

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ALPHA KAPPA ALPHA SORORITY, INC.,

Plaintiff

-against-

JOY ELAINE DALY,

Defendant(s).

-----X

HON. JOHN K. MCGUIRK, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SHORT FORM ORDER

Index No: 10150/07

Motion Date: 2/6/09

The following papers numbered 1 to 7 and the exhibits annexed thereto were read on the motion of the defendant for an order, pursuant to CPLR §3212 granting her summary judgment dismissing the plaintiff's complaint against her, for an order pursuant to 22 NYCRR 130-1.1 awarding defendant sanctions against the plaintiff for frivolously continuing this action against the defendant, and for an order pursuant to CPLR §8106 and CPLR §8202 awarding defendant costs in connection with the motion, in this action for injunctive relief and for reimbursement of moneys paid to the defendant:

- Notice of Motion - Affidavit - Affirmation 1-3
- Affidavit in Opposition - Affirmation in Opposition 4,5
- Reply Affidavit - Reply Affirmation 6,7

Upon the foregoing papers it is hereby ORDERED that the said motion is granted to the extent set forth herein. Defendant may enter judgment against the plaintiff dismissing the complaint herein together with the costs and disbursements of this action.

Plaintiff, Alpha Kappa Alpha Sorority Inc. (hereinafter Sorority or plaintiff), is the first Greek-lettered sorority established by African-American college women in 1908. The Sorority has grown to become a multi-racial organization with a membership of more than 200,000 women with over 975 chapters in the United States and around the world. In the United States, the Sorority is divided into ten geographic regions. The defendant was North Atlantic Regional Director of the Sorority from July 2002 to July 2006. As a Regional

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Director, defendant was entitled to reimbursement of expenses incurred in connection with her duties. In order to obtain reimbursement, defendant was required to submit quarterly reports of her expenses.

The Sorority Directorate adopted a policy on November 4, 2005 requiring that the Executive Director issue a Statement of Expense Advances to all officers who did not submit expense reports for advances received from the beginning of the year through December 31st of each year. The Statement of Expense Advances would state the total amount not accounted for and remind the officer that any amount unaccounted for as of 90 days after the end of an officer's term must be repaid to the sorority. The policy further dictates that if the officer does not pay the amount unaccounted for in full within 90 days of the end of the officer's term, the Sorority will issue to the officer a form 1099-MIC for the outstanding amount due. At the same meeting, the Sorority reaffirmed its policy that reimbursement payment will not be made until after quarterly expense reports are submitted.

There is no dispute that during her tenure as a Regional Director the defendant submitted quarterly expense reports to the Sorority. There is no dispute that the defendant's quarterly reports were received by the Sorority without objection and reimbursement was made without any request for further documentation. According to the complaint, the total amount that the Sorority paid to defendant as reimbursement for expenses was \$52,513.84. There is nothing in the record indicating that the Sorority required its officers to submit any documentation of expenses with a quarterly expense report.

The defendant left office in July 2006. Sometime thereafter, plaintiff chose to audit defendant's quarterly expense reports resulting in a request for further documentation of the defendant's expenses. In November 2006 and January 2007 the defendant resubmitted her quarterly reports and further information to the plaintiff regarding her expenses. Plaintiff's audit of the defendant's submissions resulted in a determination that \$30,603.58 of the expenses claimed were not documented to the plaintiff's satisfaction. Based upon this finding, and claiming to be acting in accordance with

the November 4, 2005 policy, plaintiff issued a 1099 MIC form to the defendant indicating that the plaintiff paid the defendant gross income in the sum of \$30,603.58 in the year 2006. The plaintiff demanded reimbursement of this amount from the defendant.

After the defendant left her office, she continued to use Sorority stationary to write letters to other members regarding the Sorority. She did not use the stationary to conduct Sorority business, to mislead others, or for personal gain. The Sorority advised the defendant that as she was no longer an officer, her use of the stationary was improper. By letter dated September 4, 2007 (more than a month prior to the commencement of this action) defendant agreed not to use the Sorority's stationary. Nothing in the record indicates that she has failed to abide by this commitment.

The complaint, filed on October 22, 2007, contains two causes of action. The first cause of action seeks injunctive relief enjoining the defendant from using Sorority stationary. The second cause of action alleges that not all of the expenses claimed by the defendant in her quarterly expense reports were supported by receipts or were otherwise verifiable. Based upon a lack of documentary support for \$30,603.58 of reimbursed expenses, the second cause of action seeks the return of this amount alleging that the defendant has wrongfully retained these funds. The complaint alleges only that the defendant failed to document her expenses. The complaint does not allege that these expenses were not incurred in furtherance of the Sorority's business. Nor does the complaint allege any fraudulent or otherwise improper conduct on the part of the defendant.

Issue was joined and the defendant now moves for summary judgment dismissing the complaint and also seeks sanctions and motion costs against the plaintiff.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. *Alvarez v. Prospect Hosp.*, 68 NY2d 320 (1986). Once such a showing has been made the burden shifts to the party opposing the motion to produce evidentiary

proof in admissible form demonstrating material questions of fact requiring trial. *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 NY2d 966 (1988). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. *Id.* On this motion, the defendant has carried her burden and established her entitlement to judgment as a matter of law. In opposition, the plaintiff fails to demonstrate the existence of triable issues of fact.

