

115 A.D.3d 792, 982 N.Y.S.2d 359  
(Mem), 2014 N.Y. Slip Op. 01711

\*\*1 Gary Friedman, P.C., Appellant

v

John Jay O'Neill, Respondent.

Supreme Court, Appellate Division,  
Second Department, New York  
March 19, 2014

CITE TITLE AS: Gary Friedman, P.C. v O'Neill

### HEADNOTE

#### Attorney and Client Compensation

\*793

Carl F. Lodes, Carmel, N.Y., for appellant.  
Oxman Tulis Kirkpatrick Whyatt & Geiger LLP,  
White Plains, N.Y. (Marcia L. Riebling of counsel),  
for respondent.

In an action to recover legal fees, the plaintiff  
appeals from a judgment of the Supreme Court,  
Westchester County (Walker, J.), dated February 1,  
2012, which, after a nonjury trial, is in favor of the  
defendant and against it dismissing the complaint.

Ordered that the judgment is affirmed, with costs.

The plaintiff commenced this action to recover legal  
fees for services rendered to the defendant. After  
a nonjury trial, the Supreme Court dismissed the  
complaint finding, inter alia, that the plaintiff failed  
to comply with [22 NYCRR 137.6](#) and [1215.1](#), and  
failed to establish the right to recover legal fees on  
the basis of quantum meruit.

Except in limited circumstances, where an attorney  
institutes an action to recover a fee, the attorney  
must provide written notice by certified mail or  
by personal service of the client's right to elect  
to arbitrate and must allege in the complaint that  
the client received notice of his or her right to  
pursue arbitration and did not file a timely request

to arbitrate (*see* [22 NYCRR 137.6](#)). A plaintiff's  
failure to provide the defendant with written notice  
of his or her right to elect to submit the fee dispute  
to arbitration, and the failure to allege in the  
complaint that the defendant received such notice  
and did not file a timely request for arbitration,  
require dismissal of the complaint (*see* [Herrick v  
Lyon, 7 AD3d 571 \[2004\]](#)). Here, the Supreme Court  
properly dismissed the complaint upon finding that  
the plaintiff failed to properly serve the defendant  
with written notice of his right to arbitrate the  
fee dispute, and upon the plaintiff's failure to  
allege in the complaint that the defendant received  
such notice and did not file a timely request for  
arbitration (*see* [22 NYCRR 137.6](#); [Herrick v Lyon,  
7 AD3d 571 \[2004\]](#)).

In addition, the Supreme Court properly found that  
the plaintiff failed to comply with the requirements  
of [22 NYCRR 1215.1](#) and failed to establish that he  
was entitled to recover legal fees in quantum meruit.  
Except in limited circumstances, an attorney must  
provide his or her client with a written letter  
of engagement or enter into a written retainer  
agreement explaining, inter alia, the scope of the  
legal services to be provided, the fees to be charged,  
and the expenses and billing practices (*see*  
[22 NYCRR 1215.1](#)). An attorney's noncompliance  
with [22 NYCRR 1215.1](#) does not preclude him  
or her from recovering the value of professional  
services rendered on a quantum meruit basis (*see*  
[Seth Rubenstein, P.C. v Ganea, 41 AD3d 54 \[2007\]](#)).  
Nonetheless, an attorney who fails to comply with  
rule 1215.1 bears the burden of proving the terms  
of the retainer and establishing that the terms of the  
alleged fee arrangement were fair, fully understood,  
and agreed to by the client (\*794) (*see id.*). Here,  
the court properly found that the plaintiff failed  
to comply with [22 NYCRR 1215.1](#) and failed to  
establish that the terms of the fee arrangement  
were fair, fully understood, and agreed to by the  
defendant. Dillon, J.P., Hall, Austin and Sgroi, JJ.,  
concur.

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