

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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 :
 SCOTT EPSTEIN, individually and as a Partner of :
 Cantor, Epstein & Mazzola, LLP, :
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 Plaintiff, :
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 - against - :
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 ROBERT I. CANTOR, ROBERT I. CANTOR :
 PLLC, BRYAN J. MAZZOLA, W. TODD BOYD, :
 BOYD, RICHARDS PARKER COLONELLI, P.L., :
 and BOYD RICHARDS NY, LLC, :
 :
 Defendants. :
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Index No.: 506730/2019
COMPLAINT

SCOTT EPSTEIN, as and for his Complaint against defendants, alleges as follows:

PRELIMINARY STATEMENT

1. This dispute arises from the unilateral break up of a law firm partnership effectuated by defendant Robert I. Cantor (“Cantor”), in coordination with a competitive law firm and its members who raided partnership assets, rendering it insolvent. Specifically, from in or about 1995 until, at the earliest, on or about June 8, 2016, Plaintiff Scott Epstein (“Epstein”) and Cantor had a law partnership at the law firm of Cantor, Epstein & Mazzola, LLP (“CEM”), formerly known as Cantor, Epstein, Bailey & Degenshein, LLP and Cantor, Epstein & Degenshein, LLP. However, on June 8, 2016, at the earliest, Cantor, against Epstein’s expressed wishes, decided unilaterally to dissolve and wind down CEM, disposing of the client base and good will that Epstein had worked for decades to build and establish, and causing Epstein millions in damages.

2. Eventually, Cantor formed his own law firm, and gave almost 100% of Epstein’s client base and good will to Boyd, Richards Parker Colonelli, P.L. and/or Boyd Richards NY, LLC

(“Boyd Firms”), with the cooperation and assistance of Bryan J. Mazzola, who was previously a partner of CEM, and W. Todd Boyd, who had formed a competitive practice. Upon information and belief, Cantor was compensated for his destruction of Epstein’s law practice, adding insult to Epstein’s injury.

3. For the reasons set forth below, Epstein is entitled to an award of damages and an accounting for, *inter alia*, Cantor’s multiple breaches of contract, violations of New York State Partnership law, and breaches of fiduciary duty, and, *inter alia*, the other defendants’ common law conversion, aiding and abetting breaches of fiduciary duties by others, corporate raiding, tortious interference with contract, unfair competition, unjust enrichment and other misconduct.

PARTIES

4. Epstein is, and at all relevant times herein has been, a resident of the State of New York, County of Kings.

5. Epstein is, and at all relevant times herein has been, a practicing attorney, and until, at the earliest, on or about June 8, 2016, Epstein had an active law practice at, *inter alia*, CEM.

6. CEM’s law practice specialized in, among other things, defending Boards of Directors and Boards of Managers of and for co-operative and condominium associations (“D&O Insurance Defense Practice”), as assigned by their directors and officers liability insurance carriers.

7. Upon information and belief, Cantor is, and at all relevant times has been, a citizen of the State of New York, with a law practice in the County and City of New York.

8. Cantor is, and at all relevant times has been, a practicing lawyer.

9. Upon information and belief, Defendant Robert I. Cantor, PLLC (“Cantor Firm”) is, and at all relevant times since June 21, 2016 has been, a professional limited liability company, with

a principal place of business located in New York County, New York.

10. Upon information and belief, defendant Bryan Mazzola (“Mazzola”) is, and at all relevant times has been, a citizen of the State of New York, with a place of business located at 7 Times Square, 19th Floor, New York, New York 10036.

11. Mazzola is, and at all relevant times has been, a practicing lawyer.

12. Upon information and belief, W. Todd Boyd (“Boyd”), is, and at all relevant times has been, a citizen of the State of Florida, with a regular place of business located at 7 Times Square, 19th Floor, New York, New York 10036.

13. Upon information and belief, Boyd is a principal of Defendant Boyd Richards Parker Colonnelli, P.L. (“Boyd Florida”), a professional limited liability company organized and existing under the laws of the State of Florida.

14. Upon information and belief, Boyd Florida maintains, and at all relevant times has maintained, an office at 7 Times Square, 19th Floor, New York, New York 10036 (“Boyd’s New York Office”).

15. Upon information and belief, Boyd Florida regularly does business at Boyd’s New York Office.

16. Upon information and belief, Defendant Boyd Richards NY, LLC (“Boyd NY”) is, and all relevant times has been, a limited liability company organized and existing under the laws of the State of New York, with a principal place of business at Boyd’s New York Office.

