring to Judge Orenstein Matsiborchuk's renewed motion to withdraw and for compensation and Holcombe's cross-motion to extinguish Matsiborchuk's lien did not request a

report and recommendation. Nonetheless, Judge Orenstein noted that Matsiborchuk's motion was dispositive of Matsiborchuk's lien against Holcombe. Judge Orenstein noted that any appeal from his ruling on that motion would be governed by Rule 72(b)(3) of the Federal Rules of Civil Procedure, which provides: "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). Upon de novo review, the Court may "accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Id.

C. Due Process Objections

Before reviewing de novo Judge Orenstein's substantive decisions, the Court must address Matsiborchuk's due process objections, including his claim that Judge Orenstein was biased against him. First, Judge Orenstein did not prevent Matsiborchuk from presenting evidence at the hearing. At the close of testimony on January 18, 2017, Judge Orenstein expressly asked Matsiborchuk if he had any witnesses to present. Matsiborchuk responded, "No, Your Honor." Tr. 1118, p. 65. Judge Orenstein also afforded Matsiborchuk an adequate opportunity to cross-examine Holcombe. Judge Orenstein asked Matsiborchuk to approximate the amount of time he would need to complete his cross-examination of Holcombe. Matsiborchuk requested only another hour. Id., p. 64. Judge Orenstein eventually gave Matsiborchuk more than twice the time he had requested.

To be sure, Judge Orenstein eventually ordered Matsiborchuk to cease his cross-examination. However, that order was issued only

after Matsiborchuk laughed at the witness, despite having been repeatedly warned not to do so. Tr. 2/24, p. 49. Although he subsequently denied laughing, id., p. 50, Matsiborchuk admitted doing so at the time his cross-examination was terminated, saying: "I'm laughing because I don't understand." Id., p. 48.

Finally, while Matsiborchuk claims that Judge Orenstein credited Holcombe's testimony because he was biased against Matsiborchuk, the record does not support this assertion. On the second day of the hearing, Matsiborchuk moved to recuse Judge Orenstein on this very ground. Judge Orenstein denied that motion, stating that there was neither "actual bias" nor any "appearance of bias that would warrant recusal." Tr. 2/3, p. 8. Although the hearing transcript reveals some testy exchanges between Judge Orenstein and Matsiborchuk, the record does not indicate any bias on the part of the magistrate judge. These exchanges reflected Judge Orenstein's frustration with, among other things, Matsiborchuk's failure to pre-mark exhibits, his tendency to interrupt the judge, and Matsiborchuk's obvious inexperience in cross-examining witnesses.

There is no indication that Judge Orenstein's decision to credit Holcombe was a product of bias. Her testimony was corroborated by some emails, as well as Judge Orenstein's own observations of the interactions between Matsiborchuk and Holcombe. The Court acknowledges that Holcombe was a demanding and sometimes difficult client, that Matsiborchuk was not unremittingly abusive, and that there were cordial exchanges between Matsiborchuk and Holcombe, especially at the start of their relationship. However, as discussed below, the emails also document a steady deterioration of

the attorney-client relationship, which ultimately resulted in some aberrant and unacceptable behavior on the part of Matsiborchuk.

D. Legal Framework for Adjudicating Fee Dispute

Under New York law, a client may discharge his or her lawyer at any time, with or without cause. Cohen v. Grainger, Tesoriero & Bell, 81N.Y.2d655, 658 (1993). If a lawyer is discharged for cause, he or she is not entitled to legal fees. Teichner by Teichner v. W & J Holsteins, Inc., 64 N.Y.2d 977, 979 (1985). If a lawyer is discharged without cause, however, he or she "may recover either (1) in quantum meruit, the fair and reasonable value of the services rendered, or (2) a contingent portion of the former client's ultimate recovery, but only if both of the parties have so agreed." Universal Acupuncture Pain Servs., P.C. v. Quadrino & Schwartz, P.C., 370 F.3d 259, 263 (2d Cir. 2004). The burden of proof is on the client to establish that the attorney was discharged for valid cause. Farb v. Baldwin Union Free Sch. Dist., No. CV-05-0596 (JS) (ETB), 2011WL4465051, at *9 (E.D.N.Y. 2011); Delucia v. Village of Monroe, 180 A.D.2d 897, 898-899, 580 N.Y.S.2d 91, 92 (N.Y. App. Div. 1992); Williams v. Hertz Corp., 91 A.D.2d 548, 549, 457 N.Y.S.2d 23, 25 (N.Y. App. Div. 1982), aff'd. 59 N.Y.2d 893 (1983).

Although a lawyer's entitlement to a charging lien and legal fee largely turns on the definition of "cause," New York law does not explicitly define the term. However, case law reflects that it means that "the attorney has engaged in some kind of misconduct, has been unreasonably lax in pursuing the client's case, or has otherwise improperly handled the case." Garcia v. Teitler, No. 04-CV-832

(JG), 2004 WL 1636982, at *5 (E.D.N.Y. 2004), a.ffd, 443 F.3d 202 (2d Cir. 2006). Garcia itself relied in part on a survey of appellate decisions conducted by American Jurisprudence Proof of Facts, which concluded:

> [T]he courts have been fairly consistent in finding just cause to exist where one or more of the following elements is present in the factual picture: (1) the attorney's failure to perform under the employment contract; (2) his lack of diligence in so performing; (3) his lack of ordinary skill or care in so performing; (4) his making of demands on the client which violate the terms or exceed the scope of the contract; (5) his taking of actions contrary to the client's interests or objectives; (6) his indulging in some sort of unprofessional conduct while handling the client's affairs; (7) his venting of personal or economic hostility toward the client; and (8) his loss of the client's trust and confidence.

Id. at *6. Conversely, "[p]oor client relations, differences of opinion, or personality conflicts do not amount to cause." Garcia v. Teitler, 443 F.3d 202, 212 (2d Cir. 2006).

In New York, courts have found a discharge for cause when there has been a significant breach of a legally or ethically imposed duty. See Allstate Ins. Co. v. Nandi, 258 F. Supp. 2d 309, 312 (S.D.N.Y. 2003); D'Jamoos v. Griffith, No. OO-CV-1361(ILG), 2006 WL 2086033, at *5 (E.D.N.Y. 2006) (quoting Allstate Ins. Co., 258 F. Supp. 2d at 312). In addition, the "Client Bill of Rights" set forth in Title 22, Section 1210.1, of the Compilation of Codes, Rules and Regulations of the State of New York ("22 NY

CRR 1210. l ") requires, 1) that clients should be "treated with courtesy and consideration at all times" by their attorneys, 2) that clients should "have [their] legitimate objectives respected by [their] attorney[s]," 3) that "the decision of whether to settle" is the clients' not their attorneys', and 4) that clients "are entitled to have [their] legitimate objectives respected by their attorneys." The New York Rules of Professional Conduct contains similar rules:

> Rule 1.2(a) Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter....
>
> Rule l.4(a) A lawyer shall: ... (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished

In light of these provisions protecting a client's right to decide whether, and under what circumstances, to settle, courts have found that interference with a client's right to settle can constitute misconduct sufficient to warrant discharge for cause and forfeiture of legal fees. See Louima v. City of New York, No. 98-CV-5083 (SJ), 2004 WL 2359943, at *60 (E.D.N.Y. 2004) (quoting Dagny Mgmt. Corp. v. Oppenheimer & Meltzer, 199 A.D.2d 711, 712, 606 N.Y.S.2d 337, 339 (N.Y. App. Div. 1993)).

