

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

LEILA MELTZER,

Plaintiff,

vs.

DEBRA M. POWELL, ESQ.,

Defendant.

Index No. _____-2023

COMPLAINT

Plaintiff Leila Meltzer, by her attorney Roger J. Bernstein, for her complaint against defendant Debra M. Powell alleges as follows:

1. Plaintiff Leila Meltzer (“Meltzer”) resides in Manhattan. Meltzer was 75 years old at the time of the 2021 real estate transaction which is the subject of this case.

2. Defendant Debra M. Powell (“Powell”) is a practicing real estate attorney. In 2021 her office was located at 250 East 87th Street, Suite 17B, New York, NY 10128; it is now at 215 E. 19th Street, Suite 7G, New York, NY 10003.

NATURE OF THE CASE

3. This is a lawsuit for legal malpractice and breach of contract. Ms. Meltzer retained Powell to advise and represent her in purchasing Apartment 5V at 205 West End Avenue, New York, New York. Powell, who presented herself as a competent attorney practicing real estate law, had a duty, *inter alia*, to protect the confidentiality of her communications with her client Meltzer and a duty to safeguard her email communications with her clients against hacking by third parties.

4. Powell breached these duties. Through her negligence, she permitted cybercriminals to secretly take over (“hack”) her email account and read her confidential emailed communications with Meltzer. These email communications alerted cybercriminals that Meltzer was about to transfer a large sum of money – three quarters of a million dollars – by wire transfer to the seller of Apartment 5V in order to purchase the Apartment.

5. Seeing that a substantial wire transfer was about to take place, the cybercriminals drafted spoofed emails in Powell’s name and with Powell’s email signature block. These emails appeared to be written by Powell. The cybercriminals sent these emails to Meltzer from Powell’s hacked email account, which the cybercriminals had taken control of. Using the spoofed emails, the cybercriminals instructed Meltzer to send funds by wire transfer to a bank account at Fifth Third Bank that purportedly belonged to the seller of the Apartment. In reality, and unbeknownst to Meltzer, this account was under the control of the cybercriminals.

6. Acting under the misimpression that the emailed wire transfer instructions came from her attorney, Meltzer went to HSBC Bank and placed a wire transfer for \$764,100 to the account at Fifth Third Bank indicated in the wire instructions, that is, and unbeknownst to her, the account controlled by the cybercriminals. Two days later Meltzer learned in a telephone call with Powell that the seller had not received the wire transfer. By that time it was impossible to

retrieve any of the wire-transferred funds that had been sent to the cybercriminals' account.

7. Powell's negligence in failing to protect the integrity of her email system, in failing to warn Meltzer of the dangers of wire transfers, and in failing to advise Meltzer of the need for telephone confirmation as to the correct account number prior to wiring money, enabled the cybercriminals to hack into Powell's email account and steal Meltzer's money. Meltzer has lost \$764,100 as a direct and proximate result of Powell's malfeasance. Meltzer is due that amount from Powell in compensatory damages, plus punitive damages, attorney's fees, accrued interest, costs, and the expenses of this enforcement action.

FACTS

8. In the summer of 2021, Meltzer orally agreed to purchase Apartment 5V in the cooperative apartment building at 205 West End Avenue, New York, New York. At the time Meltzer owned and was living in Apartment 7R at 205 West End Avenue, New York, New York.

9. Meltzer retained defendant Powell, who held herself out as a competent and diligent attorney practicing in real estate, to advise, assist and represent her in her purchase of Apartment 5V.

10. On July 13, 2021, Powell provided Meltzer with a retainer letter. In this letter Powell promised Meltzer that Powell would be "representing and advising you in connection with the purchase of Unit 5V at 205 West End Avenue, New York, New York." The retainer letter called for a fixed fee of \$3,500. It further

provided that if the transaction did not proceed as planned then Powell would bill Meltzer at her regular hourly rate for the time actually spent.

11. In conducting her law practice, Powell used an email account provided by “Rackspace” for all of her professional email, including correspondence with Meltzer. Powell’s email address was dpowell@dmp-law.com.

