

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANSDHER CIVIL,

Plaintiff,

vs.

Index No.: 18-cv-06424

SPECIAL AND SUPERIOR OFFICERS
BENEVOLENT ASSOCIATION,

Defendant
-----X

COMPLAINT

Plaintiff, Ansdher Civil (“Civil”), upon personal knowledge as to himself and upon information and belief as to all remaining allegations, hereby alleges the following against Defendant Special And Superior Officers Benevolent Association (the “Union” or the “SSOBA”).

INTRODUCTION

1. Plaintiff Civil is a non-exempt hourly paid employee of Rochdale Village, Inc. (“Rochdale”), a New York City housing co-operative located in Jamaica, Queens. Civil is also a member of Defendant SSOBA, a labor union that represents security personnel and is a party to several collective bargaining agreements with Rochdale. Ronald Fedrizzi (“Fedrizzi”) is the President and Chairman of SSOBA and has been actively involved in negotiating the Rochdale collective bargaining agreements.

2. As the record shows in an action pending in this Court captioned *Morales v. Rochdale Village Inc., et al.*, Index No.: 15-CV-502(RJD)(RML)(the “*Morales* Action”), Civil and other hourly employees of Rochdale are routinely denied compensation through a series of illegal and unlawful wage and hour practices. Among other things, Rochdale pays employees only by their pre-determined schedules, not when they are actually at Rochdale’s facilities performing

work before and after shifts. As a result, Rochdale employees -- including members of the SSOBA -- are routinely denied compensation for substantial time they spend working on the company's behalf.

3. By virtue of their duty of fair representation under the Labor Management Relations Act (the "LMRA"), the Union and Mr. Fedrizzi -- who ostensibly represent Plaintiff Civil and approximately 100 other SSOBA employees who work at Rochdale -- are required to exercise their discretion with complete good faith and honesty and to further the interests of their constituents. In fact, they have done precisely the opposite.

4. As a threshold matter, it is beyond dispute that SSOBA members employed by Rochdale possess meritorious claims for unlawful pay practices. Not only did the Court in the *Morales* Action deny Rochdale's motion to dismiss Plaintiff's Complaint, but the Magistrate Judge in that action (the Hon. Sanket J. Bulsara), in granting Plaintiff's motion for class certification under Federal Rule 23, described in copious detail the time records, emails, deposition testimony and other evidence demonstrating that Rochdale routinely deprives SSOBA members and other Rochdale employees of wages on a regular and continuing basis. The Union is indisputably aware of this evidence and that SSOBA employees at Rochdale have valid grievances *via* its review of Plaintiff's Amended Complaint in the *Morales* Action; declarations of SSOBA employees it was sent by Plaintiff's counsel; and its review of the Magistrate Judge's comprehensive opinion.

5. Not only has the Union and Mr. Fedrizzi inexplicably ignored these claims and failed to investigate them, they took concerted action to assure they could never be asserted by any SSOBA member in any forum. This was not simple negligence or a mere mistake in judgment. To the contrary, SSOBA and Mr. Fedrizzi: (i) submitted affidavits in one arbitration declaring that SSOBA members had no rights to arbitrate or grieve their claims; (ii) participated in a separate

sham arbitration before an arbitrator selected by Rochdale's counsel at which they proffered no evidence, made no arguments and retained an attorney who was previously affiliated with Rochdale's outside counsel; and (iii) ignored requests by Plaintiff's counsel to take action to advance and enforce the rights of Rochdale's SSOBA members. Plainly, the actions of the Union and Mr. Fedrizzi have been arbitrary and designed solely to benefit Rochdale, not the employees they purportedly represent. Thus, far from "[a] counter-balance to the unchecked power of...[e]mployers" as touted on the Union's website, the Union and Mr. Fedrizzi have actively colluded with Rochdale to protect the company's interests at the expense and to the detriment of the individuals to whom they owe fiduciary duties and undivided loyalty.

