Rasmussen v Aaserod
2013 NY Slip Op 32641(U)
October 21, 2013
Sup Ct, NY County
Docket Number: 651093/2011
Judge: Shirley Werner Kornreich

SHIRLEY WERNER KORNREICH
J.S.C

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

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CARL RASMUSSEN,

Index No.: 651093/2011

Plaintiff,

DECISION & ORDER

-against-

BJORN Q. AASEROD, JOSEPH SCOTT KARRO,
& CAMBRIDGE SECURITIES LLC,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Plaintiff, Carl Rasmussen, and defendants, Bjorn Q. Aaserod and Joseph Scott Karro, were members of the now-defunct company, Cambridge Global Capital Partners, LLC (CGCP). Rasmussen claims that he did not receive his share of a $1.5 million CGCP fee related to the acquisition of an international shipping company. He, therefore, commenced this action on April 26, 2011 by filing a Complaint, which contains the following causes of action: (1) breach of contract; (2) misappropriation and conversion; (3) breach of fiduciary duty; (4) improper and negligent allocation; (5) accounting; and (6) constructive trust.

No motions were filed before the bench trial, which was held before me on March 7, March 8, and June 3, 2013. The only witnesses who testified were the parties – Rasmussen, Aaserod, and Karro. Based upon the credible evidence, the court makes the following findings of fact and rules in favor of defendants on all claims.

I. Findings of Fact

A. The Formation of CGCP

Before the parties met, Rasmussen, a former merchant marine, worked at several large financial institutions. Tr. at 143-46. Aaserod had a multi-decade history of running numerous companies in the shipping industry. Tr. at 219. In 2008, Rasmussen lost his job at Deutsche Bank during the financial crisis. Tr. at 146. At the time, Aaserod owned and operated defendant Cambridge Securities LLC (Cambridge Securities), a company that provided financial services for shipping transactions. Tr. at 35-36. Aaserod was working with Karro to wind down another one of his companies, Monitor Oil, so that he could devote more time to Cambridge Securities. Tr. at 153. A professional contact put Rasmussen and Aaserod in touch, and Rasmussen represented that he had substantial experience raising and managing capital for shipping transactions. Tr. at 146-47, 257. Aaserod offered Rasmussen the opportunity to work out of his office space with the expectation that Rasmussen would raise capital for transactions that Aaserod's companies were in the business of structuring. Tr. at 37, 257.

At the outset, in late 2008 and early 2009, Rasmussen did little to earn any money.[1] Tr. at 187. Nonetheless, there was some uncertainty about how the parties would get compensated for deals should any come to fruition. Thus, they sought to create a formal arrangement. Tr. at 151-52. To that end, on April 6, 2009, the parties formed CGCP, a Delaware limited liability company and executed an operating agreement (the CGCP Agreement). Tr. at 104; Def. Ex. A & B. Section 4 of the CGCP Agreement provides that "[t]he purpose of the Company is to conduct any activities permitted by law." Def. Ex. A. The CGCP Agreement does not contain

[1] Aside from the deal at issue in this case, discussed in detail below, Rasmussen was only involved in two other successful deals with CGCP, which are not in dispute. The first deal generated a fee in excess of $100,000. However, the expenses exceeded the fee, and CGCP's members did not receive any of this money. The second deal, which may or may not have actually been a CGCP deal, resulted in Rasmussen being paid $8,000.

an exclusivity provision limiting the parties to doing deals with each other, and Aaserod continued to operate his own companies.

The CGCP Agreement also sets forth the parties' initial equity: Aaserod 60%, Karro 20%, and Rasmussen 20%. *Id.* This allocation was agreed to because CGCP was not capitalized and had no assets. Tr. at 154, 257. Indeed, CGCP did not have a bank account because the parties were not willing to maintain the bank's minimum balance requirement of $5,000. Tr. at 258. For this reason, CGCP used Cambridge Securities' bank account. To get paid, Rasmussen and Karro would send Aaserod an invoice directed to Cambridge Securities.