FACTS

17. Until on or about June 8, 2016 at the earliest, Epstein and Cantor were law partners at CEM, at which point, Cantor, unilaterally, began to dissolve and wind down business operations.

18. CEM's D&O Insurance Defense Practice was based, in large part, upon the client base and relationships that Epstein had accumulated over many years through his relationships with an assortment of directors and officer liability insurers, including, *inter alia*, Travelers Bond Insurance Company and their insureds (collectively, "D&O Insurer Clients" shall hereinafter refer to the insurers that assigned and referred defense matters to CEM and the insureds CEM was assigned to defend).

19. While Cantor also had clients, he would not have been able to sustain himself as a lawyer, or maintain a practice, without Epstein's D&O Insurer Clients. The lion's share of CEM's revenue and profits were generated as a result of Epstein's D&O Insurer Clients and the D&O Insurance Defense Practice. Thus, Cantor benefitted substantially from his partnership with Epstein.

20. On June 8, 2016 at the earliest, and thereafter, Cantor contacted Epstein's D&O Insurer Clients to inform them that the lawyers at CEM who previously serviced their cases and files were leaving the firm ("Departing Lawyers"), and would be soliciting their business at another firm competitive with CEM.

21. Cantor further misrepresented to Epstein's D&O Insurer Clients that CEM, at that time, would have no objection to their leaving CEM, and working with the Departing Lawyers ("Cantor's Misrepresentations"). In other words, Cantor literally gave away (or perhaps sold) almost 100% of Epstein's client base and law practice at CEM.

22. Contrary to Cantor's Misrepresentations, Epstein did have an objection to Cantor's disposal of the D&O Insurer Clients and D&O Insurance Defense Practice.

23. Prior to Cantor's unauthorized unlawful transfer of Epstein's D&O Insurer Clients, Epstein urged Cantor not to the make the Misrepresentations, as he (Epstein) objected to Cantor's

actions. Cantor, however, refused Epstein's requests, and released Epstein's D&O Insurer Clients anyway.

24. In unilaterally transferring Epstein's D&O Insurer Clients, Cantor eliminated CEM's entire D&O Insurance Defense Practice.

25. As a consequence of Cantor's actions, Epstein substantially lost his client base and the D&O Insurance Defense Practice he had worked to accumulate over decades of practicing law.

26. During the course of Cantor's disposal of the D&O Insurance Defense Practice, Cantor made contact with Mazzola, Boyd, the Boyd Firms ("Corporate Raiding Defendants") and employees and staff of CEM for the purpose of, *inter alia*, transitioning Epstein's D&O Insurance Defense Practice to the Corporate Raiding Defendants.

27. Cantor coordinated with the Corporate Raiding Defendants to facilitate the transfer of the D&O Insurance Defense Practice to one or both of the Boyd Firms.

28. Upon information and belief, Cantor received consideration for his efforts in transferring the D&O Insurance Defense Practice to one or both of the Boyd Firms.

29. The Corporate Raiding Defendants received a substantial benefit from their receipt of the D&O Insurance Defense Practice.

30. Prior to disposing of CEM's practice and giving away Epstein's D&O Insurer Clients and the D&O Insurance Defense Practice, CEM was receiving revenue generated by legal work for the same.

31. Under Epstein's and Cantor's Partnership Agreement (the "Partnership Agreement"), Cantor was charged with the responsibility of, *inter alia*, handling the revenue and other monies received by or on behalf of CEM, paying expenses and distributing Epstein's share of such monies.

See Partnership Agreement at §7.1.

32. Under the Partnership Agreement, Epstein is entitled to a percentage of the gross income (excluding reimbursement of disbursements) received by CEM from fees paid by Epstein's D&O Insurer Clients and D&O Insurance Defense Practice ("Epstein's Distribution").

33. Beginning in or about January 2016, Cantor stopped paying at least a portion of Epstein's Distribution.

FIRST CAUSE OF ACTION
Breach of Contract

34. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-33, as if fully set forth herein.

35. The Partnership Agreement constitutes a binding contract.

36. The Partnership Agreement states that CEM was "established for the purpose of engaging in the practice of law, specifically commercial litigation and other related areas of commercial practice."

37. Epstein complied with the Partnership Agreement.

38. As reflected below, Cantor breached the Partnership Agreement, causing substantial damages.

39. The Partnership Agreement expressly states that "Cantor shall not eliminate any area of practice required to service any of the Partnership's then-existing clients."

