

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
C.A. No.

ADRIENNE E. COHEN, as Personal
Representative of the Estate of Bret A. Cohen,

Plaintiff,

v.

NELSON MULLINS RILEY &
SCARBOROUGH LLP,

Defendant.

COMPLAINT AND JURY DEMAND

I. NATURE OF THE ACTION

1. This case involves Defendant Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”), a large national law firm, and its refusal to fairly compensate one of its top performing equity partners, Bret A. Cohen, with the compensation he earned for the 2021 – 2022 year when Bret was forced to go on disability leave during his battle with an aggressive form of brain cancer.

2. Bret A. Cohen was a sophisticated attorney, top performing litigator, and equity partner at Nelson Mullins and during his five (5) years of employment with the firm, he generated millions of dollars in revenue for the law firm working in their Boston office.

3. On April 26, 2022, Bret sought medical treatment when he and his wife, Plaintiff Adrienne E. Cohen, noticed a slight drop in his face. On the same day, Bret underwent radiographical imaging which revealed a malignant brain tumor and Bret was tragically

diagnosed with Glioblastoma Multiforme – an aggressive type of brain cancer that is typically fatal.

4. While undergoing radiation therapy treatment for his brain tumor, Bret continued to work at Nelson Mullins through May of 2022 and was on track to reach his annual performance goals for Nelson Mullins’s 2021 – 2022 fiscal year, which started on December 1, 2021 and ended on November 30, 2022.

5. Bret’s health condition worsened, and on June 1, 2022, Bret took a leave of absence from Nelson Mullins and went on short-term disability. Nelson Mullins assigned Bret their trusted disability insurance lawyer, Attorney Jeffrey Warncke, to advise Bret on navigating the complicated disability insurance process. In the Fall of 2022, Bret’s health condition continued to decline, and he began transitioning his new and existing clients to other attorneys at Nelson Mullins. After Bret was on short-term disability for six (6) months, Bret went on long-term disability. At all times, Bret and Adrienne Cohen relied on Attorney Jeffrey Warncke to reasonably advise them on the disability insurance process.

6. At the end of Nelson Mullins’s fiscal year on November 30, 2022, and in the beginning of 2023, Nelson Mullins made the truly shocking decision to refuse to pay Bret the compensation he earned, and was entitled to, for the 2021 – 2022 fiscal year which was likely more than \$1,900,000.00. While battling his brain cancer, Bret communicated with Nelson Mullins’s leadership to try to understand their questionable rationale, however, Nelson Mullins declined to pay Bret the full compensation he was entitled to, and instead promised to pay Bret a “Bonus” of \$100,000.00 for the 2021 – 2022 fiscal year.

7. On June 12, 2023, Bret tragically died and lost his fourteen (14) month battle with his Glioblastoma brain cancer. To date, Nelson Mullins has refused to pay Plaintiff the promised

“Bonus” of \$100,000.00 and the full compensation which Bret earned for the 2021 – 2022 fiscal year. This action seeks to collect the full compensation Bret was entitled to from Nelson Mullins for the 2021 – 2022 fiscal year.

II. PARTIES

8. Plaintiff Adrienne E. Cohen, as Personal Representative of the Estate of Bret A. Cohen, is an individual residing at 3 Southgate Road, Wellesley, Massachusetts, 02482.

9. Plaintiff Adrienne E. Cohen is a widow to her late husband, Bret A. Cohen.

10. Defendant Nelson Mullins Riley & Scarborough LLP is a registered domestic limited liability partnership with the Massachusetts Secretary of State.

11. Nelson Mullins’s principal office in Massachusetts is located at One Financial Center, Suite 3500, Boston, Massachusetts, 02111.

12. Nelson Mullins’s main office headquarters is located at 1320 Main Street, 17th Floor, Columbia, South Carolina 29201.

13. According to its website, Nelson Mullins is a large U.S. law firm that operates thirty-three (33) law offices across eighteen (18) states with over 1,000 attorneys practicing in over 100 practice areas.

