

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

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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 (*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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