6. The Union and Mr. Fedrizzi have also acted in bad faith. Seventy-three SSOBA employees opted into the *Morales* Action, thus evincing a clear desire to participate in the action and obtain compensation for their losses. Without providing these employees any notice whatsoever, the Union participated in a sham arbitration for no other purpose than to extinguish the ability of these employees to participate in the *Morales* Action, which they did with resounding success. The failure to keep their members informed and to conceal material information from their constituents is a clear indication that the Union has acted – and will continue to act – in bad faith.

7. Plaintiff and other SSOBA employees have been directly harmed and prejudiced by Defendant's conduct and inaction. By colluding with Rochdale over the last several months in several arbitrations and ignoring requests by Plaintiff's counsel to take action, the Union has denied Plaintiff and other SSOBA members employees of Rochdale the ability to obtain compensation in any forum for the lawful and meritorious grievances they possess as a result of Rochdale's unlawful wage practices. As a result, Defendant's actions have been a substantial

factor in Plaintiff's injuries and those of other SSOBA members. For the foregoing reasons, as demonstrated more fully below, the Union has violated Section 301 of the LMRA by breaching the duty of fair representation.

JURISDICTION AND VENUE

8. The Court's jurisdiction in this matter is based on Section 301 of the LMRA, 29 U.S.C. § 185. Venue is appropriate under 29 U.S.C. § 185(c) because the Union maintains its principal place of business in this District.

PARTIES

9. Plaintiff Civil has been at all relevant times a non-exempt hourly paid employee of Rochdale.¹ Civil is also a member of the SSOBA.

10. Defendant SSOBA is a labor organization that represents security personnel, mostly in New York, as well as in other areas within the eastern United States. SSOBA's principal office is in Lindenhurst, New York. SSOBA is the exclusive collective bargaining representative for the security officers employed by Rochdale.

11. Non-party Fedrizzi is the President and Chairman of SSOBA.

12. Non-party Rochdale operates Rochdale Village, which is a New York City housing co-operative located in Jamaica, Queens with 20 high-rise residential buildings, a privately owned and operated power plant, maintenance department and a private security force. Including Plaintiff, approximately 105 individuals are hourly paid security officers of Rochdale and members of the Union. In total, Rochdale has approximately 500 hourly paid, non-exempt employees, which include security officers who are members of SSOBA (the "Rochdale Employees.")

¹ For purposes of this definition, the term "Rochdale" includes Marion Scott Real Estate, Inc., Marion Scott, and Herbert Freedman, who are "control persons" of Rochdale.

FACTUAL ALLEGATIONS

A. Rochdale's Unlawful Pay Policies And Practices

13. Rochdale has a policy and practice of unlawfully penalizing Rochdale Employees who clock-in and perform work before their shifts are scheduled to begin and perform work after the end of their scheduled shifts before they clock-out. Specifically, Rochdale automatically penalizes Rochdale Employees by rounding their clock-in time to the beginning or end of their scheduled shift start time, even though they are performing job-related duties between when they have actually clocked in and out and when they are scheduled to work. These job-related duties are performed at the request of supervisors, directors and other superiors who know that Rochdale Employees will not be paid for this time and instruct these employees to begin or complete tasks within the unpaid schedule-based rounding window.

14. For example, if a Rochdale Employee is scheduled to end his shift at 5:00 p.m., and he clocks out at 5:10 p.m., he is paid only until 5:00 p.m., even though he is performing work-related duties during that uncompensated 10 minute interval. Similarly, if the same employee is scheduled to start his shift at 8:00 a.m. and clocks in at 7:50 a.m., he is paid starting at 8:00 a.m., even though he is performing work-related duties during that uncompensated 10 minute interval. Consequently, if a Rochdale Employee is scheduled to begin his shift at 8:00 a.m. and he clocks in at 8:04 a.m., he is not given the benefit of being compensated from 8:00 a.m., but rather, is paid from 8:04 a.m. forward. Similarly, if a Rochdale Employee is scheduled to end his shift at 5:00 p.m. and he clocks out at 4:55 p.m., he is not given the benefit of being compensated until 5:00 p.m., but rather, is paid only up until he clocks out at 4:55 p.m. Although it requests and is aware of the work Rochdale Employees perform during these penalty periods, Rochdale has knowingly configured its time keeping system to deny compensating Rochdale Employees for some – if not

all – of this unlawful schedule-based rounding time spent on the Rochdale’s behalf by systematically rounding down the Rochdale Employees’ total time worked. Rochdale even has a column for the “Actual Time” and the “Rounded Time” on employees’ “Timecard Listing Reports,” which show that Rochdale Employees are paid according to a biased, schedule-based rounding system regardless of when they actually clock-in or clock-out and are performing work.

