

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

BENJAMIN DANIEL DEHAAN AND
LIGHTHOUSE FINANCIAL
PARTNERS, LLC,

Defendants.

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Civil Action File No.
1:12-CV-1996-TWT

**PAGE PERRY, LLC'S RESPONSE TO MOTION TO COMPEL
PRODUCTION OF RECORDS, MOTION FOR CONTEMPT, AND
MOTION TO SCHEDULE DEPOSITION OF DEFENDANT DEHAAN**

COMES NOW Page Perry, LLC, and files this response to the Lighthouse's Motion to Compel Production of Records, Motion to find Page Perry, LLC, in Contempt, and Motion to Schedule Deposition of Defendant DeHaan.¹ Page Perry seeks guidance from this Court on what it should do with certain documents and records in its possession to which a claim of privilege has been made by Benjamin

¹ Page Perry has no interest in the scheduling of DeHaan's deposition and the issue is not addressed herein.

DeHaan. Page Perry has been thrust into an extraordinarily difficult position in which it is juxtaposed between the competing interests of the Defendants in this case and which it is not authorized to unilaterally resolve.

INTRODUCTION

Defendants in this case have foisted Page Perry between a rock and a hard place. Page Perry finds itself in a position where Lighthouse contends Page Perry's compliance with the State Bar of Georgia's Rules of Professional Conduct warrants a levy of discovery of sanctions and a finding of contempt. On the other hand, DeHaan contends that compliance with Lighthouse's discovery requests without due consideration to his claim of privilege would be in derogation of the bar rules. Page Perry has no legal authority to resolve the dispute among the Defendants and their competing claims to access to Page Perry's client files.

Page Perry has been cooperating with DeHaan and Lighthouse to facilitate production of responsive documents to which DeHaan claims no privilege. In fact, more than 30,000 pages of document have already been produced. Lighthouse has been aware of the ongoing cooperation but has filed its motion in spite of Page Perry's cooperation and extensive production.

Page Perry asks this Court to resolve the competing claims by the Defendants and direct the firm on how to proceed in such a way that allows it to comply with this Court's rules and Georgia's Rules of Professional Conduct. Page Perry has acted in good faith in dealing with the parties and should not be sanctioned for trying to strike a delicate balance between competing interests.

STATEMENT OF PROCEEDINGS

Page Perry served as counsel to Defendant Lighthouse Financial Partners, LLC (For ease of reference, "Lighthouse" refers collectively to the LLC and the Receiver.) Defendant DeHaan was the primary and nearly exclusive point of contact for Page Perry at Lighthouse. DeHaan regularly communicated with Lighthouse. Legal counsel provided by Page Perry was communicated to DeHaan.

Lighthouse sought production of client files possessed by Page Perry. DeHaan claims that during the course of Page Perry's representation of Lighthouse that the firm also either jointly represented him or represented him in his individual capacity. As a result, DeHaan has claimed a right of possession to some or all of Page Perry's client files and has asserted a claim of privilege over certain documents contained in those files. DeHaan filed a Motion for Protective Order

before Lighthouse filed the current motion. Lighthouse seeks production of documents without consideration of DeHaan's privilege claims.

While these discovery motions remain pending, Page Perry, DeHaan and Lighthouse have worked cooperatively to produce documents. DeHaan has authorized the release of more than 30,000 pages. These documents have been delivered to counsel for Lighthouse.

ARGUMENT AND CITATION OF AUTHORITY

In its motion Lighthouse specifically demands Page Perry be required to turn over certain documents and records to Lighthouse and that Page Perry be found in contempt for having not already having produced the requested documents. However, Lighthouse's motion illustrates a very narrow, incomplete view of Page Perry's dilemma. The motion further ignores the ongoing cooperation between Page Perry, DeHaan and Lighthouse that has resulted in production of numerous documents.

Page Perry was counsel for Lighthouse. However, DeHaan claims Page Perry provided legal counsel to him in his individual capacity. Moreover, DeHaan has asserted a claim of privilege in his individual capacity over documents Page

Perry included in the firm's client files. DeHaan filed a Motion for Protective Order in this matter to protect his privilege claim.

Under Georgia law, the client and not the lawyer holds the attorney-client privilege. Under Georgia Rules of Professional Conduct 1.6, "A lawyer shall maintain in confidence all information gained in the professional relationship with a client, including information which the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client, unless the client gives informed consent..." The attorney-client privilege is a rule of law for the protection of the client. Atlanta Coca-Cola Bottling Co. v. Goss, 50 Ga. App. 637, 639 (1935). Thus, *only* with the consent of a client may his counsel disclose any information obtained during the course of the attorney-client relationship. Page Perry received consent from DeHaan to produce the overwhelming majority of responsive documents the firm possesses. However, some minimal volume of documents has not been produced pursuant to DeHaan's assertion of the attorney-client privilege. As Lighthouse is fully aware, DeHaan's counsel has agreed to produce a privilege log for the few documents withheld.

