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ELECTRONICALLY FILED
DOC #:
DATE FILED: August 2, 2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LISA VIONI, :
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 Plaintiff, :
 :
 -against- :
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 PROVIDENCE INVESTMENT MANAGEMENT, :
 LLC *and* RUSSELL JEFFREY, :
 :
 Defendants. :
 :
-----X

08 Civ. 2950 (PAC)

OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

On March 13, 2017, a jury trial began on Lisa Vioni’s quantum meruit claim against Russell Jeffrey and Providence Investment Management, LLC (“PIM” and together with Jeffrey, “Defendants”). Vioni had arranged an introduction between Jeffrey and Robert Grunewald of American Capital Strategies (“ACAS”). ACAS eventually hired Jeffrey and eight PIM employees, and Vioni seeks compensation from Defendants for her introduction of the two groups.¹ Following a four-day trial, the jury found in Vioni’s favor and awarded her \$750,000.

Defendants renew their motion pursuant to Fed. R. Civ. P. 50(b)(3) for judgment as a matter of law (“JMOL”), and alternatively move pursuant to Fed. R. Civ. P. 59 for a new trial or remittitur. The Court grants Defendants’ JMOL motion because there was no evidence of the reasonable value of Vioni’s services; the jury’s findings must have been the result of sheer surmise or

¹ Vioni also asserted a quantum meruit claim against ACAS in this action. However, the Court granted ACAS’s motion for summary judgment based on the Statute of Frauds, in part because Grunewald “flatly repudiate[d] any obligation to pay Vioni for the introduction” after she wrote to ACAS regarding payment. *Vioni v. Am. Capital Strategies Ltd.*, 08 Civ. 2950 (PAC), 2011 WL 4444276, at *4 (S.D.N.Y. Sept. 26, 2011). The Court also granted Jeffrey, PIM, and Providence Investment Partners LLC’s (together the Providence Defendants) motion for summary judgment based on the Statute of Frauds. *See id.* at *5. The Second Circuit affirmed the Court’s dismissal of Vioni’s claim against ACAS, but reversed the Court’s dismissal of Vioni’s claim against the Providence Defendants. *Vioni v. Am. Capital Strategies, Ltd.*, 508 F. App’x 1 (2d Cir. 2013) (summary order).

conjecture. The Court also conditionally grants Defendants' alternative motion for a new trial on damages because the jury's award of \$750,000 was a seriously erroneous result and a miscarriage of justice. If the Court's decision on Defendants' JMOL motion is reversed or vacated, Vioni may choose between a new trial on damages or remittitur reducing the award to \$150,000.

BACKGROUND

In this quantum meruit action, Vioni seeks compensation for introducing Jeffrey and Robert Grunewald, leading to ACAS hiring Jeffrey and eight PIM employees. On March 17, 2017, after a four-day trial, a jury returned a verdict against Defendants and in favor of Vioni in the amount of \$750,000. Dkt. 199. The evidence at trial included e-mails, agreements, a recording of a telephone call, and testimony from seven witnesses, including Jill Niemczyk, an expert in the field of executive search and recruitment.

The evidence established that Vioni and Jeffrey first met when Vioni started working in Jeffrey's division at Prudential Securities in 1990. Tr. 78–80. Vioni came to see Jeffrey as a mentor. Tr. 80, 82. Both moved on from Prudential, and were in and out of touch over the years. Tr. 81–82, 230, 315. In 2006, Jeffrey and Vioni reconnected. Tr. 315. Jeffrey owned PIM, which was the general partner of a hedge fund; and Vioni was the CEO of Hedge Connection, Inc. ("HCI"), a website that provided a way for hedge funds and investors to meet. *See* Tr. 101, 233, 296, 427. They discussed the looming subprime mortgage crisis and how Jeffrey wanted to take advantage of what he saw as an opportunity to make money. *See* Tr. 92–93. Jeffrey needed ready access to large amounts of capital fast, and he was open to a number of alternatives, including selling a part of PIM, merging with another company, or obtaining investments. Tr. 93, 96; *see also* Ex. 132. Vioni then started thinking about people she could introduce to Jeffrey. Tr. 94.

Vioni contacted Jay Chapler, who represented a multibillion-dollar family office in

Canada. Tr. 95. Chapler was interested in investing hundreds of millions of dollars into hedge funds by buying a part of the hedge funds. *Id.* On March 25, 2007, Vioni introduced Jeffrey to Chapler by e-mail, and on March 26, 2007, the three talked by phone. Tr. 241–42. Also on March 26, 2007, after the call with Chapler, Jeffrey sent Vioni an e-mail stating: “we should also have a discussion about financial considerations. I want you to have a comfort and confidence about this whole process, so that if a deal is consummated, you are compensated accordingly.” Tr. 242–43; Ex. 9. The Chapler introduction did not lead to a deal. Tr. 97, 392.

Vioni was also in contact with Robert Grunewald of ACAS. Tr. 236. Grunewald was looking to buy part of a general partner that managed a hedge fund, or to make a substantial investment in a hedge fund. Tr. 236–37. On approximately April 4, 2007, Vioni introduced Jeffrey and Grunewald by phone. Tr. 129. On April 18, 2007, Vioni, Grunewald, Jeffrey, two PIM employees, and two ACAS employees met in a New York board room that Vioni rented. Tr. 135, 330–31. The meeting appeared to go well, and it seemed possible that a deal could be reached where ACAS would purchase PIM and fold it into ACAS. Tr. 137.