III. JURISDICTION & VENUE

14. This Court has jurisdiction over this matter pursuant to G.L. c. 212, § 3 because damages exceed \$50,000.00.

15. Venue is proper pursuant to M.G.L. c. 223, § 1 because Defendant is a domestic limited liability partnership with a principal office in Suffolk County and this action concerns claims relating to an employment and partnership agreement.

IV. FACTS

16. Bret A. Cohen was an adept attorney who enjoyed considerable success as a civil litigator throughout his legal career.

17. On December 15, 1997, Bret A. Cohen was admitted to the Massachusetts Bar and began his practice of law as a licensed attorney.

18. For much of his career from 2004 through 2017, Bret worked as a civil litigator at the well-known and reputable law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (“Mintz Levin”) in the firm’s Boston office.

19. During his time at Mintz Levin, Bret provided his legal services to various clients and established himself as a bright and productive attorney.

20. During his time at Mintz Levin, Bret garnered respect from his colleagues and firm leadership at Mintz Levin which enabled Bret to earn several promotions in the firm.

21. During his time at Mintz Levin, Bret consistently obtained new clients while he maintained existing client relationships and business.

22. During his time at Mintz Levin, Bret became a sophisticated and experienced civil litigator in the practice areas of employment law, non-compete litigation, and trade secrets litigation.

23. In August 2017, Bret voluntarily ended his employment with Mintz Levin to join Nelson Mullins in its Boston office.

24. In August 2017, Bret began his employment with Nelson Mullins and acted as the Co-Chair to the Labor and Employment Practice.

25. Due to Bret's sophisticated and trustworthiness, Bret retained his client base from his long tenure at Mintz Levin and brought his existing clients to Nelson Mullins when Bret began working at his new law firm.

26. Bret joined Nelson Mullins as an equity partner ("Equity Partner") as defined by Nelson Mullins's Partnership Agreement (November 29, 2021 as amended) ("Partnership Agreement").

27. Bret had various performance requirements and certain financial requirements to become and remain an Equity Partner at Nelson Mullins.

28. As an Equity Partner at Nelson Mullins, Bret was entitled to receive compensation from four (4) categories which included: (1) Base Income; (2) Overage Allocation on Base Income; (3) Bonus; and (4) Overage Allocation on Bonus.

29. While Bret was working at Nelson Mullins, Bret married Adrienne E. Cohen in 2018 and the couple happily resided in Wellesley, Massachusetts.

30. Shortly after Bret and Adrienne's marriage, the married couple had twin girls, Blake and Forde Cohen.

31. From August 2017 through June 2022, Bret worked diligently as an Equity Partner at Nelson Mullins providing his sophisticated legal services to his existing clients while he generated new clients for the firm.

32. During his employment as an Equity Partner at Nelson Mullins, Bret generated significant revenue for Nelson Mullins.

33. During his employment as an Equity Partner at Nelson Mullins, Bret was one of the top fifteen (15) performers at Nelson Mullins and was the top performer at Nelson Mullins's Boston office.

34. During his employment as an Equity Partner at Nelson Mullins for the 2020 – 2021 fiscal year, Bret earned total compensation in the amount of \$4,154,650.00 which included four (4) categories of compensation: (1) Base Income – \$1,000,000.00; (2) Overage Allocation on Base Income – \$430,800.00; (3) Bonus – \$450,000.00; and (4) Overage Allocation on Bonus – \$2,273,850.00.

35. Bret continued to work as an Equity Partner at Nelson Mullins in 2022 and generated significant revenue for Nelson Mullins.

36. On April 26, 2022, Adrienne Cohen and Bret noticed a slight drop in Bret's face and sought medical treatment.

37. On April 26, 2022, Bret underwent radiographical imaging which revealed a malignant tumor on Bret's brain.

38. Shortly thereafter, Bret was diagnosed with Glioblastoma Multiforme which is an aggressive type of brain cancer which is typically fatal.

39. A few days after his diagnosis, Bret underwent brain surgery and began the long process to recover from brain surgery.

