

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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5W PUBLIC RELATIONS, LLC,

Index No.: _____

Plaintiff,

-against-

VERIFIED COMPLAINT

AKIL RUCKER

Defendant.

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Plaintiff, 5W PUBLIC RELATIONS, LLC (“Plaintiff”), by his attorneys, SHELOWITZ BRODER LLP, complaining of the above named Defendant, AKIL RUCKER (“Defendant”), respectively alleges as follows:

1. Plaintiff 5W PUBLIC RELATIONS, LLC is a New York registered corporation with its corporate headquarters located at 1120 Avenue of the Americas, 7th Floor, New York, NY, 10036.
2. Upon information and belief, Defendant is an individual residing at 300 East 34th Street, Apt. 18J, New York, NY 10016.
3. Plaintiff is in the business of providing public relations services.

Statement of Facts

The Employment Agreement

4. On or about November 27, 2006, Defendant entered into an employment agreement with the Plaintiff Company, under which agreement Defendant was employed as Plaintiff’s Director of Marketing (the “Employment Agreement”). (A true and correct copy of the Employment Agreement signed by the Defendant is attached hereto as Exhibit “A.”)

5. Defendant’s duties as the Director of Marketing included, without limitation, maintaining the Plaintiff’s website, developing and managing Plaintiff’s promotional materials,

mailings, and mailing lists, coordinating large Company and client events, and seeking new revenue platforms through coordinated business initiatives.

6. Paragraph 3 of the Employment Agreement states:

“Duties. Employee shall: (a) perform his or her duties faithfully and to the best of Employee’s ability and consistent with Employee’s qualifications, status and experience (b) abide by general policies and procedures incident to the operation of Company’s business; and (c) provide the Company with information it requests which is related to compliance with Company policies...”

7. The Employment Agreement also contains provisions prohibiting the Defendant from disclosing any confidential information of the Plaintiff Company (The “Confidentiality Provision”) and prohibiting Defendant from competing with the Plaintiff for the duration of eighteen (18) months after the termination or resignation of Defendant’s employment (the “Non-Competition Provision”). (See Exhibit A, Paragraph 5.)

8. Because of the competitive nature of the Plaintiff’s business as a public relations firm, and because of the necessity of its employees to have access to confidential information in order to effectively perform their duties, Plaintiff is heavily reliant on the Confidentiality Provision and the Non-Competition Provision in the Employment Agreement in order to afford itself the proper measure of protection of both the Plaintiff’s confidential information and that of its clients.

9. Paragraph 6 of the Employment Agreement states:

“Damages: In addition to the remedy of injunctive relief...the Employee expressly agrees that in the event that he breaches the terms of this Agreement, the Company shall be entitled to judgment for damages and consequential damages resulting from his breach (including but not limited to breach of the Covenant Not to Compete and the Non-Disclosure provisions herein) in an amount to be determined at trial, but not less than an amount equal to three (3) times the annual rate of compensation on the date of the breach, or if the Employee has already terminated or resigned from his employment with the Company, the highest amount of compensation (including the most recent bonus) that the Employee earned while employed by the Company, the Employee agreeing that this represents minimum liquidated damages.”

The Employee Handbook

10. In addition to the Employment Agreement, Plaintiff also maintains an Employee Handbook containing the company's rules, regulations, and procedures, to which all employees are required to adhere. (A true and correct copy of Plaintiff's Employee Handbook is attached hereto as Exhibit "B.")

11. Defendant received the Employee Handbook on November 27, 2006, as evidenced by his signature on the Receipt and Acknowledgement form. (See pages 18-19 of the Employee Handbook, attached hereto as Exhibit "B.")

12. The Employee Handbook contains guidelines emphasizing the essential nature of regular employee attendance and requires advance notice prior to missing work. The Employee Handbook evidences the Plaintiff's prerequisite that reasonable notice be provided if an employee will cease performing his job duties due to his temporary absence or permanent resignation. (See page 4 of the Employee Handbook, attached hereto as Exhibit "B.")

13. Because it is vital to the operation of business for the Plaintiff to be fully staffed at all times, it is also the Plaintiff's general company policy to require two (2) weeks' notice of the resignation of any of its employees.