15. “Rounding” practices are permissible under the Fair Labor Standards Act (“FLSA”) and New York labor laws (“NYLL”) if the “arrangement averages out so that Rochdale Employees are fully compensated for all the time they actually work.” 29 C.F.R. § 785.48(b). This practice is acceptable provided the time rounding is used in a manner that will not, over a period of time, result in the failure to compensate Rochdale Employees properly for all the time they have actually worked. However, despite its knowledge of permissible rounding practices and knowing that its time-keeping software works only to the benefit of Rochdale and to the detriment of Rochdale Employees, Rochdale has never conducted an analysis to determine whether its time clock system averages out – which it does not. As such, Rochdale’s schedule-based rounding practice unfairly favors Rochdale versus Rochdale Employees subject to the schedule-based rounding policy. This rounding policy consistently and artificially reduces the total time Rochdale Employees are credited with working at Rochdale’s facilities.

B. The Morales Action

16. On February 2, 2015, Rochdale Employee Lynica Morales commenced an action in the United States District Court for the Eastern District of New York against Rochdale challenging these unlawful pay practices. *See Morales v. Rochdale Village Inc., et al.*, Index No.: 15-CV-502(RJD)(RML). On October 23, 2015, the Court denied Rochdale’s motion to dismiss Plaintiff’s Amended Complaint. Thereafter, the Court granted conditional certification of a class

of Rochdale Employees under Section 216 of the FLSA, after which seventy-three SSOBA represented employees filed consents to join the *Morales* Action.

17. Thereafter, in March 2017, Rochdale filed a motion to compel arbitration of the wage and hour claims held by Rochdale Employees who were members of SSOBA (the “Motion to Compel.”) According to the Motion to Compel, Rochdale and the Union were parties to a collective bargaining agreement executed in 2014 (the “CBA”), which “require[] all wage and hour claims to be addressed through the SSOBA CBA’s grievance and arbitration procedure and waives the SSOBA employees’ right to proceed on a class action basis for any FLSA or NYLL or wage grievances. *See Morales* Action, Dkt. No. 104, pg. 2. Rochdale also asserted in the Motion to Compel that the grievance and arbitration procedures of the CBA applied retroactively to “causes of action accruing prior to the ratification” of the 2014 CBA. *Id.*, pg. 5.

18. Over Plaintiff’s opposition, the Court issued a Memorandum and Order dated August 16, 2017 (the “Arbitration Order”) (*see* Dkt No. 118), directing an arbitrator to “decide whether the SSOBA members must proceed to arbitration to resolve their disputes or whether they may join their non-SSOBA represented colleagues in this action.” *Id.*, pg. 7. The Court also ruled that the arbitrator should “decide any threshold, procedural questions, such as whether the SSOBA employees must exhaust Rochdale’s three-step grievance process before their claims may be referred to arbitration and whether the SSOBA represented employees may bring their claims collectively.” *Id.*, pgs. 7, 8.

C. The Arbitration Before Martin Ellenberg

19. In accordance with the Arbitration Order, SSOBA member Kamel Freeman commenced an arbitration proceeding before the American Arbitration Association Labor Arbitration Tribunal against Rochdale, Marion Scott Real Estate, Inc., Marion Scott and Herbert

Freedman. Over the next several months, counsel for the parties submitted briefs and letters to arbitrator Martin Ellenberg, Esq. in support of their respective positions.