E. Causes for Termination

Matsiborchuk's misconduct, including his abusive language, his interference with Holcombe's

right to settle, and his improper threats to withdraw, amounted to "impropriety or misconduct" justifying Holcombe's termination of his legal services for cause and the forfeiture of his legal fees. See Garcia, 443 F .3d at 212. The way Matsiborchuk treated Holcombe, as reflected in Holcombe's testimony and undisputed records of email exchange between them, can hardly be explained away as mere "poor client relations, difference of opinion, or personality conflicts." Id.

When Holcombe initially reached out to Matsiborchuk in 2007, the Bankruptcy Court had just discharged her claims and she was in urgent need of an attorney who was willing to represent her at an affordable cost. See DE 188, Exhibit 1-A. Thrilled to learn that Matsiborchuk was willing to take her case on a contingency fee basis, Holcombe initially expressed satisfaction with, and gratitude for, Matsiborchuk's legal services. See DE 216, Exhibit C.

However, tension soon developed between Holcombe and Matsiborchuk. According to Holcombe, Matsiborchuk became "belligerent and nasty" in their interactions and would "call [her] names" in response to her questions. Tr. 1118, p. 21. By October 2009, their relationship had deteriorated to such an extent that Holcombe took the extraordinary step of requesting that Matsiborchuk meet with her social worker, Ms. Libin, in an effort to resolve communication issues between them. DE 189, Exhibit 3, p. 8 (October 19, 2009, email). Matsiborchuk largely rebuffed this attempt, incorrectly claiming that it would somehow be "illegal" for him to do so. Id., p. 7. Matsiborchuk further warned Holcombe that as long as he was representing her, she was "not free in [her] decisions

regarding the resolution of the legal issues pertaining to this matter." Id., p. 4.

Matsiborchuk, having invested disproportionate resources into this litigation, became increasingly autocratic in his communications with Holcombe and his management of her case. In an email dated March 15, 2011, Matsiborchuk sought to dictate the amount of Holcombe's settlement demand. See DE 189, Exhibit 1, p. 1 ("[A]s I have said a million times before, I will determine whether a settlement is reasonable. If you disagree, I will immediately cease representing you and place a lien on your claim."). Matsiborchuk also apparently made decisions regarding how to proceed on appeal from the Bankruptcy Court's decision without fully consulting Holcombe. For example, in an email dated September 25, 2012, Holcombe complained that Matsiborchuk had filed a petition for rehearing and rehearing en banc on Holcombe's behalf in the Fourth Circuit Court of Appeals without showing her the documents before submission. See DE 189, Exhibit 4, p. 1.

When Matsiborchuk encountered resistance from his client, he not only got belligerent, but also became threatening. He repeatedly threatened to withdraw from her case and to place a lien on her case if she did not comply with his direction. See, e.g., DE 189, Exhibit 3, p. 1 ("You must comply with my legal decisions and you have no room for further discussion of that topic . . . . If you wish, our legal dispute with respect to our respective obligations under our agreement, my lien and my right to be compensated for my work will be resolved in court."); Id., Exhibit 2, pp. 1-2 ("The formal procedure of my withdrawal from your representation in court will

require revealing the basis for that withdrawal: I am aware that you are familiar with that procedure."). Worse yet, he questioned her mental competence, telling her that she needed a guardian and touting his ability to diagnose her mental condition because he had taken three mental health related college-level courses in the Soviet Union more than 30 years before. See DE 189, Exhibit 5; DE 186, Exhibit 5. This scare tactic was calculated to frighten Holcombe into either acquiescing in Matsiborchuk's usurpation of her authority or transferring her authority to someone who would be more compliant.

Under New York law, Matsiborchuk's abusive and threatening conduct in this case constitutes sufficient basis for Holcombe to discharge him for cause. First, his behavior fell within several of the categories identified in Garcia as grounds for discharge for cause. Such behavior included "making ... demands on the client which violate the terms or exceed the scope of the contract," "taking ... actions contrary to the client's interests or objectives," and "indulging in some sort of unprofessional conduct while handling the client's affairs." Garcia, 2004 WL 1636982, at *6. Specifically, the retainer agreement between Holcombe and Matsiborchuk required that Matsiborchuk would "not settle or compromise [Holcombe's] claims without [her] prior consent." DE 189, Exhibit 3, p. 1. Matsiborchuk's repeated demands of Holcombe's categorical obedience to his direction on how to proceed and his threats to withdraw if Holcombe refused to comply violated the retainer agreement and conflicted with Holcombe's interests and objectives. Matsiborchuk's use of such threats to impose pressure over the client was

unprofessional, and eventually eroded Holcombe's trust and confidence. See DE 189, Exhibit 5, p. 3.

Matsiborchuk's abusive conduct also constitutes a significant breach of his duty to the client under New York law, which warrants a finding of discharge for cause. See Allstate Ins. Co., 258 F. Supp. 2d at 312 (noting that under New York law a discharge is for cause when there has been a significant breach of a legally or ethically imposed duty). First, Matsiborchuk violated the dictates of22 NYCRR 1210.1, which requires that clients be "treated with courtesy and consideration at all times" by their attorneys, that clients "have [their] legitimate objectives respected by [their] attorney[s]," and that an attorney recognize that "the decision of whether to settle" is the clients.' Second, by imposing his own judgments and objectives upon the client, Matsiborchuk violated Rule 1.2 of the New York Rules of Professional Conduct, which requires that a "a lawyer ... abide by a client's decisions concerning the objectives of representation," and Rule 1.4, which requires an attorney to consult with the client as to the means by which those objectives are to be pursued.

F. Matsiborchuk's Objections

In light of the foregoing, the Court fully concurs with Judge Orenstein's conclusion that Holcombe had ample cause for discharging Matsiborchuk. None of Matsiborchuk's lengthy objections convince the Court of the contrary.

First, the Court agrees with Matsiborchuk that Holcombe's emails from 2008 and 2009 suggest that she was initially happy with his representation. However, those same emails also suggest that Holcombe became so dissatisfied with Matsiborchuk

by October 2009 that she took the extraordinary step of requesting that he meet with a social worker in order to resolve their communication problems. See DE 189, Exhibit 3, p. 8 (October 19, 2009, email). The Court recognizes that those problems may have been attributable, at least in part, to the fact that Holcombe was a difficult client, with unrealistic expectations concerning the value of her case. Even if so, however, Holcombe's shortcomings did not justify Matsiborchuk's abusive and coercive tactics in dealing with her. Attorneys are expected to be able to tactfully discourage clients from inundating them with emails and to manage their client's unreasonable expectations. If Matsiborchuk believed that Holcombe's behavior had given him sufficient cause to withdraw, Matsiborchuk could have petitioned the Court for withdrawal before Holcombe discharged him and asked for reasonable compensation for his legal service. However, despite repeated threats to withdraw in his emails, Matsiborchuk never actually petitioned the Court for withdrawal until well after Holcombe discharged him.

