

## Lawyer's persistence brings \$20K sanction



Gary Feinerman

By [Patricia Manson](#)

Law Bulletin staff writer

A lawyer who continued to pursue employment-related claims against a defendant after it became clear his client had no case against the man was slapped with a \$20,049 sanction.

In a written opinion Monday, U.S. District Judge Gary Feinerman directed Syracuse, N.Y., attorney Lewis Graeme Spicer and his firm, Levine & Blit PLLC, to pay the attorney fees and expenses incurred by Patrick Maguire after April 24, 2014.

That was the day a witness' testimony revealed Maguire did not qualify as an "employer" under the Fair Labor Standards Act or the Equal Pay Act and, therefore, was not liable for alleged violations of those statutes, Feinerman wrote.

He wrote "sanctionable conduct" by Spicer and his law firm in the case was "the rule rather than the exception."

Feinerman noted he had imposed a \$5,000 sanction on Spicer in the same case in April 2015.

The 7th U.S. Circuit Court of Appeals upheld that sanction eight months later, finding Spicer's excuses for his misconduct were "pathetic," Feinerman wrote, quoting *Egan v. Pineda*, 808 F.3d 1180 (7th Cir. 2015).

Spicer represented Julia Egan in a lawsuit alleging she was a victim of discrimination and harassment while working as a regional vice president for Huntington Copper LLC, a business-management firm based in Cincinnati.

Defendants in the suit included Maguire, who founded Huntington Copper's predecessor, Huntington Copper Moody & Maguire Inc.

Maguire sold the firm in July 2010, but stayed on as a consultant in order to keep his health-care benefits, Feinerman wrote in his opinion.

However, Feinerman wrote, Maguire performed no work for the successor firm and never served as Egan's supervisor.

The suit Spicer filed on behalf of Egan alleged Maguire was personally liable for the discrimination and harassment she purportedly suffered because he maintained day-to-day control of the firm, Feinerman wrote.

That assertion, he wrote, prompted Maguire to serve Spicer and Levine & Blit with a

motion for sanctions under Federal Rule of Civil Procedure 11, accusing them of failing to conduct an adequate investigation before filing the suit.

Spicer responded that Billie Curry — a co-worker of Egan as well as a client in a similar suit filed in federal court in the Northern District of New York — had told him Maguire continued to exercise management responsibilities at the firm, Feinerman wrote.

“The court will give Spicer the benefit of the doubt that Curry in fact told him this about Maguire’s role at the successor firm,” Feinerman wrote.

“The trouble is that Spicer learned during discovery that this characterization of Maguire’s role was wrong.”

At her deposition on April 24, 2014, and again when it continued two weeks later, Curry testified she did not know whether Maguire had any control over hiring, firing, promoting or compensating the employee who held Egan’s position, Feinerman wrote.

The “only appropriate course at that point,” he wrote, was for Spicer and his firm to voluntarily dismiss the counts brought against Maguire under the Fair Labor Standards Act and the Equal Pay Act.

But Spicer and the firm continued to pursue those counts, forcing Maguire to spend time and money successfully seeking summary judgment, Feinerman wrote.

“That is beyond inexcusable,” he wrote.

“It should go without saying, but when a lawyer learns during discovery that his client’s case against one defendant has fallen apart, the only proper course is to dismiss that defendant and press on against the others.”

Feinerman ordered Spicer and Levine & Blit to pay the \$20,049 by Sept. 4.

Maguire is represented by David S. Allen of Ruberry Stalmack & Garvey LLC.

“Judge Feinerman’s opinion awarding sanctions against Levine & Blit, LLC and Lewis G. Spicer confirms that the claims against Mr. Maguire were baseless,” Allen said in a statement.

“Notably, in eight years on the federal bench, Judge Feinerman has rarely imposed sanctions — and twice against attorneys from Levine & Blit for the claims brought in this case.”

Matthew J. Blit of Levine & Blit’s New York office represented the firm and Spicer in the matter.

In a statement, Blit apologized to Maguire for mistakes he said “were in no way intentional, malicious or vindictive.”

Maguire’s name would have been removed from the suit or he would have been dismissed from the case following Curry’s deposition “had defense counsel asked,” Blit said.

However, he said, “this snowballed and the onus is on us.”

“Although we are obviously not happy about the amount of the sanction and believe it is drastic based upon the minimum amount of work necessary, we will honor the [c]ourt’s order and satisfy the sanction without any appeal to demonstrate our firm’s acceptance of accountability for our firm’s actions or inaction,” Blit said.

The suit filed on behalf of Egan alleged she was forced to resign from Huntington Copper in August 2011 because her working conditions were intolerable.

The suit contended female vice presidents were given less favorable compensation agreements and less lucrative jobs than their male counterparts.

Egan was harassed with comments about her appearance by a male supervisor during training trips, the suit contended.

Paragraph 75 of the suit alleged Egan also was repeatedly subjected to physical sexual harassment.

Egan "was further victimized," the paragraph continued, "by acts of sexual assault by the defendants' male employees."

In a deposition, however, Egan denied she had been sexually assaulted and denied she had told Spicer that such assaults had occurred.

Egan testified she had not seen Paragraph 75 and had not signed the complaint.

Spicer conceded the allegation was false.

In his statement Tuesday, Blit described the inclusion of Paragraph 75 as "a simple cut-and-paste error" that the firm had corrected.

In February 2014, a few weeks after Egan's deposition, Feinerman dismissed counts against defendant David Pineda — a former owner of Huntington Copper who lived in Coral Springs, Fla. — for lack of personal jurisdiction.

Feinerman granted summary judgment in favor of the remaining defendants in March 2015.

The following month, Feinerman granted Pineda's motion to sanction Spicer for including the sexual assault allegation in his client's suit.

The case is *Julia Egan v. Patrick Maguire*, No. 12 C 9034.