20. As its principal position in that proceeding, Rochdale asserted that only the Union had standing to seek arbitration under the CBA, and, thus, that SSOBA employees had no rights under the CBA to grieve or assert the wage and hour claims asserted in the *Morales* Action. Over Mr. Freeman's opposition, Mr. Ellenberg purportedly agreed. Specifically, in an Award dated July 20, 2018, Mr. Ellenberg held that "[t]he language of the [CBA] is clear" that "Claimants do not have standing to file for arbitration, a right reserved to the Union."

D. The Union Has Breached Its Duty of Fair Representation By Acting In Bad Faith And An Arbitrary Manner

21. The Union actively portrays itself as an organization devoted to "help[] its members." On its website, SSOBA depicts the purpose of a union as "[n]egotiating better wages and benefits"; "[d]emanding respect from their Employer"; and "[a] counter-balance to the unchecked power of the Employers." [sic]. The SSOBA even declares that "we will give the best service in the industry to our members." In reality, the Union has embraced precisely the opposite approach -- repeatedly acting in bad faith and an arbitrary manner -- by ignoring and ultimately extinguishing the legitimate wage and hour rights of SSOBA members employed by Rochdale.

1. The Fedrizzi Affidavit

22. It is unknown when the Union first became aware of the *Morales* Action and the unlawful pay practices described in Plaintiff's Complaint, but at least by May 2018, it began taking active steps to prevent SSOBA members from seeking relief for the viable wage and hour claims they possess against Rochdale. In connection with the Ellenberg Arbitration, for example, Mr. Fedrizzi submitted an affidavit on May 15, 2018, declaring that: (i) "Mr. Freeman is not permitted to file an arbitration under the CBAs and the SSOBA did not delegate its authority to Mr.

Freeman”; (ii) “[t]he SSOBA is represented by James Grisi, Esq. (“Grisi”) and Mr. Grisi is the only attorney authorized to file an arbitration on behalf of members of the SSOBA”; and (iii) “[i]n sum, Kamel Freeman does not have standing to bring the instant arbitration and, as such the arbitration should be dismissed.”

23. Nowhere in his affidavit did Mr. Fedrizzi suggest -- much less confirm -- that he, Mr. Grisi or the SSOBA had investigated, or planned to investigate, the merits of Mr. Freeman’s assertions regarding Rochdale’s illegal pay practices. To the contrary, Plaintiff’s counsel learned on July 23, 2018, that Mr. Fedrizzi, Mr. Grisi and Rochdale’s outside counsel had participated in a secret “arbitration” before Elliott D. Shriftman, Esq. (the “Shriftman Arbitration”), that was purposely structured and designed to extinguish the ability of every SSOBA member employed by Rochdale to participate in the *Morales* Action and obtain compensation for their claims.

2. The Sham “Arbitration”

24. The Union was well aware that Mr. Freeman and his counsel had a vital interest in the “arbitration” commenced before Mr. Shriftman. Indeed, Mr. Fedrizzi’s affidavit makes clear he knew Mr. Freeman was represented by McLaughlin & Stern, LLP who, he asserted, was not “authorized” to “represent any of its members in any arbitration before the American Arbitration Association.” Despite that knowledge, the Union and Mr. Fedrizzi participated in a secret arbitration before Mr. Shriftman but never disclosed it to Plaintiff’s counsel (who, as a result, had no opportunity to question witnesses or make arguments regarding the interpretation of the CBAs). They even agreed -- if not directed -- Mr. Shriftman to address precisely the same inquiries mandated by the Arbitration Order in the *Morales* Action that were contemporaneously being addressed by Mr. Ellenberg.

25. In addition, the Shriftman “arbitration” had all the hallmarks of a pretense and sham. To begin with, Rochdale’s outside counsel, Trivella & Forte, LLP, had used Mr. Shriftman as an arbitrator on multiple occasions, which should have been a red flag to the Union and Mr. Grisi, assuming they inquired about it at all. Even more troubling, the three individuals who ostensibly appeared on behalf of the SSOBA at the arbitration (including Mr. Fedrizzi and Mr. Grisi) provided no written response to Rochdale’s arbitration demand; submitted no exhibits to Mr. Shriftman before and during the arbitration; and offered no testimony from a single witness on the issues being considered. This inexplicable failure to proffer witnesses caused Mr. Shriftman to conclude that the CBAs applied retroactively because the testimony of Rochdale’s representative “was not challenged by any other witness.” Indeed, the only “argument” Defendants could muster at the hearing was that the language in the collective bargaining agreements “speaks for itself.” Plainly, in a circumstance where the Rules of Conduct require a lawyer to provide a client with “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation” (*see* Rule of Conduct 1.1(a)), Mr. Grisi’s feeble representation of the Union followed none of these directives and guidelines.

