IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., **Plaintiff,** **v.** **NATIONAL REVIEW, INC., *et al.*,** **Defendants.**	**2012 CA 008263 B** **Judge Alfred S. Irving, Jr.**

ORDER DENYING
PLAINTIFF'S MOTION FOR STAY OF AMENDED ORDER ON FEES

Before the Court is Plaintiff Michael E. Mann, Ph.D.'s *Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees*, filed on February 6, 2025. On February 14, 2025, Defendant National Review Inc. filed an *Opposition*. On February 21, 2025, Dr. Mann filed a *Reply*.

Dr. Mann requests that the Court issue a stay without bond of the January 7, 2025 *Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for "Fees on Fees"* (hereinafter "*Amended Order*"), in which the Court entered an award of $530,820.21 in favor of National Review, and against Dr. Mann, pursuant to the D.C. Anti-SLAPP Act and Rule 54(d) of the Superior Court Rules of Civil Procedure. *See generally* Pl.'s Mot. Dr. Mann contends that "highly unusual circumstances"—namely, a pending *en banc* appeal in *Banks v. Hoffman*, No. 20-CV-0318, concerning the validity of the Anti-SLAPP Act, that likely will be decided before the resolution of the appeals in this case—warrants the issuance of a stay without bond. Pl.'s Mot. 2-4; *see also* Pl.'s Reply 2-4. Dr. Mann further contends that National Review faces no loss should a stay issue because he is able and willing to pay the full amount of the *Amended Order*'s award upon resolution of the appeals in this case. Pl.'s Mot. 5.

In opposition, National Review first contends that Dr. Mann has failed to demonstrate any basis justifying the issuance of a stay without bond. Def.'s Opp'n 2-3. National Review next contends that Dr. Mann may not disregard the Anti-SLAPP Act because "there is no valid judicial decree . . . holding that any aspect of the Anti-SLAPP Act is invalid." *Id.* at 4. National Review further contends that the exact contours of the challenge to the Anti-SLAPP Act in *Hoffman* do not implicate the portions of the Anti-SLAPP Act under which National Review was awarded fees. *Id.* at 4-5 (noting that panel opinion in *Hoffman* invalidated the Anti-SLAPP Act's "discovery limiting" provision and expressly declined to invalidate fee-shifting provision, and *en banc* court is reconsidering whether the "discovery limiting" provision is "actually invalid"). National Review concludes by asserting that it is entitled to fees for the time and effort in opposing Dr. Mann's instant *Motion* because National Review was "force[d] . . . to expend further time and effort to defend the fee award on appeal and collect the fees and costs it is owed." *Id.* at 6 (requesting total fees of $10,412.00); *contra* Pl.'s Reply 4-5 (contending instant *Motion* is not a vexatious tactic and National Review's "fees-on-fees-on-fees" request is premature).

The Court's power to issue a stay of a judgment[1] is governed by Rule 62 of the Superior Court Rules of Civil Procedure and cases setting forth the scope of its inherent authority. *See Marshall v. United States*, 145 A.3d 1014, 1018 (D.C. 2016) (noting that "trial judges in Superior Court are free to rely on their inherent powers where superseding procedural rules and constitutional restraints are absent"). Rule 62 provides in relevant part:

[1] "'Judgment' as used in [the Superior Court Rules of Civil Procedure] includes a decree and any order from which an appeal lies." Super. Ct. Civ. R. 54(a). The *Amended Order* qualifies as a "judgment" as it is a final and appealable post-judgment order awarding an amount certain in fees and costs. *Zuniga v. Whiting-Turner Constr. Co.*, 270 A.3d 897, 902 (D.C. 2022); *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 36 (D.C. 1979).

> **(b) Stay by bond or other security.** At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

"When an appellant submits a bond that is approved by the court, the appellant is entitled to a stay as a matter of right." *Goldberg, Marchesano, Kohlman, Inc. v. Old Republic Sur. Co.*, 727 A.2d 858, 861 (D.C. 1999).[2] "That is not to say that a bond is required in order to obtain a stay. It is within the discretion of the judge to issue a stay without requiring a bond." *Id.* (internal citations omitted); *see also Dickey v. Fair*, 768 A.2d 540, 541 n.2 (D.C. 2001) ("In general, however, the appellant cannot obtain a stay without first posting a supersedeas bond or some other appropriate security."). Where a party seeks a stay without bond, the party must make two showings. First, the party must show that "he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay." *Akassy v. William Penn Apts., L.P.*, 918 A.2d 291, 309 (D.C. 2006) (quoting *Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987)). Second, the party must "show a reason for the departure from requiring the bond," such as where the party's "ability to pay the judgment is clear" or "requiring the bond would render the [party] insolvent or place the [party's] creditors in jeopardy." *Goldberg*, 727 A.2d at 861 n.2; *see also Fed. Prescription Serv. v. Am. Pharm. Ass'n*, 636 F.2d 755, 758 (D.C. Cir. 1980) (collecting cases).

