

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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RICK D. SCHNURR	:	CASE NO.
	:	
	:	
v.	:	
	:	
WINKLEVOSS CONSULTANTS, INC.	:	
and WINKLEVOSS, LLC	:	JUNE 15, 2005
.....	:	

COMPLAINT

ALLEGATIONS OF JURISDICTION

1. Plaintiff Rick D. Schnurr is a citizen of Canada and resident of the Commonwealth of Massachusetts.
2. Defendant Winklevoss Consultants, Inc. ("WCI") is a Delaware corporation with offices at 500 West Putnam Avenue, Greenwich, CT 06830.
3. Defendant Winklevoss, LLC ("WLLC") is a Delaware limited liability company with offices at 500 West Putnam Avenue, Greenwich, CT 06830. Upon information and belief, WLLC was a wholly-owned subsidiary of WCI at all times relevant to this lawsuit.
4. Mr. Schnurr claims damages in excess of \$75,000, exclusive of interest and costs.

5. The United States District Court has jurisdiction over each count of this complaint pursuant to 28 U.S.C. § 1332(a)(2).

6. Venue lies in the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1391(a).

COUNT ONE: BREACH OF CONTRACT

1. Mr. Schnurr started working for WCI in 1993, shortly after receiving his university degree. In 1999, WCI formed WLLC. Mr. Schnurr was employed either by WCI or by its subsidiary WLLC until his employment was terminated on June 15, 2004. Over his 11-year tenure, he was promoted to Executive Vice President.

2. WCI, either by itself or through its subsidiary WLLC, was engaged in the business of providing, among other things, insurance consulting and brokerage services, and charitable giving vehicles for non-profit organizations (the "Business").

3. On December 5, 2002, Mr. Schnurr and WLLC executed an agreement (the "Stay Bonus Agreement") whereby Mr. Schnurr became entitled to 9.53% of 2002 profits and 8.33% of 2003 profits. WLLC further agreed to negotiate an operating agreement in good faith, by which Mr. Schnurr would become a member of WLLC and be "entitled to an initial profits interest of 8.33% of distributions." WLLC executed similar stay bonus agreements with four other key employees (the "Key Employees").

4. WLLC executed the Stay Bonus Agreements because WLLC's president had just been terminated and WLLC wished to encourage Mr. Schnurr and the Key Employees to remain employed in the Business. In exchange for staying employed in the Business and working to prevent the Business's clients from following the departed president, Mr. Schnurr and the Key Employees were each to receive an equity interest in the increased value of the Business. In addition, Mr. Schnurr and one Key Employee were to receive an equity interest in the then-current value of the Business. During this transitional period, Mr. Schnurr served as President of WLLC.

5. In the first quarter of 2003, the Defendants agreed that Mr. Schnurr would have a 9% equity interest and 9% profits interest in the Business (much of which flowed through WLLC), and that the interests would be formally conveyed once a regulatory matter involving WLLC was resolved. Although negotiations to clarify certain collateral terms were ongoing, the parties expressly agreed that Mr. Schnurr and the Key Employees would receive the benefit of having been granted the equity and profits interests in the first quarter of 2003.

6. During the 17 months between the execution of the Stay Bonus Agreement and early May 2004, Mr. Schnurr and the Key Employees negotiated an operating agreement with Howard Winklevoss, apparently the sole shareholder of WCI. The negotiating parties prepared a list of issues that needed to be completed before the operating agreement would be executed and specified who was responsible for each issue.

7. Mr. Schnurr and the Key Employees addressed the issues assigned to them in a timely manner. In addition, Mr. Schnurr encouraged progress by arranging regular meetings of the negotiating parties. However, Dr. Winklevoss delayed addressing the issues assigned to him, rather than "attempt[ing] to finalize and execute in as reasonable time as is practicable, the terms of an operating agreement", as required by the Stay Bonus Agreement.

8. By early May 2004, the regulatory matter was resolved, but the issues that Dr. Winklevoss was to address remained open. However, rather than addressing the issues and executing the operating agreement, Dr. Winklevoss, on behalf of WLLC, terminated the employment of (i) Mr. Schnurr, (ii) the only other Key Employee slated to receive an equity interest in the current value of the Business, and (iii) one other Key Employee.

