

# Key attorney helps vindicate Mykonos owner in defamation lawsuit

By YARA ZAKHARIA, ESQ.

In August 2008, Mykonos Greek Restaurant owner Ioannis (John) Kafouros' life and that of his family were turned upside down when the *Baltimore City Paper's* senior staff writer, Van Smith, published two articles falsely identifying Kafouros\* as a federal fugitive of the same name without engaging in any kind of fact-checking or conducting an investigation.

Two years later, a federal jury in Baltimore found the paper and reporter had defamed Kafouros, and awarded him \$350,000. "They misidentified as a criminal someone of high repute in the community, someone with a good name who had worked hard all his life to maintain that good name," says Joel Magolnick, the attorney who represented Kafouros in the defamation case.

Libel or written defamation, Magolnick explains, harms individuals in incalculable ways and adversely impacts their lives. "This case is a prime example of why it's so important to perform a full investigation before reporting something that could have devastating consequences on someone's life," he states.

A 22-year veteran of the legal profession, Magolnick, who resides in Key Biscayne, specializes in civil litigation, from complex commercial litigation to mass torts. In January 2006, the University of Miami School of Law graduate joined De la O, Marko, Magolnick, & Leyton, P.A., where he serves as a co-managing partner and chairperson of the firm's Litigation Department.

Fifty percent of his practice involves complex commercial litigation and the other half general civil litigation, such as personal injury cases.

Kafouros sought Magolnick's legal services in September 2008, within a few weeks of having seen the first defamatory article online. Kafouros and his wife Maria have owned Mykonos Greek Restaurant on Coral

Way since 1986.

In March 2009, Magolnick filed suit on behalf of Kafouros for defamation against C.E.G.W., Inc., the owner of the *Baltimore City Paper* – an alternative weekly newspaper – and Smith. Magolnick had handled other defamation cases in the past, but this was the first one that actually went to trial.

Federal fugitive "Crazy John" Kafouros, who owned Baltimore restaurants and a night-club, had been convicted of dealing in interstate stolen goods and tax evasion. Immediately preceding his sentencing hearing in 1999, "Crazy John" fled and was sentenced in absentia. The feds had reliable information through various sources that "Crazy John" had absconded to Santorini, Greece, where he was born and where his family owns properties.

The interest in finding "Crazy John" Kafouros arose again in 2008 in connection with a federal raid on businesses in Baltimore owned by Milton Tillman. One of the Tillman businesses raided was located in a property registered to "Crazy John" Kafouros and his ex-wife Diane.

According to Magolnick, on August 21, 2008, Smith, who had worked 20 years for the *Baltimore City Paper* and had reported on "Crazy John" Kafouros' conviction and sentencing in absentia in 1999, called Mykonos Greek Restaurant and asked to speak to Ioannis Kafouros.

Kafouros' son Alexios answered the phone and told Smith his father was not present. The reporter told Alexios he was calling from Baltimore about open issues his father had there. He asked Alexios if his father lived in Baltimore at one point, to which Alexios responded yes.

Smith asked him whether his father owned any properties in Baltimore, to which Alexios replied, "I don't know."

He asked whether his mother's name was Diane and whether she lived in Baltimore, and Alexios informed him his mother's name is Maria and she lives in Miami. "Those were

basically the only questions that he asked my client's son; it was a very brief conversation," says Magolnick.

At the end of the call, Smith asked Alexios to have his father call him.

Prior to calling Mykonos Restaurant, Smith had run a Google search and pulled up information from the Florida Department of Corporations showing that a "John Kafouros" was listed as officer for Mykonos Restaurant, and also listing the name Maria Kafouros. But he never asked to speak to Maria or even inquire as to who she was.

"He wanted to believe that he had found 'Crazy John,' the federal fugitive who had been on the run for 10 years, and we believe that he never wanted to know the truth," indicates Magolnick.

"The bottom line is that there was a laundry list of very simple things that the reporter could have and should have done and simple questions he could have and should have asked before writing the article, any of which would have resulted in the article never being printed, but he chose not to do anything because, in our opinion, he didn't want anyone to tell him that he was incorrect about having found a federal fugitive who had been on the run for more than 10 years," states Magolnick.

Smith, he says, never even asked how long Alexios' family lived in Miami, what his father's middle name was ("Crazy John" Kafouros' middle name is Markos, whereas the restaurateur-plaintiff's middle name is Alexios), or how long they have owned Mykonos Restaurant.

According to Smith's testimony, it was very important for the story that he be able to talk to Ioannis Kafouros, the Mykonos owner, before running with the story, and Smith testified he was surprised he never got a call back from him, says Magolnick.

