

**IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

Case No. SC17-2058

L.T. Case No. 2D13-6051 Consolidated With L.T. Case No. 2D14-86

L.T. Case No. 06-CA-5366 Consolidated With L.T. Case No. 13-CA-5139

TRIAL PRACTICES, INC.	vs.	HAHN LOESER & PARKS LLP, as Substitute Party for Jack J. Antaramian
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Petitioner

Respondent

**RESPONDENT’S RESPONSE IN OPPOSITION TO
PETITIONER’S MOTION TO STRIKE PORTIONS OF
RESPONDENT’S APPENDIX AND PORTIONS OF THE ANSWER BRIEF**

RESPONDENT, HAHN LOESER & PARKS LLP, responds to Petitioner’s, Trial Practices, Inc. (“TPI”), Motion to Strike Portions of Respondent’s Appendix and Portions of the Answer Brief Which Rely on the Stricken Record dated June 12, 2018, and shows:

Respondent’s Appendix G -Motion to Supplement the Appellate Record and the Appendix Thereto

1. TPI’s Initial Brief provides as follows:

On November 10, 2011, Antaramian amended his motion for attorneys’ fees and costs. (R.7000-7017). He did not support the amended motion with affidavits or other evidence of attorneys’ fees or costs paid. (*Id.*)

(Initial Brief, pg. 9, ¶2).

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2. The Affidavit of Robert Frazitta, dated November 11, 2011 (R11849-11853¹), attaches a spreadsheet identifying billings from the professional witnesses.

3. TPI, through the Initial Brief, contends that it was not aware of the billings from the professional witnesses, even though they are set forth on the spreadsheet attached to Mr. Frazitta's Affidavit, until it received the backup invoices, and indicates to this Court that the fact that professional witnesses billed for their time and expenses was hidden by Respondent, and that TPI was not aware of the billings from the professional witnesses until "twenty-two months after the trial – and after the appellate affirmance" in Case Number 2D11-5673² (Initial Brief, pg. 9, ¶3).

4. As set forth in Appendix G to Respondent's Answer Brief, the Affidavit of Mr. Frazitta was in fact provided to TPI's counsel in the trial court case and in this Case, Mr. Romano, on November 11, 2011, less than one month following the entry of the jury verdict final judgment (R4510), four months prior to

¹ The trial court transmitted a portion of its case file for L.T. Case Number 06-CA-5366 to the Second District on June 18, 2014, as the Original Record on appeal in Case Nos. 2D13-6051 and 2D14-86, which consists of 13,473 numbered pages. The Original Record transmitted by the trial court to the Second District will be cited to with the abbreviation "R" followed by the Original Record page number (*e.g.*, R4080).

² *Trial Practices, Inc. v. Antaramian*, 97 So. 3d 228 (Fla. 2nd DCA 2012) (table decision).

TPI's Initial Brief in Case No. 2D11-5673, and approximately 1.5 years prior to the evidentiary hearing on attorneys' fees and costs in May and July of 2013.

5. TPI did not call any witnesses at the attorneys' fees and costs hearing to say that TPI's counsel, Mr. Romano, did not receive the affidavits in November of 2011. This included not calling Mr. Romano as a witness at the evidentiary hearing to testify that he did not receive the affidavits earlier. In fact, TPI made no argument at the attorneys' fees and costs hearing whatsoever that the professional witnesses' billings were secret, hidden, or not timely disclosed. (Transcripts of the two-day evidentiary hearing on Respondent's request for attorneys' fees and costs are located at R9762 – 9856 and R9867 – 9968 respectively).

6. The Second District's order denying the Motion to Supplement the Appellate Record (DCA R1303³), which is attached to TPI's Motion to Strike as Exhibit "1," does not change the fact that the Motion to Supplement itself and the Appendix thereto are part of the Second District's case file, and therefore, are appropriately included in the Second District's record (*see* DCA R1247 – 1293). Despite the fact that the Second District denied the Motion to Supplement and struck the proposed documents included in the Appendix from the record it

³ Citations to the Record of the Second District shall to be to the Record in the main Second District case, Case No. 2D13-6051, which consists of 1,657 PDF pages. The Second District's Record for Case No. 2D13-6051 will be cited to with the abbreviation "DCA R" followed by the Second District's PDF Record page number (*e.g.*, DCA R1581).

considered in forming its Opinion (DCA R1569 – 1587), both the Motion and the Appendix are in fact part of the Second District’s record, and this Court may consider and/or rule on whether to consider the Motion to Supplement and the Appendix thereto.