Since Aaserod provided all of CGCP's resources and paid its expenses, he was given 60% of the equity and was entitled to 60% of the profits on CGCP's initial deals. Tr. at 154. However, the CGCP Agreement provides that once the members' aggregate distributions reached $2 million, the members' equity and entitlement to profits would shift to: Aaserod 50%, Karro 25%, and Rasmussen 25%. Def. Ex. A. It was understood that the value added by Rasmussen and Karro to CGCP was their work soliciting and managing investor capital for investment in transactions structured by Aaserod. Tr. at 133. That being said, the parties recognized that the amount of work each of them performed would vary from deal to deal.

B. The Eitzen Deal

The dispute in this case centers around the circumstances of a deal which ultimately led to Cambridge Securities receiving a $1.5 million fee for the acquisition of the assets of a non-party shipping company, Camillo Eitzen ASA (Eitzen), by a non-party French investment company, Jaccar (the Eitzen Deal). The parties dispute whether the Eitzen Deal, as ultimately consummated, was (1) merely a fourth, stand alone, separate iteration of a transaction, which

Rasmussen played no part in; or (2) the final result of a deal that was constantly evolving, which Rasmussen consistently participated in. This issue, the parties contend, determines whether the Eitzen Deal was a "CGCP deal" subject to profit sharing under the CGCP Agreement or a transaction facilitated exclusively by Aaserod's wholly owned companies.

In the summer of 2009, Rasmussen and Karro prepared a private placement memorandum, called a "teaser", to solicit capital for investment in a newly formed special purpose vehicle (SPV). Tr. at 102. The investors' funds, to be managed by CGCP, would allow the SPV to purchase five shipping vessels from Eitzen, which the SPV would then lease back to Eitzen.[2] Tr. at 222. This proposed deal failed because Rasmussen could not find willing investors.

In early November 2009, Zephyr Gas Transport Limited (Zephyr), a company formed and wholly owned by Aaserod, offered to acquire Eitzen. Tr. at 220, 33. The deal was not a lease-back transaction and did not involve CGCP. Eitzen's board approved Zephyr's proposal on November 9, 2009. Tr. at 57. However, soon thereafter, Eitzen received a more lucrative merger offer from another company and told Aaserod that it would not go through with the Zephyr deal. Tr. at 58. Aaserod retained the services of his brother's law firm in Norway and successfully obtained a temporary restraining order (the TRO) to stop the other merger. Tr. at 58. After the TRO was issued, Eitzen proposed a sale to Zephyr of a different number of vessels. Tr. at 59. On March 30, 2010, Eitzen and Zephyr entered into a written sales agreement, which would resolve their litigation. Tr. at 59-60. That agreement provided that

[2] This leaseback transaction was designed to create liquidity for Eitzen, so that it could continue to operate by leasing its major capital assets, its shipping vessels, instead of owning them. The SPV's investors were to get a return from the company's lease payments, and CGCP would receive a management fee. Tr. at 222.

Zephyr would conduct due diligence (e.g. inspection of the vessels) and retain lawyers to complete the transactional work. Tr. at 60. Zephyr retained Akin Gump Strauss Hauer & Feld (Akin Gump) and a Norwegian law firm, Thommessen. Tr. at 60. The deal failed in late June or early July 2010 for numerous reasons, including Zephyr's inability to obtain private equity investment and Eitzen's unwillingness to wait the three-month period required to file for a listing on the Oslo Stock Exchange. Tr. at 60-61. The failed deal involved Jaccar, which was willing to invest one-third of the capital if Eitzen could obtain the remaining funding. Tr. at 61.

Immediately after the proposed transaction failed, Jaccar offered to purchase Eitzen. Jaccar told Aaserod that if Zephyr provided all of its due diligence and legal work and ended its lawsuit against Eitzen, Jaccar would pay $1.5 million to Zephyr. Tr. at 62. In other words, Jaccar offered to buy Zephyr's due diligence and legal work and, in effect, settle the Zephyr lawsuit. On October 20, 2010, the Jaccar deal closed, the lawsuit was settled, and Jaccar paid $1.5 million to Zephyr. Tr. at 64. The payment, however, could not be paid directly to Zephyr, because Zephyr, like CGCP, did not have a bank account. Tr. at 65. Instead, the money was wired to the account that Aaserod used for his companies, the Cambridge Securities account. Tr. at 65.