9. Dr. Winklevoss informed Mr. Schnurr that the reason for the terminations was financial: which, whether true or false, would indicate that the Defendants had not been negotiating in good faith.

10. Mr. Schnurr substantially performed under the Stay Bonus Agreement and other express and implied agreements concerning membership and compensation.

11. WCI and WLLC denied Mr. Schnurr: (i) the equity and profits interests in the Business; (ii) the benefit of having been granted the equity and profits interests in the first quarter of 2003; and (iii) the profits interests for the years 2002 and 2003.

12. WCI and WLLC failed to negotiate in good faith when they: (i) delayed the execution of the operating agreement; (ii) terminated Mr. Schnurr's employment rather than executing the operating agreement; and (iii) negotiated the operating agreement while planning to significantly scale-back or cease operating in the line of the Business where he was employed.

13. Accordingly, WCI and WLLC breached the terms of the Stay Bonus Agreement and other express and implied agreements concerning membership and compensation.

14. As a result, Mr. Schnurr has suffered and continues to suffer damages.

COUNT TWO: IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1-12. Plaintiff realleges each allegation contained in paragraphs 1 through 12 of Count One.

13. Dr. Winklevoss failed to negotiate in good faith and delayed finalizing the operating agreement as an agent of WCI and WLLC. Dr. Winklevoss' actions denied Mr. Schnurr the benefit of the Stay Bonus Agreement and other express and implied agreements concerning membership and compensation.

14. WLLC breached the covenant of good faith and fair dealing implicit in the Stay Bonus Agreement and other express and implied agreements concerning membership and compensation by: (i) failing to distribute profits; (ii) inducing or permitting ledger entries designed to conceal profits; and (iii) failing to characterize payments to members or employees

as "profits distributions". WCI and WLLC further breached the implied covenant of good faith and fair dealing by failing to convey the equity and profits interests in WLLC to Mr. Schnurr and by failing to negotiate in good faith and consummate the operating agreement in good faith.

15. As a result, Mr. Schnurr has suffered and continues to suffer damages.

COUNT THREE: CONNECTICUT UNFAIR TRADE PRACTICES ACT

1-9. Plaintiff realleges each allegation contained in paragraphs 1 through 9 of Count One.

10. Mr. Schnurr never received: (i) the equity and profits interests in the Business; (ii) the benefit of having been granted the equity and profits interests in the first quarter of 2003; and (iii) the profits interests for the years 2002 and 2003.

11. WCI and WLLC engaged in unfair or deceptive practices in the course of their Business in violation of Section 42-110g of the Connecticut General Statutes when they: (i) failed to convey the equity and profits interests in the Business to Mr. Schnurr and the terminated Key Employees; (ii) failed to give Mr. Schnurr and the terminated Key Employees the benefit of having been granted the equity and/or profits interests in the first quarter of 2003; (iii) failed to convey the profits interests for the years 2002 and 2003 to Mr. Schnurr; (iv) induced or permitted ledger entries designed to conceal profits; (v) failed to characterize payments to members or employees as "profits distributions"; (vi) terminated Mr. Schnurr and

the terminated Key Employees rather than executing the operating agreement; (vii) misled Mr. Schnurr and the terminated Key Employees to continue to work in the Business; and (viii) negotiated the operating agreement with Mr. Schnurr and the terminated Key Employees while planning to scale-back or cease operating in the line of the Business where they were employed.

12. WCI's and WLLC's actions offend public policy, common law, or established notions of fairness.

13. As a result, Mr. Schnurr has suffered and continues to suffer damages.

COUNT FOUR: PROMISSORY ESTOPPEL

1-8. Plaintiff realleges each allegation contained in paragraphs 1 through 8 of Count One.