7. Respondent requests this Court to allow Appendix G and the citations thereto in the Answer Brief to remain as they are. Alternatively, if this Court is inclined to grant Petitioner’s request, Respondent requests this Court to allow it to amend its Answer Brief to make the following changes:

Changes to Answer Brief⁴, pg. 6, ¶2 – pg. 7, ¶1:

Supporting affidavits for Antaramian’s request for attorneys’ fees and costs were provided to TPI ~~on~~ *in* November ~~11~~, *of* 2011. (See TPI’s Post-Hearing Memorandum ~~at~~ *at* R13207, ¶ 2; *R12554*, ¶2; *and R12626*, ¶2 App. G, pg. 272/~~DCA R1254 and App. G., pgs. 293–297/DCA R1275–1279; and see generally Hahn Loeser’s Motion to Supplement the Appellate Record, along with the Appendix thereto, at App. G/DCA R1247–1293.)~~

* * *

Changes to Answer Brief, pg. 31, ¶ 2 – pg. 32, ¶1:

TPI, through its Second Corrected Post Evidentiary Hearing Memorandum (related to Antaramian’s request for attorneys’ fees and costs), conceded that:

On November 10, 2011, Antaramian amended his motion for attorneys’ fees and costs, and submitted affidavits of Messrs. Cheffy, Roehn and Koester, Defendant’s three

⁴ Deletions to text will appear in ~~strike through~~ and additions to text will appear in *italics*.

lead attorneys in the case at various point[sic] in time, and of Robert Frazitta, Defendant's controller, claiming attorneys' fees and costs totaling over \$2.48 million. . .

(R13207, ¶ 2) (*See also TPI's initial and first corrected Memoranda at R12554, ¶2; and R12626, ¶2.*) The spreadsheet attached to Mr. Frazitta's Affidavit of November, 2011, clearly sets forth the billings from the Professional Witnesses, *and specifies the amounts billed and the timeframes for the billings* (see R11848-11853). ~~In fact, Antaramian's counsel provided Mr. Frazitta's Affidavit (including the spreadsheet attached thereto identifying the Professional Witnesses' firms and specifying the amounts billed and the timeframes for the billings from such firms) to TPI's counsel, Mr. Romano, by email on was provided to TPI in November 11, of 2011 (less than one month following the entry of the jury verdict final judgment (R4510), four months prior to TPI's Initial Brief in Case No. 2D11-5673, and approximately 1.5 years prior to the evidentiary hearing on attorneys' fees and costs). (See App. G, pg. 272/DCA R1254 and App. G., pgs. 293—297/DCA R1275—1279; and see generally Hahn Loeser's Motion to Supplement the Appellate Record, along with the Appendix thereto, at App. G/DCA R1247—1293.)~~

8. The above suggested revisions would still keep Respondent's Answer Brief within the required page limit.

Respondent's Appendix H – Excerpts from Respondent's Trial Exhibit 8: TPI's Mock Trial Results Report

9. Appendix H to Respondent's Answer Brief is demonstrative of the evidence presented during the jury trial. Appendix H also supports the following record citations contained in Respondent's Answer Brief (*see* pg. 18, ¶(ii), and pg. 19, ¶2), wherein TPI's President, Harvey Moore, testified at trial regarding Respondent's trial exhibit 8:

4 Q. Take you to page 95. You advised Mr.
5 Antaramian to strike blacks and Hispanics from the jury;
6 correct?

7 A. I told Mr. Antaramian that African Americans,
8 blacks, and Hispanics did not like cases like this.

(R8018, Tr., pg. 862, lines 4 – 8).

* * *

3 things we discussed, we had – **we had a discussion about**
4 **Mr. Antaramian's first**, of course, **which was at that**
5 **time acrimonious.**

6 There were problems with it because of the way in
7 which the defense was characterizing, when Nassif would
8 characterize those loan payments, and fair or unfair, I
9 have no basis for knowing whether it was an unfair
10 characterization, **that it was used to deceive his wife**
11 **in her divorce, because if you have no income, you're –**
12 **you're in more control of how much will be allocated to,**
13 **as I understand it, to alimony.**

14 Q. And it's your understanding, the Nassif lawyers
15 were going present that argument and that evidence.
16 They did in the mediation, didn't they?

17 A. Well, we presented it in the mediation as a way
18 of explaining, I believe, why the loans were necessary.
19 **It was characterized as an acrimonious divorce by us.**

20 **There weren't any plans to use his – that wife**
21 **in that trial, this next trial.**

(emphasis supplied) (R7830, Tr., pg. 704, lines 3 – 21).

* * *

8 BY MR. KOESTER:

9 Q. Under Defense Exhibit 8, which is the mock
10 trial results, you have set forth part of an opening
11 statement that basically said, "Because of Mr.
12 Antaramian's success in developing real estate in Boston,
13 he paid his first wife seven-and-a-half million dollars

14 in alimony for five years following his departure from
15 Boston and his move to Marco Island.” Do you recall
16 that?

