

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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Roy Den Hollander,

Appellant-Plaintiff,

Docket No. 04-6700-cv

v.

Flash Dancers Topless Club, et al.,

Appellees-Defendants.

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**AFFIRMATION OF FACT IN REPLY TO OPPOSITION TO PLAINTIFF'S  
MOTION FOR SANCTIONS**

I, Roy Den Hollander, am the attorney plaintiff-appellant, am familiar with the matters within and submit this affirmation in reply to Edward S. Rudofsky's opposition to plaintiff's motion for sanctions.

1. The issue for sanctions is not whether the Flash Dancers clients of Zane and Rudofsky incurred costs in printing their appeal brief, but whether the costs of the motion practice intentionally engaged in by Mr. Rudofsky as a result of his firm's negligent failure to file a bill of costs on time should be born by the plaintiff and this Court? The plaintiff believes it should not because no man should be allowed to escape the costs flowing from his own wrong, which is what negligence is.

2. Mr. Rudofsky tries to shift his responsibility for the costs of a motion to absolve him of his negligence onto the Clerk' Office. Rudofsky Opposition ¶ 3. As "an honorable member of the Circuit Court Bar and practitioner in this Court for more than thirty (30) years," Rudofsky Opposition ¶ 6, he should know by now that the Clerk's Office role is not to opine on whether a motion is "proper," Rudofsky Opposition ¶ 3, or sanctionable—that decision is for the judges. The Clerk's Office provides information on procedural options within this Court; it does not render judgments or make decisions for counsel. Mr. Rudofsky had the option to avoid wasting this Court and the plaintiff's time with a meritless motion, but he—not the Clerk—chose not to.

3. As for Mr. Rudofsky's inclusion of additional expenses in his bill of costs that are not permitted, he once again tries to shift to the Clerk's Office his responsibility and, in this instance, the work necessary for obeying the rules of this Court. Mr. Rudofsky claims it is up to the Clerk—not him—to weed out the allowable costs from the printers bill he submitted. Rudofsky Opposition ¶ 4. If that were so, then why did the Clerk go to the trouble of drafting and sending with the Summary Order a letter to counsel listing specifically which items can be included and those that cannot as well as including a specific form to be used, which Mr. Rudofsky didn't use or follow. Plaintiff's Motion Sanctions Exhibit B.

Mr. Rudofsky's failure to do the work required of him, or, worst, his scheme to slip unallowable costs by this Court and the plaintiff is grounds alone for sanctions.

4. Mr. Rudofsky declares that his firm's inabilities to track cases when he is on vacation are "petty issues." Rudofsky Opposition ¶ 5. Negligence by an attorney that results in missing a deadline under a court's rule is never petty.

5. What we have in Mr. Rudofsky's bill of costs motion and his opposition to plaintiff's sanction motion is not a law firm that got caught in a force majeure but rather a firm that shuts down when one of its three members is voluntarily in California because of an inept system or no system for tracking cases. That is not the fault of the plaintiff or this Court, and it is unbecoming of a long-time practitioner before this Court to blame everyone else for his firm's mistakes.

**WHEREFORE**, the plaintiff requests sanctions for Mr. Rudofsky's intentional efforts to engage in unnecessary motion practice not because of a force majeure but rather to shift the blame for his firm's negligence onto others, including this Court, and to have them bear the costs of his mistakes.

Executed under the penalty of perjury,

Dated: New York, New York  
March 11, 2006

Attorney plaintiff-appellant

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Roy Den Hollander  
545 East 14 Street, 10D  
New York, NY 10009  
(212) 995-5201