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Cipoletti ordered to pay ANA \$53,500

By David L. Ganz

Christopher Cipoletti, who was ousted as executive director of the American Numismatic Association, has been ordered to pay \$53,500 in arbitration fees and costs to the ANA.

Cipoletti, who was first placed on administrative leave and then fired "for cause" by the ANA board of governors, suffered a complete loss when an arbitrator ruled he breached his fiduciary duty to the organization, double-billed the ANA and private clients, and failed to properly account for his time, spending over 800 hours (the equivalent of 100 days) on non-ANA matters.

Cipoletti claimed he was entitled to a substantial pension contribution from the ANA; that he was entitled to the balance of his unpaid salary for the

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duration of his contract; and that he should receive reimbursement for various expenses incurred, but not yet paid over to him by the ANA.

The arbitrator, Colorado attorney Kathryn E. Miller, dismissed his claim against the ANA on May 27 and ruled Cipoletti was entitled to no further payments under his employment agreement.

The arbitrator awarded the ANA, and required Cipoletti to pay an \$8,500 filing fee for the arbitration group and more than \$45,000 in arbitration fees covering the arbitrator's time and expenses.

Cipoletti was the ANA's outside general counsel and became executive director on the retirement of Edward C. Rochette in 2003. Under his agreement with the ANA board, he was permitted to continue to practice law with "several clients".

He was removed as executive director on Aug. 13, 2007. It set off a cavalcade of legal responses that eventually saw cross-claims filed by both sides against the other in a forum run by the American Arbitration Association in Colorado Springs, Co., the home of both parties.

In an interim May 7, 2009 order, the Arbitrator requested the parties brief the issues of awarding arbitration costs and fees and attorneys fees and costs of the arbitration. On July 29, 2009, a final award was rendered.

All this took place in private, a benefit of arbitration. It became public

in late August when the ANA made a motion in a local Colorado court to confirm the award and give it the force and effect of a judgment. Unconfirmed rumors about it have circulated for several weeks.

Paragraph 13 of the Employment Agreement provides that "The ANA shall pay the costs and fees of any arbitration which is initiated under this paragraph 13 unless the arbitrator determines that Cipoletti brought an arbitration in bad faith in which case Cipoletti shall pay the arbitration expenses.

The arbitrator made the requisite finding of bad faith.

Damning his actions, the arbitrator found Cipoletti has been "stubbornly litigious and disrespectful of truth and accuracy."

The nub of the complaint is summarized by the arbitrator: "Although he told the [ANA Board of Governors] that he was winding down his practice in the last half of 2002," Cipoletti "continued his busy law practice in 2003 and 2004. Evidence acquired in discovery in this case reveals that he worked more than eight hours a day in his private practice on at least 25 days between February and December 2003, and billed more than 970 hours in his private practice that year."

It continues that "In 2004, [Cipoletti] worked more than eight hours a day in his private practice at least six times, and billed approximately 560 hours that year. He represented more than 15 separate clients."

A typical lawyer bills between 1,600 and 2,400 hours a year while in pri-

vate practice. That means that Cipoletti would have been away from his job almost as much as he was at the ANA. Put another way, it represents over 120 days in a 250 day working year devoted to something other than a primary job that paid over \$250,000 annually.

Decision in the arbitration put it in even more stark terms: "Claimant wanted it both ways and, as a fiduciary, he cannot have it both ways. For two years after starting his full-time position at the ANA, he worked more than part-time at his private practice. Billing eight hours in a day requires working more than eight hours. And there were many more days when he billed between six and eight hours, which means that he was likely working eight hours or more on that day in his private practice. It is simply not credible that when he was busy with his private practice, he could give his full attention to matters at the ANA."

The arbitrator threw down the gauntlet with several specific findings:

Claimant failed to disclose to the BOG the scope of his private practice and the fact that he continued to engage in representing many clients long after beginning to work full-time for the ANA;

Claimant failed to advise the BOG that he was out of the ANA office on non-ANA business a considerable number of days in the first two years of beginning his employment at the ANA;

Claimant failed to accurately report his days away from the ANA offices as vacation hours, while at the same time he requested and received payment for

200 hours of accrued vacation in 2006, 166 hours more after his termination, and seeks additional hours through this process;

Claimant intentionally double-billed expenses to more than one client, and personally accepted funds as reimbursement for those expenses when the ANA had paid for those expenses;

Claimant intentionally and improperly billed for and received a fee for services paid by [another law firm] Barnes & Thornburg that belonged to the ANA, which he deposited into his personal funds.

In summary, the arbitrator's May 27 decision wrote, "Overall, the Claimant's conduct constitutes a breach of his fiduciary duty to the ANA. I have certainly wondered about Claimant's motive for his behavior in this matter. But ultimately, it doesn't matter why. It only matters whether his misconduct was knowing and intentional. I believe that it was. The fact that Claimant paid back the money does not change the outcome. Lawyers are not entitled to use their clients' money until caught. Lawyers are in a position of trust and clients have the absolute right to expect that, even without questions or complaints from the client, their lawyer is being fair and honest with them, and that the lawyer will resolve all doubt in favor of the client. Claimant [Cipoletti] failed to do this."

And so one of several legal gifts in the form of lawsuits left behind by the abrupt departure of Cipoletti is resolved. Where the rest go remain to be seen.