

Andersen v Weinroth
2006 NY Slip Op 30331(U)
November 3, 2006
Supreme Court, New York County
Docket Number: 0602339/2003
Judge: Bernard J. Fried
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At IAS Part 60 of the Supreme Court of the State of New York, County of New York, held at the Courthouse at 60 Centre Street, New York, New York on Nov- 3, 2006.

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PART 60

PRESENT: Hon. Bernard J. Fried, Justice.

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G. CHRIS ANDERSEN, on Behalf of Himself :
Individually And On Behalf Of Andersen, Weinroth :
& Co., L.P., Derivatively, and JAMES RAWLINGS, :
on Behalf of Himself Individually, :
:
Plaintiffs, :
:
-against- :
STEPHEN WEINROTH, :
:
Defendant. :
-----X

Index No. 602339/03

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Fried, J.

010

**ORDER AND
JUDGMENT**

011

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STEPHEN WEINROTH, on Behalf of Himself :
Individually And On Behalf of Andersen, Weinroth :
& Co., L.P., Derivatively, :
:
Third-Party Plaintiff, :
:
-against- :
G. CHRIS ANDERSEN, JAMES RAWLINGS, :
ANDERSEN WEINROTH CAPITAL CORP., INC. :
or its Successor, and ANDERSEN & COMPANY LLC, :
:
Third-Party Defendants. :
-----X

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NEW YORK
COUNTY CLERK'S OFFICE

Defendant Stephen Weinroth moved for partial summary judgment in this case.

Plaintiffs G. Chris Andersen and James Rawlings opposed that motion. Andersen Weinroth & Co., LP ("AWLP") by and through Andersen cross moved for partial summary judgment, and

Rawlings cross moved for partial summary judgment. Weinroth opposed the Plaintiffs' cross

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 418).

motions. The motions were submitted to this Court on April 8, 2005. An order was entered on July 5, 2005 by this Court, denying Rawlings' motion, denying Weinroth's motion in part and granting AWLP's motion and Weinroth's motion in part, to the limited extent that AWLP was entitled to an accounting for, and receipt of, the economic value of all directors' compensation. This Court also ordered that certain questions relating to directors' compensation be referred to a Special Referee to hear and report with recommendations.

After a hearing held before Special Referee Leslie S. Lowenstein on September 20 and 28, 2005, October 11, 2005 and November 1 and 10, 2005, the Special Referee filed a report on January 5, 2006 (the "Report"), recommending that Defendant Weinroth be ordered to pay \$2,304,490 and Plaintiff Andersen be ordered to pay \$1,087,388 to AWLP, together with a transcript of the testimony, or copies thereof, in the office of the Clerk of the Court of New York.

The issues which were not referred have come to be heard at IAS Part 60 of this Court, New York County, at the Courthouse, 60 Centre Street, New York, New York on January 10, 11, 12, 13, 17, 18 and 19, 2006 and February 7, 2006 before Justice Bernard J. Fried without a jury. Plaintiffs appeared by Kronish Lieb Weiner & Hellman LLP (now Cooley Godward Kronish LLP), their counsel and defendant appeared by Golenbock Eiseman Assor Bell & Peskoe, LLP, his counsel. The issues were tried, the court rendered a decision on September 5, 2006, awarding Andersen a total of \$1,362,714.00 plus prejudgment interest to be recovered from Weinroth and awarding Rawlings \$219,042 plus prejudgment interest to be recovered from Weinroth ("Post-Trial Decision").

Andersen, by his attorneys, having moved for an order pursuant to CPLR 4403 confirming the Report in part and rejecting it in part ("Andersen's Motion to Confirm the Report

in Part and Reject It in Part”) and Weinroth having cross-moved to confirm the Report in part and reject it in part (“Weinroth’s Cross-Motion” and together with Andersen’s Motion to Confirm the Report in Part and Reject It in Part, the “Motions”), and said Motions having come to be heard before Justice Fried at IAS Part 60 of this Court, on April 26, 2006, and the Court having issued a decision, dated September 5, 2006, granting in part and denying in part Andersen’s Motion to Confirm the Report in Part and Reject It in Part and Weinroth’s Cross-Motion;

NOW, on the motion of Cooley Godward Kronish LLP, attorneys for plaintiffs; it is hereby