"The amazing thing is that, despite having the time to do so, Smith, an investigative reporter, never tried to call Ioannis Kafouros again, never called the restaurant again to

find out if his son had even conveyed the message to his father, never tried to contact my client at home or to follow up on a message he had left for 'Crazy John's' ex-wife Diane before or after the articles went online and to print," he says. "We believe that Smith was afraid of what he would hear."

According to Magolnick, "Smith's identification of John Kafouros as a federal fugitive was based on a Google search and a five-minute telephone conversation with Alex Kafouros, the substance of which was misstated in the articles."

The article was first published online August 22 and was then printed in the hard-copy version of the *Baltimore City Paper* August 27. It was by mere coincidence that, in early September 2008, the Kafouros family learned about the defamatory publication in the paper.

"John's wife had Googled his name looking for an article discussing how John was a guest chef at an event in Jamaica," Magolnick explained.

She wanted to have the article as part of an upcoming birthday celebration for her husband. That was when she landed on the online defamatory article in the *Baltimore City Paper*.

On September 5, 2008, Alex Kafouros called Van Smith and asked him why he attributed statements to Alex that he had not made. According to Magolnick, "Immediately after the September 5, 2008, call from Alex, Smith and *City Paper* decided that a correction had to be printed."

There were two corrections printed. The first correction was printed September 24, 2008, and placed as "the last item in the letters to the editor section of the paper," Magolnick says. "We were unhappy with the wording and placement of the first correction, and, on October 8, 2008, a second correction was printed and placed in a prominent loca-

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tion, which, in the history of the *City Paper*, had never before been used to run a correction. Although the wording and placement of second correction was acceptable, by that time, the damage had been done."

At trial, there were nine witnesses, four on the plaintiff's side and five on the defendants' side, including John Kafouros, Maria Kafouros, Alexios, the editor, editor-in-chief, publisher and Smith. The defense's position was, "Why would we want to hurt John Kafouros in Miami?" says Magolnick. "But, we didn't say they wanted to hurt my client. Rather, we said they just didn't care."

The defendants testified it was an innocent mistake and contended they had printed two corrections, and that money was not going to resolve the plaintiff's problems. "The only recourse available to my client, however, was through the courts, and the only remedy that a jury can provide is monetary compensation. Defendants argued that there were no damages, and that there was no way to prove that my client suffered damages," states Magolnick. "We proved them wrong on both of those positions."

During the trial, Magolnick and his counsel from Baltimore, Joshua Treem, focused on the complete lack of investigation and fact-checking, the policies and procedures in place at the *Baltimore City Paper* that were violated, as well as the damages suffered by Kafouros. "For us, Smith was more concerned with sensationalism than journalism," states Magolnick. "Every journalist has to follow certain ethical guidelines; there was no fact-checking done on the online or print version of the article before, during or after publication."

As a result of the defamatory articles, Mykonos' owner suffered significant emotional distress, arising from such things as embarrassment over being identified as a fugitive and the fear that someone associated with "Crazy John" would be looking for the federal fugitive.

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The U.S. Marshal service even made an unannounced visit to Kafouros at his home in December 2008 due to the articles published in the *City Paper*. Kafouros' fear for his and his family's safety led him to increase security at his home and business.

Magolnick asked the jury for \$300,000 in compensatory damages, and the jury of six women and two men awarded his client \$350,000 after only two-and-a-half hours of deliberation, finding both Smith and the paper guilty of negligence.

While the verdict was being read and the jury was still in the courtroom, his clients "handled it very quietly," says Magolnick.

They then expressed great joy. "It was a huge vindication, tempered, of course, by the fact that the articles had been written and that nothing could un-ring the bell."

Notwithstanding this, the knowledge that the jury believed his client operates as an "official determination" that his client was right, he notes.

Few defamation cases are successful; there are not a lot of verdicts against media defendants in defamation cases. "John and Maria Kafouros knew every step of the way that we were right, and it felt great knowing one, that the jury agreed with us, and two, that my client felt somewhat 'vindicated' by the verdict," he stresses.

Although this case might not have set a precedent, he says the outcome was "clearly unexpected from the defense side."

The jury sent the message that Smith and the paper could have and should have done more, says Magolnick. "My law firm and I, as well as our client, were very happy with the verdict, because when you enter into a case like this and put your client's fate in a jury's hands, the outcome is unpredictable. The jury did the right thing," he observes.

Magolnick's wife, Elena, who is also an attorney and who was present with him during the entire four-day trial, provided him with invaluable insight for cross-examination and the closing argument. "She was instrumental in helping us secure the victory," says a grateful Magolnick.

As the parents of three children, the couple appreciates the tight-knit community that is Key Biscayne, where they have been living since 1990.

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