17 A. I don’t recall saying that, no, sir.

18 Q. In your mock trial results on page 28, there is
19 the statement, “You heard Mr. Antaramian talk about the
20 alimony that he was paying to his first wife in Boston.
21 It was significant. Mr. Antaramian, because of his
22 success in developing real estate in Boston, paid his
23 first wife seven-and-one-half million dollars in alimony
24 for the five years following his departure from Boston
25 and his move to Marco Island.” Do you acknowledge that
(Pg. 812)

1 this was in your mock trial results report?

2 A. I don’t know what section of that report it’s
3 in, if it was something that I said or something that Mr.
4 Tripp or Mr. Farese said.

5 Q. Yes or no, sir, do you recognize this as being
6 in your mock trial results report?

7 A. Yes.

(R7967 – 7968, Tr., pg. 811, line 8 – pg. 812, line 7).

10. The basis for Respondent’s inclusion of Appendix H to its Answer Brief is TPI’s attack on the underlying jury trial, which has already been Per Curium Affirmed in Case No. 2D11-5673, and its request that this Court make findings regarding the underlying jury trial.

11. The trial court judge, on the first day of the two-day evidentiary hearing on Respondent’s request for attorneys’ fees and costs from TPI, ruled that the trial court would consider all of the trial court’s case file (which includes the trial exhibits and the transcripts of trial). An example of the trial court judge’s ruling is as follows:

16 THE COURT: As I've previously ruled, the
17 affidavits are part of the court file; so the Court
18 considers everything in the court file in
19 connection with the fee hearing, but it's the live
20 testimony and the exhibits that the Court considers
21 with regards to fees.

(R9834, Tr. pg. 207, lines 16 – 21).

12. Respondent's trial exhibit 8 was in fact admitted into evidence at the jury trial (*see* trial transcript at R9229, lines 8 – 15; and Clerk's Summary regarding exhibits received into evidence at R25), was taken judicial notice of by the trial court at the evidentiary hearing on attorneys' fees and costs, and was part of the record before the Second District in Case No. 2D11-5673 (*see* excerpts from the index to the record on appeal in Case No. 2D11-5673, which are attached hereto as Exhibit "A").

13. Respondent requests this Court to allow Appendix H and the citations thereto in the Answer Brief to remain as they are. Alternatively, if this Court is inclined to grant Petitioner's request, Respondent requests this Court to allow it to amend its Answer Brief to make the following changes:

Changes to Answer Brief, pg. 18, ¶(ii):

(ii) Falsely testified that Antaramian conspired and avoided payment of alimony to his ex-wife (while TPI's own Mock Trial Results Report in the Nassif case showed that Antaramian had paid his wife \$7.5 million in alimony, which was above and beyond what he was required to pay). Compare Moore's testimony at Trial Tr., pg. 704, lines 3 – 21, R7830, with cross-examination of Moore at Trial Tr., pg. 811, line 8 – pg. 812, line 7, R7967 – 7968; ~~and see also excerpt from~~

~~TPI's Mock Trial Results report in the Nassif case at App. H, pg. 313, ¶5;~~

* * *

Changes to Answer Brief, pg. 19, ¶2:

. . . Inexplicably, TPI's Mock Trial Results Report in the Nassif case even advised Antaramian to "Strike . . . Blacks and Hispanics" from the jury (see Trial Tr., pg. 862, lines 4 - 8, R8018; ~~and excerpt from TPI's Mock Trial Results report in the Nassif case at App. H, pg. 314).~~

14. The above suggested revisions would still keep Respondent's Answer Brief within the required page limit.

WHEREFORE, RESPONDENT, HAHN LOESER & PARKS LLP, respectfully requests this Court to deny Petitioner's Motion to Strike Portions of Respondent's Appendix and Portions of the Answer Brief Which Rely on the Stricken Record dated June 12, 2018, or in the alternative, allow Respondent to amend its Answer Brief as set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2018, I transmitted a true and correct copy of the foregoing document by electronic mail, through the Florida Courts E-Filing Portal, to:

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IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, LAKE LAND FLORIDA

FEB - 8 2012

TRIAL PRACTICES, INC.,
Plaintiff/Appellant

Vs.

CASE NO. 06-CA-005366

JACK J. ANTARAMIAN,
Defendant/Appellee

APPELLATE CASE NO. 11-5673

APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH
COUNTY

THE HONORABLE, RICHARD A. NIELSEN
CIRCUIT COURT JUDGE

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Exhibit "A"

Apr. 11, 2011

Continuation of:
Defendant's Evidence

Ex. 8 - 10/05/2005
TPI's Mock Trial Results
Report in Antaramian v.
Nassif Case 5935-6123

Ex. 12 - 11/23/2005
Correspondence from Ted
Tripp to Dr. Moore,
Informing TPI of Settlement
Negotiations with Nassif 6124-6127

Ex. 15 - 05/17/2005
TPI Phone Messages in
Antaramian v. Nassif Case
05/05/06 (TPI0209-TPI0210) 6128-6131

Defendant's Evidence Continued on to Volume 36