40. In May of 2022, Bret continued to work as an Equity Partner at Nelson Mullins despite his recent brain surgery and receiving on-going medical treatment for his brain cancer which included, among other things, undergoing radiation therapy to treat his brain tumor.

41. By June 1, 2022, Bret was on track to reach his annual performance goals for Nelson Mullins's 2021 – 2022 fiscal year, despite the year only being halfway over and despite dealing with his brain cancer and resulting medical treatment.

42. Nelson Mullins assigned Bret a disability insurance attorney, Jeffrey S. Warncke, Esq., to help him navigate the disability insurance process.

43. Adrienne and Bret Cohen relied on Attorney Jeffrey S. Warncke to reasonably advise them through navigating the disability insurance process and relied on Nelson Mullins's administrative staff to assist him in initiating, preparing, and completing the required paperwork for Bret's disability insurance process.

44. On or about June 1, 2022, Bret took a leave of absence from work and went on short-term disability as an Equity Partner at Nelson Mullins.

45. For the 2021 – 2022 fiscal year, Nelson Mullins made compensation decisions for all Equity Partners' compensation based on performance requirements and criteria measured from December 1, 2021, through November 30, 2022.

46. Bret was still on the short-term disability when Nelson Mullins made its compensation decision for Bret for the 2021 – 2022 fiscal year.

47. In later November 2022, Bret went on long-term disability.

48. Throughout the Fall of 2022, Bret continued the battle with his brain cancer and transitioned his clients to other attorneys to Nelson Mullins.

49. During his employment as an Equity Partner at Nelson Mullins for the 2021 – 2022 fiscal year, Nelson Mullins decided to compensate Bret with only his Base Income, in the amount of approximately \$1,400,000.00, and declined to compensate Bret with any Overage Allocation on Base Income, Bonus, or any Overage Allocation on Bonus.

50. Nelson Mullins declined to compensate Bret, one of their top performing Equity Partners, with the fair compensation he earned for the firm while Bret was battling a fight with brain cancer.

51. At the end of 2022, Bret learned of Nelson Mullins's shocking decision to undercompensate one of its top Equity Partners while he was fighting to survive from his

aggressive form of brain cancer. Bret and Attorney Jeffrey Warncke requested that Bret receive the additional compensation owed to Bret which was Overage Allocation on Base Income, Bonus, or any Overage Allocation on Bonus.

52. At the end of 2022, Attorney Jeffrey Warncke and the managing partner of Nelson Mullins, James K. Lehman, Esq., agreed that Nelson Mullins would pay Bret a “Bonus” in the amount of \$100,000.00 for the 2021 – 2022 fiscal year. On January 19, 2023, Bret sent an e-mail to the managing partner of Nelson Mullins, James K. Lehman, Esq., and Nelson Mullins’s general counsel and (1) confirmed that Nelson Mullins would him pay a “Bonus,” in the amount of \$100,000.00, for the 2021 – 2022 fiscal year and (2) requested in writing for the additional compensation he was entitled to which included the Overage Allocation on Base Income, Bonus, or any Overage Allocation on Bonus.

53. On January 31, 2023, Nelson Mullins’s general counsel denied Bret’s requests for the additional compensation he was entitled to and decided to decline to compensate Bret for the Overage Allocation on Base Income, Bonus, or any Overage Allocation on Bonus on the 2021 – 2022 fiscal year.

54. In February 2023, Bret underwent a second brain surgery and continued his battle with his aggressive Glioblastoma brain cancer.

55. On June 12, 2023, Bret died and lost his fourteen (14) month battle with Glioblastoma brain cancer.

56. Bret is survived by his wife, Adrienne E. Cohen, and his two daughters, Blake and Forde Cohen along with Bret’s older children, Mackenzie Cohen and Clayton Cohen.

57. To date, Nelson Mullins has not paid Plaintiff the “Bonus,” the “Overage Allocation on Base Income” or any “Overage Allocation on Bonus” that Bret was entitled to for the 2021 – 2022 fiscal year.

