

SUPREME COURT
STATE OF NEW YORK COUNTY OF MONROE

NOAH DOOLITTLE,

Plaintiff,

v.

NIXON PEABODY, LLP,

Defendant.

COMPLAINT
AND DEMAND FOR JURY TRIAL

Index No.

09/16/150

Plaintiff Noah Doolittle, as and for his complaint against defendant Nixon Peabody LLP, hereby alleges as follows:

NATURE OF THE ACTION

1. This action is brought under the New York Labor Law and common law damages as a result of defendant's underpayment of amounts owed plaintiff.

JURISDICTION AND VENUE

2. Plaintiff is, and at all relevant times was, an attorney admitted to practice in the State of New York and is a resident of the State of New York, Monroe County.

3. Upon information and belief, defendant is a limited liability partnership licensed to conduct business in the state of New York.

4. The jurisdiction of this Court is invoked pursuant to New York Civil Practice Law and Rules ("C.P.L.R.") §§ 301 and 302 because defendant transacts and/or solicits business within the state from which it derives substantial revenues and because this action arises from defendant's activities in New York.

5. Venue is appropriate in this Court because plaintiff resides in Monroe County

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and defendant is authorized to and does transact business in the County of Monroe, State of New York and maintains an office in Rochester, New York located at 1100 Clinton Square, Rochester, New York 14604.

RELEVANT FACTS

6. Plaintiff was employed by defendant as an associate in defendant's Rochester New York office from the Fall of 2002 until on or about September 14, 2008.

7. In recognition of the importance of associate efforts to bring in new business through their own efforts, defendant had, during plaintiff's employment, a stated policy to pay an associate, in addition to a regular salary, 5% of defendant's annual fee collections from any client generated by that associate if defendant's annual fee collections from that client exceeded \$100,000.00 ("Business Generation Bonus Plan").

8. Upon information and belief, in conformance with its stated Business Generation Bonus Plan, defendant's course of conduct during plaintiff's employment was to pay 5% of annual fees collected from an associate-generated client to that associate.

9. Plaintiff attended meetings in which agents and representatives of defendant, including an equity partner in defendant's management and the head of defendant's Professional Personnel Committee, advised plaintiff and others of the Business Generation Bonus Plan.

10. In or about early 2005, in reliance upon defendant's Business Generation Bonus Plan, plaintiff used his efforts and personal relationships to generate a new client for defendant ("Plaintiff's Client").

11. Plaintiff was listed in defendant's internal systems as the "client attorney" for Plaintiff's Client, and was otherwise understood within the firm to have been responsible for bringing Plaintiff's Client to defendant.

12. Defendant represented Plaintiff's Client in a breach of contract dispute, arbitrated before the American Arbitration Association (the "Arbitration").

13. Plaintiff performed a significant amount of work in connection with the Arbitration and was constantly in contact with Plaintiff's Client.

14. Despite plaintiff's efforts, the case did not initially receive sufficient partner attention. As a result, Plaintiff's Client expressed dissatisfaction and threatened to terminate defendant's representation several times.

15. In reliance upon defendant's Business Generation Bonus Plan, plaintiff expended a great deal of effort in working to maintain defendant's relationship with Plaintiff's Client, including urging that the case be transferred to defendant's New York City office.

16. Largely due to plaintiff's efforts, Plaintiff's Client did not terminate its relationship with defendant.

17. In August 2008, Robert B. Calihan, an equity partner in defendant's management, assured plaintiff that plaintiff would receive an incentive compensation payment upon collection of a fee from Plaintiff's Client.

18. In late August 2008, Plaintiff's Client obtained a favorable award in the Arbitration in excess of \$19,000,000.00.

19. In early September 2008, plaintiff informed Robert Calihan and others that plaintiff had been offered a job by one of defendant's long-standing clients, subject to certain remaining employment prerequisites and final approval.

20. At that time, plaintiff inquired, again of Robert Calihan, about the impact on any bonus of a decision to go to work for defendant's long-standing client.

