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a.k.a. Lisa Hogan, William Raveis Real
Estate, Inc., and William Raveis - New
York, LLC*

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
COMMERCIAL DIVISION**

**Present: HON. ALAN D. SCHEINKMAN,
Justice.**

-----X
DOUGLAS ELLIMAN OF WESTCHESTER LLC,

Plaintiff,

-against-

Index No.: 58059/2015
Motion Seq. Nos. 006,007
Motion Date: 10/27/17

LISA PERINI THEISS a/k/a/ LISA HOGAN,
WILLIAM RAVEIS REAL ESTATE INC., and
WILLIAM RAVEIS-NEW YORK, LLC,

DECISION & ORDER

Defendants.

-----X
LISA PERINI THEISS a/k/a/ LISA HOGAN,

Counterclaim Plaintiff,

-against-

DOUGLAS ELLIMAN OF WESTCHESTER LLC
and LAURA SCOTT,

Counterclaim Defendants.

-----X

Scheinkman, J.:

Defendant/Counterclaim Plaintiff Lisa Perini Theiss a/k/a Lisa Hogan ("Theiss") and Defendants William Raveis Real Estate Inc. and William Raveis-New York, LLC (the "Raveis Entities", collectively with Theiss "Defendants") move pursuant to CPLR 4404(a) and 5501(c) for an order: (a) setting aside the compensatory damages portions of the verdict herein and directing a new trial on damages unless Plaintiff/Counterclaim Defendant Douglas Elliman of Westchester LLC ("Elliman") stipulates to a reduction in the jury award by \$1,575,000; (b) entry of judgment in favor of Defendants notwithstanding the verdict or directing a new trial with respect to

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Elliman's cause of action for tortious interference with its relationships; (c) for entry of judgment notwithstanding the verdict as to punitive damages; and (d) entry of a judgment for Theiss on her counterclaim under Labor Law §198(1)-a (Seq. No. 6).

Elliman moves pursuant to CPLR 4404(a) for an order setting aside the verdict in favor of Theiss on the issue of *quantum meruit* and directing judgment be entered in Elliman's favor as a matter of law (Seq. No. 7).

The Court heard oral argument from counsel on September 7, 2017. Thereafter, the motions were adjourned at the request of counsel for the parties pending efforts to resolve the matter. The Court was informed that such efforts were unsuccessful and that a decision was required. Accordingly, the motions were marked submitted for decision on October 27, 2017.

The motions are consolidated for purposes of deliberation and disposition.

RELEVANT FACTS

The Court will not recite the lengthy history of the case, which has been addressed in prior decisions. The relevant facts can be briefly stated, based on a view of the evidence favorable to Plaintiff (*see, e.g., Piro v Demeglio*, 150 AD3d 907 [2d Dept 2017]). Theiss had been employed as the manager of Elliman's Armonk, New York branch office, where her duties included the recruitment and retention of real estate sales agents. No written employment agreement was ever signed by Elliman and Theiss. Theiss had declined to sign an employment agreement proposed by Elliman, which agreement provided that bonuses would be entirely discretionary. Theiss maintained that, despite the fact that Elliman had expressly declined to assume the employment contract made by Holmes & Kennedy (for whom Theiss had worked prior to Elliman's acquisition of Holmes & Kennedy), Elliman subsequently agreed to assume that pre-existing contract and to pay the bonuses called for therein.

On Friday, March 13, 2015, while Theiss was still in Plaintiff's employ but was physically out of the office on vacation, a dozen sales agents announced that they were leaving Elliman to join Raveis, a competing company, which was establishing an Armonk office. Theiss had been aware of the impending shift by the agents; indeed, she herself had arranged to leave for Raveis. The next Monday, March 16, 2015, Elliman terminated Theiss, perceiving that Theiss was involved in a plan by Raveis to recruit agents.

There is no dispute but that Theiss's duties while manager of Plaintiff's Armonk office included the recruitment and retention of sales agents. Elliman offered evidence to the effect that: prior to the events of March 2015, Raveis had tried and failed to recruit a number of Elliman agents; Raveis approached Theiss to recruit her

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and have her help recruit others; Theiss identified to Raveis agents who could be recruiting targets and their sales volumes; Theiss set up meetings between Raveis and Elliman agents from both the Armonk and Scarsdale offices; Theiss was offered cash bonuses for recruiting Elliman agents; and Theiss conducted a meeting at her home with four additional agents and asked them to sign a confidentiality agreement, using a form that she had obtained from Raveis. Theiss told one agent that Raveis would eventually take over Elliman's Armonk office and that Raveis would compensate any agent who lost money in relocating to from Elliman to Raveis.

During this time, Theiss remained in her employment with Elliman, at least in part because she wanted to remain until she received a bonus for 2014. However, in an email to Raveis, she expressed concern about remaining with Elliman because she felt "compromised" and because she was concerned that she did not have a contract in place with Raveis and might not get hired if Raveis did not get all of the agents she was seeking to recruit for Raveis. The Raveis executive responded that she should remain inside Elliman so that the plan would have the "biggest impact" (Ex. 31).

Theiss departed on a vacation to Puerto Rico in advance of the resignations, with Theiss having reviewed the draft resignation letter of one agent prior to leaving on her trip. The jury could conclude that she pre-planned the vacation in order to avoid being present when the agents came in to announce their departures. When the series of departures began on March 13, 2015, Theiss received resignation letters from the agents and forwarded them to her superiors at Elliman, with Theiss feigning surprise and disappointment at each resignation. Theiss had not told her superiors that she was aware, prior to the March 13, 2015 resignations, that the agents were negotiating with Raveis or were preparing to leave and did not afford Elliman the opportunity to make counter offers.

This action was tried before the Court and jury over 11 days, commencing on May 31, 2017. The jury returned its special verdict on June 16, 2017.

With respect to Elliman's First Cause of Action for breach of fiduciary duty brought as against Theiss, the jury found that Elliman had proven that Theiss had breached fiduciary duties owed to Elliman and that Elliman had sustained \$675,000 in damages by reason of this breach. On Elliman's Second Cause of Action against Raveis for aiding and abetting Theiss' breach of fiduciary duty, the jury found that Raveis had aided and abetting Theiss' breach of fiduciary duty and that Elliman had sustained damages of \$450,000 by reason of Raveis' conduct. The jury found that Elliman failed to sustain its burden of proof on its Third Cause of Action against Raveis and Theiss for misuse of confidential information. On the Fourth Cause of Action, the jury found that Elliman had proven that Theiss and Raveis had known about and intentionally interfered with Elliman's business relationship with real estate agents by the use of wrongful means. The jury found that Elliman had sustained damages of \$1,125,000 on account of the tortious interference with business relations by the

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