

# MASSACHUSETTS LAWYERS WEEKLY

## Lawyer gets slapped with \$90K verdict in fee case

### Judge then triples award under 93A

By: Brandon Gee February 6, 2014



When veteran Boston lawyer John E. Heraty was hired to represent a Greek immigrant in a recent fee dispute case, he knew exactly who he wanted as co-counsel: Leonard A. Frisoli.

Having successfully faced off against Paul A. Gargano on three previous occasions, Frisoli was more than a little familiar with the Cambridge lawyer and how he operated.

“He’s going to force the case to trial and won’t settle,” Frisoli recalls telling Heraty. “Don’t waste your time. Prepare

for trial and go in guns blazing.”

It turned out to be the right advice.

A Middlesex Superior Court jury found for Frisoli and Heraty’s client, Haralabos Karasavas, after a three-day trial in November, determining that \$90,000 of the \$120,000 the man had paid Gargano — his former lawyer — was excessive.

The verdict was followed by a scathing decision issued on Jan. 27 by Judge Paul D. Wilson, who found that Gargano had violated Chapter 93A. Wilson tripled the award to \$270,000, which, with costs and interest, is expected to reach nearly \$500,000. Frisoli and Heraty believe the sum is collectable.

The 16-page decision is *Karasavas v. Gargano*, Lawyers Weekly No. 12-012-14. The full text of the ruling can be ordered by clicking [here](#).

## **Fee agreement**

In 2006, Karasavas was accused of indecent assault and battery by female employees at the pizza shop he owned and operated. He was charged in Quincy District Court and hired Gargano to represent him.

Over the course of the case, Karasavas would pay Gargano a total of \$120,000, ultimately receiving a continuance without a finding and probation.

Karasavas subsequently sued Gargano in April 2010 for charging him excessive fees.

According to Wilson’s ruling, Gargano argued that he had agreed to take Karasavas’ case for a flat fee of \$120,000. The judge discredited that argument, however, due to the existence of a fee agreement signed by Karasavas. The agreement provided for an initial \$40,000 “non-refundable retainer” and an hourly fee of up to \$600 an hour.

Gargano made additional demands for more money over the course of the case, but never provided Karasavas with

any actual bills or detailed accountings of his time, according to the decision.

Heraty says that, early in the case, Gargano had accused him of fabricating the fee agreement. Gargano kept that accusation alive to the end and listed Heraty as a witness, a move that prompted Heraty to bring Frisoli on as co-counsel.

“As it turned out,” Heraty says, “Paul made a big mistake alerting me that I may be a witness.”

Gargano, who was indefinitely suspended from practicing law in 2011, was represented by Centerville’s Peter M. Daigle. Gargano would not give Daigle permission to comment for this story.

### **‘Double-barreled shotgun’**

Frisoli, who practices in Cambridge, previously had won three cases against Gargano, including two that went to trial. In the most high-profile of those cases, Frisoli helped represent a condominium association that sued Gargano for stealing gas from residents of the building in which Gargano’s office was located. A jury found against Gargano in 2008 and awarded the condo association \$230,408.

While Frisoli’s past dealings with Gargano proved advantageous to the plaintiff’s team, Heraty says the outcome of the case hinged on the two experts he lined up: Boston’s Thomas F. Maffei, a legal ethicist who served on the Board of Bar Overseers for years, and high-profile criminal defense lawyer J.W. Carney Jr.

Heraty says the two lawyers agreed to testify at trial for a reduced fee, believing it to be their duty to help right the wrong when another member of their profession breached his duty of loyalty to a client.

But that doesn’t mean it was a cakewalk. Frisoli says Daigle was successful at getting some evidence ruled inadmissible for trial, including documents related to Gargano’s Board of Bar Overseers proceedings.

Heraty says he had hoped to introduce the evidence since Gargano had answered the complaint with a counterclaim

alleging his reputation had been damaged by the lawsuit.

“Judge Wilson allowed [the counterclaim’s] dismissal at trial over our objection, which kept that evidence from the jury,” says Heraty, who, despite his objection, credited Wilson’s efforts to keep the trial fair.

Karasavas’ limited English proficiency also presented a challenge, and Frisoli says he worried that the heavily female jury might prove a disadvantage given the nature of the criminal charges Karasavas had faced.

But the trial got off to a good start, Frisoli says, when the plaintiff’s wife, Effie Karasavas, was called as the first witness. The woman spoke better English than her husband and was able to broadly lay out the story of the couple’s interactions with Gargano.

The plaintiff’s presentation of the case concluded with the back-to-back testimony of Carney and Maffei.

According to Wilson’s decision, Carney testified that he charged criminal clients \$450 an hour in 2006, and “that only a very few lawyers working at large firms engaged in white-collar defense work were charging \$600 per hour” (the rate quoted in the fee agreement Gargano asked Karasavas to sign). Carney identified by name one such attorney: R. Robert Popeo, a nationally known white-collar criminal defense practitioner and chairman of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo in Boston.

According to the ruling, Carney described the criminal charges Karasavas faced as “serious but not complex,” and said he could not imagine charging more than \$30,000 for the case, even assuming that \$600 an hour was reasonable and that the matter had gone to trial.

“When you get Jay Carney saying something like that, it means something,” Frisoli says.

Maffei, meanwhile, testified about the impropriety of Gargano’s fee arrangement with Karasavas. For example, he noted that nonrefundable retainer fees are not allowed under the Rules of Professional Conduct and that Gargano

compounded that violation by depositing that \$40,000 immediately into his firm's operating account rather than a client trust account.

"There's no such thing as a nonrefundable retainer fee. The lawyer has to earn the fee before he takes the fee," Maffei testified. "What the defendant did in that case was take the money up front on day one and put it in his operating account. Clients have the absolute right to change lawyers, but there's quite a disincentive to fire the lawyer if you forfeit the \$40,000. It chills the ability of the client to fire the lawyer and go somewhere else."

Maffei also refuted Gargano's claims that his defunct law firm, rather than he personally, was the liable party that had charged Karasavas fees.

"Lawyers don't get that insulation from personal liability when they practice in professional partnerships," Maffei testified.

Wilson agreed in his analysis of the 93A claim, writing that "it is the ethical responsibility of a lawyer, not his law firm, not to charge excessive fees."

Frisoli had planned to call additional witnesses, including Gargano, but thought better of it following the testimony from Carney and Maffei, which he describes as a "double-barreled shotgun."

When Gargano took the stand in his own defense, Frisoli says he seized on Gargano's claims that he was a criminal law expert by presenting statements from a prior deposition at which Gargano had said the vast majority of his work was in personal injury.

Gargano "never offered a nickel" to settle, Frisoli says, and the jury returned its \$90,000 verdict for Karasavas after about three hours of deliberations.

Wilson was similarly convinced of Gargano's wrongdoing.

“Because of the number of violations of Chapter 93A, and the fact they occurred not in an ordinary commercial relationship but in attorney/client relationship in which the attorney owes a higher duty to the other party, I conclude that it is appropriate to award treble damages to Plaintiff,” the judge wrote.

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## ONE COMMENT

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February 18, 2014 at 4:30 pm

I am glad to see justice metted out despite the allegiance Attorneys may have for each other. It shows that some Attorneys do seek true justice for their clients without bias.



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