

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN HAYMOND : CIVIL ACTION
HAYMOND NAPOLI DIAMOND, P.C. :
v. :
MARVIN LUNDY :
v. :
JOHN HAYMOND, :
ROBERT HOCHBERG, :
HAYMOND NAPOLI DIAMOND, P.C. : No. 99-5048

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

September 26, 2002

Marvin Lundy ("Lundy") has filed a Motion for Reconsideration of the Court's Award of Expert Witness Fees. Robert Hochberg ("Hochberg") has filed a Response in Opposition.

Some cases never die; they do not even fade away. Since the court's Memorandum and Order and Final Judgment of August 23, 2002 (Docket #431), as amended September 6, 2002 (Docket #435), the following papers have been filed:

- a. Motion of Wachovia Bank to Intervene and Supplement the Court's August 23, 2002 Final Judgment/Distribution (#434);
- b. Motion of Marvin Lundy for Reconsideration of the Court's Award of Expert Witness Fees (#436);
- c. Motion to Amend Findings by plaintiffs John Haymond

- and Haymond Napoli & Diamond, P.C. (#437);
- d. Response by Defendant Marvin Lundy in Opposition of Motion to Intervene and Supplement the Court's August 23, 2002 Final Judgment/Distribution by Movant Wachovia Bank (#439);
 - e. Motion by defendant Marvin Lundy for an Award of Excess Costs, Expenses and Attorneys' Fees (#439);
 - f. Praecipe by defendant Marvin Lundy for Writ of Execution upon Judgment Orders (#440);
 - g. Interrogatories in Attachment by defendant Marvin Lundy to Kline & Specter (#441);
 - h. Notice of Appeal by defendant Robert Hochberg (#443); and
 - i. Robert Hochberg's Response in Opposition to Marvin Lundy's Motion for Reconsideration of the Court's Award of Expert Witness Fees (#445).

A motion for reconsideration will generally be granted only if: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. Wiggins v. Boston Scientific Corp., 1999 WL 200672, at *2 (E.D. Pa. Apr. 8, 1999); Haymond v. Lundy, 2002 WL 7927 (E.D. Pa. Jan. 2, 2002) ("Motions for reconsideration are not to be used to reargue or relitigate matters already decided.").

If the court had jurisdiction, this motion would be denied for the reasons stated in Hochberg's Response in Opposition to Lundy's Motion for Reconsideration of the Court's Award of Expert Witness Fees. There has been no intervening change in controlling law, there is no new evidence not previously available that has become available, and there is no necessity to correct a clear error of law, nor to correct any manifest injustice.

However, on September 24, 2002, Robert Hochberg, Esq., filed a Notice of Appeal from the motion that Marvin Lundy has requested the court to reconsider; filing the Notice of Appeal removes the matter to the appellate court. Venen v. Sweet, 758 F.2d 117, 120 (3d Cir. 1985) ("[T]he timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal."). There is no exception that would permit this court to exercise jurisdiction to modify an order that has been appealed. An appropriate Order follows.

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ORDER

AND NOW, this 27th day of September, 2002, for the reasons stated
in the court's Memorandum, it is **ORDERED** that the Motion of

Marvin Lundy for Reconsideration of the Court's Award of Expert
Witness Fees is **DENIED**.

Norma L. Shapiro, S.J.