Matsiborchuk's objections do not suggest any basis for questioning the veracity of Holcombe's testimony regarding Matsiborchuk's abusive language and tactics. Holcombe expressed her deep displeasure with Matsiborchuk's tone and tactics in a contemporaneous email in October 2012. See DE 189, Exhibit 5, p. 3 (October 9, 2012, email). The fact that she did not immediately fire Matsiborchuk and retain new counsel is not circumstantial proof that Holcombe's complaints were not genuine or heartfelt. It is more likely that she encountered difficulty obtaining counsel during a late stage of the litigation

and was unwilling to proceed pro se. Moreover, the fact that Holcombe did not recount some of Matsiborchuk's specific abusive behavior until called upon to do so at the evidentiary hearing does not establish that her testimony was a recent fabrication.

Contrary to Matsiborchuk's assertions, Judge Orenstein's finding that Matsiborchuk had engaged in abusive behavior was not based on the judge's own observations at the hearing. Judge Orenstein's opinion expressly stated that Matsiborchuk's behavior during the hearing served only to corroborate Holcombe's testimony regarding Matsiborchuk's abusiveness. Holcombe, 2017 WL 1184104, at *5. The judge personally observed that Matsiborchuk was "gratuitously combative and intimidating in his cross-examination of Holcombe," which corroborated Holcombe's testimony and contemporaneous email accounts of enduring similar behavior previously. Id. at *4.

Given the evidence supporting her claims of abusiveness, Holcombe had no need to call additional witnesses. Rather, it was incumbent on Matsiborchuk to call witnesses or to point to specific documentary evidence to contradict Holcombe's testimony. Matsiborchuk chose not to call any witnesses and engaged in a highly ineffective cross-examination of Holcombe. To be sure, there may be emails among the voluminous exhibits proffered by Matsiborchuk that demonstrate that Matsiborchuk was not constantly abusive. However, Matsiborchuk has not adduced sufficient evidence to contradict Holcombe's evidence that Matsiborchuk was abusive at times.

Matsiborchuk's objections also mischaracterize the nature of the emails which Judge Orenstein

construed as containing improper threats. In these emails, Matsiborchuk was not merely communicating his legal opinions or his intent to withdraw, but rather demanding Holcombe's compliance with his dictates and threatening "dire" consequences if she failed to comply. See, e.g., DE 189 (Matsiborchuk's Declaration), Exhibit 1, p. 1 (March 15, 2011, email); Exhibit 2, p. 1 (October 5, 2012, email); Exhibit 3, p. 1 (September 26, 2012, email), p. 4 (October 5, 2012, email). Judge Orenstein correctly found Matsiborchuk's demands in these emails to be "actions contrary to the client's interests or objectives" and "demands on the client which violate the terms or exceed the scope of the contract." See Garcia, 2004 WL 1636982, at *6; Holcombe, 2017 WL 1184104, at *7.

Despite Matsiborchuk's argument to the contrary, the retainer agreement did not give Matsiborchuk the right to demand interim payment of litigation costs and expenses. When a retainer agreement can be read to support two different views, public policy requires the Court to adopt the reading that is more favorable for the client. Shaw v. Manufacturers Hanover Trust Co., 68 N.Y.2d 172, 177 (1986) (citing Greenberg v. Bar Steel Constr. Corp., 22 N.Y.2d 210, 213 (1968)). Because the retainer agreement does not specify when Holcombe was to pay the expenses of litigation, the Court will not interpret the agreement to impose on her the obligation to pay the expenses before the conclusion of the litigation. See Shaw, 68 N.Y.2d at 179 (the onus that the retainer agreements are written with clarity is upon the lawyers who draft the retainer).

III. Conclusion

For the reasons set forth above, the Court accepts Magistrate Judge Orenstein's finding that Holcombe had ample cause to discharge Matsiborchuk. Accordingly, Matsiborchuk's motion for compensation is denied and Holcombe's motion to extinguish Matsiborchuk's charging lien is granted.

SO ORDERED.

SANDRA L. TOWNES,
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
FOUGERE HOLCOMBE,
Plaintiff, 08-CV-1593 (SLT) (JO)

- against -
US AIRWAYS GROUP, INC., et al.,
Defendants.
----------X

MEMORANDUM AND ORDER

James Orenstein, Magistrate Judge:

Non-party attorney Vladimir Matsiborchuk ("Matsiborchuk") seeks to enforce a charging lien against his former client, plaintiff Fougere Holcombe ("Holcombe"); she, in turn, seeks to extinguish that lien on that ground that she discharged Matsiborchuk for cause. See Docket Entry ("DE") 114 (Matsiborchuk's original motion) ("MM I"); DE 196 (Matsiborchuk's renewed letter motion) ("MM II"); DE 185 (Holcombe's motion). Upon a referral from the Honorable Sandra L. Townes, United States District Judge, I now deny Matsiborchuk's motion for compensation, and grant Holcombe's motion to extinguish his charging lien. 2

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[2] The court referred the motions to me for decision rather than for a report and recommendation. Order dated March 28, 2017. Such a referral is consistent with the Federal Magistrates Act, as it does not require me to decide any of the types of motions specified in 28 U.S.C. § 636(b)(1)(A). However, because the instant order is dispositive as to Matsiborchuk's lien against

I. Background

Holcombe, initially represented by Matsiborchuk, filed suit in 2008 against her former employer, US Airways, and her union, the International Association of Machinists and Aerospace Workers, for disability-based discrimination and retaliation in violation of federal, state, and municipal law. DE 1 (Complaint). Matsiborchuk continued to represent Holcombe for several years, although the timing and circumstances of the ending of that representation is in dispute. The record is clear, however, that in a letter dated December 24, 2013, written by her current counsel Raymond Nardo ("Nardo"), Holcombe informed Matsiborchuk that she had discharged him for cause and asked him to execute a substitution of counsel form that she had already signed. See DE 187 (memorandum supporting Holcombe's motion) ("H Memo. I") at 2-3; MM I, Ex. 3.

In the letter discharging Matsiborchuk for cause, Holcombe cited several reasons for her decision. As Nardo described Holcombe's concerns:

> [Y]ou have filed documents in her case without her approval and consent, … you have suggested that she obtain a Law Guardian because she is incapable of making decisions due to some incapacity you diagnosed based on your alleged training in the Soviet Union, … you have accused Ms. Holcombe of colluding with courts against you, and you have asked her to pay for your wife's services as your legal assistant. [Holcombe] also had to pay a lien of

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Holcombe, it is subject to *de novo* review should any timely objections be properly filed. *See* Fed. R. Civ. P. 72(b)(3).

