

# MEDIATION THEATRE

## General message of the theatre:

A lawyer plays an important role during a mediation. The input of the legal profession is necessary to support the professionalization of mediation, and to help a client to get the best result possible. In order to do so, a lawyer needs to have the proper attitude and should be prepared. Meaning a lawyer should not just be aware of the facts and the legal merits of a case, but also analyze the interests and other negotiation aspects. And (s)he should know how to “use” the mediator and the process to get results.

## *Case general introduction:*

### **1. Objective of the theatre**

Objective of the theatre is to show how mediation works and to demonstrate the important role of a lawyer during a mediation. A mediation usually starts in a joint session with an opening statement of the mediator, followed by opening statements of the lawyers and parties. After that alternately a caucus (private meeting with one party) and joint sessions are conducted. In mediation it's about finding a creative business solution, based on interests and the future instead of legal positions and the past.

### **2. Introduction of the case**

Plaintiff: EuropeWorld Studios, based in Amsterdam, represented by CEO Manon Spelunker (“Spelunker”)

Defendant: Ali Russo (“Russo”)

The plaintiff, EuropeWorld Studios, an Amsterdam based European film making company, has sued Ankara based Ali Russo for fraud and breach of contract. About a year ago, EuropeWorld entered into a contract with Russo, an animal trainer, in connection with the making of an Italian film "Ferrari's Ferry" that was to be filmed in Turkey. The "Ferrari's Ferry" script called for a scene in which a mule sits on its haunches. Russo, an aspiring actor and animal trainer, represented to EuropeWorld that he owned a trained mule, named "Marco", and that Marco had been taught to sit on his haunches. Russo also indicated that Marco was a gentle and mild-mannered beast – and whose color would appear nicely on screen.

Marco turned out to so wild on the set that he had to be removed. After some investigation it turned out the Marco was not owned by Russo. EuropeWorld had to engage a new mule of a different color and had to redo many shots. Russo has counterclaimed against EuropeWorld for the fee he was not paid and has asserted a € 4.0 million libel claim against EuropeWorld. EuropeWorld C.E.O., Eve Spelunker, was quoted in the ROMA Times and Hürriyet as saying *"Russo is the worst animal actor trainer in the business. He flat out lied to us about Marco, who was nothing more than an unruly pain in the butt."*

The parties have agreed to mediate this dispute with the support of their Turkish attorneys. Both parties have full authority to settle.

## Key Information and Confidential Instructions

**Plaintiff:** EuropeWorld Studios, based in Amsterdam, represented by CEO Manon Spelunker (“Spelunker”)  
**Defendant:** Ali Russo (“Russo”)

### **The Immovable Mule**

#### **General Information**

The plaintiff, EuropeWorld Studios, a Amsterdam based European film making company, has sued Ankara based Ali Russo for breach of contract. About a year ago, EuropeWorld entered into a written contract with Russo, a self-proclaimed mule handler, in connection with the making of an Italian film “Ferrari's Ferry” that was to be filmed in Turkey. The "Ferrari's Ferry" script called for a scene in which a mule sits on its haunches. Russo, an aspiring actor and animal trainer, represented to EuropeWorld that he owned a trained mule, named "Marco", and that Marco had been taught to sit on his haunches. Russo also indicated that Marco was a gentle and mild-mannered beast – and whose color would appear nicely on screen.

The contract between EuropeWorld and Russo provided that EuropeWorld would pay Russo € 5500.00 for five days of work in which Russo would handle Marco and Marco would appear for filming and, among other things, sit on his haunches. EuropeWorld informed Russo that the 'haunches' scene was quite important, and integral to the movie. In fact, the mule's sitting was to be the impetus for a change of heart in Sebastian, the movie's main protagonist.

On the first day of Marco's appearance on the Ferrari's Ferry set, Marco knocked over a make-up table, kicked down a lighting set, and nearly kicked Monica Bellucci (a famous Italian actress) in the teeth, but for the intervention of a production hand. The following day, during the important sitting on his haunches scene, Marco not only refused to engage in the maneuver, but also appeared to threaten the film's director and actors. Russo, despite repeated attempts, was unable to calm Marco. The next day, several actors refused to go to the set if Marco was to be present.

EuropeWorld immediately attempted to locate a different mule of the same color and size. This turned out to be a difficult task. However, during the mule search, when they interviewed owners and potential trainers, EuropeWorld learned Russo didn't even own Marco, but had rented him. EuropeWorld was then required to pay Marco's true owner € 500.00 a day to keep Marco calm. But even with the real owner, Marco would not sit on the haunches.

Finally, and due to the short time frame, EuropeWorld was forced to accept a mule of a different color. A week later, a suitable mule named Ernesto, was found to replace Marco. Ernesto was used to re-shoot the sitting on its haunches scene. The shoot, however, took over a month longer, as all prior scenes with Marco in the background had to be edited and most were then re-shot with Ernesto. Needless to say, EuropeWorld and Russo parted company on unfriendly terms.

EuropeWorld is now suing Russo for fraud and breach of contract. EuropeWorld claims Russo misrepresented his ownership of the mule, that Marco would sit on his haunches and that Russo could control the beast. EuropeWorld is claiming € 111,000.00 as damages, which represents the cost overruns caused as a result of having to find a better behaved and cooperative mule. EuropeWorld is also seeking attorney's fees in the amount of € 25,000.00.

