

Cohen v Gordon & Silber, PC

2024 NY Slip Op 34293(U)

July 8, 2024

Supreme Court, New York County

Docket Number: Index No. 653458/2020

Judge: Melissa A. Crane

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

PRESENT: HON. MELISSA A. CRANE

PART 60M

Justice

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ARTHUR G. COHEN, INDIVIDUALLY, AND DERIVATIVELY
ON BEHALF OF GORDON & SILBER, PC,

INDEX NO. 653458/2020

Plaintiff,

- v -

GORDON & SILBER, PC, DAVID M. DINCE, SANFORD N.
GOLD, DAWN ADELSON, LAWRENCE WASSERMAN,
ANDREW KAUFMAN

**DECISION AFTER
INQUEST**

Defendant.

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The court presumes familiarity with the facts underlying this 2020 case but provides the following background as relevant to this decision after inquest.

In Motion Sequence No. 06, Defendants Gordon & Silber, PC (the “firm”), David M. Dince (“Dince”), Sanford N. Gold (“Gold”), Dawn Adelson, Lawrence Wasserman (“Wasserman”), and Andrew Kaufman (“Kaufman”) (collectively, “defendants”) moved for summary judgment dismissing plaintiff’s complaint in its entirety, and on their counterclaims in their entirety.

On August 14, 2023, the court granted defendants’ motion for summary judgment seeking dismissal except for the 6th cause of action for conversion as it relates to plaintiff’s Joe Namath jersey, and the part of the 11th cause of action that seeks to hold defendants responsible for their own American Express charges. The court also dismissed the 4th, 5th, 7th, 8th, 9th, and 10th causes of action, as plaintiff failed to oppose their dismissal. The court further dismissed the 1st and 2nd causes of action for lack of damages, the 12th cause of action, and deemed the 3rd cause of action as moot. As for defendants’ counterclaims, the court granted summary judgment as to liability as

OTHER ORDER – NON-MOTION

there was no opposition to that part of the motion. In addition, the court scheduled an inquest to determine defendants' damages.

Discussion

This decision addresses defendants' damages following the inquest on damages and ascertains, amongst other things, the amounts owed to defendants on their counterclaims. Plaintiff Cohen did not testify at the inquest (Doc 110 [Decision + Order on MS 003] [precluding Cohen from testifying as to matters to which he pleaded the fifth at EBT], *affd Cohen v Gordon & Silber, PC*, 217 AD3d 445, 445-46 [1st Dept 2023]).

1. Cohen's Personal American Express Credit Card (\$213,726.30)

Defendants have adequately demonstrated their entitlement to \$213,726.30, representing their damages related to Cohen's personal American Express credit card ("Cohen's Personal AmEx").

The credible evidence at the inquest established that Cohen used his own personal credit cards for personal expenses and charged the firm for those expenses. The Personal AmEx is one of those credit cards.

Defendants have submitted a Journals Listing Report, spanning from March 27, 2006 to August 30, 2017, for Cohen's Personal AmEx (Account #4-73005) (Exhibit 2). This is a ledger the firm kept, listing the payments that it made to pay this card.

Kaufman's testimony reflected intimate knowledge of how the firm's accounting department kept these records. Kaufman credibly testified that Exhibit 2 is a financial record maintained in the firm's ProLaw system,¹ in the ordinary course of business, that documented every payment made to American Express for Cohen's Personal AmEx (account #4-73005) (tr at

¹ Kaufman explained that the ProLaw system was the firm's computer system for everything from accounting to case management, calendaring, etc. (tr at 15).

16). The record lists the payment dates, amounts, and the corresponding check numbers (*id.* at 16). Kaufman also testified that anyone in the financial department could have made these records in the ordinary course of daily business, as part of their duties, and that the entries were made contemporaneously with a checks' issuance (*id.* at 16).

Kaufman explained that it was the firm's regular business practice to make these entries when issuing checks on cases to pay for expenses, like securing experts, depositions and transcripts. He also said the firm made entries to reflect funds that came in to satisfy invoices for legal expenses and fees the firm sent to insurance companies (*id.* at 17). Kaufman also explained that, despite listing certain entries' descriptions as luncheons, or marketing, these were not business expenses, because Cohen never documented, via email, pursuant to the firm's policy, that he was marketing or meeting with any particular individual (*id.* at 19).

Kaufman further testified that he could not find any business expenses on Cohen's Personal AmEx, that the card's statements were not in the firm's office, but had to be obtained by subpoena. Those subpoenaed records showed that none of Cohen's purchases were firm related (*id.* at 20). Kaufman also elaborated on how there were other charges and other cards listed on the statements, that were heavily redacted, and how he believed that the redacted charges reflected that Cohen's family members made personal charges as well (*id.* at 20).

