

CAUSE NO. _____

DORON "DORI" AVNI	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
JERRY L. SCHUTZA, ATTORNEY AT LAW	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION, REQUEST FOR DISCLOSURE, AND JURY DEMAND

Plaintiff Doron "Dori" Avni ("Avni") files his Original Petition, Request for Disclosure, and Jury Demand, and would respectfully show unto the court as follows:

I. Discovery Level & Rule 47(1) Statement

1.1. Discovery shall be conducted pursuant to Level 2. Avni seeks monetary relief over \$1,000,000.

II. Parties, Jurisdiction, and Venue

2.1. Plaintiff Doron "Dori" Avni ("Avni") is an individual residing in the State of New York. He has appeared through counsel.

2.2. Defendant Jerry L. Schutza ("Schutza"), an attorney at law, is an individual doing business in Harris County, Texas. He may be served with citation at 815 Walker St, Ste 1453, Houston, TX 77002-5717.

2.3. Defendant resides and does business in Texas and is subject to the *in personam* jurisdiction of its courts. The damages sought are within the minimum limits. Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a) since all or a substantial

part of the events or omissions giving rise to the claim occurred here.

III. Factual Background

3.1. Avni owned an undivided interest in the property located at 645 E. 11 ½ St., Houston, Texas 77008, legally described as:

LOTS 15, 16 AND 17 IN BLOCK 35 OF STUDE'S SECOND ADDITION, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP RECORDS OF HARRIS COUNTY, TEXAS AND IS SUPERSEDED BY THE MAP OR PLAT THEREOF RECORDED IN VOLUME 5, PAGE 51 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS ("Property").

3.2. In June 2018, Avni learned that Harris County had filed a suit to foreclose the tax lien on the Property. The suit remained pending for years, but Avni was never served with the suit. Upon learning of the suit, Avni retained Schutzta to represent his interests in the lawsuit.

3.3. Schutzta is an attorney at law, his Bar Card Number is 17853800 and his TX License Date is 11/01/1976. According to the official website of the State Bar of Texas, Schutzta runs a solo-practitioner law firm located in Harris County, Texas specializing in commercial litigation.

3.4. Avni's father, Dov Avni, met with Schutzta in Houston at the request of Avni prior to retaining Schutzta. Avni participated by phone from New York. During the meeting, Avni explained to Schutzta the circumstances of the case and specifically relayed his chief concern – the imminent foreclosure on the Property unless legal action was taken. It was directly communicated to Schutzta that Avni was not willing to lose the Property and he was prepared to do whatever was necessary to retain the property, including paying all due taxes

and other charges. Schutzza advised Avni that he would file an application for a temporary restraining order to stop the foreclosure; however, Schutzza required an immediate retainer from Avni representing the legal fees for filing the application. Schutzza offered Avni the Engagement Agreement.¹

3.5. In the Engagement Agreement, Schutzza asserted that he had “a civil litigation practice *with an emphasis in real property*.” He further asserted the following:

In order to open a file in this matter, I would require a retainer of \$3,500.00. This should cover the preparation of the Petition, and Application for a Temporary Restraining Order and filing fees, plus leave a balance for future invoices.

3.6. On or about June 13, 2018, Avni paid the retainer. On or about June 15, 2018 Avni sent Schutzza multiple documents related to the case.²

3.7. Between June 13, 2018 and August 13, 2018 Avni called and e-mailed Schutzza multiple times to inquire about the status of the case. Schutzza did not return any e-mails prior to August 13, 2018 and did not return any calls prior to August 16, 2020.

3.8. Concerned by the lack of information he was receiving from Schutzza, Avni contacted Harris County himself, explaining that he was never served with the lawsuit or the notice of foreclosure. He included Schutzza as a recipient of this e-mail.³ Again, no action by Schutzza followed.

3.9. On August 13, 2018, a tenant occupying the Property got a letter advising him

¹ See Exh 1 (Engagement Agreement).

² See Exh 2 (Avni email and docs to Schutzza).

