

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**
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IN RE: CASE NO.: 09-34791-RBR
ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11
Debtor.

Opening Statement

In 2008, a few years after leaving his position as an Assistant State Attorney, Brad Edwards began practice in his own firm and, shortly thereafter, he filed civil lawsuits against Jeffrey Epstein on behalf of multiple victims of Jeffrey Epstein’s serial molestation of dozens of young children. In 2009, Brad Edwards took a job as an attorney at Rothstein, Rosenfeldt, Adler (“RRA”) and continued the prosecution of those civil cases against Jeffrey Epstein. When the RRA law firm imploded, Edwards joined in forming the law firm of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman (“Farmer Jaffe”), and continued prosecuting those cases. Days after the destruction of RRA, Jeffrey Epstein, for the purpose of exploiting the implosion of the RRA law firm, filed a false and baseless law suit in Palm Beach Case Number 50-2009-CA-040800 against Scott Rothstein, Brad Edwards, and L.M.—one of Epstein’s many child victims.

In late 2009, RRA was placed into bankruptcy and a trustee, Herb Stettin, was assigned. Herb Stettin was represented by the law firm of Berger Singerman. During the Palm Beach state court litigation, on or about April 16, 2010, Jeffrey Epstein served a subpoena on the bankruptcy trustee requesting, among other things, emails and correspondence to which Mr. Edwards was a party or on which he was copied while he was working as an attorney at RRA. The documents consisted primarily of emails that Brad Edwards sent, received, or was copied on which related to the Epstein civil prosecution and contained significant attorney-client and work-product privileged

information. By Order dated August 13, 2010 [DE 888] this Court ordered the documents be produced to Special Master Robert Carney for the purposes of the Special Master preparing a privilege log, and that all legal fees and costs incurred by the Special Master be paid by Epstein, who had agreed to pay directly all such fees and costs.

It was then determined that the number of documents that would need to be printed and Bates stamped exceeded 27,000, which would have resulted in significant costs to the Farmer Jaffe law firm. Consequently, Farmer Jaffe requested the Court to order that the copying and Bates numbering of this large volume of documents be incurred by Jeffrey Epstein, as he was no longer voluntarily willing to pay for the service. While Farmer Jaffe's motion was pending, Special Master Carney contacted Farmer Jaffe about Fowler White's offer to copy and Bates stamp the documents in-house to save Epstein costs. Special Master Carney recommended that Fowler White's offer be accepted by Farmer Jaffe. In email communication and verbal communication, Special Master Carney made clear that Fowler White was strictly prohibited from retaining any copies of the materials and that even if Farmer Jaffe objected, Special Master Carney was still going to recommend the in-house copying process be performed by Fowler White in order to save Mr. Epstein money.

As is evident by the email correspondence between and amongst the Counsel handling this issue at the time—representatives of the Fowler White firm, the Farmer Jaffe firm, and Special Master Carney—Farmer Jaffe vehemently objected to this Fowler White in-house printing process. In fact, after a series of both written and verbal objections, Gary Farmer specifically explained to Judge Carney, “based on your meeting and assurance, and in order to move this whole matter forward to the inevitable conclusion that awaits, we will take the unprecedented step of allowing an opponent to copy & Bates stamp our and our clients' potentially privileged materials and give the printed materials to us and return to us the disc from which they were printed. We will need language in the agreed order that sanctions will be awarded should it be determined that the

confidentiality is breached or some residue or image of our documents remains at [Fowler White].” Special Master Carney took offense to Farmer Jaffe’s insinuation that Jeffrey Epstein or any member of his legal team might look at the documents that were being printed at Fowler White or might retain the disc containing the subject documents or a copy thereof.

After multiple rounds of Fowler White representatives and Special Master Carney assuring that all precautions would be taken to guarantee that Fowler White never came into possession of any of the potentially privileged documents, Farmer Jaffe ultimately had no real choice but to concede and attempt to protect itself and its clients the best that it could under the circumstances. Throughout, Special Master Carney maintained that it was preposterous to think that after Fowler White representatives assured everyone that no copies of the materials would be kept at or with Fowler White, such copies would be retained by Fowler White.

To ensure that no such copies would be made or kept or ever come into Fowler White or Epstein’s possession improperly, the parties entered into a strict liability Agreed Order. This was an Agreed Order that was intended to provide strict liability should there be a violation. [DE 1194].

In pertinent part, the Order reads as follows:

Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White’s copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards, or his client.