12. In 2021 Rackspace offered its customers “two factor authentication”, which requires the account holder not only to know the email account password (which is possible for hackers and cybercriminals to obtain), but also to use a device such as a cellular phone to receive via a text message a code which must be inputted in order to utilize the email account. This two-factor authentication process makes it far more difficult for an unauthorized user to “hack” into the system.

13. Powell did not employ two-factor identification or, indeed, any other supplementary device to strengthen the security of her account. Thus, she failed to take even the most rudimentary steps to protect Meltzer from cyberfraud. In addition, Powell never advised Meltzer to orally confirm any wire instructions she might receive from Powell via email with the recipient to be sure that the instructions were correct.

14. Powell’s failure to install basic cybersecurity protection had the predictable result: the Powell email account was hacked by unauthorized third parties, some of whom almost certainly were professional cybercriminals. The lack of basic cybersecurity measures also meant that this hack was not detected by Powell. These cybercriminals then learned when and how Meltzer intended to pay

for the Apartment, knowledge that permitted them to pose as Powell and thereby steal Meltzer's money.

15. On July 15, 2021, Meltzer and the owners of Apartment 5V entered into a contract of sale for Meltzer's purchase of the Apartment. The total purchase price was \$849,000. The purchase required a 10% downpayment of \$84,900 with the remaining balance of \$746,100 (the "balance payment") to be paid at closing.

16. On July 15, 2021, Meltzer provided the seller of Apartment 5V with a deposit check in the amount of \$84,900 for the 10% deposit. The seller did not deposit the check until July 29, 2021.

17. On August 17, 2021, Meltzer entered into an agreement for the sale of Apartment 7R at 205 West End Avenue, New York, New York. The seller provided a downpayment in the amount of \$43,250.

18. The real estate broker for both of these transactions was Loretta Edmonds ("Edmonds") of Essential New York Real Estate, LLC.

19. On July 15, 2021, Meltzer applied for a mortgage loan from JP Morgan Chase Bank ("Chase") to finance part of the balance payment for her pending purchase of Apartment 5V. On July 31, 2021, Meltzer's mortgage loan application was approved. This approval was later extended through October 21, 2021.

20. On October 1, 2021, the co-op board for 205 West End Avenue approved Meltzer's purchase of Apartment 5V as well as the sale of Apartment 7R to the purchaser for that apartment.

21. Thereafter Meltzer encountered multiple obstacles at Chase in seeking to schedule closings for the sale of Apartment 7R and the purchase of Apartment 5V on the same date. As a result, on October 21, 2021, she elected to forego using a mortgage loan for part of the \$746,100 balance payment for Apartment 5V.

22. Instead of a mortgage loan, Meltzer elected to make the entire \$746,100 balance payment using money in her savings account at HSBC Bank. In the vocabulary prevalent in the real estate market, a real estate purchase in which the buyer pays the entire price from the buyer's own funds is called a "cash" purchase. Accordingly, Edmonds and Powell discussed by email the fact that Meltzer was going to be paying "cash" for Apartment 5V.

23. Since co-op board approval had been received, the next step was to schedule closings for the purchase of Apartment 5V and the sale of Apartment 7R.

24. On October 18, 2021, Meltzer sent an email to Powell asking whether she needed a bank check or wire transfer to pay off the mortgage on the apartment she was selling (Apartment 7R).

25. On October 18, 2021, the cybercriminals who had hacked Powell's email account sent the following email to Meltzer using Powell's email account and purporting to be Powell:

"Good news, we are looking at Monday for closing and funds need to be with us today or latest tomorrow. please for accuracy confirm the amount you are to wire if wiring will possible today and I will provide you with the wiring instruction for this payment."

26. On Friday, October 22, 2021 at 8:17 a.m., real estate broker Edmonds wrote an email to Meltzer stating:

“You can close with cash.
Debra will have to notify Chase’s lawyers and AKAM”

27. On Friday, October 22, 2021 at 7:37 p.m., real estate broker Edmonds wrote an email to Powell stating that Meltzer would use her own funds to pay for Apartment 5V. A minute later Powell responded:

“I haven’t spoken with her. I have seen the emails but didn’t know if her decision was to pay cash.