C. Dispute Over The Fee

Two days after the Eitzen Deal closed, on October 22, 2010, Aaserod sent an email to Rasmussen and Karro:

> Cambridge Securities, LLC has received funds related to the closing of the Zephyr/Eitzen Ethylene transaction. The received funds were net of [$663,000] deducted for services of Thommessen and Akin Gump, therefore net proceeds of [$837,000]. I additionally have to pay the following expenses.

Litigation [$100,000]
Zephyr [$342,000]
Travel [$30,000]
NY Office [$45,000] through [January 2011].

Consequently the net availability is [$320,000], which will give the following compensation payments

Cambridge Oslo [$160,000]
Cambridge New York [$160,000]

split
Aaserod [$96,000]
Karro [$32,000]
Rasmussen [$32,000]

Please send Cambridge Securities, LLC an invoice and I will transfer money immediately.

Tr. at 67; Def. Ex. D.

The $100,000 litigation expense for Aaserod's brother's services in obtaining the TRO, was separate from the legal fees paid to Thommessen and Akin Gump. Tr. at 68. The $342,000 was paid pursuant to a November 9, 2009 Services Agreement between Cambridge Securities and Zephyr, signed by Aaserod on behalf of Zephyr and Cambridge, companies which he wholly owned.[3] Tr. at 73; Def. Ex. K. Much of the money (almost $300,000) was paid to Karro for

[3] Rasmussen takes issue with the Services Agreement, contending that it was some sort of sham which allowed Aaserod to divert more of the fee to himself. Aaserod maintains that, throughout his career, he always operated through separate corporate entities with specific purposes (e.g. Cambridge Securities for financial services and Zephyr to acquire shipping assets). The fact that Cambridge Securities provided the financial services militates against Rasmussen's claim that CGCP did any work to raise capital for the deal. Moreover, even if Zephyr were merely an alter ego of Cambridge Securities, such fact has no bearing on whether the Eitzen Deal is subject to

serving as Zephyr's CFO. Tr. at 72. The $30,000 was for travel expenses, and the $45,000 was for rent payments for the office space used by the parties.[4] Tr. at 74, 75. $160,000 was paid to Aaserod's Norwegian business partner, Morten Tronstad, who originally brought the Eitzen Deal to Aaserod.[5] Tr. at 79. The remaining $160,000 was allocated in accordance with the 60/20/20 split provided for in the CGCP Agreement, entitling Rasmussen to $32,000. Tr. at 79-81.

During the trial, it became clear that the accounting in Aaserod's October 22, 2010 email was not an entirely accurate reflection of how the $1.5 million was actually allocated. Aaserod testified that this email was never meant to be a formal accounting; it was merely a rough, big picture approximation of the fee breakdown used to justify paying $32,000 to Rasmussen. Tr. at 85. In fact, Aaserod stated that he did not believe that Rasmussen was entitled to any money from the Eitzen Deal since Rasmussen did little overall work on the predecessor failed deals and no work on the final Eitzen Deal with Jaccar. Indeed, the record is devoid of any evidence of Rasmussen's involvement with the Eitzen Deal, other than evidence that he spent a short amount of time on the "teaser" and a minimal amount of time on the phone with former banking colleagues in an unsuccessful attempt to solicit investment in the original, failed CGCP managed fund deal.

D. The Dissolution of CGCP

On November 2, 2010, Aaserod caused the dissolution of CGCP by withdrawing from the company. *See* Def. Ex. A. p.3, §10. On November 9, 2010, Aaserod emailed a proposed

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profit sharing under the CGCP Agreement.

[4] The stated time period, which went through January 2011, post-dated the dissolution of CGCP.

[5] It appears that Rasmussen went into business with Tronstad after the underlying events concluded. Tr. at 193.

