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# Referee in Firm Breakup Rules Both Name Partners Consented to 9/11 Memorial Donation

Scott Flaherty, New York Law Journal

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A New York state court-appointed referee on Tuesday resolved a piece of the fallout from former personal injury firm Napoli Bern's [messy breakup](#), finding that former name partner Marc Bern consented to the firm's \$5 million donation to the National September 11 Memorial and Museum.

Mark Zauderer—a partner at Flemming Zulack Williamson Zauderer who oversees Napoli Bern's dissolution as a referee appointed by Manhattan Supreme Court Justice Eileen Bransten—ruled in favor of Bern's former law partner Paul Napoli in a dispute over the 9/11 museum donation.

[mark-zauderer-napoli-dispute-Vert-201602101817.jpg]

"It would be unfair and inequitable to afford both parties the benefit, but only one party the burden, of a donation that has provided perpetual recognition to both parties at one of the nation's most solemn memorial sites," Zauderer wrote on Tuesday.

In 2011, Napoli Bern agreed to donate \$1.2 million to the Sept. 11 museum and memorial, with Napoli signing that pledge agreement and Bern authorizing someone else to sign on his behalf, according to Tuesday's decision. In connection with the initial pledge, the 9/11 museum agreed to inscribe Bern's and Napoli's names, along with the name of their firm, on a founders wall near the entrance to the 9/11 museum.

The firm committed another \$3.8 million in a subsequent pledge agreement in 2014. Napoli signed the 2014 pledge agreement, indicating that he was doing so on behalf of the firm, while Bern did not sign, according to Zauderer's ruling.

Bern, represented by Clifford Robert of Robert & Robert, then argued that he never consented to upping the firm's pledged donation, which was to be paid in installments over several years. Bern alleged that under his partnership agreement, Napoli was required to get his consent for a donation of that size. Napoli, represented by Boies Schiller Flexner's Luke Nikas, maintained that he had discussed with Bern an increased donation to the museum.

Siding with Napoli, Zauderer held that there was evidence that Bern consented to the donation and that the installment payments should be considered valid debts of the legacy Napoli Bern law firm.

The ruling marks the latest in a contentious litigation battle between the Napoli Bern founders, a former plaintiffs-side personal injury firm that represented thousands of World Trade Center first responders and cleanup workers in the wake of Sept. 11. The referee noted that Napoli Bern helped

clients secure more than \$1 billion in recoveries and that the firm took in more than \$100 million in legal fees from 9/11-related litigation.

Reacting to Zauderer's decision, Nikas said in a statement that the three-day hearing held to resolve the donation dispute "was about credibility," and that the referee reached the right conclusion: "Napoli was telling the truth."

In a feisty statement of his own, Napoli sharply criticized his former partner. "It is reprehensible that Bern tried to renege on his promise to the 9/11 heroes and the 9/11 memorial," he said.

Robert, Bern's lawyer in the dispute, said his client plans to appeal.

"Marc Bern has always been a strong supporter of the 9/11 memorial, which is what makes the whole situation so absurd," Robert said in a statement. "What the referee has said is completely unsupported by either the facts or the law and he has plainly disregarded serious evidentiary issues for no apparent reason."

Napoli Bern's acrimonious breakup started in 2014, when Napoli filed a suit alleging that Bern had frozen him out of the business at a time when Napoli was hospitalized with leukemia. Bern, meanwhile, alleged that once he took over day-to-day management of Napoli Bern, he discovered misconduct on Napoli's part.

The two sides agreed to a settlement in August 2015 and split into separate firms: Napoli Shkolnik and Marc J. Bern & Partners. The August 2015 agreement included the appointment of Zauderer, who [as referee](#) has all the powers of a court to rule on disputes that arise out of Napoli Bern's winding-down process.

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