

Lawsuit by Divorce Client Against Blank Rome Proceeds

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Body

A JUDGE has refused to dismiss parts of a legal malpractice suit brought by an ex-client of **Blank Rome** who claims the law firm threw her "under the bus" when it simultaneously represented exhusband's employer, **Morgan Stanley**, during her divorce.

Blank Rome matrimonial partners Norman Heller and Dylan Mitchell represented Kristina **Armstrong** against her ex-husband, Michael **Armstrong**. She claims the firm never told her it was also representing her husband's then-employer, **Morgan Stanley**, in lucrative transactions-even when Michael was on the company's management committee-and the firm did not act in her best interests.

Blank Rome moved to dismiss parts of her legal malpractice suit, claiming it contained allegations of conflict that were scandalous and unnecessary. But Manhattan Supreme Court Justice Anil Singh found **Blank Rome** and two partners failed to show that the parts of the complaint lacked relevance or necessity.

Singh, however, dismissed a portion of the complaint for violating New York General Business Law. The parties will proceed to discovery, said Kristina's malpractice attorney, Jonathan Sack, of litigation boutique Sack & Sack.

"I believe the court got it right," Sack said. "There's a message to be sent to the defendants in so far as you need to fully disclose any perceived conflict that you reasonably believe could interfere with the zealous advocacy of a client matter."

"You got to run a conflicts check," he added.

Philip Tuitou, **Blank Rome**'s malpractice defense attorney and a Hinshaw & Culbertson partner, declined to comment.

According to Kristina's complaint, she met Michael while he attended Harvard Business School. They married in 1989 while he was starting his career at **Morgan Stanley** as a salesman in the sales and trading division.

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At that time, Kristina had a modeling career, working in television and advertising.

By 2007, Michael had become a managing director at Morgan Stanley and sat on the bank's management committee, the complaint said. Michael was also head of global and U.S. private wealth management.

Kristina said she discovered in 2007 that her husband was having an affair. About two years later, she filed for divorce in Westchester County Supreme Court. Michael retained Teitler & Teitler and treated the divorce "as all out corporate warfare," Kristina claimed.

She retained Blank Rome in November 2009, paying an upfront retainer of \$25,000. At no point before or after she hired Blank Rome did the law firm disclose to her a "debilitating conflict of interest" because they were simultaneously representing Morgan Stanley, her complaint said.

Kristina said Blank Rome misled and took advantage of her, first by charging exorbitant rates and then by "throwing her under the bus."

Her complaint noted that in the same month she retained the firm, Blank Rome announced it had represented Morgan Stanley as underwriters' counsel in connection with a \$400 million bond deal.

"Attorney Heller and Attorney Mitchell should have never represented Ms. Armstrong in the first place, and thus the entire relationship is shrouded under a veil of conflict, fraud and breach of fiduciary duties owed to a client," Kristina's complaint said.

She said Morgan Stanley "paid Blank Rome millions of dollars in fees, thus allowing Blank Rome to be the ultimate 'puppet master,' as Blank Rome could control Ms. Armstrong's divorce litigation in a manner designed to protect Morgan Stanley and Mr. Armstrong," Kristina wrote.

Kristina said Blank Rome lied to her, negotiated her rights away behind her back and deceived her into signing a stipulation in the divorce proceedings in 2010, where she unwittingly signed a statement providing that the parties are not going to value Michael's securities licenses.

Kristina said Michael's securities licenses were the largest asset of the marital estate. She said Blank Rome should have been aware that the value of the licenses was up to \$16.17 million.

She fired Blank Rome in October 2010 and retained matrimonial firm Kramer Kozek. Kristina claimed she would have received about \$8 million, which is 50 percent of a discounted value of his licenses, if not for Heller and Mitchell's misrepresentation, fraud and malpractice.

Her complaint seeks treble damages, totaling nearly \$25 million, as well as a return of her legal fees of more than \$239,000.

Client 'Turned Against' Firm

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Blank Rome responded to Kristina's suit in September 2013, moving to strike "scandalous, prejudicial and unnecessary allegations" in Kristina's complaint and to dismiss two other claims.

Blank Rome argued "no attorney or law firm, no matter how wellregarded, could satisfy [Kristina's] desire to make her husband 'pay' for his wrongs."

The firm said it and an expert spent extensive time evaluating financial information from Michael and formulating a strategy to help Kristina. The firm said it explained the advantages and disadvantages of settling and the risks of proceeding to trial.

Blank Rome said Kristina knew that a valuation of intangible assets, such as securities licenses, would be vulnerable to attack at trial. "Faced with the decision on how best to proceed, Plaintiff chose to pursue a strategy that would maximize her spousal maintenance, and at the pre-trial conference ... she knowingly executed a stipulation of undisputed fact memorializing that strategy," the firm said.

"She has turned against those who worked assiduously on her behalf and who gave her their honest, experienced advice," **Blank Rome** continued.

The firm disputed any conflict of interest, saying neither Heller nor Mitchell were involved with the **Morgan Stanley** transactions, and Kristina failed to explain how those matters were related to her divorce.

Blank Rome argued the allegations of a conflict were based on a misinterpretation of the New York Rules of Professional Conduct and should be struck.

"Plaintiff should not be permitted to convert what is nothing more than a random coincidence into an opportunity to transform her claims of negligence into ones based on the commission of a fraud," **Blank Rome** said.

"Plaintiff's allegations and unfounded conclusion relating to the existence of a conflict has harmed (and continues to harm) Defendants' reputation, and if they are not stricken from the complaint, that harm will be exacerbated," **Blank Rome** said.

Singh, in his decision, said **Blank Rome** and the partners failed to show that the parts of the complaint lacked relevance, apparent necessity or demonstrated any prejudice.

Singh also denied **Blank Rome**'s request to dismiss Kristina's claim for violation of Judiciary Law §487, which penalizes deceit and collusion by attorneys, finding the pleading requirements are satisfied.

"Moreover, plaintiff is specific in the sum of the damages claimed," the judge said.

But Singh granted **Blank Rome**'s request to dismiss another claim for violation of General Business Law §349, finding the case "is not a consumer oriented transaction."

"How common is it, as plaintiff avers, for the said lawyer to make a practice of continuing to represent both parties without making the required disclosures because the benefits of the conflict are too lucrative to pass up?" he asked.

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