Dissolution Agreement to Rasmussen. *See* Def. Ex. H. This proposed agreement called for a distribution to the members on the Eitzen Deal in accordance with Aaserod's October 22, 2010 email ($32,000 to Rasmussen) and set forth a proposed revenue sharing plan for other pending transactions. *See id.* Rasmussen refused to sign the Dissolution Agreement, objecting to only receiving $32,000 on the Eitzen Deal. Aaserod testified that his offer of $32,000 was intended as a settlement and severance of their business relationship, which was not working out due to Rasmussen's inability to attract investor capital.

The court finds Aaserod's testimony on the nature of the parties' relationship more persuasive than Rasmussen's testimony on his entitlement to proceeds from the Eitzen Deal.[6] The preponderance of the evidence demonstrates that: (1) Aaserod extended a job offer to Rasmussen during the financial crisis; (2) Aaserod's purpose was to benefit from Rasmussen's purported ability to attract investor capital, which could be used on Aaserod's deals; and (3) Rasmussen failed to attract investor capital. Given these findings, the court must determine if the CGCP Agreement entitles Rasmussen to a cut of the Eitzen Deal fee, regardless of his actual involvement on the deal.

II. Conclusions of Law

[6] The court declines to discuss the portions of Aaserod's testimony not relevant to its decision, but wishes to make two points clear: (1) the court does not find Aaserod to be generally credible, especially about how he handles the finances of his wholly owned companies; but (2) this lack of general credibility does not impact the court's findings about Aaserod's testimony regarding why he offered $32,000 to Rasmussen, since his explanation is more plausible to the court than Rasmussen's testimony on the matter. Aaserod's testimony is supported by the evidence – his continued ownership of other companies and Rasmussen's failure to demonstrate that he worked on the Eitzen/Jacar Deal.

"In a civil action such as this one, it is incumbent upon the Plaintiff to prove his entitlement to judgment by a fair preponderance of the credible, relevant, material and admissible evidence. It is the province and indeed, the obligation, of the trial court to assess and determine matters of credibility." *Parr v Ronkonkoma Realty Venture I LLC*, 18 Misc3d 1138(A), at *6 (Sup Ct, NY County 2008), citing *Wendy A. v John H.*, 65 NY2d 826 (1985); *Torem v 564 Cent. Ave. Rest., Inc.*, 133 AD2d 25 (1st Dept 1987).

A. Conversion

At the outset, the court dismisses Rasmussen's "misappropriation and conversion" claim. "[S]uch a cause of action cannot be predicated on a mere breach of contract, and no independent facts are alleged giving rise to tort liability." *Kopel v Bandwidth Tech. Corp.*, 56 AD3d 320 (1st Dept 2008).

As for his claim under the CGCP Agreement, Rasmussen sets forth two theories about why he is entitled to a portion of the Eitzen Deal fee: (1) the Eitzen Deal was a "CGCP deal", entitling the members to their 60/20/20 split, regardless of their actual involvement on the deal (the Contract Argument); and (2) even if the Eitzen Deal was not technically covered under the CGCP Agreement, Aaserod's actions (e.g. playing a financial shell game to divert the deal from CGCP in order to enrich himself and Karro at the expense of Rasmussen and CGCP) is a breach of the duty of good faith and fair dealing and a breach of fiduciary duty.

B. Breach of Contract

The CGCP Agreement does not state that CGCP has a specific corporate purpose (i.e. soliciting and managing investment capital for shipping transactions or making money in myriad ways by being involved with shipping deals). Instead, the CGCP Agreement merely recites the

boilerplate language that "[t]he purpose of the Company is to conduct any activities permitted by law." Def. Ex. A. Additionally, the CGCP Agreement does not restrict the members from doing business in the shipping industry without entitling the other members to an automatic stake in those deals. In fact, at the time the CGCP Agreement was executed, Aeserod owned other companies involved in the shipping industry. At best, the CGCP Agreement is silent, and therefore ambiguous, on whether CGCP is a company whereby *all* business conducted by its members are automatically "CGCP deals", or if CGCP only has a stake in certain types of deals. Aaserod argues in favor of the latter interpretation. Rasmussen insists on the former. Rasmussen bears the burden of proof on the issue.