26. Finally, Mr. Grisi’s complete lack of interest and zealousness in advancing the interests of the Union and its members raises conflict of interest questions about who he was actually representing. According to his LinkedIn page, Mr. Grisi was “of counsel” to the very firm that represents Rochdale in the *Morales* Action and the Shriftman Arbitration, Trivella & Forte LLP. The Union’s willing acceptance of Mr. Grisi as its lawyer in this circumstance further shows its bad faith and arbitrary behavior in representing and supposedly protecting the interests of its constituents; *i.e.*, members of the SSOBA who are being victimized by Rochdale’s illegal pay practices.

27. Unsurprisingly, with the Union offering no testimony, documents or defense at the Shriftman Arbitration, Mr. Shriftman fully embraced Rochdale's positions and provided the Union all the relief it requested. Specifically, in an Opinion and Award of Arbitrator dated May 16, 2018 (the "Shriftman Award"), Mr. Shriftman ruled that: (i) SSOBA employees of Rochdale were prohibited from participating in the *Morales* Action; (ii) the CBA applied retroactively; and (iii) any FLSA or NYLL claims against Rochdale could not be "arbitrated on a class or collective basis." Through the Ellenberg and Shriftman arbitrations, therefore, the Union actively and purposely extinguished all rights and claims SSOBA employees of Rochdale could assert in any forum to recover the wages they are being denied by Rochdale's illegal pay practices.

3. Defendants Ignore Requests To Investigate Plaintiff's Claims And Seek Relief For SSOBA Employees

28. By August 1, 2018, SSOBA undoubtedly knew that Rochdale employees had, and continue to have, meritorious claims against Rochdale that would cause any labor organization acting in good faith to conduct a full investigation and seek redress on behalf of its members. On that date, United States Magistrate Judge Sanket J. Bulsara issued a Report and Recommendation granting Plaintiff's motion for class certification under Federal Rule 23. *See Morales v. Rochdale Vill., Inc.*, 2018 U.S. Dist. LEXIS 13109 (E.D.N.Y., Aug. 1, 2018) (the "R&R"). While the Magistrate Judge excluded SSOBA members from the certified class based on the Shriftman Award, he identified a litany of documentary and testimonial evidence confirming the existence of Rochdale's unlawful pay policies that systematically deprive Rochdale Employees of rightfully earned wages. *See, e.g., id.* at *39 ("There is substantial record evidence from employees that they worked uncompensated overtime pursuant to a policy that only paid them for scheduled time.") Several weeks later, on September 26, 2018, United States Judge Raymond J. Dearie adopted the R&R in its entirety.

29. In light of these rulings, Plaintiff's counsel wrote Mr. Fedrizzi on October 8, 2018. In that letter, Plaintiff's counsel requested Mr. Fedrizzi to provide notice of "any and all actions the SSOBA has or intends to take to ensure that its members' wage and hour related grievances will be remedied." With the letter, Plaintiff's counsel also forwarded Mr. Fedrizzi eight declarations from SSOBA members who described the wage and hour claims they possess against Rochdale and affirmed that they were not informed about the Shriftman Arbitration and the adverse impact it had on their claims. In keeping with their arbitrary and bad faith conduct since May 2018, Mr. Fedrizzi and the Union completely ignored the letter.

CAUSE OF ACTION
(Violations of Section 301 of the LMRA, 29 U.S.C. § 185)

30. Plaintiff repeats and realleges the foregoing allegations as if fully set forth herein.

31. Like all unions, the SSOBA has a duty to represent its members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. Known as the duty of fair representation, the duty applies to all representational activity in which a union engages, including negotiation, administration, and enforcement of collective bargaining agreements.