28. On Saturday, October 23, 2021, at 8:07 a.m., Meltzer sent Powell an email with a copy to Edmonds stating:

“I will go to the bank to arrange the transfer on Mon. if I have the routing numbers. I would prefer to wire directly to the seller because of what happened with the deposit check.”

The same day at 12:54 p.m., Edmonds sent Powell an email stating that Meltzer:

“. . .will be paying cash for purchase of apt. 5V at 205 WEA at the closing on Oct. 29th at 12 noon”

29. The foregoing messages on October 22 and 23, 2021 were visible to the hackers because Powell had failed to take the steps necessary to secure her communications with Meltzer and Edmonds. The hackers read these emails and responded to them as if they were Powell.

30. Specifically, on October 23, 2021 at 1:44 p.m., impersonating Powell, the hackers sent the following email to Edmonds, with a copy to Meltzer:

“I got the message, I would provide her with the wiring instructions first thing on Monday morning. I will be on

transit and may not be available for a call. Everything is in place, and we will have a successful closing.”

31. On Monday, October 25, 2021, at 6:42 a.m., the cybercriminals impersonating Powell sent Meltzer the following email:

“Hello!

Hope you had a great weekend and a happy new week.

Find attached the wiring instruction for this morning’s wire, I will be busy all day with closing and will not be available for calls.

If you have any questions please revert back to the same email thread and I will revert back immediately.”

The attached wiring instructions were for an account at Fifth Third Bank in Georgia.

32. At 7:13 a.m. on October 25, 2021, Meltzer sent an email to Powell’s email address asking for confirmation that the correct amount to be wired was \$764,100 since this amount was not stated in the wiring instructions.

33. At 7:38 a.m. on October 25, 2021, the cybercriminals, again using Powell’s hacked email account and continuing to impersonate her, responded that the amount for Meltzer to wire was \$764,100. They also requested that Meltzer send a wire confirmation once the funds were wired.

34. At approximately 10:00 a.m. on October 25, 2021, Meltzer caused HSBC to wire \$764,100 to the account in the wiring instructions that appeared to have been sent by Powell but unbeknownst to her had actually been sent by the

cybercriminals. Meltzer then sent an email to Powell's email account stating that the wire transfer was done.

35. Powell did not see this email or learn anything about what was happening to her client because her email account was under the control of the hackers.

36. At 12:36 p.m. on October 25, 2021, still impersonating Powell, the cybercriminals told Meltzer that they needed her Social Security number so that "the transfer taxes can be prepared." This ruse enabled the cybercriminals to steal Meltzer's Social Security number and exposed her to further cybercrimes with her fraudulently obtained Social Security number.

37. On Tuesday, October 26, 2021 at 3:14 p.m., Meltzer sent Powell an email asking where the closing on Apartment 5V would be held. Still pretending to be Powell, the cybercriminals responded: "I will let you know by Thursday."

38. On October 27, 2021, Meltzer learned from Powell in a telephone call that Powell was unaware of the hacker's emails directing Meltzer to wire transfer \$764,100 to Fifth Third Bank.

39. On October 27, 2021, at approximately 10:00 p.m., Meltzer notified HSBC by telephone of the fraudulent wire instructions and requested that HSBC seek the return of the transferred funds.

40. HSBC sent a request to Fifth Third Bank for recall of the wire transfer, a step which could only succeed if the cybercriminals had not already withdrawn the wired funds from their Fifth Third Bank account. No recall of the

wired funds ever took place, and therefore HSBC could not return the stolen \$746,100 to Meltzer.

41. Meltzer was obligated to retain another attorney to explain to the seller of Apartment 5V what had happened and to attempt to unwind the pending purchase of that apartment. The seller of Apartment 5V retained \$14,000 of Meltzer's downpayment and sent Meltzer the balance. The result was a total loss of \$760,100.

42. Having lost the ability to purchase and move into Apartment 5V because of Powell's malpractice, Meltzer could not proceed with the sale of Apartment 7R. She had to cancel that transaction as well and returned the downpayment she received for the sale of Apartment 7R.