Rasmussen argues that the CGCP Agreement was meant to be a broad business arrangement, encompassing all shipping deals that any of the parties participated in. It was up to Rasmussen to introduce evidence at trial to support this theory. There was no such evidence at trial.[7] At most, the CGCP Agreement is ambiguous on this point, and from a commercial standpoint, it would seem unreasonable to grant Rasmussen a 20% stake in all of Aaserod's businesses merely for access to an untested funding source. If Rasmussen was to get a cut of all of Aeserod's business dealings pursuant to the CGCP Agreement, the parties, who are highly sophisticated financial professionals with the means to retain qualified counsel, could have memorialized this commercially, counter-intuitive understanding in writing. They did not.

[7] The court notes that its decision is primarily based on Rasmussen's failure to produce persuasive evidence supporting his theories about why he is entitled to a cut of the $1.5 million fee from the Eitzen Deal. The leading and argumentative nature of plaintiff's witness examination cut against the credibility of the few answers that might have aided plaintiff's case. Additionally, much of the trial was spent disputing semantics over the structure of the Eitzen Deal, disputes over the legitimacy of Aaserod doing business through wholly owned companies, and the fairness of Aaserod and Karro receiving substantial money from the Eitzen Deal while Rasmussen got nothing. Yet, concrete, clear, and credible testimony about the parties' intentions was sorely lacking.

Rasmussen's claim ultimately fails because he has not carried his burden of proof of establishing the parties intent was in keeping with his trial position. Instead, the persuasive evidence supports defendants' interpretation of the CGCP Agreement.

As Aaserod argues the evidence shows he brought Rasmussen into his office and formed CGCP to leverage Rasmussen's ability to attract investor capital and manage investment funds. Aaserod already had an established business which participated in shipping deals, including owning and managing companies that acquired shipping assets and providing financial services to shipping them. The value of partnering with Rasmussen was to use the capital that Rasmussen raised to fund Aaserod's deals. This was CGCP's actual corporate purpose. Since CGCP had no assets, it did not have the capacity to do anything but solicit investors or manage their money. Unlike Cambridge Securities, an Aeserod entity, CGCP did not have the resources to purchase shipping companies or pay for the expense of performing due diligence.

With this context in mind, Aaserod avers that CGCP was the parties' investment fund management company. Any money made from the parties' fund management activities, such as the management fee the proposed SPV would have earned in the first iteration of the Eitzen Deal, would have belonged to CGCP. However, Aaserod argues, CGCP had no stake in Aaserod's shipping deals when such deals did not involve CGCP's assistance in raising or managing investment capital. For instance, had Zephyr purchased Eitzen's vessels and generated revenue by leasing them back to Eitzen, CGCP would not be entitled to a cut of such revenue unless CGCP raised or managed the capital that Zephyr used to purchase those vessels. Likewise, under this reasoning, CGCP would not be entitled to a portion of the fee from the

Jaccar deal since CGCP did not play any role in that deal. The court finds that this was the parties' intention when they formed CGCP.

Thus, the court does not believe that Aaserod was granting Rasmussen and Karro a stake in all business conducted by Cambridge Securities, for which Aaserod performed all the legwork and paid all of the expenses. Such a broad intention is not commercially reasonable under the circumstances. Aaserod, experienced and well-connected, was giving Rasmussen a limited opportunity to help him fund deals, not an equity interest in all his business ventures for no capital investment. On those deals where CGCP successfully raised capital, Rasmussen would get his cut. In that event, the marginal amount of work performed by Rasmussen in raising capital relative to the time Aaserod spent closing the deal would be irrelevant for determining the members' entitlement to fee sharing. So long as Rasmussen raised capital, he would get his 20%. Yet, the idea that the parties' relative efforts on a deal would not impact their compensation was not meant to change the understanding that, to be entitled to anything at all, the deal must have actually involved CGCP raising money. This makes commercial sense. Rasmussen, whose background was raising capital, was brought in to raise money. If he did so, he would get paid. If he did not raise money on a deal, he would not get paid. Here, with respect to the Eitzen Deal, Rasmussen did not raise any money. All of the money to purchase Eitzen came, independently, from Jaccar, and Jaccar paid Zephyr, Aeserod's company, $1.5 million for its due diligence, legal work and the end of litigation.