32. As such, a union breaches its duty of fair representation when its conduct towards members of a collective bargaining unit is arbitrary, discriminatory, or in bad faith. The duty is designed to ensure that unions represent fairly the interests of all of their members without exercising hostility or bad faith toward any. Thus, for example, when a union ignores or impedes a meritorious claim, it has acted arbitrarily. Moreover, when a union conceals material information from its members, it engages in bad faith. Needless to say, both circumstances are present here.

33. As a threshold matter, it is beyond dispute that SSOBA members employed by Rochdale possess meritorious claims for unlawful pay practices. Not only did the Court in the

Morales Action deny Rochdale's motion to dismiss Plaintiff's Complaint, but the R&R describes in copious detail the voluminous evidence demonstrating that Rochdale routinely deprives SSOBA members and other Rochdale Employees of wages on a regular and systematic basis. Defendant is indisputably aware of this evidence and that SSOBA members have valid grievances *via* its review of Plaintiff's Amended Complaint; the eight declarations of SSOBA employees it was sent by Plaintiff's counsel; and its review of the R&R.

34. Not only has the Union inexplicably ignored these claims and failed to investigate them, it took concerted and purposeful action to assure they could never be asserted by any SSOBA member in any forum. As particularized above, the Union and Mr. Fedrizzi: (i) submitted affidavits in the Ellenberg Arbitration declaring that SSOBA members had no right to arbitrate or grieve their claims; (ii) participated in a sham arbitration before an arbitrator selected by Rochdale's counsel at which they proffered no evidence, made no arguments and retained an attorney who was previously affiliated with Rochdale's law firm; and (iii) ignored requests by Plaintiff's counsel to take action to advance and enforce the rights of SSOBA members. Plainly, the actions of the Union and Mr. Fedrizzi have been arbitrary and designed solely to benefit the employer (Rochdale), not the employees they purportedly represent. Thus, far from "[a] counter-balance to the unchecked power of ... [e]mployers" as touted by SSOBA on its website, the Union and Mr. Fedrizzi have actively colluded with Rochdale to protect the company's interests at the expense and to the detriment of the individuals to whom they ostensibly owes fiduciary duties and are committed to provide their "best service[s]." By any measure, Defendant's actions and conduct have been -- and continue to be -- wholly irrational and lacking in any good faith explanation.

35. The Union has also acted in bad faith and with an improper motive. Seventy-three SSOBA employees opted into the *Morales* Action, thus evincing a clear desire to participate in the

action and obtain compensation for their losses. Without providing these employees any notice whatsoever, Defendant participated in the sham Shriftman Arbitration for no other purpose than to extinguish their ability to participate in the Action, a strategy they pursued with resounding success. When eight of those employees specifically advised Mr. Fedrizzi that had they known of the Shriftman Arbitration, they would have requested to participate and submit evidence in support of their claims, Mr. Fedrizzi and the Union ignored them as well. This concerted failure to keep their members informed and to conceal material information from their constituents is a clear indication that the Union and Mr. Fedrizzi have acted – and will continue to act – in bad faith and with an improper motive.

36. Plaintiff and other SSOBA employees have been directly harmed and prejudiced by Defendant's conduct and inaction. By colluding with Rochdale over the last several months in the Ellenberg and Shriftman Arbitrations and ignoring legitimate requests to take action, the Union has denied Plaintiff and other SSOBA members employed by Rochdale the ability to obtain compensation in any forum for the lawful and meritorious grievances they possess as a result of Rochdale's unlawful wage practices. Had Defendant acted in good faith and consistent with its fiduciary duties to Rochdale's SSOBA employees, the outcome would indisputably have been different, as these employee would have a forum to seek and obtain redress for their legitimate wage and hour grievances. As a result, Defendant's actions have been a substantial factor in Plaintiff's injuries and those of other SSOBA members employed by Rochdale.

37. For the foregoing reasons, Defendant has violated Section 301 of the LMRA by breaching the duty of fair representation. Accordingly, Plaintiff and other SSOBA members who are hourly paid employees of Rochdale are entitled to damages.