This type of Order was essential to protect Farmer Jaffe and its client from the potential problems that could arise from the unprecedented allowance of an opponent, especially in a case like this when defending a baseless lawsuit filed by a sex offender billionaire, to come into the possession of privileged documents. On November 11, 2010, to aid in satisfying concerns, Ms. Sanchez specifically warranted that, “I am speaking to my IT department and they believe that the storing of

any documents can be bypassed on a copy machine – We are just printing not photocopying . . . it is photocopying which stores in memory – Once I have further info on this I will forward.” On November 15, 2010, Ms. Sanchez further indicated that “[t]here is no copy that will remain nor would I ever look at documents to which I am not entitled.”

As Fowler White Representative Jim Hurley testified on October 18, 2018, in December 2010, two CD’s were picked up from Special Master Carney containing 27,542 pages of documents gathered by the trustee in response to the subpoena. On December 8, 2010, both CD’s were delivered to Fowler White’s Miami office. One at a time, each CD was uploaded to a temporary file on Fowler White’s computer system. Fowler White used its computer program to Bates stamp the documents chronologically from document 1 through 27,542. Fowler White then copied those documents to a blank CD, leaving one CD containing all of the Bates stamp numbered documents as well as the two CD’s that together contained all of the documents without Bates stamp numbers. Fowler White then made one full hard copy of all 27,542 documents. According to Fowler White, it mailed the original CD’s back to Special Master Carney and delivered the only hard copy of the documents to Farmer Jaffe on December 10, 2010.

Farmer Jaffe then spent considerable time and resources reviewing the volume of documents. Specifically, on January 25, 2011, Farmer Jaffe provided Epstein with 8,408 pages of non-privileged emails. On January 26, 2011, Farmer Jaffe served Epstein with a privilege log governing the remainder of the documents. On February 15, 2011, Epstein challenged the privilege log as insufficient before this Court. [DE 1442]. On February 23, 2011, Farmer Jaffe provided Epstein with an additional 12,711 pages of emails, and an Amended Privilege Log containing 159 pages identifying the remaining 6,471 pages of emails containing privileged information that were not being produced. The 12,711 pages of produced documents were divided into two separate categories respectively labeled “Attorneys Eyes Only” and “Farmer Jaffe Irrelevant E-Mails.” Two

boxes of “Attorneys Eyes Only” documents were produced containing 1,829 pages of documents in the first box and 3,198 pages of documents in the second box, totaling 5,027 pages. Two additional boxes of “Farmer Jaffe Irrelevant E-Mails” were also produced containing 3,804 pages of documents in the first box and 3,880 pages of documents in the second box, totaling 7,684 pages. In May 2012, the State Court Judge Crow ordered 163 pages of documents from the February 23, 2011 privilege log be produced and Edwards and Farmer Jaffe complied. The remaining 6,308 pages of documents catalogued on the privilege log were never produced to Epstein or his counsel.

In August, 2012, Epstein’s lawsuit against Edwards was dismissed. Edwards then filed a malicious prosecution lawsuit against Epstein, which was dismissed in 2013 in reliance on a Third DCA opinion that effectively temporarily abolished the tort of malicious prosecution in the State of Florida. That dismissal was appealed by Edwards and the Fourth District Court of Appeals issued an opinion in Edwards’ favor, which was then appealed to the Florida Supreme Court to resolve the conflict between the appellate courts. On June 9, 2017, the Florida Supreme Court ruled in Edwards’ favor and ordered the malicious prosecution action be tried before the state court Judge.

Scott Link of Link & Rockenbach testified that he began representing Jeffrey Epstein in November of 2017, replacing Fowler White and multiple interim lawyers as Epstein’s counsel. On January 10, 2018, Mr. Link traveled to Fowler White’s office in Miami, Florida to review their Jeffrey Epstein files. While at the office of Fowler White, Scott Link flagged certain documents to be copied by Fowler White and provided to him at a later date. On February 1, 2018, Fowler White delivered copies of the documents and the items that Scott Link had flagged. One of those items was a CD with handwriting on the front stating “Epstein Bates Stamp.” Inspection of that CD indicated that it was “last modified” on December 8, 2010 providing indisputable evidence that this was a CD copying all of the subject documents, including those that were never voluntarily produced and which remain on the February 23, 2011 Farmer Jaffe privilege log.

