

UNIRED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VINCENT NASSO

AMENDED VERIFIED COMPLAINT
AND JURY DEMAND
CIVIL ACTION NO:11-03480

Plaintiff

-against-

BIO REFERENCE LABORATORIES, INC

Defendant

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Plaintiff, Vincent Nasso, Citizen of the State of New York, as and for his verified complaint, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, Plaintiff was and still is a resident of the State of New York.

2. That at all times hereinafter mentioned and upon information and belief, the Defendant Bio Reference Laboratories inc was and still is a corporation duly organized and existing by and under the laws of the State of New Jersey and maintains its main office and

principal place of Business in the State of New Jersey and more particularly at Elmwood Park, New Jersey.

3. That upon information and belief, the defendant is authorized to do business in the State of New York and maintains offices for that purpose in the State of New York.

4. That at all times hereinafter mentioned and in or about 1989, Bio Dynamics, Inc was a corporation duly organized and existing by and under the laws of the State of New York.

5. That in or about 1987, Plaintiff Vincent Nasso was an officer and shareholder of the above named Bio Dynamics, Inc.

6. That jurisdiction properly lies with the Federal District Court by virtue of the diversity of Citizenship of the Plaintiff and defendant AS SET FORTH IN TITLE 28 u.s.c. SECTION 1332 © (1) and 1348.

7. That the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

8. That upon information and belief, the defendant at all times hereinafter mentioned was involved in the business of providing, among other things, and for profit, blood laboratory work up, and medical diagnostic results for Medical Facilities and others who pay defendants to provide said results.

9. That in 1989 Bio Dynamics, Inc was involved among other things, in providing for profit, blood laboratory work and diagnostic work up for Medical facilities and provided those services to specified facilities including the International Long Shoreman's Union.

10. That defendant , in 1989, did purchase Bio Dynamics, Inc including all of the accounts the aforesaid Bio Dynamics, Inc was servicing at the time.

11. That said purchase required the approval and consent of among others, of Vincent Nasso, a Principal Officer and Principal shareholder of Bio Dynamics, Inc, Plaintiff herein.

12. That in consideration of the approval of the sale of Bio Dynamics including its shares of stock and existing accounts, Defendant agreed to pay to Vincent Nasso issuance of its stock, stock options,(Bio Reference)as well as other valuable consideration and further agreed to hire and employ plaintiff as a sales person and consultant for the purposes of soliciting and referring medical facilities and others who required diagnostic testing results and who agreed to pay defendant for obtaining said results.

13. That at that time it was agreed between defendant and plaintiff that in addition to the above mentioned remuneration, plaintiff would receive 10 % of all monies defendant earned from accounts Plaintiff referred to defendant as well as from accounts generated or referred to defendant from accounts originally referred to defendant by plaintiff and that plaintiff would receive said 10% of said monies earned by defendant as long as those accounts and referred accounts continued to pay defendant for the services defendant provided to them.

14. That Plaintiff did obtain and did, in fact, refer numerous accounts to defendant in the years 1989 through 2002.

15. That upon information and belief, accounts originally referred to defendant by plaintiff referred other accounts to defendant.

16. That in 2002, Plaintiff was indicted for violating certain Federal laws and was charged with federal crimes which compelled plaintiff to leave his employment with defendant.

17. That defendant, through its agent servant and employee and Principal Officer of Defendant, namely, Dr. Mark Grudman , stated to plaintiff that because Plaintiff was under Federal Indictment and because Defendant was a publicly held company, that defendant could no longer pay Plaintiff his earned commissions as agreed to until Plaintiff's criminal case was completely resolved but that all monies and commissions that Plaintiff was entitled to pursuant to the aforementioned agreement entered between the parties would be held by defendant for plaintiff's benefit until such time as Plaintiff's criminal case was completely resolved and when plaintiff was released from prison at which time defendant through its agent Dr. Grudman agreed to not only pay Plaintiff commissions he was entitled to while the criminal process was unveiling but to continue to pay plaintiff thereafter commissions earned through accounts referred to defendant which remained with defendant after plaintiff's criminal case was resolved and which commissions would continue so long as those accounts(accounts generated by and through Plaintiff) remained and continued to remain defendant's "account".

18. That Plaintiff agreed to the terms and conditions of payment as set forth above and agree to suspend payment of commissions due him until such time as his criminal proceeding concluded.