> $2,000 from a personal injury case to an attorney you referred for expenses allegedly incurred in this federal matter.

MM I, Ex. 3.

Over a month after Holcombe informed Matsiborchuk of his discharge for cause, on January 27, 2014, Matsiborchuk responded by claiming that he had already withdrawn from representation in October 2012. H Memo. I at 3; MM I, Ex. 4. He refused to execute the substitution form and notified Holcombe that he would pursue a demand for the reasonable value of his services rendered. Id. Holcombe filed a notice of consent to change counsel that same day, DE 110, and the court acknowledged the substitution by Order dated February 6, 2014.

On February 25, 2014, Matsiborchuk filed a motion seeking several forms of relief: disqualification of the magistrate judge then assigned to the case, a retaining lien in the amount of $4,398.58 for costs and expenses, and a charging lien of $184,128.70 for attorney's fees under the doctrine of quantum meruit. DE 114. The court referred the motion to the magistrate judge on March 13, 2014. DE 118. After engaging in settlement negotiations that failed to resolve the dispute, the magistrate judge determined that her recusal was not warranted for the reasons Matsiborchuk had advanced, but nevertheless determined sua sponte that her participation in settlement discussions required her recusal from the fact-finding that would be required to resolve the request for a and the request for a charging lien See DE 134. The matter was then reassigned to me on September 26, 2014. DE 134. On September 30, 2014, the court denied

Matsiborchuk's remaining requests for relief: the request for a retaining lien was denied outright,[3] and the request for a charging lien was denied as premature without prejudice to renewal upon a determination as to whether he was fired for cause following resolution of the underlying litigation. DE 136.

Holcombe later settled with the defendants, and the court approved the stipulation of dismissal on January 28, 2016. DE 174. On April 12, 2016, Holcombe asked for leave to seek relief as to her fee dispute with Matsiborchuk. DE 175. She filed her fully briefed motion to extinguish Matsiborchuk's charging lien on August 24, 2016. The submissions included the following materials:[4]

- Holcombe's notice of motion, DE 185;
- Nardo's supporting declaration, with exhibits, DE 186 ("Nardo Decl.");

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[3] Although the denial of the retaining lien required Matsiborchuk to turn over the case file to successor counsel immediately, Matsiborchuk did not do so. Instead, he filed a motion for reconsideration that the court denied on October 21, 2014. *See* DE 137; DE 138. Even after the denial of reconsideration, he ignored repeated requests from Nardo to produce the file. *See* DE 139. Instead, it took three more court orders, culminating in a warning that the next step would be an order to show cause why he should not be adjudged in contempt of this court's lawful authority, before Matsiborchuk finally allowed Nardo to retrieve his client's files on November 5, 2014. *See* Orders dated October 30, November 3, and November 4, 2014; DE 145; *see also* H Memo. I at 3.

[4] I cite the sealed, unredacted versions; the parties also filed redacted versions on the public docket.

• Holcombe's supporting memorandum, DE 187 ("H Memo. I");

• Matsiborchuk's affirmation in opposition, with exhibits, DE 188 ("Opp. I");

• Matsiborchuk's declaration with exhibits, DE 189 ("M Decl."); and

• Holcombe's reply memorandum and declaration, DE 190 ("Reply").

By Order dated November 22, 2016, I scheduled an evidentiary hearing for January 18, 2017, on the issue of whether Holcombe terminated Matsiborchuk for cause. On January 16, 2017, two days prior to the hearing, Matsiborchuk re-filed his original motion to withdraw from 2014, and stated that he was thereby renewing his charging lien and motion for compensation. DE 196.

The next day, on the eve of the hearing, Matsiborchuk filed a motion to disqualify Nardo on the basis of an alleged conflict of interest. DE 201. On January 18, 2017, I proceeded with the hearing as scheduled. At the start of the hearing, I heard argument on the motion to disqualify and concluded that the alleged conflict of interest was one that Holcombe could and did knowingly waive; I therefore denied the motion. Holcombe testified on direct examination, but Matsiborchuk required additional time to complete his cross-examination, and I scheduled the hearing to continue on February 3, 2017. See DE 202 (minute order); DE 212 (transcript of hearing dated Jan. 18, 2017) ("Tr. I").

On February 1, 2017, two days before the hearing was to resume, Matsiborchuk filed a motion to disqualify me, vacate my rulings at the hearing

and subsequent orders, and reassign the case to a different judge. DE 204. At the outset of the continued hearing on February 3, 2017, I denied that motion. Matsiborchuk then proceeded with his cross-examination of Holcombe, but was unable to complete it in the allotted time. I therefore scheduled the conclusion of the hearing for February 24, 2017. See DE 205 (minute order); DE 213 (transcript of hearing dated Feb. 3, 2017) ("Tr. II").

Once again, two days before the hearing was to resume, on February 22, 2017, Matsiborchuk moved to disqualify me (and to call me as a witness), and also to transfer this action to another district court. DE 206. I denied the motion by Order dated February 23, 2017. Later the same day, Matsiborchuk filed a letter addressed to the court's Chief Judge asking her to transfer the matter to another district court. DE 207. The Chief Judge, having no authority over this case, properly took no action, but in an abundance of caution I consulted with her, and confirmed that she did not wish to intervene, before proceeding with the conclusion of the hearing on February 24, 20175 At the conclusion of Holcombe's testimony, both sides rested; notably, Matsiborchuk himself did not testify in his own behalf or to impeach Holcombe. At the close of the hearing, I invited each side to submit a post-hearing

[5] This was not the first time Matsiborchuk improperly sought relief from a judge not assigned to this case. On November 6, 2014, he similarly asked the current Chief Judge's predecessor to intervene. *See* DE 144. As in the later instance described above, the former Chief Judge properly ignored the request. Indeed, in both instances it is probable that the Chief Judge did not know of the filing when it was made because filings on the electronic docket are normally forwarded only to case participants.

brief by March 27, 2017. See DE 208 (minute order); DE 214 (transcript of hearing dated Feb. 24, 2017) ("Tr. III"). Holcombe timely submitted her post-trial brief on March 27, 2017; Matsiborchuk belatedly submitted his on March 28, 2017. See DE 209 ("H Memo. II"); DE 211 ("Opp. II").6

II. Discussion

A. Applicable Law

Under New York law, "'notwithstanding the terms of the agreement between them, a client has an absolute right, at any time, with or without cause, to terminate the attorney-client relationship by discharging the attorney.'" Louima v. City of New York, 2004 WL 2359943, at *59 (E.D.N.Y. Oct. 5, 2004) (quoting Campagnola v. Mulholland, Minion & Roe, 76 N.Y.2d 38, 43 (1990)), aff'd sub nom, Roper-Simpson v. Scheck, 163 F. App'x 70 (2d Cir. 2006). An attorney who is discharged without cause before a case ends "may recover either (1) in quantum meruit, the fair and reasonable value of the services rendered, or (2) a contingent portion of the former client's ultimate recovery, but only if both of the parties have so agreed." Universal Acupuncture Pain Servs., P.C. v. Quadrino & Schwartz, P.C., 370 F.3d 259, 263 (2d Cir. 2004). However, where the attorney's discharge "is for cause, the attorney has no right to compensation or a retaining lien, notwithstanding a specific retainer agreement. "Garcia v. Teitler, 2004 WL 1636982, at *5 (E.D.N.Y. July 22, 2004) (quoting Campagnola, 76 N.Y.2d at 44), aff'd, 443 F.3d 202 (2d Cir. 2006); see also Adams v. City of New York, 2014 WL 4649666, at *2

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6 I consider Matsiborchuk's submission on the merits, despite its untimeliness.