21. Robert Calihan assured plaintiff he would receive the same bonus as if plaintiff was still an associate, in connection with the collection of fees received from Plaintiff's Client, further commenting this was the case especially because plaintiff was going to be a client.

22. Subsequently in September 2008, and in reliance upon Robert Calihan's assurances that plaintiff would receive the payment even if plaintiff left defendant's employ, plaintiff completed the process of accepting the job offer and quickly went to work for defendant's long-standing client.

23. In early November 2008, as a result of its representation of Plaintiff's Client in the Arbitration, defendant collected a fee payment from Plaintiff's Client in the amount of \$5,318,520.00.

24. Despite plaintiff's due demand therefore, defendant has refused to pay plaintiff the amount it promised and agreed to pay plaintiff as compensation resulting from the fees paid by Plaintiff's Client to defendant.

FIRST CAUSE OF ACTION
Violation of New York Labor Law

25. Plaintiff repeats and realleges the allegations expressed above as if fully set forth herein.

26. Defendant willfully violated its obligation to properly compensate plaintiff

under the New York State Labor Law and is liable to plaintiff.

27. As a direct and proximate cause of defendant's violation of the New York Labor Law, plaintiff has suffered damages.

SECOND CAUSE OF ACTION

Breach of Contract

28. Plaintiff repeats and realleges the allegations expressed above as if fully set forth herein.

29. Defendant willfully violated its obligations under the common laws and state laws of New York and is liable to plaintiff.

30. As a direct and proximate cause of defendant's breach of its contract with plaintiff, plaintiff has suffered damages.

THIRD CAUSE OF ACTION

Fraud and Deceit

31. Plaintiff repeats and realleges the allegations expressed above as if fully set forth herein.

32. To the extent defendant represented to plaintiff that he would be compensated for generation of fee paying clients in an amount equal to 5% of the annual fee receipts from such clients without ever intending to so compensate plaintiff, defendant willfully violated its obligations under the common laws and the state laws of New York.

33. To the extent defendant represented to plaintiff that after his departure he would still be compensated as if he had remained employed by defendant without ever intending to so compensate plaintiff, defendant willfully violated its obligations under the common laws and the state laws of New York.

34. As a result of plaintiff's reliance upon defendant's representations, plaintiff suffered damages because he was not appropriately compensated for his generation of a fee paying client.

35. As a direct and proximate cause of the fraud committed by defendant, plaintiff suffered damages.

FOURTH CAUSE OF ACTION
Misrepresentation

36. Plaintiff repeats and realleges the allegations expressed above as if more fully set forth herein.

37. To the extent defendant misrepresented to plaintiff that he would be compensated for generation of fee paying clients in an amount equal to 5% of the annual fee receipts from such clients, defendant willfully violated its obligations under the common laws and the state laws of New York

38. To the extent defendant misrepresented to plaintiff that after his departure he would still be compensated as if he had remained employed by defendant, defendant willfully violated its obligations under the common laws and the state laws of New York.

39. As a result of plaintiff's reliance upon defendant's misrepresentations, plaintiff suffered damages because he was not appropriately compensated for his generation of a fee paying client.

40. As a direct and proximate result of defendant's negligent misrepresentation, plaintiff suffered damages.

under quantum meruit.

49. As a direct and proximate cause of defendant's actions, plaintiff suffered damages.

PRAYER FOR RELIEF

WHEREFORE, THE PLAINTIFF PRAYS THAT THIS COURT:

- a. declare defendants' conduct complained of herein to violate his rights as secured by New York Labor Law;
- b. declare defendants' conduct complained of herein to violate his rights as secured by New York common law;
- c. award plaintiff all compensatory and consequential damages including the value of plaintiff's unpaid wages;
- d. award plaintiff liquidated damages and penalties;
- e. award plaintiff reasonable attorney's fees, expenses, expert fees and costs incurred in vindicating his rights;
- f. award plaintiff pre- and post-judgment interest; and
- g. grant such other relief as this Court may deem just and appropriate.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated: November 20, 2009

THOMAS & SOLOMON LLP

By:


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