19. That Defendant has, upon information and belief, since 2002, and up to and including the present time, continued to maintain and profit from numerous accounts obtained by and through plaintiff and referred to defendant during the years that plaintiff was employed by defendant including the New York Hotel Trade Council Account which plaintiff obtained on behalf of defendant and referred to defendant and from which defendant continues to profit from.

20. That upon information and belief defendant still and currently holds a retirement (401K) account with Fidelity Investments wherein defendant lists Plaintiff as an "employee".

21. That the criminal proceedings that Plaintiff was a party to concluded in 2006.

22. That Defendant has heretofore been advised that the criminal proceeding Plaintiff was involved in has been resolved and concluded and that to date, defendant has failed and refused to pay plaintiff any commissions earned on monies defendant has received from accounts referred to it from the time of plaintiff's employment through the present time although payment for commissions earned by plaintiff for accounts maintained by defendant up to the present time has been duly demanded.

23. The amounts due and owing plaintiff are not known to Plaintiff because defendant, its agents and employees and Officers have had sole charge and custody of, and access to the books of defendant, and to the entries made therein, which would disclose the gross amounts of monies earned by defendant from accounts referred to it by plaintiff up to the present time and for which information defendant has willfully refused to divulge though duly demanded by Plaintiff.

24. That defendant's relationship to plaintiff was and is a fiduciary one and one of trust, inasmuch as defendant, its agents and its Officers and agents other than Plaintiff had and still have custody and access to its books and records relating to commissions it agreed to hold for plaintiff's benefit following Plaintiff's criminal indictment as set forth above and defendant holds said commissions earned as set forth herein.

25. That Plaintiff has no adequate remedy at law.

26. That based on the foregoing, plaintiff demands that defendant account to him for all gross sales earned by defendant from 2002 up to the present time on sales earned from accounts provided it or referred to it from Plaintiff and that Plaintiff have judgement against defendant in the sum found to be due him on such accounting, with interest and in an amount of money not yet ascertained but believed to exceed \$5,000,000.00

AS AND FOR A SECOND CAUSE OF ACTION

27. Plaintiff repeats reiterates and realleges each and every allegation contained in paragraphs one through eighteen with the same force and effect as if same were fully set forth herein.

28. That the aforesaid conduct as set forth herein constitutes a breach of the terms of the contract and agreement entered into between Plaintiff and defendant which breach of contract entitles Plaintiff to money damages exceeding the sum of \$5,000,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

29. Plaintiff repeats reiterates and realleges each and every allegation contained herein the numbered paragraphs 1 through 28 with the same force and effect as if same were fully set forth herein.

30. Upon information and belief defendant has converted to its own use the sums of money so collected as Plaintiff's rightful commissions .

WHEREFORE, Plaintiff demands judgement :

ON THE FIRST CAUSE OF ACTION

1. That Defendant account to plaintiff for all gross sales earned by defendant from 2002 to the present time on sales earned from accounts provided it or referred to it by and through Plaintiff.

2. That Plaintiff have judgement against defendant in the sum found to be due him on such accounting, with interest together with costs, interest and disbursements of this action.
3. That Plaintiff have judgement against defendant in the sums found to be due him for breach of contract and conversion of Plaintiff's earned commissions.
4. For such other further and different relief as to this Court may deem just and proper.

Dated: St. James, New York

August 22,2011

Yours, Etc.,

JOHN C. DIGIOVANNA

Attorney for Plaintiff

BY _____

JOHN C. DIGIOVANNA

PO Box 639

20 Pondview

St. James, New York 11780

631 979 1960

TO:

LITTLER MENDELSON, P.C.

Attorney for Defendant

One Newark Center-8th floor

Newark, New Jersey 07102

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

=====X

VINCENT NASSO

Plaintiff

ATTORNEY

CERTIFICATION

-against-

BIO REFERNCE LABORATORIES, INC

Defendant

=====X

ATTORNEY VERIFICATION

I he undersigned, an attorney duly admitted to practice in the courts of New York, AFFIRM AS FOLLOWS;

I am the attorney for Plaintiff in this action; I have read the foregoing amended complaint and know the contents thereof; THE same is true to my knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: Information provided by Plaintiff. This verification is made on the grounds that plaintiff resides in a county other than where your affirmant maintains his law office.

JOHN C. DIGIOVANNA

