

**O'Connor v Society Pass Inc.**

2025 NY Slip Op 32892(U)

July 21, 2025

Supreme Court, New York County

Docket Number: Index No. 656938/2019

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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THOMAS O'CONNOR, CVO ADVISORS PTE. LTD.	<b>INDEX NO.</b>	<u>656938/2019</u>
Plaintiffs,	<b>MOTION DATE</b>	<u>06/09/2025</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>018</u>
SOCIETY PASS INCORPORATED,		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 564, 565, 566, 567, 568, 594, 600, 601

were read on this motion to CONFIRM SPECIAL REFEREE'S REPORT.

On May 17, 2023, the Court granted in part Plaintiff O'Connor's motion for partial summary judgment on his first cause of action for breach of contract (NYSCEF 199 [Order]; NYSCEF 233 [Transcript]). Specifically, the Court determined that O'Connor exercised his rights under the terms of a Common Stock Purchase Warrant ("Warrant") to purchase 1,148 shares of Defendant Society Pass Incorporated ("SPI") and reserved the issue of damages for trial. Thereafter, on March 12, 2024, the Court issued a Decision and Order directing a Special Referee to hear and make a recommendation to the Court on the valuation of Plaintiff O'Connor's shares (NYSCEF 421).

Following several hearings before the Special Referee, the parties submitted post-hearing briefs on January 27, 2025. The Special Referee issued his Report and Recommendation ("R&R") on June 5, 2025, concluding that O'Connor met his burden of proof by a fair

preponderance of the evidence and valuing each share at \$5,763.00, for a total value of \$6,615,934.00 including prejudgment interest (NYSCEF 562 at 45).

O'Connor now moves pursuant to CPLR 4403 and 22 NYCRR § 202.44(a) for an order confirming the Special Referee's R&R. Defendant SPI opposes the motion. For the reasons set forth below, the motion is **granted**.

### **DISCUSSION**

Pursuant to CPLR § 4403, “[u]pon the motion of any party or on his own initiative, the judge required to decide the issue may confirm or reject, in whole or in part, the verdict of an advisory jury or the report of a referee to report; may make new findings with or without taking additional testimony; and may order a new trial or hearing... Where no issues remain to be tried the court shall render decision directing judgment in the action.” While the report is not binding, “a special referee’s findings of fact and credibility will generally not be disturbed where substantially supported by the record” (*RC 27th Avenue Realty Corporation v New York City Housing Authority*, 305 AD2d 135, 135 [1st Dept 2003]).

Here, the Special Referee’s findings were substantially supported by the record. The record reflects statements by SPI’s former CEO, Dennis Nguyen, that the \$5,763.00 valuation was applied to both preferred and employee common shares (NYSCEF 535, [Transcript] 56:13-57:20). Mr. Nguyen also confirmed statements he made at a May 15, 2023 deposition about the connection between the \$5,763.00 valuation used in an arms-length transaction with a sophisticated investor and the pricing applied to SPI’s employees (*id.* at 59:3-67:5; NYSCEF 540 at 17:11-13, 28:8-22). The Special Referee also appropriately credited Nguyen’s statements regarding internal communications, emails to employees, and prior judicial admissions regarding this valuation (NYSCEF 535 at 52:13-53:12, 54:9-55:14, and 68:5-70:24). Moreover, the

Special Referee credited documentary evidence that SPI contemporaneously valued O'Connor's shares at the same amount as other employees, and that SPI internally used a \$150 million company valuation to arrive at the \$5,763.00 per share figure (NYSCEF 408-411, 416). The Court finds no error in the Special Referee's reliance on this testimony and evidence.

The Special Referee's decision is consistent with the result reached in a parallel proceeding involving options held by a different SPI employee as to the same common shares. In *Narain v Socy. Pass Inc.*, 234 AD3d 494 (1st Dept 2025), the Appellate Division affirmed a Commercial Division decision valuing SPI option shares at \$5,763.00, reasoning that "[b]ecause defendant failed to explain its CEO's repeated admission as to the value of the shares appurtenant to the warrant, the court properly found that defendant was bound by the admission" (*Narain*, 234 AD3d 495). Although the Court does not reach the question (raised by O'Connor) whether the *Narain* decision collaterally estopped SPI from challenging the \$5,763.00 valuation in this case (the Court referred this case to the Special Referee solely to hear and make a recommendation as to valuation), it does take comfort that another fact finder reached the same conclusion based on a similar body of evidence.

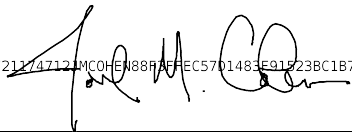
SPI's argument that O'Connor's valuation cannot be sustained absent expert evidence is unavailing (*Nussberg v Tatintisian*, 137 AD3d 521, 522 [1st Dept 2016] ["The court erred by requiring expert testimony on valuation; defendants could prove value in other ways."]). Nguyen's admissions, corroborated by contemporaneous documents, are sufficient to support the valuation. SPI also challenges the Special Referee's rejection of its expert's testimony (NYSCEF 600 at 7). The Court defers to the Referee's credibility determinations, particularly in light of the extensive opportunity the parties had to present their respective cases.

Accordingly, it is

**ORDERED** that the motion to confirm the Special Referee’s June 5, 2025 Report and Recommendation is **GRANTED**.

This constitutes the decision and order of the Court.

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**JOEL M. COHEN, J.S.C.**

<u>7/21/2025</u>					
<b>DATE</b>					
<b>CHECK ONE:</b>	<input type="checkbox"/>	<b>CASE DISPOSED</b>	<input checked="" type="checkbox"/>	<b>NON-FINAL DISPOSITION</b>	
	<input checked="" type="checkbox"/>	<b>GRANTED</b>	<input type="checkbox"/>	<b>GRANTED IN PART</b>	<input type="checkbox"/>
			<b>DENIED</b>		<b>OTHER</b>
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>		<input type="checkbox"/>	<b>SUBMIT ORDER</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>		<input type="checkbox"/>	<b>FIDUCIARY APPOINTMENT</b>
				<input type="checkbox"/>	<b>REFERENCE</b>