(E.D.N.Y. Sept. 16, 2014) ("[I]t is well-settled that an attorney loses his right to enforce a charging lien if the attorney … is discharged for cause." (internal citations and quotation marks omitted)); Williams v. Hertz Corp., 427 N.Y.S.2d 825, 825-26 (App. Div. 1980) (holding that "an attorney who is discharged for cause or misconduct has no right to the payment of fees and no retaining lien on his client's papers"). In such a case, "[t]he burden rests with the client to demonstrate that there was just cause to terminate the attorney-client relationship." Louima, 2004 WL 2359943, at *60 (citing Casper v. Lew Lieberbaum & Co., 1999 WL 335334, at *6 (S.D.N.Y. May 26, 1999)).

New York case law does not explicitly define "cause" for termination, but it does establish that the term "means that the attorney has engaged in some kind of misconduct, has been unreasonably lax in pursuing the client's case, or has otherwise improperly handled the case." Garcia, 2004 WL 1636982, at *5; see Louima, 2004 WL 2359943, at *60 (finding that when an attorney is "terminated for misconduct, the charging lien is forfeited"). Examples of the kind of attorney misconduct that support a finding of termination for cause include the following:

(1) the attorney's failure to perform under the employment contract; (2) his lack of diligence in so performing; (3) his lack of ordinary skill or care in so performing; (4) his making of demands on the client which violate the terms or exceed the scope of the contract; (5) his taking of actions contrary to the client's interests or objectives; (6) his indulging in some sort of unprofessional conduct while handling the client's affairs; (7) his venting of personal or

economic hostility toward the client; and (8) his loss of the client's trust and confidence.

Garcia, 2004 WL 1636982, at *6 (quoting 31 Am. Jur. Proof of Facts 2d 125 § 7 (Aug. 2003)). In particular, interference with the client's right to settle can constitute misconduct sufficient to warrant discharge for cause and forfeiture of counsel's fee. Louima, 2004 WL 2359943, at *60 (citing Dagny Mgmt. Corp. v. Oppenheimer & Meltzer, 606 N.Y.S.2d 337, 339 (App. Div. 1993)); see also Marrero v.

Christiano, 575 F. Supp. 837, 839 (S.D.N.Y. 1983) ("Under New York law, the refusal of a client to accept a settlement offer is not good and sufficient cause for the withdrawal of an attorney.").

B. Cause for Termination

1. Abusive Behavior

Holcombe asserted that Matsiborchuk treated her with disrespect and contempt during his representation. As she recounted, Matsiborchuk's misbehavior included name-calling, insults, and questioning her mental competence. See Nardo Decl., Ex. 1 (Holcombe Decl.) ¶¶ 2-9 (citing interactions with Matsiborchuk "refer[ing] to [her] as 'senseless,' 'stupid,' an 'idiot,' and 'crazy,' stating that [she] need[ed] to be institutionalized"); Tr. I 21-24 (testifying that Matsiborchuk often called her senseless, inept, and inadequate, and told her she was "psychologically impaired" and needed to be under guardianship); Tr. II 39 (Matsiborchuk's insults became "progressively more hostile and frightening as [their] relationship went on"); Tr. II 44 (Matsiborchuk called Holcombe names such as "'senseless,' 'stupid,' 'incompetent,' 'crazy,' … which made [her] very frightened and uncomfortable"); Tr.

III 7-8 (Matsiborchuk was "[v]ery forceful, bullying, and belligerent" in communications "[r]epeatedly for years"); see also H Memo. II at 5-9.

Notwithstanding Matsiborchuk's denials, see Opp. II at 14-15, Holcombe's testimony in this regard was amply corroborated by the record of contemporaneous email exchanges between the two. Indeed, Matsiborchuk himself adduced evidence of such misconduct: to cite just one particularly egregious example, Matsiborchuk included as an exhibit to his own declaration an email in which he addressed his client thusly: "I firmly reject your pervert [sic] views and corrupt practice that you employed in this case. I reject all your bizarre and violent allegations contained in your latest communications." M Decl., Ex. 3 at 1 (Sept. 26, 2012 email). Other examples of gratuitously belittling communications abound. See id. at 4 (Oct. 21, 2009 email) ("You are intentionally taking my time to block my work on your case"); id. at 9 (May 13, 2009 email) ("Let's get things nice and clear. … You are simply forcing me to remind you that the US Airways case is still before the court due solely to my effort, and you should have the common 'courtesy' to be thankful for that."); id Ex. 5 at 3 (Oct. 9, 2012 email). ("In your communication, you made unintelligible and incoherent statements … [n]one of my clients have ever behaved like you."). Matsiborchuk's emails also reveal his repeated suggestions that Holcombe appoint a guardian, and his claimed ability to diagnose psychiatric competence. See id. Ex. 1 at 1 (Mar. 15, 2011 email) ("I told you during our last conference that I believe you require a guardian."); Oct. 10, 2012 email (providing the legal definition of "guardian", stating that he is "trained in the fields of

forensic psychiatry, forensic psychology and forensic medicine [and] definitely trained to determine [the] existence [of psychiatric incompetence] and identify it[,]" and appending his graduate transcript as proof).[7]

Over a year before she discharged him for cause, Holcombe wrote to Matsiborchuk to protest his behavior and the toll she feared it would have on his ability to adequately represent her:

> Each time you behave in a belligerent, unprofessional manner, additional time is needed to diffuse the situation before there is any possibility of discussion. … You completely distort my own case evidence documentation and communication which is confidential information, privileged and confidential for the sole purpose of protecting me, not to harass, threaten, or humiliate me. To apply a false meaning to it and make it Public as somehow necessary to include with court filings raises serious ethical questions. In no way are you allowed to do that and are prohibited. You have threatened, coerced, and bullied me with withdrawal and suing me at every juncture, to ensure that you can do whatever you want through leveraging fear. You also make

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[7] Matsiborchuk maintains that he suggested that Holcombe obtain a law guardian if her health prevented her from participating in court proceedings, and that she merely misunderstood his purpose in producing his credentials, which was to demonstrate "his knowledge in this area of the law[.]" Opp. II at 13. Read in context, the record belies such *post hoc* rationalization; Matsiborchuk was plainly questioning Holcombe's mental health based on his own claimed ability to diagnose her.