On October 19, 2018, Fowler White's Corporate Representative testified that the "Epstein Bates Stamp" CD was **not** the only evidence of the violations of this Court's November 30, 2010 Order. In addition to retaining the CD containing all of the documents that this Court's November 30, 2010 Order strictly precluded Fowler White from possessing, Mr. Hurley also discovered in Fowler White's possession a folder bearing the writing "J. Carney – Printing of CD issue –." This folder contained 32 printed, hard copy emails, 24 of which are currently listed on the Farmer Jaffe privilege log and which were never produced. One email contains handwritten notations indicating that these printed materials were not only retained, but were clearly reviewed in flagrant violation of this Court's Order. Recognizing this discovery as a problem, Mr. Hurley testified that he did not himself review the hard copy materials when he found them in Fowler White's file. Specifically, he testified that certain factors informed him that the retention of these particular documents was problematic for Fowler White and that consequently he should not review them.

First, the writing on the cover matched the writing on the cover of the file folder containing the CD that was delivered to Scott Link and which Mr. Link represented contained the subject CD. Second, the first page of this compilation of documents demonstrated that the folder contained emails of Brad Edwards and upon inspection of the Bates stamp numbers on the bottom right corner of these hard copy documents, Fowler White discovered that some of these documents were on the Farmer Jaffe privilege log. Mr. Hurley could not, without pure conjecture, explain why Fowler White was in possession of the subject disc and had even less of an explanation as to why Fowler White would be in possession of a select compilation of hard copy documents that were never voluntarily produced and remain on the Farmer Jaffe privilege log.

Due to the obvious violation represented by this compilation of documents that was produced at Mr. Hurley's deposition, the documents were placed in a sealed envelope and not publicly attached to the deposition. Those documents can be made available to this Court for in-camera

review upon request. Inspection of this selection of documents reveals that the person or persons who created this composite must have individually reviewed the documents at issue in order to create such a compilation. The documents in the folder were actively hand selected after a clear review of documents that Fowler White knew it was not permitted to have in its possession.

Perhaps more compelling, Mr. Hurley's review of Fowler White's internal records indicated that in 2014, Fowler White created an inventory of the items in its possession relating to Jeffrey Epstein when Fowler White closed out the Jeffrey Epstein file. The inventory created by Fowler White contained an entry titled "J. Carney – Printing of CD issue –," proving that in 2014, Fowler White was not only in possession of a CD containing all of the impermissibly retained Bates stamped documents, but also that Fowler White was in possession of select hard-copy privileged materials derived from that CD. There could not be a clearer violation of this Court's November 30, 2010 Order.

This Court retained jurisdiction to award sanctions in favor of Farmer Jaffe, Brad Edwards, or his client if it was ever determined that Fowler White retained any copies of the privileged documents contained on the disks provided to it. Mr. Hurley, who is at a disadvantage as he has never personally reviewed the hard copy documents produced at the deposition, testified that from email correspondence in 2010, he believes that all CD's—including the subject CD containing all 27,542 Bates stamped documents—were mailed to Special Master Carney. He has also been unable to match the handwriting on the cover of the file folder in which the CD was found, which led him to deduce that the person who wrote it was possibly not a member of the Fowler White law firm. Mr. Hurley's best guess in terms of his suspicion as to how the CD was found in a Fowler White bankers' box is that Special Master Carney at some point mailed it back to Fowler White. Yes, Fowler White's defense through Mr. Hurley is that Special Master Carney, in direct contravention of the Order that he helped to create, delivered the privileged, protected documents to Fowler White.

For a multitude of reasons, this seems highly improbable. A review of the selected hard copy documents demonstrates that theory to be inaccurate. Special Master Carney does not have the motive to protect Jeffrey Epstein the way in which the person or persons who created that file folder did. Regardless of any speculation by Mr. Hurley, the only **evidence** is that Fowler White created the Bates stamped CD on December 8, 2010 and that Fowler white possessed that CD as well as a file containing hard-copies of privileged documents from that CD in 2014.

Regardless, there is no conceivable doubt or dispute that Fowler White retained a copy of the disc it made and modified by way of Bates Stamp on December 8, 2010. There is also no doubt that at some time before the end of 2014, Fowler White retained hard copies of selected documents of a highly confidential nature that were logged on the Farmer Jaffe Privilege Log. Fowler White's retained copies of privileged materials both in electronic and paper format in direct violation of the Order. It is clear based on the recently discovered evidence and testimony provided by Fowler White that there was not substantial compliance with this Court's November 30, 2010 Order that was made in good faith given that not only was the CD containing 27,542 Bates stamped documents retained, but that selected privileged materials from that CD were printed, reviewed, analyzed, and written on before being incorporated into the files of Fowler White. Sanctions are required to remedy the substantial damage this extraordinary violation has caused and continues to cause.