

## Alerts

### Second Circuit Affirms Sanctions Against Law Firm Entity Under Section 1927

May 24, 2012

*Lawyers for the Profession® Alert*

*Enmon v. Prospect Capital Corporation*, 675 F.3d 138 (2d Cir. 2012)

#### Brief Summary

The U.S. Court of Appeals for the Second Circuit affirmed sanctions against a law firm under 28 U.S.C. § 1927, although the statute applies by its terms to an “attorney or other person admitted to conduct cases.” The court also affirmed that the district court acted within its discretion in sanctioning the firm for filing a frivolous appeal, which the firm voluntarily withdrew.

#### Complete Summary

The U.S. District Court for the Southern District of New York imposed sanctions on a law firm and its attorneys for various misrepresentations. The sanctions were based on both the court’s inherent authority and 28 U.S.C. § 1927. The firm appealed.

The Second Circuit largely affirmed the award. In doing so, the court attributed conduct of certain lawyers to the firm and held that although § 1927 only authorizes sanctions against an “attorney or other person admitted to conduct cases[.]” that statute is also a proper basis for sanctions against a law firm entity. The court reached that conclusion because, *inter alia*, it had upheld such sanctions before, other circuits had reached the same conclusion, and because it did not want to upset a long-standing practice among the district courts within the Second Circuit.

The court further held that the district court acted within its discretion in sanctioning the firm for filing an earlier frivolous appeal, even though that appeal had been voluntarily withdrawn. That holding was based on: (1) the concern that appellees contesting frivolous appeals could be deterred from agreeing to voluntary dismissal if deprived of the opportunity to seek attorney fees; and (2) the Second Circuit had no jurisdiction once the appeal was voluntarily dismissed, leaving the district court solely responsible for monitoring the firm’s conduct. The Second Circuit nonetheless cautioned that this sanctioning power should be used sparingly.

Finally, the court remanded an order requiring the firm to attach a copy of the sanctions order to all future *pro hac vice* applications within the district. The court held that such a sanctions order required the lower court to consider whether to impose temporal limits on the sanction and whether to exclude

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attorneys who joined the firm after the sanctions order was entered from the scope of the order.

### **Significance of Opinion**

This opinion underscores how practical considerations inform the exercise of discretionary sanctioning powers, as well as the appellate review of such powers.

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