> outrageous insults, claiming that there is something wrong with me; that I am incompetent or have cognitive impairment; and in need of a legal guardian. You are in no way qualified, nor is it appropriate for you to make such statements. As an attorney, I know it is not your area, but would hope you know the process for such a determination, and you are way out of bounds as my legal representative for making such statements. I have asked you to stop with these sort of devices, and insist on it again.

M Decl., Ex. 5 at 3 (Oct. 9, 2012 email).

Holcombe echoed those concerns in other settings, both before and after she terminated Matsiborchuk for cause. See Holcombe Decl. ¶¶ 4-6 ("I was made to feel insecure and unstable by his badgering and ranting. I was actually fearful of him."); Oct. 10, 2012 email (Matsiborchuk observes that Holcombe is "dissatisfied with my services … and you do not trust me anymore."); Tr. I 47-48 (Holcombe was "in shock and scared to death and deeply upset and hurt and very afraid … I was frightened because … here is somebody that I had to trust and that I was relying on in a very vulnerable way and things were just awful then and … here was someone who was trying to take away my dignity"); Tr. II 39, 44 (Matsiborchuk's behavior "made [Holcombe] very frightened and uncomfortable and afraid" and insults became "progressively more hostile and frightening"); Tr. III 28-29 (Holcombe "had to be very careful because I was very, very afraid of [Matsiborchuk].").

Holcombe's testimony about Matsiborchuk's abusiveness was corroborated not only by the record of their prior communications, but also, to an extent, by Matsiborchuk's behavior during the hearing before me. Matsiborchuk was gratuitously combative and intimidating in his cross-examination of Holcombe, and repeatedly shouted and laughed contemptuously at her. See Tr. I 32 (instructing Matsiborchuk not to laugh at the witness); Tr. III 11 (instructing Matsiborchuk not to argue with the witness); Tr. III 45 (instructing Matsiborchuk not to laugh at the witness); Tr. III 46-47 (instructing Matsiborchuk not to engage in bad faith questioning, and warning the hearing would be concluded if he engaged in such misconduct again). Indeed, after multiple instructions not to engage in such conduct and warnings that further violations would result in the termination of his cross-examination, Matsiborchuk again laughed at Holcombe and thereby forfeited his right to continue questioning her (albeit long after the time originally allotted for such questioning had lapsed). See Tr. III 48-49.

In short, Matsiborchuk persistently treated Holcombe in a way that no client should have to endure. Such behavior qualifies as misconduct justifying termination for cause. See Garcia, 2004 WL 1636982, at *6 (citing factors such as "indulging in … unprofessional conduct while handling the client's affairs; … venting of personal or economic hostility toward the client; and … loss of the client's trust and confidence" as constituting just cause for termination).8

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[8] Matsiborchuk faults Holcombe for failing to include allegations of such misconduct in her December 2013 notice of discharge. *See* Opp. II at 7, 14-15. Such argument misses the mark:

2. Interference in the Client's Right to Settle

An independent basis for Holcombe's decision to terminate Matsiborchuk for cause was his interference in her right to settle the case. See Louima, 2004 WL 2359943, at *60 (interference in client's right to settle can "constitute misconduct sufficient to warrant discharge for cause and forfeiture of [the attorney's] fee") (internal citations and alterations omitted). Specifically, in an email dated March 15, 2011, Matsiborchuk wrote to Holcombe as follows:

"Your value assessment is unreasonable. … If you want to kill possible negotiations, I must protest. … There are rules and procedures in determining a fair and reasonable settlement, and as I have said a million times before, I will determine whether a settlement is reasonable. If you disagree, I will immediately cease representing you and place a lien on your claim. I spent four years on this case, the better part of which I had to deal with you as if you were an opposing party because of the way you chose to behave toward me.

> … You refused to even pay expenses and violated the retainer in other ways (for whatever reasons). Because of this, I suggest two options: (1) transfer your rights under the retainer to someone who will pay your

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Holcombe was under no obligation to provide him with a contemporaneous, detailed inventory of his lapses if she had good cause to terminate him. If Matsiborchuk's point is that the absence of detailed assertions in her termination letter impeaches her hearing testimony as recent fabrication, I respectfully disagree: as discussed above, the historical record demonstrates that Holcombe's concerns about Matsiborchuk's abusive behavior long preceded his termination for cause.

> expenses and uphold the retainer agreement, or (2) settle. … One of the consequences that results from your decision to not uphold the retainer agreement is the imposition of further losses on me and ultimately on you. These losses may stem from a refusal to agree to a reasonable settlement. You may choose to refuse to settle and refuse to uphold our retainer agreement, but the consequences for you would be dire."

Mar. 15, 2011 email (emphasis added); see also H Memo. II at 9-12. Matsiborchuk's demand to dictate the terms of settlement to his client stands in sharp contrast with the terms of the retainer agreement, which provides that Matsiborchuk "will not settle or compromise [Holcombe's] claims without [her] prior consent." M Decl., Ex. 3 at 12. 9

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[9] Although it is ultimately tangential to my ruling on the motions, I note that with respect to their dispute about the payment of expenses, Matsiborchuk is again in the wrong. The retainer agreement provided that Holcombe would be "responsible for the expenses in the course of this case[,]" *id*., but it did not give Matsiborchuk the unlimited right either to incur expenses unilaterally or to require interim payment of such expenses. To the contrary, the agreement explicitly required Matsiborchuk to seek Holcombe's consent in advance of incurring expenses greater than $500, and had no provision allowing Matsiborchuk to insist on the immediate or advance payment of any expenses. *See id*. at 12-13. Indeed, the agreement explicitly left open the possibility that Holcombe's net recovery would be determined by the total recovery minus, among other things, "expenses paid by you *or advanced by me*[.]" *Id*. at 13 (emphasis added); *see also* Tr. I 25; Holcombe Decl. ¶ 2 (stating that Matsiborchuk's demands to pay him made no sense, since he was hired on contingency). Matsiborchuk's assertion that Holcombe's failure to pay expenses on demand was a breach of the retainer agreement is thus unfounded. I therefore need not and do not resolve the

Matsiborchuk's demands that Holcombe comply with his decisions regarding settlement are "actions contrary to the client's interests or objectives" and "demands on the client which violate the terms or exceed the scope of the contract[.]" See Garcia, 2004 WL 1636982, at *6. His improper threat to abandon the litigation, with "dire" consequences for Holcombe, if she did not accede to his demand to dictate her settlement position justified termination for cause not only because of its abusive nature, but independently because it interfered with Holcombe's right to settle. Louima, 2004 WL 2359943, at *60; see also Marrero, 575 F. Supp. at 839 ("[T]he refusal of a client to accept a settlement offer is not good and sufficient cause for the withdrawal of an attorney.").