³ See Exh 3 (Avni email to Harris Co.).

of a change in ownership of the property. The following e-mail exchange followed:⁴

Jerry Schutza <schutzalaw@yahoo.com>

8/13/18 7:09 pm

Re: Status

To: Doron Avni <davni@optonline.net>

I was out last week.

The building finally finished our permanent office space and we moved three weeks ago. Unfortunately we did not have any phone or internet service for almost two weeks. I will be in the office tomorrow afternoon. Either call me or give me a number where I can call.

Jerry L. Schutza
713-963-9988

Sent from my iPhone

On Aug 13, 2018, at 3:04 PM, Doron Avni <davni@optonline.net> wrote:

Schutza,

I do not understand why you ignore every single one of my emails and texts.

In fact, the only time you have ever responded related to the retainer agreement and payment information.

A tenant received the attached letter today regarding a change in ownership of the property and directions to begin remitting payments to somebody else.

I demand a call back in a timely manner.

Sincerely,

Your client
Doron Avni

3.10. Avni learned the Property was sold to JPAD HOLDINGS, LLC (“JPAD”), that JPAD purchased the Property at a foreclosure sale held on August 07, 2018, and that Schutza never filed the application for TRO for which he demanded a retainer. On August 14, 2018, Schutza explained to Avni that he “did not know that the property was posted for sale.”⁵

3.11. Further, Schutza never advised Avni about his right to redeem the Property at

⁴ See Exh 4 (Schutza Aug. 13th email to Avni).

⁵ See Exh 5 (Schutza Aug. 14th email to Avni).

or after a tax foreclosure. Had Schutzza provided this information to Avni, he would not have missed the deadline to redeem the Property.

3.12. In lieu of redeeming the Property, at about the same time Schutzza proposed that Avni file a federal lawsuit against JPAD to challenge the tax foreclosure. Avni, relying upon Schutzza's legal advice, agreed.⁶ JPAD moved to dismiss the claim for failure to state a claim upon which relief can be granted based on Plaintiff's failure to comply with the formal prerequisites pursuant to Tex. Tax Code § 34.08 (a)(1)&(2).⁷ Instead of timely and easily curing the formal defect of the claim, Schutzza assured Avni of the necessity of arguing the Motion and advised Avni to hire an additional attorney with expertise in real estate titles - Jay Ginsburg ("Ginsburg"), whom Schutzza allegedly knew for 40 years.⁸

Jerry Schutzza <schutzalaw@yahoo.com>

12/26/18 5:51 pm

JPAD Holdings

To: davnii@optonline.net

Doron

JPAD Holdings has been served and has finally filed an answer. I am enclosing a copy.

They have also filed a Motion To Dismiss which is a Motion filed under Rule 12 of the Federal Rules. It is standard procedure for a defendant in a Federal lawsuit to file this type of Motion. They have raised several issues which were unsuccessfully raised in a similar lawsuit in which I was previously involved. I am in the process of preparing a response.

As a part of the response I have spoken to and retained an attorney who is very experienced in the examination of titles to real property. His name is Jay Ginsburg with the law firm of Jay S. Ginsburg, P.C. His web page is jayginsburglaw.com. I have known Jay for more than forty years and he is the best title attorney that I have ever worked with.

Jay has started to review the title to the property and if his opinion is favorable he will be an excellent expert attorney who will testify on your behalf.

Jays fees are charged on an hourly rate of \$300.00 and has requested a retainer of \$2,500.00. I believe that Jay's testimony could be critical to your case.

If you will agree to retain his services please send a check payable to my trust account (Jerry Schutzza Trust Account). I will forward a check to him.

⁶ See Exh. 6 (Original complaint – federal lawsuit).

⁷ See Exh. 7 (JPAD's Rule 12 (b)(6) Motion for Dismiss)

⁸ See Exh. 8 (Schutzza Dec. 26th email to Avni).

On March 30, 2020, the federal court granted JPAD's motion for summary judgment, dismissing Avni's claims.⁹ Schutzta never advised Avni of the requirement to place a deposit or an affidavit of inability to pay to commence the lawsuit challenging the validity of the tax foreclosure sale. Therefore, Avni suffered additional damages by presenting claims which were not viable in the first place and paying additional legal fees to both Schutzta and Ginsburg.