Kaufman also explained that: (a) if a partner purchased something on a personal credit card, and it was a firm expense, they could submit a receipt and documentation asking for reimbursement; (b) it would never have been proper for a firm employee or partner to have the firm pay their personal credit card expenses directly to the credit card company instead of submitting it as an expense to the firm; and (c) none of the charges in Cohen's Personal AmEx that Kaufman testified to were ever submitted to the firm for reimbursement (*id.* at 21). Ultimately,

Kaufman had intimate knowledge about how the firm's accounting department kept the records, and adequately demonstrated all the criteria for establishing these records and business records, including that they were kept in the ordinary course of business at the time.

Defendants also submit the handwritten notes that Cohen gave to the financial department directing the issuance of checks (Exhibit 1). Kaufman credibly testified that these notes directed payment to Cohen's Personal AmEx (tr at 31). He explained that Cohen would tell the financial department how to characterize expenses, such as for supplies, marketing, donations, or computers (*id.* at 31-32). Kaufman also testified that he knew it was Cohen's handwriting on the notes, because when he was an associate, he was assigned to Cohen, who marked-up his work, so he was intimately familiar with Cohen's handwriting (*id.* at 32).

Kaufman explained that: (a) the notes were in the financial department's file cabinet folders for the American Express card; (b) he copied the notes from there; and (c) the financial department issued and kept the checks in the regular course of business (*id.* at 32).

Kaufman also reasoned that these expenses were all personal and were not business-related (*id.* at 33). He testified that these entries and notes were clearly for Cohen's Personal AmEx, because there would have been no reason to purchase computers or anything else on the card, as the firm had its own American Express card to which business expenses were supposed to be charged (*id.* at 33-34). Kaufman also confirmed that these notes were the only ones found in the American Express card folder for account number 4-73005 (*id.* at 38).

Accordingly, the court awards defendants \$213,726.30.

2. Elan Signature Credit Card (\$514,621.73)

Defendants have also adequately established their entitlement to \$514,621.73 in damages related to Cohen's misuse of the firm's Elan Signature credit card.

Defendants have submitted a Journals Listing Report for the Elan Signature card (Exhibit 3). This ledger, that the firm kept, lists payments made to the card. Kaufman's testimony reflected intimate knowledge of how the firm's financial department kept these records. Kaufman credibly testified that when he searched the financial department, there was a file for this card, without statements, and that he only received the ledger after the firm's financial department printed him a copy (tr at 22).

Kaufman also testified that the ledger was kept in the ProLaw system, that the financial department made entries when it issued checks to Elan Signature, at the time it issued a check (*id.* at 22-23). He testified that this was the regular practice, any time the firm issued a check. Moreover, the ledger was kept in the regular course of business from July 5, 2006 with regular entries on a monthly basis (*id.* at 23).

Defendants also submitted the Elan Signature card's statements (Exhibit 7). Kaufman credibly testified that he reviewed all the statements defendants received via subpoena between January 2015 to 2020, line-by-line, and concluded that every charge under Cohen's name was personal (tr at 24-25). These charges were for pet insurance, interior decorating, vacations, personal airline tickets, Ritz Carlton hotels, wedding expenses, photographers, Mercedes Benz and Porsche charges (*id.* at 25). On cross, Kaufman also explained that there were clear personal charges for restaurants, diners, hair care, wedding gowns, dry cleaning, and florists (*id.* at 50).

Kaufman also explained how he calculated the total the firm paid for Cohen's personal expenses on the Elan Signature card. First, he added all relevant charges from 2015 to 2018. This totaled \$419,453.71, based on the statements. Then, he compared the ledger and added all charges from August 2014 to December 2014 to calculate a figure of \$95,168.02 (*id.* at 26). Finally, he added the statement and ledger charges together. This totaled \$514,621.73 (*id.*).

As for the larger \$4,488 charge to the Four Seasons hotel in Boston, Kaufman testified that: (a) he was confident that it was not a firm related charge because the firm worked in New York, not Massachusetts; (b) Cohen's son lives and works in Massachusetts; and (c) Cohen and his wife would regularly visit him (*id.* at 27).

Additionally, Kaufman clarified that there was a firm American Express card for business expenses. Therefore, there would be no need to charge a legitimate business expense to a personal card. Moreover, if the charge for the Four Seasons was entitled to reimbursement, there would be a corresponding expense sheet for it. But there was not, and there were no receipts either (*id.* at 27).

