

LAW OFFICES  
**COE AND BROBERG**  
PALM BEACH, FLORIDA 33480

CHARLES FRANCIS COE (1930-1978)  
JUSTICE OF THE PEACE, JR.  
PATRICK BROBERG  
JOHN S. WILBUR, JR.

May 13, 1991

P. O. BOX 066  
223 PERUVIAN AVENUE  
TELEPHONE (407) 853-0666  
TELEFAX (407) 853-0666

Ms. Marcha Stiller  
Clerk of Courts, Martin County  
Martin County Courthouse  
Post Office Box 779  
Stuart, Florida 34995

Re: Murphy v. Steinberg & Lyman and Ascenio  
Circuit Court Case No.: 88-94 CA  
Judge: John E. Fennelly

Dear Ms. Stiller:

Enclosed please find the original and one copy each of Defendant Manuel P. Ascenio's pro se Motion to Set Aside Final Judgment and Motion to Dismiss in the above-referenced matter.

Please accept these pro se Motions for filing with your office as Defendant is presently unreachable in order to have him sign same. You may return the copies, stamped as "filed", to this office. I have enclosed a self-addressed, stamped envelope for your use in this regard.

Thank you for your prompt attention to this matter. Please contact this office should you have any questions or comments in this regard.

Cordially,

*John S. Wilbur, Jr., Esq.*  
John S. Wilbur, Jr., Esq.

SIGNED IN ATTORNEY'S ABSENCE TO EXPEDITE

/s/amm  
Encl.

cc: Mr. Manuel Ascenio  
1725 York Avenue  
New York City, NY 10120

2-24/0048A  
6077.0

0094 0222

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR MARTIN COUNTY, FLORIDA

NORMAN E. MURPHY,

Plaintiff,

vs.

STEINBERG & LYMAN, a Limited  
Partnership, and Manuel P.  
Ascensio, individually

CASE NO. 88-24 CA

Assigned Judge: FENNELLY

Defendants.

NOTICE TO SET ASIDE FINAL JUDGMENT

The Defendant, Manuel P. Ascensio, (hereinafter referred to as "Ascensio") proceeding pro se, appearing specially and without admitting this Court's jurisdiction over him, pursuant to Florida Rules of Civil Procedure, including F.R.C.P. 1.540, moves this Court to vacate, void and set aside the FINAL JUDGMENT in the above styled cause for reason of fraud upon the Court by the Plaintiff, and the Plaintiff's attorneys Noel A. Bobko ("Mr. Bobko") and Robert L. Kilbride ("Mr. Kilbride"). The defendant sets forth the following in support thereof:

1. On or about November 9, 1987 the Plaintiff through the above referred attorneys filed a complaint against Steinberg & Lyman and Ascensio with the National Association of Securities Dealers ("NASD"), the leading securities industry self-governing organization. The NASD complaint contained the same allegations made by the Plaintiff to this Court and was based on the same transaction. The NASD found Ascensio without fault. The NASD determined that Ascensio had not acted unfairly, nor violated any of

the NASD's rules and regulations, which govern the subject transaction. Based on Asencio's statement to the NASD, Asencio has been completely and without question cleared of any wrongful acts. The Plaintiff and his attorneys knew of Asencio's statements to the NASD and the result of the NASD's investigation.

The "Findings of Fact" specifically states that Mr. Kilbride testified in Court that the Defendant (which presumably refers to Asencio and not Steinberg & Lyman) had: "admitted that the willful and intentional acts of the Defendant (again Defendant is not defined) resulted in the Plaintiff's loss". Mr. Kilbride knew that Asencio had vehemently denied any wrong doing. Mr. Kilbride knew this through the NASD proceeding, and through conversations held between him and Asencio while Mr. Kilbride was acting as Plaintiff Murphy's lawyer. As is set forth in Paragraph 6 herein the Plaintiff attempted but failed to obtain an affidavit or settlement from Asencio because of his complete denial of any guilt. To the contrary Asencio stated to Mr. Kilbride that he had provided the Plaintiff with accurate, professional and ethical service and advice.

Mr. Kilbride's testimony was knowingly false and a complete sham. Mr. Kilbride knew that the Court would rely on his false testimony. Plaintiff Murphy paid Mr. Kilbride to testify against Asencio. The Court relied on the Plaintiff's fraudulent statements in granting the judgment.

2. The NASD has a arbitration proceeding set up specifically to mediate customer claimants. The NASD handles complaints like the Plaintiff's and many that are far more complex and substantial. It is expert in handling these claims. The Plaintiff was able to bring this case before the Court only because he had purposely refused to submit the proper account documents, which would have made him subject to mandatory arbitration. The Plaintiff wished

to avoid the NASD's export arbitration in order to resorted to the Court where he could pervert a very simple situation into a complex case through Plaintiff Murphy's frauds and perfidice.

