

# HELEN-MAY HOLDINGS, LLC

**By Fax and Regular Mail To: 518 474-0389**

**Att: Michael Philip, Jr  
Deputy Chief Attorney**

State Of New York  
Supreme Court, Appellate Division  
Third Judicial Department  
Committee On Professional Standards  
40 Steuben Street, Suite 502  
Albany, NY 12207-2109

November 1st, 2008

## Unauthorized Settlement

### **Breach of Fiduciary, Legal Malpractice, Breach of Contract, False Representation**

Date and Place: At a hearing held on July 20, 2005; in Federal Bankruptcy Court, One Bowling Green, 7th FL,  
New York, NY, 10004;

Chief Judge Stuart M. Bernstein presiding: Case #04-16410

Dear Mr. Philip,

In response to that of Gerald Orseck (September 19, 2008) we dispute the basis on which he held a "subjective belief" that he had an "apparent authority" to "settle" our dispute with the debtor (now defendants) in the above noted federal bankruptcy case.

First I would urge the committee to read the two decisions by Chief United States Bankruptcy Judge Stewart M. Bernstein. (Opinion and Order Denying Motion for Summary Judgment and Post Trial Findings Of Fact and Conclusions of Law. Copies of which are included with this letter.)

For the record, at the time that Mr. Orseck was actually communicating with the debtor's attorneys, we were not aware that he was discussing settlement parameters. It was our firm belief that any discussions he may have held with the debtor's attorney were limited to issues relating to our explicit instructions to him...that is the lifting of the bankruptcy stay, and the payment of adequate protection. More specifically, Mr. Orseck was well aware that we had always remained adamant that his marching orders were: 1) the lifting of the automatic stay, allowing for a subsequent eviction, and 2) the full payment of adequate protection based on \$1500.00 per day from the date of the debtor's default. Any of my own documents to Mr. Orseck were to remain privileged, and the purpose for any calculations contained therein were strictly to impress upon Mr. Orseck our determination in having the debtors removed from our property, and their paying for the damages, and adequate protection.

Regarding Mr. Orseck's response: *"They never made two cents with the subject property; they overpaid when they bought it, and they would have walked away with a substantial profit," "Had the Griffins not challenged the settlement, they would be immeasurably better off today than they are."*

Even if that were true, which it is not, it is completely irrelevant and just shows that Gerald Orseck, was then, and apparently, to this day he still remains prepared to enforce his own judgment over our rights. Had Mr. Orseck simply followed our very clear and explicit instructions, with the lifting of the stay, we would have evicted the debtor from our property, and very likely been awarded our increased adequate protection, and been able to sell or rent our property on our own terms. Instead, we were forced into a costly and protracted litigation in order to undo his unauthorized settlement...a process that took eighteen very long months. The fact that the debtor's records show that they earned over \$300,000.00 during their first two month's on our property bears testament to the fact that the property held significant value and was very much coveted by the debtor. Therefore, Mr. Orseck's retort that had we accepted his unauthorized settlement *"we would be immeasurably better off today"* rings hollow when considered against the background of the funds that the debtor was funneling through our property.

Referring to Mr. Orseck's comment, "they overpaid when they bought it." Strange that he never mentioned this in June of 2005, when he did himself conduct a refinance of our mortgage on the property for several hundred thousand dollars above the purchase price. He makes reference to our impecunious condition, and yet he charged us \$16,000.00 for a straight forward closing. He also kept for himself funds from the Use & Occupancy payments, which he himself accused our previous attorney of doing, stating that it was legally improper.

Furthermore, Mr. Orseck completely missed the opportunity to expose these fraudulent debtors and instead chose to capitulate to them. He had the supporting documents to prove a fraudulently filed bankruptcy, and yet he snatched defeat from the jaws of victory! The transcript from the hearing of July 20, 2005 demonstrates that Mr. Orseck was so ill-prepared, that when it came to cross examining the debtors about fraudulent filings, schedules, or perjured statements, and false allegations, Mr. Orseck could only respond: *"It's difficult to cross examine because I really don't understand the answer to your question."* The judge admonished, *"sometimes you have to know just to sit down."* Thus, Mr. Orseck's subpoenaed witnesses were pretty much redundant since he neither examined nor cross examined them.

Document production in preparation for the bench trial in this case rendered conclusive evidence that at the July 20<sup>th</sup>, 2005 hearing, (scheduled only for a lift stay motion, and a motion for adequate protection.) Gerald Orseck had no basis whatsoever for even the remotest belief that he was cloaked with apparent authority to settle this case. This is the very same hearing that Gerald Orseck told us was adjourned, *"because the judge said there were too many witnesses."* As we know, the hearing was not adjourned and I would venture to say that Judge Bernstein never made any such comment. (Based upon the preponderance of the evidence, it is our enlightened opinion, that this was a manufactured strategy between the attorneys in order to force a settlement, not of our choosing!)

The document to which I refer, and produced from Mr. Orseck's own files is a fax that he sent to the debtor's attorney on the evening of July 19. (Shortly after we had left his office.) The fax stated, *"[t]he case is not settled. There is a problem with Griffin."* We had no knowledge of this document until it

was produced, and we certainly didn't know that we, (Griffins) were a problem! This syntax makes it clear that Gerald Orseck knew emphatically that he did not have authority to enter into a settlement with this debtor. Furthermore, 1) the timing of this fax, 2) his subsequent telephone call to us (falsely advising us that the hearing had been adjourned) and 3) the events that took place the following day in court, when considered collectively, strongly point to a contrived strategy between Gerald Orseck and Backenroth, Frankel and Krinsky, PC (debtor's attorney) to keep us from attending the scheduled hearing. (So that they could conduct a stealthy settlement?)