14. The Employee Handbook also reemphasizes the essential nature of the Plaintiff's confidentiality policies. (See pages 12-13 of the Employee Handbook, attached hereto as Exhibit "B.")

The Sundance Film Festival Project

15. Defendant began working for the Plaintiff pursuant to the Employment Agreement on or about November 27, 2006.

16. In early 2007, the Defendant was appointed as the project manager on a major project, whereby he was required to represent the Plaintiff Company and its key clients at the Sundance Film Festival (the “Sundance Film Festival Project”). Defendant was given a budget of two hundred and fifty thousand dollars (\$250,000.00) and was required to attract and book corporate sponsors and celebrities to attend the the festival’s numerous events, parties, gatherings, and galas. He was also responsible for creating and planning innovative day and evening events to take place during the festival to specifically promote the Plaintiff Company, and to create a product sampling program.

17. The Sundance Film Festival is a major annual event for the Plaintiff and its clients, which is attended by thousands of artists, celebrities, businesses, investment firms, entertainment and media entities, retailers, and spectators. The festival attracts numerous investors from a variety of different industries and therefore is of prime importance to the public relations services industry. Attendance at and participation in the Sundance Film Festival is a critical component of Plaintiff’s operations.

18. The Sundance Film Festival is being held this year in Park City Utah during January 17 – 27, 2008. As a result of the recent highly-publicized theater strikes, the festival has attracted even more publicity and significance this year, making it an even more vital event for the Plaintiff.

19. Defendant accepted the Sundance Film Festival Project and the above duties and obligations, and was at all times aware of his key role at the festival.

Defendant’s Abrupt Resignation

20. After eight (8) months of work on the Sundance Film Festival Project, Defendant abruptly resigned from the Plaintiff Company on January 17, 2008, the same day on which the

Sundance Film Festival had commenced as he was being given checks to pay various festival vendors.

21. Defendant withheld and failed to give Plaintiff any prior notice of his resignation and neglected to even discuss his intention to leave or apparent dissatisfaction with his position with any of his supervisors prior to simply walking out.

22. As a result, Plaintiff was forced to find immediate replacements and sort through the multiple arrangements and projects managed by Defendant for the Sundance Film Festival Project in order to save its reputation and prevent loss of key customers.

23. Plaintiff was forced to expend significant sums in finding and training immediate replacements for the Defendant and to send a substitute for the Defendant to the festival as Plaintiff's Director of Marketing.

24. Upon information and belief, since his abrupt resignation from the Plaintiff Company, Defendant may have begun working for one of the Plaintiff's competitors, in violation of the Plaintiff's Non-Competition Provision in the Employment Agreement.

25. Upon information and belief, Defendant may have also disclosed confidential information belonging to the Plaintiff to his current employer, a competitor of the Plaintiff, in violation of the Confidentiality Provision in the Employment Agreement.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract as to the Resignation)

26. Plaintiff repeats and re-alleges each and every allegation contained in Paragraph "1" through "25" above as if set forth fully herein.

27. By withholding and failing to give notice of resignation, and instead resigning on the same day that the Sundance Film Festival had commenced, Defendant failed "to perform his...duties faithfully," in violation of Paragraph 3 of the Employment Agreement.

28. By withholding and failing to give notice of resignation, and instead resigning on the same day that the Sundance Film Festival had commenced, Defendant failed to “abide by [Plaintiff’s] general [company] polic[y] and procedure[.]” of requiring two (2) weeks’ notice prior to resignation, in violation of Paragraph 3 of the Employment Agreement.

29. By withholding and failing to give notice of resignation, and instead resigning on the same day that the Sundance Film Festival had commenced, Defendant also failed to “provide the [Plaintiff] Company with information...related to compliance with Company policies,” in violation of Paragraph 3 of the Employment Agreement.

30. Defendant’s failure to give notice of his resignation therefore amounts to a breach of Paragraph 3 of the Employment Agreement.

31. Due to the foregoing and as a direct and proximate result of Defendant’s breach of contract, Plaintiff was damaged in an amount to be determined at trial but not less than two hundred and forty thousand dollars (\$240,000.00) in liquidated damages under Paragraph 6 of the Employment Agreement.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealings)

32. Plaintiff repeats and re-alleges each and every allegation contained in Paragraph “1” through “31” above as if set forth fully herein.