3. Improper Threats to Withdraw

Matsiborchuk's improper threat to abandon Holcombe unless she ceded control of settlement to him was not an isolated tactic: he repeatedly threatened to withdraw if she failed to listen to him and abide by his judgment. See Holcombe Decl. ¶ 5 ("If there were a dispute between us … he would repeatedly threaten to abandon representation of me."); see also H Memo. II at 12-14. In one email, Matsiborchuk "demands [Holcombe's] compliance with [his] directions" and states that "as long as I am representing you, you are not free in your decisions regarding the resolution of the legal issues pertaining to this matter." Oct. 21, 2009 email ("[I]f your behavior is aimed at my forceful withdrawal from your representation, my lien in your case is 33%

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apparent factual dispute as to whether Holcombe paid such expenses. *See* Tr. I 39-40 (Holcombe's testimony that that she did in fact pay all expenses).

of all proceeds … I explained to you many times that in order for us to be successful you must comply with my directions and stop your constant interference with my independent legal judgment. You have failed to abide by this requirement.").

In the September 26, 2012 email – the subject of which is "disengagement" – Matsiborchuk threatens Holcombe with withdrawal:

> You must comply with my legal decisions and you have no room for further discussion of that topic. If you don't accept the legal steps I consider as necessary and the legal work I have done, or, as you are saying, 'my bad attitude,' You must have changed [sic] your attorney."
>
> …
>
> I intend to seek withdrawal from your representation because you do not accept my legal position, refused to communicate with me and do not intend to compensate my work on your case.

Matsiborchuk repeated that improper threat in another email with the same subject heading sent several weeks later. See Oct. 10, 2012 email ("I have warned you in the past that I would have to withdraw if you were to continue to make unfounded criticisms of my work, to ignore my advice, to disagree with my position and to refuse to communicate with me. … Under these circumstances, I can no longer continue to represent you in your legal matters.") 10Matsiborchuk's

[10] Despite the email's language purporting to withdraw, Matsiborchuk continued to be Holcombe's counsel of record

multiple threats to abandon his representation of Holcombe if she did not comply with his dictates constitute misconduct warranting discharge for cause. See Garcia, 2004 WL 1636982, at *6 (citing "actions contrary to the client's interests or objectives" and "demands on the client which violate the terms or exceed the scope of the contract" as elements constituting just cause for termination).11

4. Other Misconduct

The foregoing suffices for me to conclude that Matsiborchuk gave Holcombe several independent reasons to discharge him for cause and therefore forfeited his right to collect a fee. In the interest of

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until replaced by Nardo, and continued to hold himself out as such even longer. Indeed, when he initially applied for an award of fees after Holcombe had discharged him for cause, Matsiborchuk explicitly continued to hold himself out as Holcombe's current counsel who was only then seeking leave to withdraw. *See* MM I at 1.

[11] Matsiborchuk contends that Holcombe's "unprovoked hostility, insults, threats, accusations, lack of cooperation, unavailability, persistent questioning of attorney's work product and persistent intent to dictate and pursue her own legal theories and arguments directly contrary to the law her counsel's professional judgment … forced" him to withdraw from representation. MM I at 10; Opp. II at 11-12. I disagree that the record supports Matsiborchuk's characterization of his relationship with Holcombe, and note that he did not testify to such misbehavior (thereby exposing himself to cross-examination on the subject). More fundamentally, however, such argument is misplaced. The record is clear that Holcombe discharged Matsiborchuk long before he ever purported to seek leave to withdraw. The resolution of both motions thus turns not on whether Holcombe gave Matsiborchuk sufficient reason to withdraw – that question is wholly moot under the circumstances – but rather whether Matsiborchuk acted in such a way as to give Holcombe cause to fire him. As explained above, he did.

completeness, I note two other categories of misconduct that bolster resolution of the motions in Holcombe's favor but do not independently suffice to warrant such a result.

First, while representing Holcombe in this litigation, Matsiborchuk also gave Holcombe advice in a related bankruptcy case in which she was appearing pro se against US Airways Group, Inc. Holcombe testified that Matsiborchuk insisted she represent herself because he did not want another attorney sharing his fee. Holcombe Decl. ¶ 7; Tr. I 22; Tr. III 16-17. Holcombe lost that case on summary judgment because, at Matsiborchuk's behest, she failed to appear for a deposition. See H Memo. at 11; Holcombe Decl. ¶ 7; Tr. II 50-54; H Memo II at 14-15. During the evidentiary hearing before me, Holcombe testified that Matsiborchuk drafted a declaration for her to sign and send to the bankruptcy court indicating that she was too ill to attend her deposition, and that she would have attended had he not "forbade her to go." Tr. II 50-54. Holcombe's bankruptcy claims were ultimately dismissed, and she was precluded form asserting them in her federal action in this court. See DE 87 at 9-10. Matsiborchuk asserts that Holcombe's medical doctor expressed the professional opinion that she was not well enough to attend the deposition, and that he could not advise his client to appear "despite the clear express instructions of health professionals to the contrary." Opp. II at 16-17 (citing doctor's note). I found Holcombe's uncontroverted testimony on the matter to be credible, and sufficient to explain the existence of the doctor's note. Nevertheless, I would hesitate before resolving the instant motions in Holcombe's favor based solely on this episode, in part because the

doctor's note lends some credence to Matsiborchuk's account, and in part because of the attenuation between Matsiborchuk's alleged conduct and its effect on Holcombe's litigation of this case.

Second, Matsiborchuk has engaged in disruptive tactics throughout the course of this litigation that would reasonably cause concern to any client. See H Memo. II at 15-18. A great deal of such disruptive behavior was on view after Holcombe's decision to discharge Matsiborchuk for cause: his refusal to sign a substitution of counsel and release the client file, even after repeated court orders to do so; his multiple, often last-minute, motions to disqualify lawyers and judges, to seek relief from those not authorized to give it, and to transfer the litigation elsewhere; his frequent untimely requests for delay; his claim at the evidentiary hearing – either feigned or unreasonable – that he did not know its scope in advance and was therefore unable to prepare;[12] and his wholly unjustified accusations that other participants in this litigation harbored animus toward him because of his disability. See DE 144; DE 201; DE 204; DE 206; DE 207. No such conduct occurring after Matsiborchuk's discharge independently justifies resolving the pending motions in Holcombe's favor, but the consistency of his continued misbehavior lends credence to the proposition that Holcombe was genuinely, and reasonably, alarmed by Matsiborchuk's conduct at the time she discharged him.

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[12] *Compare* Tr. II 5 (asserting lack of warning about the subject of the hearing), *with* Scheduling Order dated Nov. 22, 2016 (scheduling an evidentiary hearing "on the issue of termination for cause, as it relates to prior counsel, Vladimir Matsiborchuk").

III. Conclusion

For the reasons set forth above, I conclude that plaintiff Holcombe justifiably terminated her former counsel for cause; I therefore deny the attorney's motion for compensation in quantum meruit and grant the plaintiff's motion to extinguish the attorney's charging lien.

SO ORDERED.

Dated: Brooklyn, New York

March 29, 2017

/s/JAMES ORENSTEIN

U.S. Magistrate Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of October, two thousand eighteen.

Fougere Holcombe,
Plaintiff - Appellee,
v.
Vladimir Matsiborchuk,
Interested Party - Appellant,
US Airways Group, Inc., US Airways, Inc., (US Airways), International Association of Machinists and Aerospace Workers, Loretta Bove, Beth Holdren,
Defendants.