[2] *Goldberg* refers to Rule 62(d). The language and substance of current Rule 62(b) was formerly located at sub-provision (d) until the Superior Court in 2019 adopted the 2018 amendments to Rule 62 of the Federal Rules of Civil Procedure. *See* Super. Ct. Civ. R. 62 comment to 2019 amendments; Fed. R. Civ. P. 62 advisory committee's note to 2018 amendments ("Subdivision 62(b) carries forward in modified form the supersedeas bond provisions of former Rule 62(d).").

Here, the Court finds that Dr. Mann has failed to make the requisite showings for the issuance of a stay without a bond.

As to the first of the four-factor test rearticulated in *Akassy*, 918 A.2d at 309 (quoting *Barry*, 529 A.2d at 320-21), Dr. Mann's speculation as to final disposition of *Hoffman* and the ultimate fate of the Anti-SLAPP Act does not constitute a showing that he is likely to succeed on the merits of his appeal of the *Amended Order*. There has not been a change in substantive law concerning the validity of the Anti-SLAPP Act that undermines the award of fees, especially (1) where the controlling law expressly recognizes the validity of the Anti-SLAPP Act's fee-shifting provision as a substantive remedy that is not contrary to the Home Rule Act, *see Khan v. Orbis Bus. Intelligence Ltd.*, 292 A.3d 244, 260-62 (D.C. 2023); and (2) the Court remains bound by the Court of Appeals' disposition of National Review's Anti-SLAPP motion on interlocutory appeal as the law of the case, *see Lynn v. Lynn*, 617 A.2d 963, 969 (D.C. 1992) ("The general rule is that 'if the issues were decided, either expressly or by necessary implication, those determinations of law will be binding on remand and on a subsequent appeal.'" (quoting *Lehrman v. Gulf Oil Corp.*, 500 F.2d 659, 663 (5th Cir. 1974))); *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1238 (D.C. 2016) (interpreting fee-shifting provision so as not to render it "redundant relative to the rules of civil procedure"). Thus, the Anti-SLAPP Act remains in full force and effect and Dr. Mann is bound by the *Amended Order*, regardless of the controversy over the validity of the Anti-SLAPP Act as a whole and any implications for any fee award made pursuant to its provisions. *See Kammerman v. Kammerman*, 543 A.2d 794, 798 (D.C. 1988); *In re Marshall*, 445 A.2d 5, 7 (D.C. 1982).

On the second *Akassy* factor, Dr. Mann does not discuss whether he will suffer any irreparable harm should a stay not issue.

On the third *Akassy* factor, Dr. Mann suggests that National Review will suffer no harm should a stay issue because Dr. Mann will pay the award upon resolution of the appeals in this case. Not so. The Anti-SLAPP Act's fee-shifting provision serves not only as "financial levies to deter a SLAPP plaintiff," *Competitive Enter. Inst.*, 150 A.3d at 1238, but also as a means of compensating parties for the costs of litigation they otherwise would not incur but for a SLAPP plaintiff's haling them into court, *Khan*, 292 A.3d at 257. Delaying payment of an Anti-SLAPP Act fee award would prolong the award recipient's loss of funds to meritless litigation and erode the compensatory value of the award. *Cf. Fed. Prescription Serv.*, 636 F.2d at 760 ("Because the stay operates for the appellant's benefit and deprives the appellee *of the immediate benefits of his judgment* . . . ." (emphasis added)); *Mazor v. Farrell*, 186 A.3d 829, 833 (D.C. 2018) (in prejudgment interest context, noting rationale for compensating a prevailing party "for loss of the use of its money" and the focus on "making the [party] whole").

On the fourth *Akassy* factor, Dr. Mann does not discuss whether the public interest favors the issuance of a stay.