As for Cohen's taxi charges, Kaufman clarified that if Cohen had to pay personally, he would have put the charges on his expense sheet if business-related, but that he did not (*tr* at 50). As for Cohen's car service charges, Kaufman testified they were personal, because Cohen never placed statements for them in the files in the ordinary course of business (*id.* at 58-59). Kaufman also credibly testified that, from his experience at the firm, if Cohen had a legitimate expense, he would have put it on an expense sheet, or would have used the firm's card. Because he did not, the conclusion is that these car service charges were not firm related (*id.* at 59).

Accordingly, the court awards defendants \$514,621.73.

3. Other Fraudulent Expenses (\$150,907.87)

Defendants have also demonstrated their entitlement to the \$150,907.87 in damages for Cohen's fraudulent expenses.

Defendants submitted Cohen's Expense Sheets and Reimbursement checks for 2017-2019 (Exhibit 8). Kaufman credibly testified that these documents were copies of the firm's preprinted expense sheets. Kaufman explained that attorneys and other staff handed in these expense sheets

weekly or monthly for reimbursement of case related expenses that the attorney had not charged to the firm's American Express card (tr at 28). Kaufman confirmed that all staff, including himself, used these forms (*id.* at 29).

Kaufman also explained that: (a) the forms looked the same, were preprinted, and were made for all to use regularly; (b) the person incurring the expense would fill out the form and give it to the financial department who would then accumulate the forms monthly and apply the expenses to cases if case related; and (c) would later issue a reimbursement check (*id.* at 30).

Kaufman confirmed that it was the firm's regular business practice to create these records and this was the same practice since his first day of work (*id.* at 30-31). He also confirmed that: (a) the records were kept in binders, and everyone who submitted an expense sheet had a tab with their initials; (b) at each year's end the binders would go into storage; and (c) he found Cohen's by going into the binders and removing Cohen's sheets (*id.* at 31).

Kaufman also testified that he reviewed the expense sheets to determine any legitimate business expenses (*id.* at 34). He reviewed every entry, line by line. Ultimately, he found a clear pattern of charges for non-firm related matters (*id.*). For instance, there were multiple charges in 2017 and 2018 for Pennsylvania Bar dues. Normally, the firm would reimburse this type of expense. However, on Cohen's expense sheets, he had multiple entries for these bar dues, multiple times a year, for amounts that were not the actual cost of the dues (*id.*). Kaufman concluded that in 2017 there were \$1,685 in charges for these dues, but that the dues for 2017 were only \$275 a year (*id.*).

Kaufman also explained that there was another repetitive charge, for a Pennsylvania Public Service Waiver Fee. However, he explained that the firm did not work in Pennsylvania, and that Cohen had an inactive Pennsylvania Bar license that could have been renewed for just \$100 a year

(*id.* at 36). Kaufman reiterated that, when he photocopied the expense sheets, there were no receipts with the requested expenses (*id.* at 38). Kaufman credibly testified that to calculate the amount that the firm paid Cohen that were not legitimate expenses, Kaufman combined the figures for 2017 to 2019 and reached a total of \$150,913.35 (*id.* at 35).

Accordingly, the court awards defendants a total of \$150,907.87.

4. Gordon & Silber Firm American Express Credit Card (\$132,007.22)

Defendants have also demonstrated their entitlement to \$132,007.22, representing Cohen's misuse of the firm's American Express credit card.

Defendants submitted copies of the firm's American Express card statements (Exhibit 6). Kaufman credibly testified that every partner and office manager used, or was supposed to use, the firm's American Express card for firm related expenses (tr at 40). Gold testified that he reviewed the statements from July 2014 to determine whether any of Cohen's charges paid by the firm were legitimate business expenses (*id.* at 88). Gold explained that he went through all the statements, isolated firm-related charges, such as those for Regus, Xeroxing, and computers, classified them as firm related charges, and did not include them as personal expenses (*id.* at 88). Additionally, Gold testified that he gave Cohen the benefit of the doubt and did not include any local restaurant charges from Cohen's hometown, even though he believed they were personal (*id.* at 88-89).

Gold, however, did include personal charges for liquor, car services in Washington DC (where he believed one of Cohen's children went to college), Penn Club dues, travel agencies, personal vacations, show tickets, purchases on Amazon, and purchases at drugstores (*id.* at 89).

