

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Del Rosso v. Staten Island University Hospital

Del Rosso, 2026 NY Slip Op 00877 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-09566 · Decided February 18, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order allocating 25% of a net contingency fee to Krentsel Guzman Herbert, LLP and 75% to Harris, Keenan, & Goldfarb after the plaintiff changed counsel before settlement. The court held that the allocation was not an improvident exercise of the Supreme Court's discretion, considering the circumstances, equities, time and labor, difficulty, skill, and effectiveness of the attorneys' work.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 18, 2026
DOCKET	2023-09566
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nonparty former and current counsel disputed allocation of a net contingency fee after the underlying personal-injury action settled. The current firm appealed from an order awarding it 25% of the net contingency fee and awarding 75% to the discharged firm.
STANDARD OF REVIEW	Whether the allocation of an attorney's fee constituted an improvident exercise of the Supreme Court's discretion, with deference to the trial court's assessment of the circumstances and equities of the particular case.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Krentsel Guzman Herbert, LLP v. Harris, Keenan, & Goldfarb

TOPICS

attorney fees appellate procedure standard of review remedies

PRACTICE AREAS

attorney fee allocation contingency fees appellate review

QUESTIONS PRESENTED

1. Whether the Supreme Court properly allocated the net contingency fee by awarding Krentsel 25% and Harris 75% based on the firms' respective work and the circumstances of the case.
2. Whether the 25% award to Krentsel constituted an improvident exercise of the Supreme Court's discretion.

HOLDINGS

1. In a fee dispute between current and discharged counsel governed by a contingent-fee retainer, the discharged attorney may elect immediate compensation based on quantum meruit or a contingent percentage fee based on the attorney's proportionate share of the work performed on the whole case.
2. An award of a reasonable attorney's fee is within the sound discretion of the Supreme Court, and the 25% allocation to Krentsel was not an improvident exercise of that discretion.

KEY QUOTATIONS

“The issue of apportionment of an attorney's fee is controlled by the circumstances and equities of each particular case, and the trial court is in the best position to assess such factors” (2026 NY Slip Op 00877, at *1)

“An award of . . . reasonable attorney's fee[s] is within the sound discretion of the Supreme Court based upon such factors as the time and labor required, the difficulty of the issues involved, the skill required to handle the matter, and the effectiveness of the legal work performed” (2026 NY Slip Op 00877, at *1)

FACTUAL BACKGROUND

The plaintiff initially retained Harris, Keenan, & Goldfarb on a contingency-fee basis to prosecute a personal-injury action against 10 defendants. Over approximately eight years, Harris conducted extensive discovery, including 13 depositions, engaged in motion practice, attended numerous conferences, and filed the note of issue. After the plaintiff discharged Harris and retained Krentsel in July 2021, the action settled for \$1,724,000 in December 2022, shortly before jury selection.

PROCEDURAL HISTORY

The Supreme Court, Richmond County, referred the fee-allocation dispute to a court attorney referee. After a hearing, the referee awarded Krentsel 25% and Harris 75% of the net contingency fee. Krentsel appealed, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Tirado-Sottosanyti v. Crowley, 220 A.D.3d 820, 822-823
- Lamanna v. Compitiello, 213 A.D.3d 833, 834
- Matter of Cohen v. Grainger, Tesoriero & Bell, 81 N.Y.2d 655, 658
- Oz v. GCPKOP, LLC, 210 A.D.3d 689, 690
- Stephen v. City of New York, 216 A.D.3d 1029, 1030
- Berkowitz v. Helms Bros., Inc., 193 A.D.3d 671, 672

OPINION

PER CURIAM.

Del Rosso v Staten Is. Univ. Hosp. (2026 NY Slip Op 00877) Del Rosso v Staten Is. Univ. Hosp. 2026 NY Slip Op 00877 Decided on February 18, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P. WILLIAM G. FORD HELEN VOUTSINAS LAURENCE L. LOVE, JJ. 2023-09566 (Index No. 750004/16) [*1]Barbara Del Rosso, etc., plaintiff, v Staten Island University Hospital, et al., defendants; Krentsel Guzman Herbert, LLP, nonparty-appellant; Harris, Keenan, & Goldfarb, nonparty-respondent.

