

[Lack of Retainer Leads Court to Order Firm to Return Fees Beyond Contingency](#)

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Body

Lawyers whose original retainer agreement stated only that they would receive a one-third contingent fee must disgorge additional fees collected for an appeal and collateral litigation, a Manhattan judge has ruled.

Omar Siagha was assaulted in 1993 by a bartender at an Upper East Side restaurant called Ruby's River Road Cafe. To pursue a claim against the restaurant, Mr. Siagha contacted lawyer Michael J. Rosenblatt, then an associate at the firm of Schwartz, Gutstein & Associates.

Mr. Rosenblatt soon thereafter left the firm to start his own practice and then to co-found Katz & Rosenblatt with attorney David Katz. The suit against the restaurant was filed by Katz & Rosenblatt, which later became Katz & Associates after Mr. Rosenblatt's resignation. A jury returned a verdict of \$1.2 million, which was affirmed on appeal.

Following further litigation with the insurance companies, Mr. Siagha received a judgment of \$1.7 million, from which Katz & Associates took a fee of around \$870,000, including one-third of the award and legal costs relating to the appeal and collateral litigation.

But Manhattan Supreme Court Justice Carol Edmead () ruled that the firm was not entitled to such a large fee because Mr. Siagha never signed a retainer agreement authorizing fees beyond the one-third contingent fee.

"A client retaining an attorney on a contingent basis, in the absence of clear and express language to the contrary, contemplates that the percentage fixed is to constitute payment for whatever services may be necessary to obtain collection of any judgment which may be recovered, whether the services be in connection with an appeal taken from the judgment or in connection with efforts to collect the judgment, or both," the judge wrote in

[Siagha v. Katz & Associates](#), 603927/05.

The decision will be published Friday.

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She noted that there had only been one retainer agreement filed with the Office of Court Administration in the case, a standard form filed by Schwartz Gutstein. The judge also noted that none of the lawyers who actually represented Mr. Siagha had ever taken the step of obtaining a retainer agreement specific to the case. They also never wrote him a letter or e-mail describing or discussing their legal fees.

Justice Edmead granted summary judgment to Mr. Siagha on his motion to have the fees disgorged beyond one-third of the award. But she denied his motion to have them disgorge their entire fee.

Mr. Siagha had argued that the Schwartz Gutstein retainer should not be given any effect because the case had been handed off to different attorneys. But the judge said there was an adequate relationship through Mr. Rosenblatt, whose name was on the retainer agreement and who "morphed" into Katz & Rosenblatt, which in turn morphed into Katz & Associates.

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