58. As a result of Defendant’s breaches of contract, breaches of the implied covenant of good faith and fair dealing, violation of the Massachusetts Wage Act, G.L. c. 149 § 148, breaches of fiduciary duty, unjust enrichment, quantum meruit, and Defendant’s failure to timely remedy the problems they caused, Plaintiff has incurred significant damages.

V. CLAIMS

COUNT I **Breach of Contract**

59. Plaintiff repeats and restates the allegations contained in each of the preceding paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

60. In consideration of Bret A. Cohen’s certain financial contributions and his promise to perform legal services in accordance with Nelson Mullins’s Partnership Agreement, Nelson Mullins agreed to make Bret A. Cohen an Equity Partner in Nelson.

61. Bret A. Cohen and Defendant agreed to abide by the terms of the Partnership Agreement which was a valid and binding contract.

62. Bret A. Cohen fully performed his obligations under the Partnership Agreement during his employment with Nelson Mullins.

63. Defendant breached the Partnership Agreement by failing to fully compensate Bret in accordance with the terms of the Partnership Agreement for the 2021 – 2022 fiscal year.

64. Defendant breached the Partnership Agreement by failing to fully compensate Bret while Bret was on short-term disability for the 2021 – 2022 fiscal year.

65. As a direct and proximate cause of Defendant's breaches, Plaintiffs have incurred substantial damages associated with the loss of compensation that Bret A. Cohen was entitled to for his work and the revenue he generated in the 2021 – 2022 fiscal year.

COUNT II
Breach of Implied Covenant of Good Faith and Fair Dealing

66. Plaintiff repeats and restates the allegations in contained each of the preceding paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

67. Under Massachusetts law, every contractual relationship includes an implied covenant of good faith and fair dealing.

68. Defendant was engaged in a contractual relationship with Bret A. Cohen to perform legal services for Nelson Mullins.

69. The implied covenant of good faith and fair dealing in any contractual relationship obligates each party to refrain from taking action that will have the effect of impairing the right of the other party to receive the fruits or the benefits of the contract. The implied covenant of good faith and fair dealing may be violated when one party seeks to obtain an unfair advantage for itself vis a vis the parties' transaction.

70. Defendant had a duty to act in a commercially reasonable and good-faith manner in providing employment and fair compensation to Bret A. Cohen as an Equity Partner.

71. Defendant's failure to fully compensate Bret A. Cohen with the money and benefits he was entitled to during his employment with Nelson Mullins for the 2021 – 2022 fiscal year, while battling his brain cancer, was in breach of the implied covenant of good faith and fair dealing.

72. As a direct and proximate result of Defendant's breaches, Plaintiff has incurred and suffered direct and consequential damages in amounts to be determined in the trial of this matter.

COUNT III
Violation of Massachusetts Wage Act – G.L. c. 149 § 148

73. Plaintiff repeats and restates each of the allegations contained in the preceding paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

74. Bret A. Cohen was an employee of Defendant as defined by the Massachusetts Wage Act – G.L. c. 149 § 148 ("Massachusetts Wage Act").

75. Pursuant to the Massachusetts Wage Act, Defendant was required, among other things, to pay Bret A. Cohen all commissions when the amount of such commissions, less allowable or authorized deductions, have been definitely determined and have become due and payable to Bret A. Cohen.

76. Bret's "Overage Allocation on Base Income" for the 2021 – 2022 fiscal year was based, in part, upon the amount of revenue that Bret personally generated for Nelson Mullins.

77. Bret's "Overage Allocation on Base Income" for the 2021 – 2022 fiscal year was definitely and arithmetically determinable and was due and payable to Bret.

78. Bret's "Overage Allocation on Base Income" for the 2021 – 2022 fiscal year was a commission as defined by the Massachusetts Wage Act.

79. Bret's "Bonus" for the 2021 – 2022 fiscal year was based upon the amount of revenue that Bret personally generated for Nelson Mullins.

80. Bret's "Bonus" for the 2021 – 2022 fiscal year was definitely and arithmetically determinable and was due and payable to Bret.