On April 19, 2007, Vioni sent Grunewald an e-mail stating: “In formulating my payment from Russell for this acquisition I need to understand how his group will be folded into AC[AS]. For example, if the other group I introduced him to ended up doing the deal we had proposed, I would have gotten an upfront fee and then ownership in the entire holding company.” Ex. 15. Also on April 19, 2007, Vioni wrote to Jeffrey: “I would like to get a little more specific as soon as we can with how the deal between you and me will work. I agree that there should be a significant upfront payment for the introduction to AC[AS] and then that I should be tied to the growth of the business going forward.” Ex. 62. Jeffrey responded: “If I do go to NYC tomorrow, let’s meet again if your schedule permits to iron out more specifics.” *Id.*

Negotiations between PIM and ACAS continued. On June 5, 2007, Jeffrey sent Grunewald an e-mail with a proposed framework for a deal. Ex. 136. Attached to the e-mail was a document that noted: “Lisa Vioni expects payments for the initial introduction and for any capital that is managed for ACAS out of its newly created PIM office.” *Id.* While negotiations were ongoing, Vioni continued her attempts to secure compensation. For example,

- On May 14, 2007, Vioni e-mailed Jeffrey to outline details of how she would be compensated for the ACAS deal. Ex. 21. She wrote: “I would be comfortable stating that the details will be determined when you know how ACAS will structure your deal but acknowledges that my compensation will be similar to the normal pattern of compensation of general industry practices for a person that raises money in the hedge fund industry etc.” *Id.*
- On June 4, 2007, Vioni wrote to Jeffrey: “I hope to be compensated the way that any marketing person in our industry would be compensated for this type of introduction. A marketing person typically gets paid a percentage of fees on the money they raise usually in perpetuity. I view this deal as being no different and in fact more significant because the access to capital will be almost unlimited some ways. So in terms of how I should be compensated on this deal should be a combination of things. As we discussed, I think I should receive an upfront fee for the deal and then payment for the money that goes into the hedge fund from ACAS. I don’t know how you work that into your deal with them...perhaps my fee would be part of your expenses? I am sure we can get to a place where we all feel comfortable.” Ex. 22.
- On July 16, 2007, Vioni sent Jeffrey an e-mail stating: “I am feeling like I need to close the loop on the introduction I made between you and ACAS I really need to know how your deal proposes that I get compensated. It should be clearly written in your deal memo with indemnifications etc. . . . For example, if I am going to get paid according to industry standard on the introduction of you to ACAS, I don’t necessarily want or need to sell any of [HCI] to ACAS.” Ex. 24.
- On July 17, 2007, Vioni e-mailed Jeffrey: “Before I speak to [Grunewald], can you tell me if there is a reason that you didn’t include my marketing fee when you were negotiating operating expenses, guaranteed salaries, guaranteed bonuses, options and upside for your group? My expectation was to be paid versus industry standard which would be some percentage of the management fee for some amount of years on all money that comes in from the investor introduction. Since [Grunewald] has said that ACAS will not pay for marketing according to industry standard, how will you go back to him now and get me paid out of your P&L? I really need you to clarify with me how I am included in your deal with ACAS. Since I did not get an engagement letter signed by you for the introduction and we only discussed it and always referred to industry standard, I must now rely on you to help negotiate marketing fees into your deal for me.” Ex. 25.

- On July 17, Vioni wrote to Grunewald, in an e-mail she later forwarded to Jeffrey, that she saw her “payment as two different things.” Ex. 26. First was marketing fees, and second was an “ACAS fee.” *Id.* Vioni stated as to the ACAS fee: “I have introduced a key team of executives that are joining ACAS. A department is being developed and ACAS will have access to this group and all of the opportunities including but not limited to their expertise and potential investor introductions (like the potential investment from the RI treasurer). The fee that you pay for this service is one that you are probably more familiar with. Whatever you traditionally pay for this type of service is what I would accept.” *Id.* Grunewald responded “ACAS does not pay fees other than those for a retained search for the introduction of employees.” *Id.*

By August 10, 2007, PIM and ACAS had reached a deal, *see* Ex. 37–45, but not the one originally envisioned. Instead of ACAS buying, or investing in PIM, or its hedge funds, ACAS hired Jeffrey and eight PIM employees and paid their salaries and bonuses to work for ACAS. *See id.*; Tr. 168–69. However, Jeffrey and the PIM employees were able to continue to run the PIM hedge funds. *See* Tr. 168–69.

Defendants never paid Vioni for the introduction to ACAS.

DISCUSSION

I. Judgment as a Matter of Law

JMOL is appropriate when “a reasonable jury would not have a legally sufficient evidentiary basis to find for the [opposing] party on that issue.” Fed. R. Civ. P. 50(a)(1). The Court “may set aside a jury’s verdict where there is such a complete absence of evidence supporting the verdict that the jury’s findings could only have been the result of sheer surmise or conjecture, or there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded persons could not arrive at a verdict against him.” *Vangas v. Montefiore Med. Ctr.*, 823 F.3d 174, 180 (2d Cir. 2016) (internal quotation marks and alteration omitted). “In reviewing a Rule 50 motion, all credibility determinations and reasonable inferences of the jury are given deference and [the Court] may not weigh the credibility of witnesses.” *Id.*

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