40. CEM's then-existing clients included the D&O Insurer Clients.

41. Cantor eliminated the D&O Insurance Defense Practice by jettisoning Epstein's D&O Insurer Clients on and after June 8, 2016 at the earliest.

42. By eliminating the D&O Insurance Defense Practice, Cantor breached Article 2 of

the Partnership Agreement.

43. The Partnership Agreement further states that:

Cantor shall not allow any associate attorney, independent contractor attorney, of counsel attorney or any other worker, administrator, paralegal or other employee to work on cases involving Epstein's clients without Epstein's approval.

Id. at §7.5.

44. By encouraging Epstein's D&O Insurer Clients to abandon CEM and to hire the Departing Lawyers, Cantor breached §7.5 of the Partnership Agreement.

45. The Partnership Agreement further states that:

the parties [Cantor and Epstein] agree, upon execution of this Agreement, to inform the clients whom they are obligated to attempt to refer to the Partnership that they have formed a partnership, and to use their best efforts to have those clients retain the partnership to service their existing and future legal needs.

46. Section 5.2 of the Partnership Agreement further states that it shall survive dissolution of the Partnership and/or other termination of the Partnership Agreement, "unless and until the parties agree, in a writing signed by both of them, that the provisions of this Article 5 shall no longer bind them." *Id.*

47. By enticing Epstein's D&O Insurer Clients to abandon CEM and to hire the Departing Lawyers, Cantor breached §5.2 of the Partnership Agreement.

48. Section 8.2 of the Partnership Agreement states:

The Partnership, Cantor and Epstein understand and agree that the clients of Epstein will attempt to refer to the Partnership [clients that] require the type of representation that was afforded to them previously by the [Epstein's former law] firm. Accordingly, the Partnership and Cantor agree to provide to Epstein's [D&O Insurer] clients the representation previously provided to them by [Epstein's Former] firm.

49. By enticing Epstein's D&O Insurer Clients to abandon CEM and to hire the Departing Lawyers, Cantor breached §8.2 of the Partnership Agreement.

50. Section 8.3 of the Partnership Agreement was supposed to guarantee that Cantor did not give away Epstein's D&O Insurer Clients, by requiring Cantor to cause the lawyers of CEM to execute non-solicitation agreements. In this regard, §8.3 states:

Cantor agrees that all attorneys who perform work for the Partnership, whether as associate attorneys, of counsel attorneys or independent contractor attorneys, shall execute an agreement with the Partnership in which they too agree, in the event of any such breach, dissolution or discontinuance, not to solicit work from Epstein's clients for a period of two years from the date of their termination or the date on - which they no longer perform work for the Partnership.

51. By encouraging Epstein's D&O Insurer Clients to abandon CEM and to hire the Departing Lawyers, Cantor breached §8.3 of the Partnership Agreement.

52. Under the Partnership Agreement, if Cantor seeks to withdraw, he must afford Epstein the opportunity to assume control over the practice, and to provide transitional services to CEM for a period of three months before effectuating his withdrawal. *Id.* at §8.3.

53. In breach of §8.3, Cantor failed to provide the aforesaid transitional services to CEM.

54. Under §6.2 of the Partnership Agreement, Cantor is required to pay Epstein's Distribution with respect to the D&O Insurer Clients and D&O Insurance Defense Practice.

55. In breach of §6.2 of the Partnership Agreement, Cantor stopped paying at least a portion of Epstein's Distribution, beginning in or about January 2016.

56. By reason of the foregoing, Epstein has sustained substantial damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
Breach of Fiduciary Duty

57. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-56, as if fully set forth herein.

58. As his partner, Cantor owed Epstein fiduciary duties of loyalty, care and good faith.

59. Cantor breached his duties of loyalty, care and good faith by luring away almost the entire D&O Insurance Defense Practice and facilitating its transfer to the Corporate Raiding Defendants.

60. Upon information and belief, Cantor breached his duties of loyalty, care and good faith by accepting consideration from one or more of the Corporate Raiding Defendants for the transfer of the D&O Insurance Defense Practice from CEM to one or more of the Boyd Firms.

61. By reason of the foregoing, Epstein has sustained substantial damages in an amount to be determined at trial.

THIRD CLAIM
Violation of New York State Partnership Law

62. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-61, as if fully set forth herein.

