

**Dionne-Tontchev v Worldwide Wealth Mgt. Corp.**

2016 NY Slip Op 31889(U)

October 7, 2016

Supreme Court, New York County

Docket Number: 602986/2009

Judge: Shirley Werner Kornreich

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

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DINO DIONNE-TONTCHEV,

Index No.: 602986/2009

Plaintiff,

**DECISION & ORDER**

-against-

WORLDWIDE WEALTH MANAGEMENT CORP.,  
JAMIE DIAZ and WORLDWIDE ASSET MANAGEMENT  
GROUP, LLC,

Defendants.

-----X  
SHIRLEY WERNER KORNREICH, J.:

Plaintiff Dino Dionne-Tontchev (Dionne) moves to confirm the report of J.H.O. Ira Gammerman (the JHO) dated November 9, 2015 (the Second Report).<sup>1</sup> Though no opposition has been submitted, the motion is denied for the reasons that follow.

By order dated August 20, 2015 (the August 20 Decision) (Dkt. 174), the court confirmed the JHO's June 15, 2015 report (the First Report) (Dkt. 169) *only* with respect to the JHO's compensatory damages recommendation; the court rejected the JHO's punitive damages recommendation. The court explained:

In 2007, Dionne and defendant Jamie Diaz formed an investment advisory firm, defendant Worldwide Asset Management Group, LLC (WAM). Diaz owned 67% of WAM; Dionne owned 33%. Dionne left his job at JPMorgan and moved his client accounts to Diaz's brokerage firm, defendant Worldwide Wealth Management Corp. (WWM). Defendants agreed to indemnify Dionne for his litigation expenses if, as occurred, JPMorgan sued Dionne for transferring clients to WWM. In January 2009, Diaz fired Dionne and agreed to repurchase his equity in WAM as required by the parties' operating agreement. In April 2009, a firm called Metis Group, Inc. valued Dionne's equity at \$902,000. Diaz, however, refused to pay Dionne for his shares.

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<sup>1</sup> The JHO did not actually issue a written report. On January 26, 2016, the JHO entered a November 9, 2015 order (Dkt. 178) indicating that the reference was being decided in accordance with the November 9, 2015 hearing transcript, which the JHO so-ordered and entered on February 10, 2016. *See* Dkt. 179 at 9. References to "Dkt." followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing system (NYSCEF).

Dionne commenced this action on December 22, 2009, asserting breach of contract, quasi-contract, and tort claims. The complaint has never been amended. At this juncture, Dionne only seeks recovery of (1) the value of his shares in the amount of \$902,000; (2) reimbursement for his \$95,000 of legal costs in the JPMorgan litigation; and (3) recovery of the \$80,000 that defendants improperly garnished from his wages. Dionne also seeks punitive damages. After years of discovery, defendants abandoned their defense of this action [and were held in default on March 3, 2015]. ... The action was then referred to [the JHO], who conducted an inquest on May 28, 2015. At the inquest, Dionne testified about his entitlement to the damages sought from defendants, set forth above, which total \$1,077,000. [The JHO] recommended Dionne be awarded this amount, plus \$250,000 in punitive damages. [The JHO], however, did not explain the basis for awarding punitive damages nor did he indicate why the amount recommended was \$250,000.

See August 20 Decision at 1-2.

After explaining why the JHO's \$1,077,000 compensatory damages award was confirmed, the court then rejected the JHO's \$250,000 punitive damages award because "[n]o testimony was elicited as to why punitive damages are appropriate in this case" and the JHO did not "explain why \$250,000 is an appropriate punitive damages award." See *id.* at 3, citing *Walker v Sheldon*, 10 NY2d 401, 405 (1961) (punitive damages are only allowed "in cases where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives"); *Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489 (2007) (defendant must "evinced a high degree of moral turpitude and demonstrate such wanton dishonesty as to imply a criminal indifference to civil obligations"), quoting *Walker*, 10 NY2d at 405; see also *Morsette v "The Final Call"*, 309 AD2d 249, 254 (1st Dept 2003) ("in order for punitive damages to be awarded, the plaintiff must demonstrate that the defendant's conduct is intentional and deliberate, has fraudulent or evil motive, and has the character of outrage frequently associated with crime"), citing *Prozeralik v Capital Cities Communications, Inc.*, 82 NY2d 466, 479 (1993). Nonetheless, Dionne was given

another opportunity to demonstrate his entitlement to punitive damages, and the action was remanded to the JHO for a second hearing.

That hearing occurred on November 9, 2015. *See* Dkt. 179 (11/9/15 Tr.). At the hearing, Dionne testified about Diaz's misconduct at issue in this action and also about other misdeeds Diaz allegedly committed, the latter of which had nothing to do with Dionne or this case. While Dionne testified that Diaz stole money from their company (WAM), that theft is not the subject of the compensatory damages award, which, as noted above, was composed of the value of Dionne's shares, his legal fees in the JPMorgan litigation, and his unpaid wages. All of these claims arise from breaches of contract, not fraud. While Diaz does, indeed, appear to have committed malfeasance, the claims on which the judgment is based does not appear to qualify for punitive damages under the standard in *Walker* and its progeny, cited above. Critically, the JHO failed to comply with the court's directives that he explain the basis and amount of a punitive damages award.

Approximately *nine* months after the hearing, on August 8, 2016, Dionne filed the instant motion to confirm the Second Report. That motion is supported by an affirmation by Dionne's counsel (but no memorandum of law, a violation of this court's rules), which, while setting forth the well settled standard for confirming a referee's report, does not cite the standard for awarding punitive damages or proffer any *legal* argument about why the testimony procured at the second hearing warrants punitive damages.

The court, therefore, rejects the punitive damages recommendation. It did not comply with the August 20 Decision nor did counsel, on the instant motion, make a valid legal argument

burden of demonstrating that punitive damages are actually appropriate (or indeed legally permissible). Moreover, aside from the failure to establish a threshold legal entitlement to punitive damages, the \$250,000 punitive award is not explained, rendering the award arbitrary and directly in contravention of the August 20 Decision.

For these reasons, judgment will be entered in the amount of the previously confirmed compensatory damages award. No punitive damages are awarded. With respect to pre-judgment interest, which is mandatory under CPLR 5001, Dionne has never clearly set forth what he believes the proper date from which interest ought to be computed. Reviewing the complaint, the court finds that the amounts contractually owed were certainly owed by the date of the complaint, November 10, 2009, and uses that date to compute pre-judgment interest.

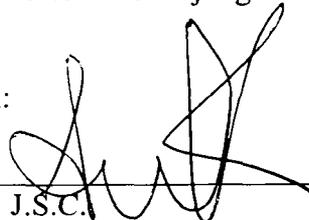
Accordingly, it is

ORDERED that the motion by plaintiff Dino Dionne-Tontchev to confirm the Second Report of J.H.O. Ira Gammerman is denied, the court rejects the Second Report and declines to award punitive damages to plaintiff; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Dino Dionne-Tontchev and against defendants Worldwide Wealth Management Corp., Jamie Diaz, and Worldwide Asset Management Group, LLC, jointly and severally, in the amount of \$1,077,000 plus 9% pre-judgment interest from November 10, 2009 to the date judgment entered.

Dated: October 7, 2016

ENTER:



J.S.C.

**SHIRLEY WERNER KORNREICH**  
J.S.C.