FIRST CAUSE OF ACTION FOR LEGAL MALPRACTICE

43. The facts in paragraphs 1-42 above are realleged and fully incorporated here by reference.

44. As Meltzer' attorney, Powell had a duty to provide competent representation, to act with reasonable diligence, and to maintain the confidentiality of client information and communications.

45. As a legal professional who regularly performed and/or supervised financial transactions that were conducted electronically, Powell was aware or should have been aware of the danger of cybercrime, hacking and imposture.

46. To represent Meltzer competently and protect Meltzer (and other clients) from cybercrime, Powell had a duty to take reasonable and necessary

security precautions, such as the use of two-factor authentication or other protective software and such as alerting her client to the prevalence of fraud in wire transfer transactions. Powell had a duty to take measures including but not limited to the following:

- a. Readily available measures to secure her email account and computer, including the data contained within them, from unauthorized third parties.
- b. Readily available measures to prevent Powell's email account from being used by unauthorized third parties.
- c. A strict policy of orally confirming instructions for the electronic transfer of funds belonging to clients, including advance notification to clients that funds should not be transferred by wire unless Powell orally confirmed the correctness of any emailed wiring instructions.
- d. Oral confirmation, following the electronic transfer of funds, to establish that the funds were actually received by the intended party.
- e. The immediate investigation of any incident involving crime or cybercrime, to determine its cause, its perpetrator, and the possibility of remedying or mitigating any loss.

47. Powell failed to take any of these precautionary measures and failed to protect confidential communications with her client from intrusion. This failure had disastrous results: cybercriminals were able to hack Powell's email system and gain access to her confidential communications with Meltzer. With the information these criminals gained they were able to impersonate Powell and mislead Meltzer into wiring her money to an account controlled by the cybercriminals instead of the Apartment 5V seller.

48. Had Powell taken readily available and necessary steps to secure her email account from unauthorized intrusion, cybercriminals would not have been

able to steal Meltzer's \$746,100 and Meltzer would not have lost \$14,000 of her downpayment. Powell, however, was oblivious to the threat of cybercrime and did nothing to protect Meltzer from this form of fraud.

49. To summarize, Powell's disregard of her duty to protect Meltzer's interests was the direct and proximate cause of Meltzer's loss of \$760,100. Powell is liable to Meltzer in the amount of \$760,100 in compensatory damages, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this enforcement action.

SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT

50. The facts in paragraphs 1-42 above are realleged and fully incorporated here by reference.

51. Pursuant to her retainer agreement, Powell had a duty to represent and advise her client with respect to the purchase of Apartment 5V.

52. Powell failed to perform this duty. She failed to advise Meltzer as to the prevalence of fraud in wire transfer transactions, and she failed to advise Meltzer as to the importance of confirming wire transfer instructions with the intended recipient before sending a wire.

53. Powell did not send Meltzer a bill for legal services, tacitly admitting that she had failed to perform the services she had promised to provide.

54. As a direct and proximate result of Powell's breach of her contractual duty to advise Meltzer as to the prevalence of fraud in wire transfer transactions and as to how to handle a wire transfer safely, Meltzer lost \$746,100 to the

cybercriminals who had hacked Powell's email account as well as \$14,000 of her downpayment. Powell is liable to Meltzer in the amount of the total loss of \$760,100, plus punitive damages, attorneys' fees, accrued interest, costs, and the expenses of this enforcement action.

WHEREFORE, Plaintiff Leila Meltzer demands:

A. On her First Cause of Action against Debra M. Powell, a monetary judgment for an amount to be established at trial but in any event no less than \$760,100, plus punitive damages, attorney's fees, accrued interest, costs, and the expenses of this enforcement action;

B. On her Second Cause of Action against Debra M. Powell, a monetary judgment for an amount to be established at trial but in any event no less than \$760,100, plus punitive damages, attorney's fees, accrued interest, costs, and the expenses of this enforcement action; and

C. Such additional and further relief as this Court may deem just and proper.

Dated: New York, New York
August 1, 2023

s/ Roger J. Bernstein
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