Russo has counterclaimed against EuropeWorld for the € 5500.00 he was not paid and has asserted a € 4.0 million libel claim against EuropeWorld. EuropeWorld C.E.O., Manon Spelunker, was quoted in the ROMA Times and Hürriyet as saying "Russo is the worst animal actor trainer in the business. He flat out lied to us about Marco, who was nothing more than an unruly pain in the butt."

The parties have agreed to mediate this dispute with the support of their Turkish attorneys. Both parties have full authority to settle.

## **The Immovable Mule**

### **Confidential Facts for EuropeWorld (CEO Spelunker)**

You, Spelunker, have maintained a decent reputation for business in the film industry and are a bit embarrassed by this event. You have no doubt that Russo entirely misrepresented Marco's qualities and you were incensed to learn Russo didn't even own the mule. And, frightening Monica Bellucci half to death didn't help. Someone should have done some homework regarding the mule. However, it is not your responsibility to do "background checks" regarding mules – or the trainers.

Moreover, you were equally exasperated at your director, Milos Makarena, who insisted that the Ferrari's Ferry script must be literally followed and that the mule sitting on its haunches scene was central to the film. You suggested to Makarena that the mule scenes just be deleted from the script, but he insisted on finding a replacement donkey. You feel that this entire ordeal has taken an inordinate amount of time and it is most important that this matter be put to rest.

Although you are somewhat regretful about trashing Russo in the *Hürriyet* and *ROMA Times*, the statements were essentially true and based upon the facts. EuropeWorld's Board of Directors has not authorized you to pay Russo any sum directly for the libel claim as comments such as those, particularly in the *ROMA Times*, are commonplace throughout the industry- even if exaggerated somewhat. However, even as furious as you are about this matter, especially since Russo lied to you, you did not intend to end Russo's career. You realize, that because of EuropeWorld's reputation and status in the industry that would be very possible. Perhaps it is even probable, if you can now believe Russo's claims that s/he is afraid that s/he might never work again in Turkey or Europe. You had kept this from your Board of Directors, but in fact, you had personally worked with Russo about four years ago, and were quite impressed with the handling and acting of the bear. You think that you would be willing to consider some other options.

Coincidentally, you have just received the script for the third, wildly successful, Ace Ventura film entitled *Ace Ventura: A Giraffe Named Monica*. You suspect that a trained giraffe is currently owned, handled and trained by Russo. It has been made clear to you that an animated giraffe will not do. Delays in the production of the third Ace Ventura film could cost you millions. The Ace Ventura screenplay is very much a secret.

You are really tired of this matter, and in fact, you do not like any legal matters. You are quite furious that Russo lied to you, but know that it was an attempt to get much needed business – and you can certainly understand that. In fact, you have not always been so truthful yourself - especially in your early promotions. Depending on how the mediation goes, you may be able to work with Russo in the future, and would be willing to talk with the Board of Directors of EuropeWorld Studios about such a possibility.

## **The Immovable Mule**

### **Confidential Facts for Ali Russo**

Imagine. A donkey might ruin a career you had worked so hard for so many years to develop. You have always been able to handle animals expertly, and are still somewhat bewildered by the difficulties with Marco. You felt that you and Marco had related well, and were certain that not only would all go well, but that this could have been your “lucky break”.

Now it is more than obvious that Marco was a bust and you realize that you should never have taken Marco’s hayseed owner's word that the animal was well behaved and would sit down on command. What made this worse was that you had never worked with mules before. You figured if you could make a rhino behave, how could a mule be that hard. Boy, you were wrong.

You had really wanted to work with EuropeWorld, and especially Spelunker again. You had worked with Spelunker about four years ago, although s/he did not mention it when you met to discuss Ferrari’s Ferry. But you were quite pleased to have another opportunity. In fact, you felt sure that this film could solidify your presence as a premier animal trainer in Turkey. Now you are worse off than before. Admittedly you exaggerated and made some serious misrepresentations about Marco – but that is commonplace in the industry. You can’t understand why the studio is so upset. In an attempt to assist with the film, you made a lot of calls to find a replacement mule. But even with your contacts, you were unable to do so.

But Spelunker's comments in the ROMA Times and Hürriyet, even while largely true, went too far and violated an Industry "norm." Everyone in the industry puffs up things and lies just a little, but you don't call someone a liar in the paper and ruin someone's career just because something went a little wrong. Overruns are common – aren't they? You are absolutely furious about the negative publicity, and fear it will result in the total demise of your career. In fact, you have had great difficulty finding good paying work lately. And your competitors are, of course, delighted about the article. You had already been an object of ridicule when you bought and trained a giraffe for an updated version of the TV series Mr. Ed, albeit this series involving a talking giraffe. The pilot was never picked up by a studio and now you've wasted € 35,000.00 on a giraffe.

Now, your name is mud, and your career kicked in the teeth by a mule. What's worse is that you have no idea how you're going to feed your animals, especially the giraffe, during the litigation. You have some concerns about your business – and even your ability to pay your attorney.

You wonder why these attorneys got involved. Perhaps things could work out better if the focus were more from a business perspective. While it is somewhat important to you to maintain your reputation, that could be done with a retraction – rather than the payment of money for the libel claim. And what you really need – and want – now is work. You know that EuropeWorld has many contacts; you wonder if they would help you find some business. In fact, that would be the best “apology” of all.