63. Under §20(3) of the New York State Partnership Law, a partner may not, without the consent of the other partners of a business, “dispose of the good-will of the business” or “do any other act which would make it impossible to carry on the ordinary business of the partnership.”

64. By encouraging Epstein’s D&O Insurer Clients to abandon CEM and to hire the Corporate Raiding Defendants, Cantor violated §20(3) of the New York State Partnership Law.

65. Under §51 of the New York State Partnership Law, each partner of a partnership is a co-owner of partnership assets, which may not be disposed of absent consent of all partners.

66. Epstein’s D&O Insurer Clients and D&O Insurance Defense Practice constituted

assets of CEM.

67. By disposing of Epstein's D&O Insurer Clients, Cantor violated §51 of the New York State Partnership Law.

68. By reason of Cantor's violations of New York Partnership Law, Epstein has sustained substantial damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Accounting

69. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-68, as if fully set forth herein.

70. As a partner of CEM, Cantor owes a fiduciary duty to Epstein.

71. Cantor was in sole possession of all books and records of CEM, including financial documents.

72. Cantor has refused to account for CEM's assets, profits and losses, despite demands therefor.

73. By reason of the foregoing, Epstein is entitled to an accounting.

74. As to this claim, Epstein has no remedy at law.

FIFTH CAUSE OF ACTION

Misappropriation/Conversion

75. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-74, as if fully set forth herein.

76. Upon information and belief, Cantor misappropriated and converted assets of CEM, including client files, monies received on behalf of CEM (including, without limitation, work-in-progress payments received from and on behalf of D&O Insurer Clients), and other assets of CEM

– all without Epstein’s consent, and all to the detriment of Epstein and CEM.

77. Upon information and belief, Cantor, on and/or after June 8, 2016, continued litigating matters on behalf of extant Epstein’s D&O Clients as well as new referrals received in connection with Epstein’s D&O Insurance Defense Practice, and accepted payments with respect to the same, without compensating Epstein and/or CEM therefor.

78. By reason of Cantor’s misappropriation and conversion, Epstein and CEM have sustained substantial damages in amounts to be determined at trial.

SIXTH CAUSE OF ACTION
Violation of the Faithless Servant Doctrine Against Mazzola

79. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-78, as if fully set forth herein.

80. Mazzola became a partner of CEM in or about 2007.

81. As of 2013, Mazzola purported to resign as a partner of CEM, and purported to have become a senior employee of the firm.

82. Unbeknownst to Epstein, Mazzola, in or about 2016, began to plan his departure from CEM, notwithstanding his employment with CEM.

83. In connection with the aforesaid planned departure, Mazzola, while still employed by CEM, began to form a competitive law practice.

84. While working to form a competitive practice, Mazzola, upon information and belief, conspired with at least one of the D&O Insurer Clients that previously referred and assigned business to CEM, to leave CEM, and join him as he prepared to join one or more of the Boyd Firms.

85. Upon information and belief, Mazzola utilized confidential client information and other proprietary assets of CEM to take CEM’s D&O Insurer clients.

86. Mazzola exploited the D&O Insurer Clients and the D&O Insurance Defense Practice to procure partnership positions at one or more of the Boyd Firms.

87. Mazzola's conduct constitutes a violation of the faithless servant doctrine.

88. By reason of the foregoing, Epstein and CEM are entitled to an order, directing Mazzola to return all compensation received by him from CEM, and directing Cantor and CEM to remit such monies to Epstein.

89. Epstein and CEM have no remedy at law for this claim.

SEVENTH CAUSE OF ACTION
Unjust Enrichment Against Mazzola

90. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-89, as if fully set forth herein.

91. Mazzola's misconduct constitutes unjust enrichment, as Mazzola reaped the benefits of bringing an entire practice area -- the D&O Insurance Defense Practice created by Epstein -- to one or more of the Boyd Firms, becoming a partner to one or both thereof, to Epstein's substantial detriment.

92. By reason of the foregoing, Epstein and CEM are entitled to an order, directing Mazzola to return all compensation received by him as a partner of the Boyd Firms, and directing Cantor and CEM to remit such monies to Epstein.

EIGHTH CAUSE OF ACTION
Corporate Raiding by the Corporate Raiding Defendants

93. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-

92 as if fully set forth herein.

94. Upon information and belief, the Corporate Raiding Defendants conspired to solicit at least seven employees away from CEM.