3. The Plaintiff solicited and obtained financial advice from Asensio. The Plaintiff gained from utilizing Asensio's counsel by selling securities, which as Asensio predicated thereafter fell substantially in value. However, despite many demands made upon him (Exhibit I is a copy of a mailgram sent to him by Steinberg & Lyman) the Plaintiff either witlessly and stupidly refused to make delivery or did so under a plan to sale the securities at a later date for what he hoped to be a higher price. (Paragraph 8 below includes information about the transaction concerning the Plaintiff.) Regardless, the Plaintiff failed and did not in anyway whatsoever even attempt to make proper deliver of the securities he had sold. Without sending or delivering what he wanted to sell he could not be paid. No one, not Asensio or Steinberg & Lyman, could have stopped or prevented the Plaintiff from delivering the securities, if he wanted to. Only the Plaintiff could either do it or not for himself. The Plaintiff did not deliver the securities to either Asensio or Steinberg & Lyman because he chose not to do it. He did as he wished and delivered the securities somewhere else. These facts and statements were hidden by the Plaintiff from the Court. The Plaintiff is completely devoid of even basis for a claim.

4. The Plaintiff later sold the subject securities, where he presumably finally delivered the sold securities and was paid. Furthermore, the Plaintiff then settled with Defendant Steinberg & Lyman for about \$12,000. The amount of the settlement and the proceeds from the sale were not disclosed to the Court. Asensio denies that the Plaintiff had any damages. However, even if somehow the Plaintiff fabricated a false calculation of some kind

of fake damages the Court would need to know the amount that the Plaintiff had gotten when he sold and settled in order to render and calculate any award. Therefore, the calculation of damages, which the Court required the Plaintiff to demonstrate as not excessive before granting the Final Judgment, was totally misleading and fraudulent.

5. No money or securities has or had ever exchanged between the hands of Ascensio and the Plaintiff. No contract, written or verbal, was ever entered into by Ascensio with the Plaintiff. Therefore, it is impossible for the Plaintiff to show, calculate or prove any damages whatsoever. Since the Plaintiff could not prove or even allege otherwise these facts were hidden from the Court.

6. Ascensio did not benefit in anyway whatsoever from any of the alleged acts in the Complaint. The award against Ascensio who was only acting as an agent, and did nothing nor is it alleged that he did anything individually, could not be rendered or economically justified and was granted based on the frauds, lack of disclosures and lies presented to this Honorable Court by the Plaintiff and his attorneys Messrs. Bobko and Kilbride.

7. On March 26, 1989 Mr. Bobko delivered to this Honorable Court an original "Final Judgment" to be signed and entered (a copy of this is attached hereto as Exhibit II). On March 31, 1989 Mr. Bobko delivered a revised Final Judgment titled "Findings of Fact" (a copy of this is attached hereto as Exhibit III). The revision was made pursuant to a discussion between his Honor and Mr. Bobko referred to in Mr. Bobko's cover letter to the "Findings of Fact" (this letter is attached as Exhibit IV).

The Court required that the "Findings of Fact" specifically state that Mr. Kilbride had testified that the Defendant (which presumably refers to Asensio and not Steinberg & Lyman) had: "admitted that the willful and intentional acts of the Defendant (again Defendant is not defined) resulted in the Plaintiff's loss". Based on this testimony the Court found that the claimant had demonstrated to the Court that the award is not excessive.

Mr. Kilbride, the Plaintiff and Mr. Bobko committed a fraud upon the Court by lying, and failing to disclose important facts related to any alleged Asensio statement. The following is set forth in support of this claim by the Defendant Asensio of the fraud knowingly committed by Mr. Kilbride, the Plaintiff and Mr. Bobko:

(a) Mr. Kilbride was the Plaintiff's attorney in the matter. All of Asensio's dealings with him concerning facts of the case were limited to discussions about an affidavit he wished Asensio to sign. (A copy of his cover letter and the original Affidavit are attached hereto as Exhibits V and VI.) The Affidavit contained errors of fact and demonstrated Mr. Kilbride's lack of understanding of the specific securities transaction alleged in the Plaintiff's complaint and securities business in general. Based on Asensio's conversation with Messrs. Kilbride and Bobko a revised affidavit was drafted. (A copy of this second cover letter and the revised Affidavit are attached hereto as Exhibits VII and VIII.)

(i) Asensio told Mr. Kilbride, the Plaintiff and Mr. Bobko that the Affidavit was incorrect, untrue and misinformed, and therefore refused to sign it.

(ii) Neither Affidavit contains any evidence that Asensio had made any statements that admitted to any wrongful and willful acts that caused the Plaintiff loss.

