

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERTO MATA,

Plaintiff,

22-cv-1461 (PKC)

-against-

OPINION AND ORDER
ON SANCTIONS

AVIANCA, INC.,

Defendant.

-----X
CASTEL, U.S.D.J.

In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings. Rule 11, Fed. R. Civ. P. Peter LoDuca, Steven A. Schwartz and the law firm of Levidow, Levidow & Oberman P.C. (the “Levidow Firm”) (collectively, “Respondents”) abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.

Many harms flow from the submission of fake opinions.¹ The opposing party wastes time and money in exposing the deception. The Court’s time is taken from other

¹ The potential mischief is demonstrated by an innocent mistake made by counsel for Mr. Schwartz and the Levidow Firm, which counsel promptly caught and corrected on its own. In the initial version of the brief in response to the Orders to Show Cause submitted to the Court, it included three of the fake cases in its Table of Authorities. (ECF 45.)

important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

The narrative leading to sanctions against Respondents includes the filing of the March 1, 2023 submission that first cited the fake cases. But if the matter had ended with Respondents coming clean about their actions shortly after they received the defendant's March 15 brief questioning the existence of the cases, or after they reviewed the Court's Orders of April 11 and 12 requiring production of the cases, the record now would look quite different. Instead, the individual Respondents doubled down and did not begin to dribble out the truth until May 25, after the Court issued an Order to Show Cause why one of the individual Respondents ought not be sanctioned.

For reasons explained and considering the conduct of each individual Respondent separately, the Court finds bad faith on the part of the individual Respondents based upon acts of conscious avoidance and false and misleading statements to the Court. (See, e.g., Findings of Fact ¶¶ 17, 20, 22-23, 40-41, 43, 46-47 and Conclusions of Law ¶¶ 21, 23-24.) Sanctions will therefore be imposed on the individual Respondents. Rule 11(c)(1) also provides that “[a]bsent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its . . . associate, or employee.” Because the Court finds no exceptional circumstances, sanctions will be jointly imposed on the Levidow Firm. The sanctions are “limited to what

suffices to deter repetition of the conduct or comparable conduct by others similarly situated.”

Rule 11(c)(4).

Set forth below are this Court’s Findings of Fact and Conclusions of Law following the hearing of June 8, 2023.

FINDINGS OF FACT

1. Roberto Mata commenced this action on or about February 2, 2022, when he filed a Verified Complaint in the Supreme Court of the State of New York, New York County, asserting that he was injured when a metal serving cart struck his left knee during a flight from El Salvador to John F. Kennedy Airport. (ECF 1.) Avianca removed the action to federal court on February 22, 2022, asserting federal question jurisdiction under the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Montreal, Canada, on 28 May 1999, reprinted in S. Treaty Doc. 106-45 (1999) (the “Montreal Convention”). (ECF 1.)

2. Steven A. Schwartz of the Levidow Firm had been the attorney listed on the state court complaint. But upon removal from state court to this Court, Peter LoDuca of the Levidow Firm filed a notice of appearance on behalf of Mata on March 31, 2022. (ECF 8.) Mr. Schwartz is not admitted to practice in this District. Mr. LoDuca has explained that because Mr. Schwartz is not admitted, Mr. LoDuca filed the notice of appearance while Mr. Schwartz continued to perform all substantive legal work. (LoDuca May 25 Aff’t ¶¶ 3-4 (ECF 32); Schwartz May 25 Aff’t ¶ 4 (ECF 32-1).)

3. On January 13, 2023, Avianca filed a motion to dismiss urging that Mata’s claims are time-barred under the Montreal Convention. (ECF 16.)

Also available as part of the eCourse
[2023 Entertainment Law eConference](#)

First appeared as part of the conference materials for the
33rd Annual Entertainment Law Institute session
"Chatting ChatGPT"