81. Bret's "Bonus" for the 2021 – 2022 fiscal year was a commission as defined by the Massachusetts Wage Act.

82. Bret's "Overage Allocation on Bonus" for the 2021 – 2022 fiscal year was based, in part, upon the amount of revenue that Bret personally generated for Nelson Mullins.

83. Bret's "Overage Allocation on Bonus" for the 2021 – 2022 fiscal year was definitely and arithmetically determinable and was due and payable to Bret.

84. Bret's "Overage Allocation on Bonus" for the 2021 – 2022 fiscal year was a commission as defined by the Massachusetts Wage Act.

85. Defendant violated the Massachusetts Wage Act by failing to pay Bret A. Cohen the commissions and full compensation he was entitled to under the Massachusetts Wage Act including, but not limited to, the "Bonus," the "Overage Allocation on Base Income," and the "Overage Allocation on Bonus" for the 2021 – 2022 fiscal year.

86. As a direct and proximate result of Defendant's violations of the Massachusetts Wage Act, Plaintiff has incurred and suffered direct and consequential damages in amounts to be determined in the trial of this matter.

87. As a direct and proximate result of Defendant's violations of the Massachusetts Wage Act, Defendant is subject to the penalties of G.L. c. 149 § 150 and Plaintiff is entitled to recover treble damages, its reasonable attorneys' fees, and its litigation costs.

COUNT IV
Breach of Fiduciary Duty

88. Plaintiff repeats and restates each of the allegations contained in the preceding paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

89. A fiduciary relationship existed between Bret A. Cohen and Defendant, and its employees and agents, as a result of their special relationship.

90. A fiduciary relationship existed between Bret A. Cohen and Defendant, and Defendant's agent, Attorney Jeffrey S. Warncke, as a result of their attorney-client relationship.

91. Defendant, and its employees and agents, specifically including Attorney Jeffrey S. Warncke, breached their fiduciary duty through the aforementioned acts and omissions, including, but not limited to, by failing to reasonably advise and counsel Bret A. Cohen on the handling of the disability insurance process to ensure that he would receive all commission and full compensation he was entitled to for the 2021 – 2022 fiscal year.

92. These breaches were the actual and proximate cause of damages suffered by Plaintiff.

93. At all times relevant hereto, Attorney Warncke was an employee or agent of Defendant, and therefore Defendant is responsible for his actions under the doctrine of respondeat superior.

94. As a result of the breach of the fiduciary duty, Plaintiff has incurred and suffered direct and consequential damages in amounts to be determined in the trial of this matter.

COUNT V
Unjust Enrichment

95. Plaintiffs repeat and restate each of the allegations contained in the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

96. At all times material hereto, Defendant has inequitably and unjustly enriched itself to the detriment of Plaintiff through the aforementioned actions or omissions.

97. As a result of Defendant's unjust enrichment, Plaintiff has incurred and suffered direct and consequential damages in amounts to be determined in the trial of this matter.

COUNT VI
Quantum Meruit

98. Plaintiff repeats and restates each of the allegations contained in the preceding paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

99. As set forth herein, Bret A. Cohen performed legal services for the benefit of Defendant during the 2021 – 2022 fiscal year and Defendant directly benefitted from these legal services.

100. Defendant refused to adequately compensate Bret A. Cohen for the value of the legal services he performed for the benefit of Nelson Mullins during the 2021 – 2022 fiscal year.

101. As a result of Defendant's failure to adequately compensate Bret A. Cohen for the value of his legal services he performed during the 2021 – 2022 fiscal year, Plaintiff has incurred and suffered direct and consequential damages in amounts to be determined in the trial of this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

1. Enter judgment for Plaintiff on each count of this Complaint awarding damages against the Defendant plus interest, and costs;
2. Award Plaintiff treble damages on its claim pursuant to G.L. c. 149 § 148;
3. Award Plaintiff its attorneys' fees; and
4. Grant such other further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 31, 2024

Respectfully submitted,
ADRIENNE E. COHEN, as Personal
Representative of the Estate of Bret A.
Cohen
By her counsel,



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