That being said, though the court is somewhat troubled by Aaserod's accounting of the $1.5 million fee, such concerns are not legally relevant. It appears that much of Aaserod's accounting, which was done informally in a series of emails, comes across as an *ad hoc* means of

dividing up the money in a way that nominally adheres to various written agreements. Such behavior is indicative of the uncertainty about how the fee was supposed to be split. Aaserod's contention that he was offering $32,000 to Rasmussen as a settlement is plausible. Though Aaserod's justifications for reaching that number are somewhat suspect (e.g. charging rent after CGCP was dissolved), and may have undermined the credibility of his settlement offer, Aaserod's justifications do not have any impact on the threshold issue of whether Rasmussen has proved his entitlement to the $500,000 portion of the fee he claims.

Finally, the court has considered the evidence of the parties' actual work performed on the Eitzen Deal. While it is undisputed that the parties' split under the CGCP Agreement is not dependant on their relative efforts, their actual efforts are evidence of the parties' understanding of the nature of the Eitzen Deal. Had Rasmussen presented evidence of continuous, significant participation in the Eitzen Deal throughout all of its iterations, the court might have found that the parties understood that the Eitzen Deal, as ultimately consummated, is a "CGCP deal". However, the scant evidence produced by Rasmussen demonstrates a minimal level of involvement, which was totally irrelevant to the final deal. The court will not divine a broader level of involvement based upon a "teaser" for an abandoned investment fund concept and a handful of unsuccessful phone calls. If Rasmussen really played a more significant role in the deal, he should have introduced evidence of such involvement. His failure to do so leads the court to infer that he was not really involved.

In sum, Rasmussen is claiming entitlement to the fruits of Aaserod's businesses for the time when he worked in Aaserod's offices. The CGCP Agreement does not provide Rasmussen with this right. In light of the CGCP Agreement's silence on the matter, the court is not willing

to add such a significant provision absent persuasive evidence that this result is what the parties intended. Rasmussen produced no such evidence. For this reason, the court rejects the Contract Argument.

C. The Fiduciary Argument

The parties agree that the scope of their fiduciary duties is governed by Delaware law because CGCP is a Delaware company. Under Delaware law, active members of a limited liability company owe fiduciary duties to each other. *See generally Feeley v NHAOCG, LLC*, 62 A3d 649, 660 n.1 (Del Ch 2012), citing *Phillips v Hove*, 2011 WL 4404034, at *24 (Del Ch 2011) ("Unless limited or eliminated in the entity's operating agreement, the member-managers of a Delaware limited liability company [ ] owe traditional fiduciary duties to the LLC and its members."). Also, the parties have a duty of good faith and fair dealing toward each other under the CGCP Agreement. *See Kuroda v SPJS Holdings, L.L.C.*, 2010 WL 925853, at *10 (Del Ch 2010). However, "one generally cannot base a claim for breach of [the duty of good faith and fair dealing] on conduct authorized by the terms of the agreement." *Dunlap v State Farm Fire & Cas. Co.*, 878 A2d 434, 441 (Del 2005).

As discussed earlier, the CGCP Agreement does not prohibit members from participating in shipping deals without involving CGCP. Aaserod owned companies other than CGCP at the time, transacting shipping deals. However, even if such exclusivity were required, Aaserod's failure to allow CGCP to participate in the Eitzen Deal is neither a breach of fiduciary duty nor a breach of the duty of good faith and fair dealing. As the Delaware Supreme Court has explained:

> [A] corporate officer or director may not take a business opportunity for his own if: (1) the corporation is financially able to exploit the opportunity; (2) the opportunity is within the corporation's line of business; (3) the corporation has an

> interest or expectancy in the opportunity; and (4) by taking the opportunity for his own, the corporate fiduciary will thereby be placed in a position inimical to his duties to the corporation. The Court in *Guth* also derived a corollary which states that a director or officer *may* take a corporate opportunity if: (1) the opportunity is presented to the director or officer in his individual and not his corporate capacity; (2) the opportunity is not essential to the corporation; (3) the corporation holds no interest or expectancy in the opportunity; and (4) the director or officer has not wrongfully employed the resources of the corporation in pursuing or exploiting the opportunity.