(iii) Asensio not only denied having caused any loss but stated in writing in his answer to the NASD that Norman Murphy was

interested in keeping the securities in order to sell them elsewhere and at what he thought could be higher prices.

(b) Asensio stated to Mr. Kilbride, the Plaintiff and Mr. Bobko that he was in no way whatsoever interested in holding any settlement discussions. Asensio stated to each of them that he was an agent of Steinberg & Lyman, did not receive any compensation in the subject matter and was not involved in anyway whatsoever with any acts that the Plaintiff alleges caused him damage. Asensio sought not to admit guilt but to obtain a Covenant Not to Sue from the Plaintiff in all his discussions with Mr. Kilbride. (A copy of a cover letter to and the Plaintiff's proposed Covenant Not to Sue Asensio are attached hereto as Exhibits IX and X.)

Each of the above referred to statements and documents in this Paragraph 6 and its subparagraphs (a) and (b) shows the calculated frauds and lies that the Plaintiff and his attorneys used in obtaining the Final Judgment from this Court. Their fraud was clearly committed with the full knowledge of the Honorable Court's requirement that the Plaintiff include in his Findings of Facts statements alleging that Asensio admitted to a wrong doing. The Plaintiff knew this to be completely untrue. In all of their dealings with Asensio, in the NASD complaint, the Covenant not to sue and the Affidavit, there is no evidence that Asensio said or thought that either he had done anything to cause the Plaintiff a loss or admitted that the Plaintiff had suffered a loss. The Plaintiff knew the Court would rely on Mr. Kilbride's false statements.

7. Plaintiff had already voluntarily dismissed the above styled cause against Defendant, Steinberg & Lyman, and granted a complete general release in the matter to it and all its officers, directors and employees. The Plaintiff's Dismissal and General

Release (Copies of which are attached to the Defendant's Motion to Dismiss as Exhibits III and IV thereto) ~~MUST~~ include Acensio since in all acts alleged by the Plaintiff, Acensio was an agent of Steinberg & Lyman. Furthermore, no allegations are made of Acensio individually. Since Steinberg & Lyman carried and controlled the Plaintiff's account and not Acensio, he could have done any of the alleged acts individually.

8. The Plaintiff did not have an account with Steinberg & Lyman. The Plaintiff desired to sell securities through Steinberg & Lyman. The firm's compliance officer agreed to allow the Plaintiff to sell the securities in a new account based on the Plaintiff's agreement to Federal Express the certificate on the day of the sale. The Plaintiff failed to do so. Acensio telefaxed a copy of the sale confirmation to the Plaintiff so that the Plaintiff would send his securities via Federal Express on the day after the sale. The Plaintiff failed to do so. The new account had no cash or securities to act as collateral against the sale. Steinberg & Lyman and Acensio were completely at risk in the transaction. The stock market crash of 1987 occurred between the day the securities were sold and when Plaintiff Murphy was to have delivered his securities. Steinberg & Lyman and Acensio were responsible for the transaction. Acensio and Steinberg & Lyman contacted the Plaintiff several times in an attempt to get him to make good delivery. The Plaintiff wished to delay delivery to see if the securities would rise in price in the post-Crash recovery period. Since the Plaintiff did not have any securities or cash on deposit he was not at risk and he could then resell the securities elsewhere.

The facts that the Plaintiff did not have an account at Steinberg & Lyman prior to the sale, the Plaintiff's agreement to Federal Express the securities and the Plaintiff's subsequent sale the securities elsewhere were all hidden from the Court. In fact



the Plaintiff blatantly lied to the Court when he testified that he had delivered or attempted to deliver the securities to Steinberg & Lyman. The Court relied on these outrageous omissions and flagrant lies in granting the judgment.

9. The Plaintiff was never served with a copy of the Plaintiff's complaint or with any notice of trial.

10. Ascensio retained Peter J. Snyder as his attorney (Florida Bar No. 324982) in this case. Mr. Snyder had been Ascensio's paid legal representative in both personal and business matters since on or about March, 1985. On November 21, 1989 Mr. Snyder wrote to Ascensio representing that he would file a motion to void and vacate this Final Judgment. (Exhibit IX is a copy of this "Client Memorandum".) Mr. Snyder failed to file the motion. Ascensio learned of this failure in April, 1990 and has therefore decided to take this action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing including the Exhibits referred to therein was furnished by mail to Noel A. Hobbs, of Kohl, Hobbs & McKay, P.A., 2600 South Federal Highway, Stuart, Florida 34989-0809, attorney for the Plaintiff, and Gerald Meyer, of Buchner, Tally & Martell, 7151 West Commercial Boulevard, Suite 5109, Ft. Lauderdale, Florida 33309, attorney for Defendant Steinberg & Lyman, this the \_\_\_ day of May, 1990.

---

Kennel F. Ascensio  
1725 York Avenue  
New York, New York 10128