

Dionne-Tontchev v Worldwide Wealth Mgt. Corp.

2015 NY Slip Op 31587(U)

August 20, 2015

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.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff Dino Dionne-Tontchev (Dionne) moves to confirm the report of J.H.O. Ira Gammerman dated June 15, 2015 (the Report). *See* Dkt. 169. The motion is granted in part and denied in part, on default, for the reasons that follow.

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.

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;¹ 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. On December 16, 2014, Finkelstein & Feil, P.C. moved for leave to withdraw as counsel for defendants. By order dated January 6, 2015, the court granted the motion and directed defendants to appear at a status conference on March 3, 2015. *See* Dkt. 162. The court further held that if defendants failed to appear on March 3, a default judgment on liability would be issued and an inquest to determine damages would be referred to a J.H.O. *See id.*

On March 3, 2015, Dionne's counsel appeared for the conference, but defendants did not. The court, therefore, issued an order noting defendants' default. *See* Dkt. 168. The action was then referred to J.H.O. Gammerman, 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. J.H.O. Gammerman recommended Dionne be awarded this amount,² plus \$250,000 in punitive damages. J.H.O. Gammerman, however, did not explain the basis for awarding punitive damages nor did he indicate why the amount recommended was \$250,000.

J.H.O. Gammerman's compensatory damages recommendation of \$1,077,000 is confirmed. It is well established that "[t]he recommendations and report of a referee will not be disturbed when they are substantially supported by the record, and the referee has clearly defined

¹ There was a FINRA arbitration and also litigation where a temporary restraining order and preliminary injunction were issued. *See* Report at 7-8.

² J.H.O. Gammerman stated that the amount he was recommending in compensatory damages was \$1,177,000 (*see* Report at 14), but such amount is \$100,000 more than Dionne sought. Dionne appears to recognize this error and, on this motion, only seeks \$1,077,000.

the issues and resolved matters of credibility.” *Hudson v Smith*, 127 AD3d 816 (2d Dept 2015); *see Namer v 152-54-56 W. 15th St. Realty Corp.*, 108 AD2d 705 (1st Dept 1985) (same). These criteria, however, are not met with respect to J.H.O. Gammerman’s punitive damages award. No testimony was elicited as to why punitive damages are appropriate in this case. *See 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). Nor did J.H.O. Gammerman explain why \$250,000 is an appropriate punitive damages award.³

Dionne, therefore, has two options. First, he may have this matter remanded to J.H.O. Gammerman for further proceedings to establish a sufficient record upon which a punitive damages award may be based. Alternatively, Dionne may forgo his punitive damages claim and seek entry of judgment in the amount of \$1,077,000 plus applicable pre-judgment interest. If

³ This, in part, may be the court’s fault, since J.H.O. Gammerman may have felt a ruling that punitive damages are inappropriate in this case would contravene the court’s default judgment on liability. On remand, discussed herein, if J.H.O. Gammerman finds that defendants’ conduct lacks the culpability discussed by the authority cited herein, J.H.O. Gammerman is expressly directed not to award any punitive damages. If, however, J.H.O. Gammerman finds punitive damages to be appropriate, the amount awarded should be explained.

Dionne elects the latter option, a proposed judgment shall be submitted for the court's review, which, if approved, the clerk will be directed to enter.⁴ Accordingly, it is

ORDERED that the motion by plaintiff Dino Dionne-Tontchev to confirm the report of J.H.O. Ira Gammerman dated June 15, 2015 is granted on default as to the compensatory damages award of \$1,077,000, which is hereby confirmed, and denied as to the punitive damages award of \$250,000, which is hereby vacated; and it is further

ORDERED that within 14 days of the entry of this order of the NYSCEF system, plaintiff shall e-file and fax to chambers (212-952-2777): (1) a proposed order remanding this action to J.H.O. Gammerman for further proceedings in accordance with this decision; or (2) a proposed judgment.

Dated: August 20, 2015

ENTER:


SHIRLEY WERNER KORNREICH
J.S.C.

⁴ Since \$902,000 of the judgment corresponds to an amount Diaz owes Dionne for his shares, the proposed judgment shall provide for Dionne for turn over his shares to Diaz upon satisfaction of the judgment.