ORDERED that the Motion to Confirm the Report in Part and Reject It in Part is granted in part and denied in part and the Report is confirmed in its entirety, except that no receiver shall be appointed at this time to oversee the winding up of AWLP, and it is further;

ADJUDGED that plaintiff Andersen Weinroth & Co., LP (“AWLP”), whose principal place of business is 430 Park Avenue, Suite 701, New York, New York 10022 recover of the defendant Weinroth, whose residence is 700 West 247th Street, Bronx, New York 10471, the principal sum of \$2,304,490, together with interest on said principal at the rate of 9% per annum from July 5, 2005, to the date of entry herein in the sum of \$ _____ for a total sum of \$ _____ and that plaintiff AWLP have execution therefore, and it is further;

ADJUDGED that plaintiff AWLP, whose principal place of business is 430 Park Avenue, Suite 701, New York, New York 10022 recover of the plaintiff Andersen, whose residence is 1050 Fifth Avenue, New York, New York 10028, the principal sum of \$1,087,388, together with interest on said principal at the rate of 9% per annum from July 5, 2005, to the date

of entry herein in the sum of \$ _____ for a total sum of \$ _____, and that plaintiff AWLP have execution therefore, and it is further;

ORDERED AND ADJUDGED that plaintiff Andersen, whose residence is 1050 Fifth Avenue, New York, New York 10028, prevailed on the second cause of action for breach of contract, the third cause of action for breach of fiduciary duty, the fourth cause of action for fraud, the fifth cause of action for fraudulent concealment and the seventh cause of action for unjust enrichment and shall recover of the defendant Weinroth, whose residence is 700 West 247th Street, Bronx, New York 10471, the principal sum of \$1,362,714.00, together with interest on said principal at the rate of 9% per annum from the dates set forth in the Post-Trial Decision, to the date of entry herein in the sum of \$ _____ for a total sum of \$ _____, together with \$ _____ costs and disbursements as taxed by the Clerk, all totaling \$ _____, and that plaintiff Andersen have execution therefore, and it is further;

ORDERED AND ADJUDGED that plaintiff Rawlings, whose residence is 63 Hemlock Lane, Buckhill Falls, Pennsylvania 18323, prevailed on the second cause of action for breach of contract, the third cause of action for breach of fiduciary duty, the fourth cause of action for fraud and the fifth cause of action for fraudulent concealment and shall recover of the defendant Weinroth, whose residence is 700 West 247th Street, Bronx, New York 10471, the principal sum of \$219,042, together with interest on said principal at the rate of 9% per annum from the April 17, 2000, to the date of entry herein in the sum of \$ _____ for a total sum of \$ _____, and that plaintiff Rawlings have execution therefore, and it is further;

ORDERED AND ADJUDGED that plaintiff Andersen's first cause of action for breach of the partnership agreement is dismissed; plaintiffs' sixth cause of action for conversion

is dismissed; defendant Weinroth's first counterclaim for breach of the partnership agreement, third counterclaim for breach of oral agreements, fourth counterclaim for breach of fiduciary duty, fifth counterclaim for conversion, sixth counterclaim for unjust enrichment, and seventh counterclaim for unjust enrichment are dismissed; defendant Weinroth's second counterclaim for breach of contract is dismissed to the extent that portions of it were not determined in the July 5, 2005 decision on the motion for summary judgment and referred to the Special Referee to report and recommend; and defendant Weinroth's eighth counterclaim for an accounting of directors' compensation is dismissed in accordance with the referee's report and recommendation, and it is further;

ORDERED that plaintiff Andersen's eighth cause of action for an accounting of AWLP's assets and liabilities and defendant Weinroth's ninth counterclaim for an accounting of AWLP's assets and liabilities, are severed and continued and referred to a Special Referee to hear and report with recommendation, except that, in the event of and upon the filing of a stipulation by the parties, the Special Referee or another person designated by the parties to serve as referee shall determine the issue of an accounting of AWLP's assets and liabilities, and it is further;

ORDERED that Plaintiffs' motion to strike certain paragraphs in Defendants' Proposed Findings of Fact, and Defendant's motion to strike Plaintiffs' Supplemental Proposed Findings of Fact, are denied as moot.

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Bernard J. Fried

BERNARD J. FRIED Bernard J. Fried, J.S.C.
BERNARD J. FRIED 11/3/06
J.S.C.

DO NOT POST

Judgment entered this _____ day of _____, 2006
By the Clerk of the New York County Courthouse

Clerk