More than a month prior to the commencement of this action, defendant agreed not to use the Sorority's stationary and she has honored that commitment. As the defendant ceased using Sorority stationary of her own accord prior to the commencement of this action, there is no basis for injunctive relief and the defendant has established her entitlement to judgment as a matter of law on the first cause of action. Plaintiff does not submit any evidence with regard to the first cause of action. Accordingly, the motion is granted as unopposed with regard to the first cause of action.

In support of her motion regarding the second cause of action, the defendant submits the affidavit and quarterly expense reports of the Great Lakes Regional Director (hereinafter former director) who served as a regional director during the same time period as defendant. The former director states that Regional Directors were never advised by the Sorority that quarterly expense reports had to be in any specific format and were not given any specific instructions or guidelines as to the preparation of quarterly expense reports. The former director also states that her quarterly expense reports were accepted as submitted and were not audited by the Sorority. The former director's documentation of expenses includes copies of checks payable to herself for "expenses" without any supporting receipt or other documentation of the expense and, like defendant's quarterly reports, lacked documentation for many other claimed expenses.

Defendant's proof establishes that plaintiff accepted the defendant's quarterly expense reports without objection or reservation and issued payment to defendant. Her proof also establishes that she fully complied with the plaintiff's policy adopted in November 2005.

Defendant submitted quarterly expense reports. The policy does not require documentation, it only requires the submission of quarterly expense reports. Thus, the issuance of a 1009 form to the defendant was not in accordance with the Sorority's policy.

Defendant's proof on the motion also establishes that the Sorority never promulgated a standard for the submission of quarterly expense reports or a requirement for documentation of expenses claimed therein.

Plaintiff's opposition to the motion is insufficient to demonstrate the existence of a triable issue of fact. The plaintiff does not contest defendant's proof that plaintiff has no standard regarding the content of quarterly expense reports. The plaintiff does not contest defendant's proof that plaintiff has no requirement that expenses claimed in quarterly expense reports must be supported by receipts or other documentation.

Plaintiff does not even attempt to explain why the former director's lack of documentation was adequate while the defendant's lack of documentation was inadequate. Plaintiff simply ignores the issue. Rather, in response to this proof, plaintiff advises the court that it has reevaluated its position as to what is a properly documented expense for the purposes of this case and reduces its claim against the defendant to the sum of \$18,418.94.

Plaintiff does not allege, and does not submit any evidence to demonstrate, that any of these remaining disputed expenses were not incurred for the benefit of the Sorority. Rather, the Sorority only claims that the defendant's evidence of these expenses - defendant's check registers and bank statements - is unacceptable. The plaintiff's Director of Finance opines that defendant's check register and bank statements, are "inadequate under any auditing standard" to document expenses¹. Of course, absent from the record is proof that the Sorority had "any auditing standard" applicable to Regional

¹The court notes that ~~the~~ nothing in the record indicates that this witness is qualified to give such an opinion.

Directors' quarterly expense reports².

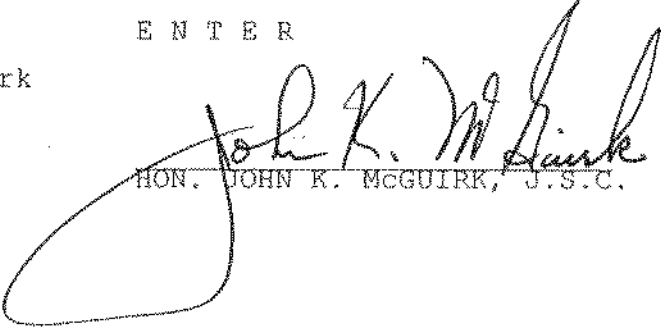
Plaintiff fails to show that defendant did not comply with plaintiff's requirements regarding quarterly expense reports. Plaintiff does not explain why these reports were received and paid on without objection or how the reports do not comply with the policy adopted in November 2005.

Despite plaintiff's failure to promulgate a standard for documentation of expenses and despite never having asserted that the disputed expenses were not authorized or otherwise inappropriate, the plaintiff claims that the lack of adequate documentation creates an issue of fact requiring trial. The court does not agree. The failure of the plaintiff to ever issue a standard for documentation of expenses precludes the plaintiff from recovering from the defendant on the second cause of action of the complaint.

The defendant's request for sanctions and costs is denied. Based upon the record before this court it cannot be said that the plaintiff's claims are frivolous or completely without merit under 22 NYCRR 130-1.1.

E N T E R

Dated: Goshen, New York
June 19, 2009


HON. JOHN K. MCGUIRK, J.S.C.

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²As to the claim that defendant's evidence is inadequate under "any standard", the court disagrees. IRS Publication 463 is an example of a standard for the documentation of expenses. This publication indicates that, while receipts are the best proof of an expense, other documentation, such as defendant's check register and bank statements, will not be considered inadequate provided there is other proof that the documentation is related to a valid business expense. Defendant attempted to offer further proof and the plaintiff was not interested in further proof. Plaintiff simply declared the documentation inadequate. In any event, the defendant's expense reports were not subject to IRS standards, the reports were not subject to any standard.