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Selten v. Hyon (2007) 152 Cal.App.4th 463 (rev. den. 9/12/07)

The Second District voids a contingent fee contract between a client and a non-lawyer for unlawful referral services, but permits quantum meruit recovery for lawful services rendered by the non-lawyer.

Junho Hyon and Laurence Colangelo entered into a contract with National Legal Network (NLN), to act as their agent, consultant, and case manager with regard to litigation. The contract allowed NLN to retain counsel and to provide other litigation support services. If NLN obtained counsel, it was entitled to a contingent fee. Later NLN assigned the contract to its president, Eric Selten.

NLN retained an attorney who obtained a large verdict, but the trial court set the verdict aside. Hyon and Colangelo retained appellate counsel who prevailed on appeal and a new attorney for a retrial. The new attorney negotiated a settlement. When a dispute erupted between Hyon and Colangelo concerning their respective interests in the recovery, Hyon filed suit against Selten who filed a cross complaint for his share of the recovery.

Hyon prevailed on summary judgment against Selten. Hyon argued that Selten provided unlawful attorney referral services since he was not registered with the State Bar, rendering the contract

illegal and unenforceable. Selten argued that NLN was not an attorney referral service, and that he had spent approximately 8,000 hours working on the matter.

The Court of Appeal noted that Business & Professions Code § 6155 prohibits attorney referral services that are not registered with the state bar. The NLN contract constituted a contract for a referral to an attorney and was in violation of § 6155.

The Court rejected the contention that the contract was for litigation support services and not primarily attorney referral. It does not matter that the contract required other services, the attorney referral provision rendered the contract at least partially illegal. The illegal portion of the contract could not be severed because it provided a single consideration in exchange for all of Selten's services, rendering the entire contract unlawful.

Nor did the court agreed that Selten was entitled to refer Hyon and Colangelo to a

lawyer as an “authorized representative” under Evidence Code § 951. That statute defines the term “client” solely for purposes of the attorney-client privilege.

The fact that Hyon and Colangelo were free to retain their own attorney did not save the contract because the contract expressly denied NLN any right to compensation absent its failure to secure counsel for them.

It was irrelevant that the first attorney referred Hyon and Colangelo to the second attorney. Selten arranged for the referral to the first attorney and this entitled him to compensation under the contract, regardless of who ultimately resolved the case.

The court also disagreed with the argument that NLN was not covered by the statute because it was not a sham referral service, which, Selten argued, was the principle evil the statute was designed to prevent. Selten relied upon materials from the legislative history pertaining to the original enactment of the statute. The Court noted that it was relying on language in a later amendment of the statute and that the statute was not ambiguous and therefore there was no need to resort to the legislative history.

Selten’s due diligence in investigating, through contact with the state bar and the opinion of private counsel, whether NLN constituted an unlawful attorney referral service was not sufficient to validate the contract. The contract called for a referral to an attorney and the state bar and private counsel opinions predated the contract and the amendment of the statute.

Selten argued that to rule the contract illegal renders § 6155 unconstitutionally vague, because it would make unlawful numerous commercial relationships, such as when accountants or other professionals refer clients to attorneys while they continue providing service to the same client for a fee. The court disagreed, noting that the fee earned by NLN was for the referral, not for other lawful services.

The Court of Appeal held that Selten should be entitled to recover the reasonable value of his services. When services are rendered under a contract that is unenforceable as against public policy, but the subject services are not themselves prohibited, quantum meruit may be allowed. Selten could not recover for the unlawful attorney referral services or for any instances of the unauthorized practice of law, but he could recover the reasonable value of his lawful work. In a footnote the Court set forth two caveats: Selten’s recovery must come out of the recovery in the underlying litigation since he agreed to work on a contingency and it could not exceed the amount he would have been paid under the contingent fee provision of the contract.

Comment: The statute also prohibits attorneys from accepting matters from an illegal attorney referral service. This prohibition could affect an attorney’s entitlement to contingent fees. However, like Selten, attorneys are entitled to the reasonable value of lawful services rendered under an illegal contract.

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