

JUDGE RICHARD A. JONES
MAGISTRATE JUDGE MARY ALICE THEILER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,) NO. CR 10-310 RAJ
)
Plaintiff,)
)
vs.) DECLARATION OF DEBRA M.
) MALCOLM
FREDERICK DARREN BERG,)
)
Defendant.)

I, Debra M. Malcolm, hereby state and declare that the following information is true and correct to the best of my knowledge, information and belief:

1. I am employed as an investigator by the Federal Public Defender for the Western District of Washington.

2. I was present during two telephonic interviews of Mary Simon, Esq. The first interview, on November 12, 2010, was conducted by Erik Levin, Assistant Federal Public Defender representing Frederick Darren Berg, and the second interview on November 17, 2010, was conducted by Assistant Federal Public Defender Jay Stansell, also representing Mr. Berg.

3. Mary Simon is an attorney with Simon Vigal Law Group PLLC. In 2009, and prior to forming Simon Vigal Law Group PLLC, Ms. Simon, was with Vigal & Simon, Inc.

1 4. At the outset of the interview of Ms. Simon on November 12, 2010,
2 Ms. Simon indicated that she had read newspaper articles written about Mr. Berg's case.
3 Ms. Simon indicated the allegations made by the government as reported by the media
4 were misrepresentations regarding DB517 LLC and the trust in Belize and she had been
5 waiting for someone to call her so she could correct the record.

6 5. In July 2009, Ms. Simon consulted with Frederick Darren Berg on matters
7 related to Mr. Berg's motor coach business, MTR Western. Mr. Berg was referred to
8 Mary Simon by Rich Carlson, Mr. Berg's business attorney, for advice on asset
9 protection for MTR Western. Ms. Simon recalled the impetus for Mr. Berg in seeking
10 advice in this area was publicity surrounding accidents involving other motor coach
11 carriers.

12 6. Mr. Berg had been exploring captive insurance as a vehicle for asset
13 protection for MTR Western. Ms. Simon and Mr. Berg discussed captive insurance as
14 well as estate planning for Mr. Berg.

15 7. Mr. Berg's motor coach business could have been insured via captive
16 insurance at a lower rates than those offered on the retail insurance market because
17 captive insurance "cuts out the middleman" and offers direct access to international
18 reinsurers such as Lloyd's of London.

19 8. In July 2009, Ms. Simon began the process of setting up a Limited
20 Liability Company ("LLC") in Delaware and a trust in Belize, entities Mr. Berg would
21 have needed in place in order to execute the captive insurance proposal and estate
22 planning. The completion of the trust in Belize was contingent on the completion of the
23 Limited Liability Company under a full Operating Agreement.

24 9. In July 2009, the Limited Liability Company, named DB517 LLC, was set
25 up in Delaware, but was never completed. Ms. Simon explained that DB517, LCC was
26 an incomplete LLC, at least for the purposes of accomplishing the asset protection plan

1 she had proposed to Mr. Berg. DB517, LLC was a Series LLC with only an Abstract
2 Operating Agreement, which Mr. Berg signed on July 29, 2009. The Abstract Operating
3 Agreement was to have been a temporary operating agreement until a full Operating
4 Agreement could be put in place.

5 10. DB517 LLC remained an incomplete LLC, essentially a shell structure,
6 because DB517 LLC lacked a full Operating Agreement, Separate Series Agreements
7 and completed schedules. DB517 LLC never rose beyond the level of a shell structure
8 and was never completed.

9 11. During the time Ms. Simon was setting up DB517 LLC in July 2009,
10 Ms. Simon used her contacts in Belize to begin the process of establishing a trust for
11 Mr. Berg in Belize. Ms. Simon contacted a company in Belize, Contract Management,
12 Inc., to coordinate the formation of the trust.

13 12. Contract Management Inc. enlisted Carlos Newman, an attorney with
14 Panama Relocation Attorneys, to facilitate the purchase of an inexpensive Panamanian
15 company, Red Autumn Investments, that the captive insurance company would have
16 owned and used as a "cell" for the DB517 Trust. Mr. Berg would not have owned Red
17 Autumn Investments, but his assets would have been insured via Red Autumn
18 Investments.

19 13. Ms. Simon indicated the formation of the trust was not to avoid the
20 payment of taxes. The trust would have been set up as a grantor trust used for estate
21 purposes.

22 14. In February 2010, Mr. Berg contacted Ms. Simon and asked her to run the
23 schedules for DB517 LLC. Ms. Simon said she agreed to run the schedules and answer
24 any questions related to the schedules. In February 2010, Ms. Simon's associate, Ethan
25 Anderson, provided Mr. Berg with information on what paperwork would be necessary
26

1 to set up a bank account for DB517 LLC. Following the contact in February 2010,
2 Ms. Simon did not hear from Mr. Berg again until June 2010.