33. In performing his duties under the Employment Agreement, Defendant had an implied obligation to act in good faith and fairly to the Plaintiff.

34. By withholding and failing to give notice of resignation, and instead resigning on the same day that the Sundance Film Festival had commenced, Defendant acted in bad faith and unfairly to the Plaintiff.

35. Due to the foregoing and as a direct and proximate result of Defendant's breach of the implied covenant of good faith and fair dealings, Plaintiff was damaged in an amount to be determined at trial but not less than two hundred and forty thousand dollars (\$240,000.00) in liquidated damages under Paragraph 6 of the Employment Agreement.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of the Non-Competition Provision)

36. Plaintiff repeats and re-alleges each and every allegation contained in Paragraph "1" through "35" above as if set forth fully herein.

37. Upon information and belief, since his abrupt resignation from the Plaintiff Company, Defendant may have begun working for one of the Plaintiff's competitors, in violation of the Plaintiff's Non-Competition Provision in the Employment Agreement.

38. Defendant's violation of the Non-Competition Provision in the Employment Agreement amounts to a breach of contract entitling Plaintiff to recover damages pursuant to Paragraph 6 of the Employment Agreement.

39. Due to the foregoing and as a direct and proximate result of Defendant's breach of contract, Plaintiff was damaged in an amount to be determined at trial but not less than two hundred and forty thousand dollars (\$240,000.00) in liquidated damages.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Confidentiality Provision)

40. Plaintiff repeats and re-alleges each and every allegation contained in Paragraph "1" through "39" above as if set forth fully herein.

41. Upon information and belief, Defendant may have also disclosed confidential information belonging to the Plaintiff to his current employer, a competitor of the Plaintiff, in violation of the Confidentiality Provision in the Employment Agreement.

42. Defendant's violation of the Confidentiality Provision in the Employment Agreement amounts to a breach of contract entitling Plaintiff to recover damages pursuant to Paragraph 6 of the Employment Agreement.

43. Due to the foregoing and as a direct and proximate result of Defendant's breach of contract, Plaintiff was damaged in an amount to be determined at trial but not less than two hundred and forty thousand dollars (\$240,000.00) in liquidated damages.

WHEREFORE, the Plaintiff demands judgment against the Defendants in each cause of action as follows:

A. That Plaintiff be awarded twenty five thousand dollars (\$25,000.00) for Defendant's breach of contract for withholding and failing to provide Plaintiff reasonable notice of Defendant's resignation; and/or

B. That Plaintiff be awarded twenty five thousand dollars (\$25,000.00) for Defendant's breach of the implied covenant of good faith and fair dealings; and/or

C. That Plaintiff be awarded two hundred and forty thousand dollars (\$240,000.00) for Defendant's breach of the Non-Competition Provision; and/or

D. That Plaintiff be awarded two hundred and forty thousand dollars (\$240,000.00) for Defendant's breach of the Confidentiality Provision; and/or

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E. That Plaintiff be awarded costs, disbursements and attorney's fees incurred in this action, along with other and further relief as the Court deems just and proper.

Dated: New York, NY
January ___, 2008

SHELOWITZ & ASSOCIATES PLLC

By: Mitchell Shelowitz
Attorneys for Plaintiff
11 Penn Plaza, 5th Floor
New York, NY 10001
Tel.: (212) 655-9384

TMZ.com

VERIFICATION

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

RON TOROSSION, being duly sworn, deposes and says that he is the Chief Executive Officer of the Plaintiff in this action; that he has read the foregoing and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Dated: New York, NY
January ____, 2008

RON TOROSSION

Sworn to before me this
____ day of January, 2008

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
5W PUBLIC RELATIONS, LLC,

Plaintiff,

-against-

AKIL RUCKER

Defendant.
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Index No.:

Date Purchased:

Plaintiff designates
NEW YORK
County as the place of trial.

The basis of venue is Defendant's residence
and Defendant's contractual consent to this
venue.

SUMMONS

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, NY
January __, 2008

Defendant's Address:
300 East 34th Street, Apt. 18J
New York, NY 10016

Mitchell Shelowitz
SHELOWITZ BRODER LLP
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