ORDER

Docket No: 17-2758

Appellant, Vladimir Matsiborchuk, filed a petition for panel rehearing, or, in the alternative, for rehearing en banc. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing en banc.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

APPENDIX E

United States Court of Appeals
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of February, two thousand fifteen.

Present:
Peter W. Hall,
Raymond J. Lohier, Jr.,
Circuit Judges,
Jeffrey A. Meyer,[13]
District Judge.

Fougere Holcombe,
Plaintiff-Appellee,
v. 14-4341;
14-4348
Vladimir Matsiborchuk,
Appellant,

US Airways Group, Inc., *et al.*,
Defendants-Appellees.

The appeals docketed under 14-4341 and 14-4348 are consolidated for purposes of this order.
Appellant moves for *in forma pauperis* status. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeals are

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[13] Hon. Jeffrey A. Meyer, of the United States District Court for the District of Connecticut, sitting by designation.

DISMISSED because they "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

This Court lacks jurisdiction over Appellant's appeals from the non-final July 2014 district court order and the non-final district court rulings deferring decision on the issues of whether he was terminated for cause and whether he is entitled to quantum meruit compensation. *See In re Agent Orange Product Liability Litigation*, 745 F.2d 161, 163–64 (2d Cir. 1984) ("While there is no simple formula to define finality . . . an order expressly subject to future reconsideration by the issuing court is generally thought to be nonappealable.").

Moreover, the district court did not abuse its discretion in denying Appellant's motion for a retaining lien, *see Pomerantz v. Schandler*, 704 F.2d 681, 682 (2d Cir. 1983); *see also Pay Television of Greater New York, Inc. v. Sheridan*, 766 F.2d 92, 94 (2d Cir. 1985), or in denying reconsideration of that decision, *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX F,

Opening Brief to the Second Circuit dated January 22, 2018 (Excerpt, page 3)

STATEMENT OF THE ISSUES

The following issues are respectfully presented for review:

(1) Whether the District Court erred by violating an attorney's due process rights by prejudging its decision and by precluding the attorney from presenting evidence in support of the attorney's position?

(2) Whether the District Court erred by granting client's motion to extinguish attorney's charging lien absent an objective showing of actual impropriety or misconduct on the part of the attorney warranting a discharge for cause under New York law?

The answer to both Issues is YES.

APPENDIX H.

Attorney R. Nardo representation letter dated February 27, 2002

RAYMOND NARDO
ATIORNEY AT LAW
129 Third Street
Mineola, NY 11501
(516) 246-2121
BY FAX & REGULAR MAIL

February 27, 2002

Rachel Morstad Teipe, Esq.
Senior Counsel
US AIRWAYS
2345 Crystal Drive
Arlington, VA 22227

Re : Fougere ("Fern") Holcombe

Dear Ms. Teipe:

I represent the above employee. Although my client is working at USAIRWAYS, there are still issues relating to her disability which need to be resolved. I would appreciate it if you could contact me; otherwise, I will be compelled to file a charge of discrimination at the EEOC on behalf of Ms. Holcombe.
Thank you for your consideration and cooperation.

Very truly yours,
/s/
Raymond Nardo

APPENDIX I.

DISTRICT COURT ORDER dated September 30, 2014, case 08-cv-01593, doc. 136 (excerpt, page 4,5)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FOUGERE Q. HOLCOMBE, ORDER
Plaintiff, **03-CV-4785 (SLT)(JMA)**
-against- **08-CV-1593 (SLT)(JMA)**
US AIRWAYS GROUP, INC. ET. AL.
Defendants.

TOWNES, United States District Judge:

…In any event, as explained above, the Order relied on the date of the arbitral opinion as the latest possible date that Plaintiff's claim could have accrued, however the Court explained that Plaintiff's claim accrued as early as 2006….

APPENDIX J

Attorney Matsiborchuk disengagement letter, dated October 10, 2012 (excerpt)

Vladimir Matsiborchuk, Esq.
Attorney At Law
244 Fifth Ave., Suite V-217
New York, NY 10001
… October 10, 2012
VIA e-mail femar@nycc.rr.com with delivery confirmation.

Dear Ms. Martino (Holcombe):
….
11. I firmly confirm that you have always had an opportunity to speak with me personally. You had a constant opportunity to speak with my assistant. All of your voice messages and e-mail communications were returned immediately. This is the way we have worked with our clients for 26 years in two nations.
12. To say that I allegedly "refused" to speak with you is the most strange and incredible statement that I have ever heard from any of my clients. You rejected several of my proposals to meet. None of my clients have ever behaved like you have.
13. You should look for another attorney immediately. According to your communication below, you are dissatisfied with my services, you intend to disregard my advice and you do not trust me anymore. You have clearly discharged me. Under these circumstances, I can no longer continue to represent you in your legal matters.
….

APPENDIX K

E-mail communication from Holcombe's e-mail address dated November 8, 2013

From: Fleur Holcombe <fholcombe@nyc.rr.com>
Sent: Friday, November 08, 2013 4:55 PM
To: Vladimir Matsiborchuk
Subject: <no subject>

Hello,
Sorry for the delay - within the last couple of weeks, 2 separate deaths occurred in Fleur's family.
She.is not able to speak with anyone right now and nor am I. She will be all right but definitely not by the 12th,
Your message is passed on to Fleur and she asks that if the schedule is made at the meeting that you schedule as far put as possible, given the rules and time restrictions, Please send an email after the meeting with the outcome,
She will get in contact with you soon, probably early in the week after,
Thank you for your patience during this initial grieving period,

Michael

APPENDIX L

December 24, 2013 notice of discharge

RAYMOND NARDO
ATIORNEY AT LAW
129 Third Street
Mineola, NY 11501
(516) 246-2121

December 24, 2013

VLADIMIR MATSIBORCHUK, Esq.
244-Fifth Ave., Ste. V-217
New York, NY 10001

Re: Holcombe v. US AIRWAYS GROUP, Inc.
03-04785, 08-1593 (SLT) (JMA)

Dear Mr. Matsiborchuk,

Enclosed please find a Stipulation to Substitute Counsel in the above matter. Please cease any work on this 'file and transfer the contents to my office. Please cease from contacting Ms. Holcombe.
My client informs me that you have filed documents" in her case without her approval and consent, that you have suggested that she obtain a Law Guardian because she is incapable of making decisions due to some incapacity you diagnosed based on your alleged training in the Soviet Union, you have accused the court of fraud and collusion, you have accused Ms. Holcombe of colluding with courts against you, and you have asked her to pay for your wife's services as your legal assistant. She also had to pay a lien of

$2,000 from a personal injury case to an attorney you referred for expel1ses allegedly incurred in this federal matter.

In short, without going into further instances and details, she is discharging you for cause. I do not wish to further communicate about her reasons for discharging you. I only ask that you sign the attached document and forward the file to my office.

If you have any questions, please contact me.

Thank you for your consideration and cooperation.

Very truly yours,
/s/
Raymond Nardo