3.13. The total amount of Schutzta's legal services paid by Avni constitutes \$ 29,512.¹⁰ The total amount of Ginsburg's fees paid by Avni is \$5,775.¹¹ Avni also paid approximately \$50,000 to the attorney he hired to replace Schutzta in the federal court lawsuit. But for Schutzta's legal malpractice, Avni would have acquired complete ownership of the Property, which has a fair market value of \$1,500,000. He saved approximately \$530,000 in taxes. Thus, his actual damages equal \$1,055,287, calculated as \$1,500,000 + 50,000 (attorney fees paid to successor lawyer in federal court lawsuit) + \$29,512 (attorney fees paid to Schutzta) + \$5,775 (attorney fees paid to Ginsburg) - \$530,000 (taxes saved) = \$1,055,287.

IV. Causes of Action

4.1. Breach of contract. Schutzta entered into a valid and enforceable contract with Avni to provide him legal representation in the lawsuit concerning the tax foreclosure on the Property. Avni performed the contract when he deposited a retainer to file an application for TRO and paid Schutzta's other legal fees. Schutzta breached the contract by failing to file the

⁹ See Exh 9 (Order 03/30/20).

¹⁰ See Exh 10 (Avni's invoices from Schutzta).

¹¹ See Exh 11 (Avni's invoices from Ginsburg).

application for TRO, failing to advise Avni on his right as an owner to redeem the property from the foreclosure sale, and advising Avni to pursue federal litigation. Schutzza's breach caused actual damages to Avni of \$1,055,287.

4.2. Legal malpractice. Schutzza provided professional legal services to Avni. Due to Schutzza's negligence and failure to file an application for TRO, Avni lost his Property at the foreclosure sale. Further, due to Schutzza's failure to advise Avni of his right to redeem the Property, Avni missed his deadlines to retrieve the Property after the foreclosure. Instead, Schutzza drew Avni into a federal lawsuit without sufficient grounds in the law and failing to meet the minimal formal prerequisites to commence the lawsuit. Schutzza's malpractice proximately caused Avni's actual damages in the amount of \$1,055,287. But for Schutzza's malpractice, Avni would have achieved a more favorable result in an underlying lawsuit – specifically, he could have stopped the foreclosure based on a TRO or redeemed the Property, paid the delinquent taxes and charges, and obtained clear title to the Property .

V. Remedies

5.1. Damages. Avni seeks to recover his actual damages, including direct and consequential damages, in the amount of \$1,055,287.

5.2. Attorney Fees. Avni seeks his attorney fees pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 incurred in prosecuting his breach of contract claim.

5.3. Taxable Costs, Pre- and Post-Judgment Interest. Avni seeks his taxable costs pursuant to Rule 131 and pre- and post-judgment interest at the highest rates allowed by law.

VI. Jury Demand

6.1. Avni hereby demands his right to trial by jury and is paying the jury fee contemporaneously with this demand.

VII. Request for Disclosure

7.1. Pursuant to Rule 194, you are requested to disclose, within 50 days, the information or materials described by Rule 194.2(a) – (l).

Prayer

Avni prays for entry of a final judgment against Schutza, awarding actual damages in the amount of \$1,055,287, reasonable and necessary attorney fees incurred in prosecuting his breach of contract claim, for costs and pre- and post-judgment interest at the highest rates allowed by law, and for all other relief to which he is entitled.

Respectfully submitted,

PENNELL LAW FIRM PLLC
19 Briar Hollow Ln Ste 110
Houston, TX 77027
(713) 965-7568 (telephone)
(713) 583-9455 (fax)

By: /s/ Kevin Pennell
Kevin Pennell
TBN: 24046607
kevin@pennellfirm.com
Victoriya V. Vidma
TBN: 24110484
vvidma@pennellfirm.com

ATTORNEYS FOR DORON “DORI” AVNI