Broz v Cellular Info. Sys., Inc., 673 A2d 148, 155 (Del 1996), accord *Guth v Loft, Inc.*, 5 A2d 503 (Del 1939). "No one factor is dispositive and all factors must be taken into account insofar as they are applicable." *Id.*

Under this standard, Aaserod is not guilty of improperly diverting a corporate opportunity. CGCP had no assets and, therefore, no financial ability to exploit the opportunity. CGCP could not purchase shipping vessels, conduct due diligence, pay legal expenses, or do anything to help consummate the Eitzen Deal in the way that Aaserod's other companies, Zephyr and Cambridge Securities, could. Indeed, the reason that Zephyr and Cambridge Securities were able to make an impact on the Eitzen Deal was because Aaserod, as those companies' sole owner, put up the money. CGCP, in contrast, was only in a position to solicit investor capital, nothing more, and was only in that position to begin with due to Aaserod. Had Aaserod hid the opportunity to solicit capital for the Eitzen Deal from Rasmussen or hired another fund manger to do so, that would be an improper diversion of a corporate opportunity. Here, Rasmussen was actually given the opportunity to raise money for the Eitzen Deal. He failed. As a result, the Eitzen Deal became a completely different breed of transaction that did not require a fund manager. The failure to capitalize on an opportunity ultimately captured by another does not retroactively render such opportunity diverted.

The Eitzen Deal, as consummated, was not within CGCP's grasp. However, the Eitzen Deal was the type of corporate opportunity within Zephyr's and Cambridge Securities' line of business. Such opportunity was only pursued after CGCP was presented with a chance to participate, which CGCP tried and failed to do. Consequently, Aaserod did not improperly divert the Eitzen Deal from CGCP, and the court rejects the Fiduciary Argument.

For the reasons discussed above, the court dismisses Rasmussen's claims for breach of contract, misappropriation and conversion, and breach of fiduciary duty. Additionally, the remaining claims for improper and negligent allocation, accounting, and constructive trust are dismissed, since Rasmussen is not entitled to any money from defendants.[8] Accordingly, it is

ADJUDGED that the action is dismissed as against defendants, Bjorn Q. Aaserod, Joseph Scott Karro, and Cambridge Securities LLC, with prejudice, and the Clerk is directed to enter judgment accordingly with costs and disbursements as taxed by the Clerk upon presentment of a bill of costs.

Dated: October 21, 2013

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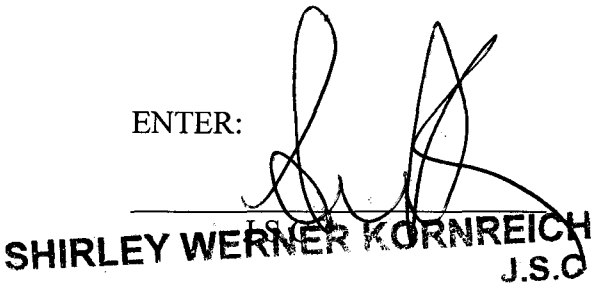

[8] Finally, a word about Karro, who was not discussed much in this decision. Karro received over $300,000 for his role in the Eitzen Deal. Aaserod claims that much of that compensation was due to Karro's role as CFO of Zephyr. Rasmussen contends that this was a sham job, which entailed no real work, and the claim was proffered as pretext for compensating Karro instead of Rasmussen. However, this does not matter. The evidence at trial led this court to conclude that the Eitzen Deal belonged to Aaserod's companies. Whatever Aaserod wishes to do with his own money is his business. Rasmussen's complaints about the manner in which Aaserod structures his companies and compensates his business partners is no substitute for establishing a legal entitlement to the subject fee. Rasmussen's failure to produce persuasive evidence supporting his understanding of the parties' agreement about CGCP and his actual role in the Eitzen Deal doomed his case. Rasmussen simply did not meet his burden of proof.