Thus, the Court finds that Dr. Mann has failed to demonstrate his entitlement to a stay under *Akassy*. *See also Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 554 n.9 (D.C. 2001) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." (quoting *United States v. Zannino*, 895 F.2d 1, 16 (1st Cir. 1990))).

As to Dr. Mann's second required showing of "a reason for the departure from requiring the bond," *Goldberg*, 727 A.2d at 861 n.2, Dr. Mann indicates his willingness to pay the award and relies on the trial record to suggest his ability to pay. Dr. Mann fails to proffer adequate information to justify waiving the bond, however. Indeed, the Court is bereft of any information

to determine Dr. Mann's ability to pay. In explaining that Rule 62 did not preclude trial courts from exercising their discretion to issue unsecured stays, the U.S. Court of Appeals for the Seventh Circuit explained:

> To the technical reasons which [the *Federal Prescription Service*] court advanced for rejecting a literal reading of Rule 62(d) we add that an inflexible requirement of a bond would be inappropriate in two sorts of case: where the [judgment debtor's] ability to pay the judgment is so plain that the cost of the bond would be a waste of money; and—the opposite case, one of increasing importance in an age of titanic damage judgments—where the requirement would put the [judgment debtor's] other creditors in undue jeopardy.

Olympia Equip. Leasing Co. v. W. Union Tel. Co., 786 F.2d 794, 796 (7th Cir. 1986); *see also Fed. Prescription Serv.*, 636 F.2d at 761 (affirming trial court's granting unsecured stay pending appeal and noting that "the documented net worth of the judgment debtor was . . . about 47 times the amount of the damage award" and "the judgment debtor was a long-time resident of the District of Columbia" with "no indication it had any intent to leave").

Here, Dr. Mann does not give any specifics as to his assets, net worth, or liquidity in support of his request. *See also* Pl.'s Mot., Exs. 1-2 (demonstratives from trial that do not list any numbers). Nor did the trial record establish the extent of Dr. Mann's assets, net worth, or liquidity at present: The only substantiated figures were drawn from Dr. Mann's W-2s from 2012 to 2017, showing an annual income of at most $198,877.40. *See* Trial Ex. 580; Trial Tr., 1/24/24 PM, 15:23-19:03 (cross-examination on Dr. Mann's W-2s). "The burden is on the moving party to show a reason for the departure from requiring the bond." *Goldberg*, 727 A.2d at 861 n.2. Dr. Mann's perfunctory and unsubstantiated assertions plainly do not meet his burden to show why he should be entitled to an unsecured stay. *See Wagner*, 768 A.2d at 554 n.9 ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its

bones. . . ." (quoting *Zannino*, 895 F.2d at 16)). Thus, the Court finds that, as with the first required showing under *Akassy*, Dr. Mann has not made the second required showing under *Goldberg*. The Court is therefore constrained to deny Dr. Mann's *Motion for Stay*.

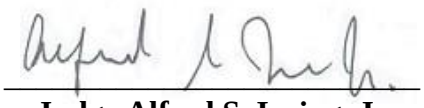
As to National Review's request for fees incurred in opposing Dr. Mann's *Motion for Stay*, in view of both Parties' recognition that the request for a stay pending appeal falls under "work on appeal," *see* Def.'s Opp'n 5 (quoting *D.C. Metro. Police Dep't v. Stanley*, 951 A.2d 65, 68 (D.C. 2008)); Pl.'s Reply 5 (same), and the pending appeal of the *Amended Order*, the Court will decline to award National Review "fees on fees," at this juncture. *See Stanley*, 951 A.2d at 66 (determination of fee award arose after successful appeal and mandate of remand).

ACCORDINGLY, it is by the Court this 3rd day of April, 2025, hereby

ORDERED that Plaintiff Michael E. Mann, Ph.D.'s *Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees*, filed on February 6, 2025, is **DENIED**; and it is further

ORDERED that Defendant National Review, Inc.'s request for fees in connection with litigating Plaintiff Michael E. Mann, Ph.D.'s *Motion for Stay of Amended Order Granting in Part National Review Inc.'s Motion for Attorneys' Fees and Supplemental Motion for Fees on Fees*, as set forth in its February 14, 2025 *Opposition to Plaintiff's Motion for Stay of Fee Award and Supplemental Motion for Fees on Fees*, is **DENIED WITHOUT PREJUDICE**.

SO ORDERED.



Judge Alfred S. Irving, Jr.

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