All that is needed to form an attorney-client relationship is the "reasonable belief" on behalf of the client that such a relationship has been formed. Mays v.

_____, 262 Ga. App. 417, 419 (2003). In Mays, the Georgia Supreme Court laid out the groundwork of what could lead to such a reasonable belief:

An attorney-client relationship may be created expressly by written contract or inferred from the parties' conduct. Although contractual formalities are not essential to the creation of such relationships, the fundamental question is whether the professional advice or assistance of an attorney has been both sought and received in a legal matter. All that is necessary is a "reasonable belief" on the part of the would-be client that he or she [is] being represented by [an] attorney.

[Quotes and cites omitted].

DeHaan claims, as an individual, that an attorney-client relationship existed with Page Perry. His claim of privilege over documents possessed by Page Perry that are responsive to Lighthouse's requests is based upon *his* belief he had an attorney-client relationship. Lighthouse correctly notes DeHaan served as an officer, agent, and the principal of Lighthouse. Lighthouse also acknowledges there are circumstances when an officer, agent, or principal of an entity may have an attorney-client relationship with a law firm independent of the relationship the same law firm has with the entity. (Doc. 18, pp. 13-14).

Lighthouse fails to recognize and acknowledge that Page Perry is neither positioned nor authorized to determine unilaterally whether DeHaan or Lighthouse is correct in the present dispute. It is absolutely, positively not for Page Perry to

determine the reasonableness of Mr. DeHaan's belief as to whether an attorney-client relationship existed between him and Page Perry or the propriety of his assertion of the attorney-client privilege. Page Perry properly cooperated with DeHaan and Lighthouse in participating in the production of a massive volume of documents.

As counsel charged with maintaining its client confidential information, including documents, Page Perry is ethically bound to decline to produce confidential documents unless and until DeHaan consents to disclosure. See Mrozinski v. Pogue, 205 Ga. App. 731, 733 (1992) (noting generally that in a joint representation, privilege is not waived by the mere existence of the joint representation and thus each client's information must remain protected from third-parties). Disclosing the privilege documents exposes Page Perry to great risk.

Essentially, Page Perry has been dragged into a discovery dispute between Lighthouse and DeHaan. It is not up to Page Perry to mediate or resolve the dispute. Lighthouse contends that the documents requested are the property of Lighthouse alone. Unsurprisingly, DeHaan contends otherwise. He contends he holds a privilege in his individual capacity that precludes production of certain documents by Page Perry without his consent. Page Perry requests guidance from

this Court as to what it should do with the documents and records it possesses. Page Perry cannot be legitimately expected to mediate a disputed between two clients.

Lighthouse incorrectly asserts the absence of a written retainer agreement conclusively establishes an attorney-client relationship was never formed between Page Perry and DeHaan. Specifically, Lighthouse points out that Page Perry and DeHaan “did not have an engagement letter or written representation agreement...and there exists no joint representation agreement between Lighthouse, DeHaan, and Page Perry.” (Doc. 18, p. 5, ¶ 12). Lighthouse’s assertion is a misstatement of Georgia law. As noted above, no written agreement is necessary. A reasonable belief by DeHaan that Page Perry represented him establishes an attorney-client relationship. Lighthouse asks Page Perry to risk discipline from the bar and assume DeHaan’s belief is unreasonable. Page Perry is not authorized to make such a unilateral decision. As a result the bar rules and Georgia law require Page Perry to respect DeHaan’s privilege claim.

Page Perry asks this Court to decide things that Page Perry and the parties cannot. Page Perry should not be penalized for respecting the interest of both

parties claiming an attorney-client relationship existed. The firm has acted in good faith and cooperated to the extent permitted by the bar rules and Georgia law.

CONCLUSION

Page Perry requests that Lighthouse's motion be DENIED. Page Perry has acted in good faith between the competing claims of two parties in relation to its files. Moreover, Page Perry has worked cooperatively with Lighthouse and DeHaan to ensure production of almost all responsive documents it possesses. In short, there is no basis to compel Page Perry to do what it has already done. Moreover, there is no basis to find Page Perry in contempt for declining to violate bar rules in order to placate Lighthouse. For this and all the reasons set forth herein, Page Perry requests this Court deny Lighthouse' motion.

This 31st day of August, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing
RESPONSE TO MOTION TO COMPEL with the Clerk of Court using the
CM/ECF system which will automatically send notification of such filing to the
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I further certify that the foregoing document has been prepared with Times
New Roman 14-Point Font, as approved in LR 5.1C.

This 30th day of August, 2012.

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