3 15. In June 2010, Mr. Berg contacted Ms. Simon and asked her to complete
4 DB517 LLC and the trust in Belize. Mary Simon contacted Contract Management, Inc.,
5 and informed the company that Mr. Berg wanted to "reinstate" the trust and asked the
6 company to invoice Mr. Berg. Mr. Berg was invoiced by the company for the
7 reinstatement of the trust. The invoice was not sent to Ms. Simon and was not part of
8 her client file for Mr. Berg. This investigator e-mailed Ms. Simon a copy of the
9 Contract Management Inc. Performa invoice dated June 30, 2010, just prior to the
10 interview of Ms. Simon on November 17, 2010. Ms. Simon explained that when
11 Mr. Berg failed to pay for the services related to the trust in 2009, the trust was not
12 completed and Red Autumn Investments was not purchased, which is why the June 30,
13 2010 invoice referred to the reinstatement of the trust.

14 16. By the time of Ms. Simon's meeting with Mr. Berg in June 2010, she had
15 formed a new law group, Simon Vigal Law Group PLLC. Ms. Simon prepared a legal
16 services agreement dated July 1, 2010 for Mr. Berg's signature. However, Mr. Berg
17 never signed the legal services agreement or paid the deposit for Ms. Simon's services as
18 required by the legal services agreement. Nor did Mr. Berg provide the information
19 needed to complete DB517 LLC.

20 17. Following Ms. Simon's meeting with Mr. Berg in June 2010, Mr. Berg
21 provided her with the information she requested during their June 2010 meeting
22 regarding other captive insurance proposals he had been given. Ms. Simon recalled
23 receiving information on TRAX Insurance, Ltd. After receiving the TRAX proposal,
24 however, she never heard from Mr. Berg again.

25 18. In August 2010, Ms. Simon read a news article on Mr. Berg's personal
26 bankruptcy petition. Ms. Simon sent Mr. Berg a termination letter, dated August 3, 2010,

1 notifying Mr. Berg that as a result of his personal bankruptcy petition she could no
2 longer assist him with the services they discussed.

3 19. Ms. Simon recalled that Mr. Berg told her during their June 2010 meeting
4 that he had consulted a bankruptcy attorney because he needed to put funds he was
5 managing into bankruptcy. Ms. Simon said she took no action because this matter was
6 unrelated to Mr. Berg's motor coach business, but when she discovered Mr. Berg was
7 engaged in personal bankruptcy proceedings, she terminated her relationship with him.

8 20. I have reviewed a copy of Mary Simon's client file for Mr. Berg.
9 Ms. Simon's file included a copy of the termination letter. I have attached a copy of the
10 aforementioned termination letter to this declaration.

11 I declare under penalty of perjury that the forgoing is true and correct.

12 Executed this 30th day of November 2010, in Seattle, Washington.

13
14 
15 DEBRA M. MALCOLM

The Simon Vigal Law Group PLLC
Two Union Square, Suite 4500
601 Union
Seattle, WA 98101

August 3, 2010

VIA E-MAIL and Regular Mail

Darren Berg
1640 72nd AVE NE
Mercer Island, WA 98040

Re: Legal Services Agreement

Dear Darren:

As you know, the LLC operating agreement, series agreements and other documents that were previously completed for you were completed under your prior engagement with Vigal & Simon, Inc. You agreed in the July 22, 2009 engagement letter that you signed to pay \$40,000 for those services, payable in 2 equal payments, and to provide information and documents necessary for me to complete the assignment. You made the first payment of \$20,000, but you did not make the second payment that was due on August 31, 2009 and you failed to provide all the information and documents we needed to complete the assignment. Accordingly, that relationship is terminated and neither I nor Vigal & Simon, Inc. have any further obligations thereunder.

As we discussed, and as stated in the Legal Services Agreement that I sent to you on July 1, 2010 no agreement exists with The Simon Law Group, PLLC, and we have no obligation to provide any services to you, until we received a signed copy of the Legal Services Agreement and the initial deposit of fees. We have not received either; accordingly, no agreement exists and we will not be providing any services to you.

Moreover, I was surprised to learn from other sources that you have filed for personal bankruptcy. This is not consistent with the communications and information you previously provided to me. Under these circumstances, our firm cannot provide the services that we previously discussed. Our offer to provide the services as set forth in the Legal Services Agreement that I sent to you on July 1, 2010 is hereby withdrawn.

Sincerely,

THE SIMON VIGAL LAW GROUP, PLLC

Mary Simon

Mary Simon Vigal
Attorney at Law