95. Upon information and belief, the only persons working for CEM whom the Corporate Raiding Defendants did not solicit and hire for one or both of the Boyd Firms are Epstein and Cantor.

96. Upon information and belief, the Corporate Raiding Defendants conspired to solicit the D&O Insurer Clients and the D&O Insurance Defense Practice to become clients of one or more of the Boyd Firms.

97. Upon information and belief, the Corporate Raiding Defendants utilized confidential information to solicit D&O Insurer Clients and the D&O Insurance Defense Practice to become clients of one or more of the Boyd Firms.

98. Upon information and belief, Mazzola utilized his status at CEM to obtain access to confidential information in his effort to raid the assets and employees of CEM.

99. Upon information and belief, the Corporate Raiding Defendants made misrepresentations to entice the D&O Insurer Clients and the insurance carriers that authorize panel counsel relative to the D&O Insurance Defense Practice to leave CEM and join one or more of the Boyd Firms.

100. The aforementioned and described misrepresentations include, *inter alia*, that CEM could not service the D&O Insurance Defense Practice and would thus be required to terminate servicing the D&O Insurer Clients.

101. As a direct, substantial and proximate cause of the Corporate Raiding Defendants'

misconduct, Epstein and CEM sustained substantial damages.

102. The aforesaid misconduct by the Corporate Raiding Defendants was wilful, wanton, and reflective of their criminal indifference to their civic obligations.

103. By reason of the foregoing, Epstein is entitled to an award of compensatory and punitive damages in an amount to be set at trial.

NINTH CAUSE OF ACTION

Aiding and Abetting Cantor's Breach of Fiduciary Duty

104. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-103, as if fully set forth herein.

105. The Corporate Raiding Defendants, fully aware of Cantor's fiduciary duties, aided and abetted in their breach by, upon information and belief, assisting the planned transfer of the D&O Insurer Clients and the transition of the D&O Insurance Defense Practice to one or more of the Boyd Firms.

106. As a direct, substantial and proximate cause of the Corporate Raiding Defendants' misconduct, Epstein and CEM sustained substantial damages.

107. The aforesaid misconduct by the Corporate Raiding Defendants was wilful, wanton, and reflective of their criminal indifference to their civic obligations.

108. By reason of the foregoing, Epstein is entitled to an award of compensatory and punitive damages in an amount to be set at trial.

TENTH CAUSE OF ACTION

Unfair Competition

109. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-108, as if fully set forth herein.

110. While CEM was actively in business, Boyd Florida was a competitor of CEM.

111. While CEM was actively in business, Boyd NY was a competitor of CEM.

112. The Boyd Firms unfairly competed in bad faith with CEM, working through Cantor, Mazzola, and, upon information and belief, other insiders at CEM, and making misrepresentations and relying upon confidential and proprietary information of CEM, to facilitate the transfer of the D&O Insurer Clients and D&O Insurance Defense Practice to one or more of the Boyd Firms.

113. The Boyd Firms' above-referenced misconduct constitutes unfair competition.

114. As a direct, substantial and proximate cause of the Corporate Raiding Defendants' misconduct, Epstein sustained substantial damages.

115. The aforesaid misconduct by the Boyd Firms was wilful, wanton, and reflective of their criminal indifference to their civic obligations.

116. By reason of the foregoing, Epstein and CEM are entitled to compensatory and punitive damages in an amount to be determined at trial.

ELEVENTH CAUSE OF ACTION
Tortious Interference with Contract

117. Epstein repeats and realleges each and every allegation set forth in the preceding ¶¶1-116, as if fully set forth herein.

118. At all relevant times, all of the Corporate Raiding Defendants, including Mazzola, were aware of the terms and provisions of the Partnership Agreement, which constitutes a binding contract between Cantor and Epstein.

119. Notwithstanding his knowledge of the Partnership Agreement, the Corporate Raiding

Defendants, including Mazzola, interfered with and induced Cantor to breach, it, resulting in substantial damages to Epstein.

120. The Corporate Raiding Defendants' tortious misconduct was wilful, wanton, and reflective of his criminal indifference to civic obligations.

121. By reason of the foregoing, Epstein is entitled to an award of compensatory and punitive damages in an amount to be set at trial.

WHEREFORE, for the reasons stated, Epstein is entitled to compensatory and punitive damages in an amount to be determined at trial, plus pre-judgment interest, an accounting, and any and all further relief the arbitrator deems just and proper.

Dated: New York, New York
July 31, 2019

Respectfully submitted,

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