Krentzel Guzman Herbert, LLP (Horn Appellate Group, Brooklyn, NY [Scott T. Horn], of counsel), nonparty-appellant pro se. Harris, Keenan, & Goldfarb, New York, NY (Judith Stempler, Marla L. Stein, and Jason Steinberg of counsel), nonparty-respondent pro se. DECISION & ORDER In an action, inter alia, to recover damages for personal injuries, etc., nonparty Krentsel Guzman Herbert, LLP, appeals from an order of the Supreme Court, Richmond County (Peter Geis, Ct.

Atty. Ref.), dated August 14, 2023. The order, insofar as appealed from, after a hearing, in effect, granted that branch of the motion of nonparty Krentsel Guzman Herbert, LLP, which was, in effect, for a determination of the allocation of a net contingency fee to the extent of awarding it only 25% of the net contingency fee and awarding 75% of the net contingency fee to nonparty Harris, Keenan, & Goldfarb.

ORDERED that the order is affirmed insofar as appealed from, with costs. The plaintiff commenced this action, inter alia, to recover damages for personal injuries that Joseph Del Rosso

allegedly sustained while being treated at a hospital and a rehabilitation center.

The plaintiff initially retained the predecessor firm to nonparty law firm Harris, Keenan, & Goldfarb (hereinafter Harris) to represent them in the action, on a contingency fee basis. In 2014, Harris commenced this action on the plaintiff's behalf against 10 defendants. Over the next approximately eight years, Harris's attorneys, among other things, conducted extensive discovery including 13 depositions, engaged in motion practice, attended dozens of conferences, and filed the note of issue.

In July 2021, the plaintiff discharged Harris and retained nonparty Krentsel Guzman & Herbert, LLP (hereinafter Krentsel), to represent her. In December 2022, on the eve of jury selection, the action was settled for \$1,724,000. Thereafter, Krentsel moved, *inter alia*, in effect, for a determination of the allocation of a net contingency fee.

In an order dated June 21, 2023, the Supreme Court referred the matter to a court attorney referee to hear and determine the fee issue. In an order dated August 14, 2023, after a hearing, the court attorney referee, in effect, granted that branch of Krentsel's motion which was for a determination of the allocation of the net contingency fee to the extent of awarding it 25% of the net contingency fee and awarding 75% of the net contingency fee to Harris.

Krentsel appeals. "'When there is a fee dispute between the current and discharged attorneys for the plaintiff in an action to which a contingent fee retainer agreement applies, [t]he discharged attorney may elect to receive compensation immediately based on quantum meruit or on a contingent percentage fee based on his or her proportionate share of the work performed on the whole case'" (*Tirado-Sottosanyti v Crowley*, 220 AD3d 820, 822, quoting *Lamanna v Compitiello*, 213 AD3d 833, 834; see *Matter of Cohen v Grainger, Tesoriero & Bell*, 81 NY2d 655, 658). "'The issue of apportionment of an attorney's fee is controlled by the circumstances and equities of each particular case, and the trial court is in the best position to assess such factors'" (*Tirado-Sottosanyti v Crowley*, 220 AD3d at 822, quoting *Lamanna v Compitiello*, 213 AD3d at 834; see *Oz v GCPKOP, LLC*, 210 AD3d 689, 690). "'An award of... reasonable attorney's fee[s] is within the sound discretion of the Supreme Court based upon such factors as the time and labor required, the difficulty of the issues involved, the skill required to handle the matter, and the effectiveness of the legal work performed'" (*Tirado-Sottosanyti v Crowley*, 220 AD3d at 822, quoting *Lamanna v Compitiello*, 213 AD3d at 834).

Here, based upon the record in this case, it cannot be said that the award of 25% of the net contingency fee to Krentsel constituted an improvident exercise of discretion (see *Tirado-Sottosanyti v Crowley*, 220 AD3d at 822-823; *Stephen v City of New York*, 216 AD3d 1029, 1030; *Berkowitz v Helms Bros., Inc.*, 193 AD3d 671, 672). BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and LOVE, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court

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