9. In late 1998, as part of a compensation plan, WCI promised to compensate Mr. Schnurr with salary, bonus and a commission on gross revenue from new business in the Business (the "1998 Compensation Agreement"). The parties agreed to modify the 1998 Compensation Agreement in early 1999 so that Mr. Schnurr would be compensated with salary, bonus, 5% of all profits from the Business, and an ownership interest in the Business (the "1999 Compensation Agreement"). WLLC was organized to implement the 1999 Compensation Agreement.

10. On December 31, 1999, Mr. Schnurr signed a letter agreement prepared by WCI whereby he agreed not to compete with WCI in exchange for, among other things, membership in WLLC with an interest of at least 7.5%.

11. Beginning in 1999, WCI and WLLC began holding Mr. Schnurr out as a member of WLLC. His business cards identified him as a "Principal", as did WLLC marketing materials. WLLC referred to him as a member or Principal in communications with its clients.

12. WCI and WLLC denied Mr. Schnurr: (i) the equity and profits interests in the Businesses; (ii) the benefit of having been granted the equity and profits interests in the first quarter of 2003; (iii) the commission to which he was entitled by virtue of the 1998 Compensation Plan; (iv) the percentage of profits to which he was entitled by virtue of the 1999 Compensation Plan; and (v) the profits interests for the years 2002 and 2003.

13. Mr. Schnurr reasonably relied upon WCI and WLLC's promises that he would become a member and be paid certain profits interests and commissions.

14. Mr. Schnurr relied upon WCI and WLLC's promises to his detriment because he continued to work for WCI and WLLC when he could have worked elsewhere at higher total compensation, and was not compensated for his work in the manner that WCI and WLLC promised that he would be.

15. As a result of his detrimental reliance, Mr. Schnurr has suffered and continues to suffer damages.

COUNT FIVE: NEGLIGENT MISREPRESENTATION

1-12. Plaintiff realleges each allegation contained in paragraphs 1 through 12 of Count Four.

13. WCI and WLLC failed to act with reasonable care when they made their representations regarding making Mr. Schnurr a member of WLLC, paying him a percentage of profits, paying him commissions and negotiating in good faith.

14. Mr. Schnurr reasonably relied upon WCI's and WLLC's representations to his detriment because he continued to work for WCI and WLLC when he could have worked elsewhere at higher total compensation, and was not compensated for his work in the manner that WCI and WLLC represented that he would be.

15. As a result of Defendants' negligent misrepresentations, Mr. Schnurr suffered and continues to suffer damages.

COUNT SIX: BREACH OF CONTRACT

1-2. Plaintiff realleges each allegation contained in paragraphs 1 through 2 of Count One.

3. In late 1998, as part of a compensation plan, WCI agreed to compensate Mr. Schnurr with salary, bonus and a commission on gross revenue from new business in the

Business (the "1998 Compensation Agreement"). The parties agreed to modify the 1998 Compensation Agreement in early 1999 so that Mr. Schnurr would be compensated with salary, bonus, 5% of all profits from the Business, and an ownership interest in the Business (the "1999 Compensation Agreement"). WLLC was organized to implement the 1999 Compensation Agreement.

4. Mr. Schnurr substantially performed under the 1998 Compensation Agreement and the 1999 Compensation Agreement.

5. WCI, either directly or through its subsidiary, WLLC, breached the 1998 Compensation Agreement and 1999 Compensation Agreement by: (i) failing to grant the ownership interest in the Business pursuant to the 1999 Compensation Agreement; (ii) failing to pay any commission under the 1998 Compensation Agreement; and (iii) failing to pay a percentage of profits under the 1999 Compensation Agreements for the years 2001, 2002, 2003 and half of 2004.

6. As a result, Mr. Schnurr has suffered and continues to suffer damages.

WHEREFORE, Plaintiff Rick D. Schnurr demands judgment and the following relief:

1. Damages of \$1,700,000;
2. Punitive damages pursuant to C.G.S. § 42-110g;
3. Attorneys' fees pursuant to C.G.S. § 42-110g;
4. Costs;
5. Interest; and
6. Such other and further relief as this Court deems just and equitable.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Rick D. Schnurr hereby demands that all triable issues in this matter be tried before a jury.

THE PLAINTIFF, Rick Schnurr

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