Mr. Orseck's referral to his telephone call is surprisingly accurate and self indicting. He states, *"The transcripts show that I called the Griffins from court on July 20, 2005, by cell phone during recess, and that the call was cut off as I attempted to relay to them the negotiations and prospective settlement."* At the least he is admitting that we were cut off before he received our answer. (And still he went back into court and settled?) The truth of the matter is that he: 1) Mis-represented his current location...he never indicated that he was at a hearing, and 2) he did receive our answer and it didn't meet with his own preconceived agreement with the debtor's attorney. Therefore, he avoided our repeated attempts to reestablish communications with him. If he really thought that he had our authority, 1) wouldn't he have contacted us afterwards to tell us that it was done? 2) Wouldn't his office staff in Liberty, NY have told him that the Griffins had been trying to reach him all day? 3) If he was so proud of his accomplishment in court, why would he remain mysteriously unavailable to us? In Mr. Orseck's testimony, he admits, *"Quite honestly, I was trying to avoid the Griffins!"* Judge Bernstein asked Gerald Orseck about the cell call to the Griffins:

Q. "Did they ever say go ahead and settle it for that amount"

A. "No!"

**(Transcript page: 3-33 line 18-22)**

The complete substance of the above noted phone conversation was *"Dan (Scher) and I spoke last night and he agrees that the most you can expect is between three and four hundred over the price."* (Dan Scher stated that that conversation never took place.) Our response was: *"Absolutely not! Just get our property back!"*

Dan Scher and I made numerous efforts to contact Mr. Orseck in order to make some sense of what amounted to hearsay rumors that a settlement had in fact taken place on July 20<sup>th</sup>. Finally, we were able to establish a conference call with him on July 26<sup>th</sup>, 2005 and we asked him directly, *"Did you enter into a settlement?"* His answer was an emphatic, *"No!"* It is clear that Mr. Orseck was not prepared to admit the truth regarding his own actions, and that he knew that he had not acted in his client's best interests... and so he was even prepared to lie...not just to his client, but to his client's attorney. It follows that his testimony at trial was also peppered with false statements, and the court did so conclude!

Yet another document demonstrating Orseck's lack of authority to settle is his own sworn affidavit. He states: *"I was under the mistaken impression that I had authority to settle the case, but after refreshing my recollection with respect to the communications I had with the client leading up to the hearing, as well as the day of the hearing, I realized that I never had authority to settle this case in any fashion."*

Finally, a further demonstration of Gerald Orseck's arrogance, and total lack of respect for his client's best interests took place during his own testimony at a bench trial. Toward the conclusion of a three

day trial, it became absolutely clear to the court that Orseck had lied, not only to his clients, but to his client's corporate attorney Dan Scher. In his own defense he stated, "*They're musicians your honor!*" And so he usurped our rights based on his own prejudice against our career choices. **(Attached Exhibit: Our Credentials.)**

Judge Bernstein's decision states: "I do not believe Orseck's testimony that he was merely seeking reassurance of his settlement authority when he called the Griffins on the morning of July 20th." "Helen-May had never authorized any settlement, and Orseck called on July 20th to get that authority to settle." "He never got it." "Although Orseck and Paul disagreed on precisely what was said during the brief July 20th telephone conversation, both agreed that Paul did not give Orseck the authority to settle within the range of \$300,000 to \$400,000 over the contract price. Paul testified that he told Orseck to get the Property back, and Orseck said that the call was cut off before Paul could respond. It is difficult to explain why Orseck did not try to call Paul back, right then or during the lunch break, and instead, agreed to the settlement on the record after the lunch recess. Even by his own testimony, he needed reassurance of his authority." "Accordingly, I find that Orseck lacked the actual authority to enter into the settlement." "The evidence demonstrated that Orseck also lacked the apparent authority to settle the case." "I conclude, therefore, that Orseck lacked apparent as well as actual authority to enter into the settlement, and the debtor's motion to enforce the settlement is denied." Dated: New York, New York February 23, 2007

/s/ **Stuart M. Bernstein**

STUART M. BERNSTEIN

Chief United States Bankruptcy Judge

Needless to say, this case was very much complicated by Gerald Orseck's unauthorized settlement. As a direct consequence of his **Breach of Fiduciary, Legal Malpractice, Breach of Contract, False Representation**, we have only recently arrived at a point in the subject bankruptcy case where we would have been in July of 2005. The stay has been lifted, the debtors have been evicted, their case has been converted to a chapter 7 and assigned to a trustee, an adversarial case has been filed by the trustee against the principals of the debtor for their breach of fiduciary obligations, and an adversarial case seeking sanctions has been filed against the debtors and their attorneys. Further causes of action are being sought by the trustee. In our "Proof Of Claims" as submitted in April of 2008, administrative fees are in excess of \$3,000,000.00, while HMM's secured claims exceed \$3,000,000.00. Our Un-liquidated Chapter 11 Administration Damage Claims include: Property Neglect and Damage; Mortgage Debt Increase; Loss of Business Opportunities; and General Financial Damages to Helen May and its Principal, including additional pre, and post petition claims exceeding \$10,000,000.00! Had Mr. Orseck simply acceded to his client's instructions, the damages and the stress caused to us would have been very much mitigated, and most likely a distant memory by now.

Yours Sincerely,

Paul Griffin-Corporate Consultant

Irene Griffin-Managing Member  
[Anatomy Of A Bankruptcy Fraud](#)  
[HOME](#)