Gold also highlighted the personal charges for Cohen's son's wedding in October 2014 (*id.* at 98). He explained that Cohen "put down on the Firm Amex Card that he attended an Asbestos conference for that very that weekend." (*id.*). The court notes that the charges for the Four Seasons

hotel in Boston were also mentioned in Cohen's Plea Allocution (Doc 239 [Plaintiff's Plea Allocution] at ¶ h). Gold explained that he knew that was Cohen's son's wedding date, because he and others from the firm attended the wedding. Therefore, when he saw an asbestos conference for that weekend, he knew it was false (*id.*). Gold also inquired and confirmed there was no asbestos conference that weekend (*id.*). He also clarified that the firm did not pay for any of his own expenses when he went to attend the wedding (*id.* at 98-99).

Accordingly, the court awards defendants a total of \$132,007.22.

5. Cohen's Personal Bank of America Credit Card (\$1,391,400.00)

Defendants have adequately established their entitlement to \$1,391,400.00, representing the damages they incurred with regard to Cohen's personal Bank of America credit card ("Cohen's Personal BoA Card").

The credible evidence at the inquest established that Cohen's Personal BoA Card was his own personal card that he used for personal expenses during his time at the firm and, again, was not a card that was associated with the firm. Further, the evidence at the inquest revealed that Cohen expensed charges on his Personal BoA Card to the firm, and that the firm paid for these charges as well.

Defendants submitted a Journals Listing Report for Cohen's Personal BoA Card (Exhibit 4). This ledger, that the firm kept, lists the payments the firm made to this card (tr at 97). Kaufman credibly testified that it was the firm's regular business practice to create these records at the time the firm issued a check through ProLaw (*id.* at 41). Kaufman also clarified that when he searched for these ledgers, there was no file for the card. He explained that he did not learn about this card until after Cohen's suspension from the firm on February 18, 2020, after the firm received mail from Bank of America with a rewards payment check issued to Cohen (*id.* at 42). Thus, Kaufman

asked the financial department for the ledger after personnel there informed him that they had been paying the card monthly (*id.*).

Gold credibly testified that the card was a personal one that Cohen owned secretly and that they did not discover it until after his suspension in 2020 (*id.* at 96). Gold also confirmed that the firm was paying the entire card off consistently based on the ledgers and checks (*id.* at 97). He concluded that, based on the ledgers listing the totals on the last page, the amount the firm paid to Bank of America was about \$1,391,000, and that all the underlying charges were personal (*id.* at 102).

Defendants also submit the card's statements (Exhibit 5). Kaufman testified that the statements listed Cohen's name, that the card was not used in the firm's ordinary course of business, and that the statements had to be subpoenaed (tr at 44, 54). Gold also testified that the charges were all obviously personal because they were for items like clothes, liquor, insurance, groceries, hair salons, newspapers, and landscaping (*id.* at 90). He testified he could not find any firm related charges (*id.* at 90-91).

Gold also confirmed that the firm never paid personal credit card bills (*id.* at 91). He testified that purchases on the firm's behalf would be with the firm's American Express card (*id.*). He also explained that, if someone did not have the firm's American Express card with them, and instead used a personal card or paid cash, then at the end of the month, they would submit an expense sheet to request reimbursement (*id.* at 91-92).

Gold also testified that the car service charges were personal because the firm did not operate in D.C., while the charges in New York were for hundreds of dollars (*id.* at 110-111). He noted various charges for \$177, \$572, \$690, \$1,289, \$710, and \$829 (*id.* at 114). He also

confirmed that the firm permitted charging commutation, but that he did not “see how [Cohen] up in Westchester would be paying \$1,200 for commutation on a given day.” (*id.* at 112).

Finally, Gold credibly testified that, after reviewing the ledger and statements to determine whether charges were legitimate business expenses, or personal expenses, he calculated the total the firm paid to Cohen’s Personal BoA Card to be \$1,391,400.00 (*id.* at 92).

Accordingly, the court awards defendants a total of \$1,391,400.00.

6. Cohen’s Salary Theft From His Partners (\$275,000.00)

Defendants have also established their entitlement to \$275,000.00, representing the total salary that Cohen stole from defendants.

Defendants have submitted 2019 W2s for Cohen, Dince, and Gold (Exhibits 9-11). Kaufman credibly testified that Cohen, along with all other equity partners, was supposed to forgo his salary due to cash flow issues, largely of Cohen’s own creation, but Cohen instead surreptitiously took his salary during that year (tr at 45). Kaufman also testified that equity partners received hard copy checks in 2019, and that at each year’s end they received a W2 from ADP with their payroll and tax information. These are the 2019 W2s defendants submitted here (*id.* at 45-46). Gold credibly testified that all the senior equity partners agreed to forgo salary in October 2018, as the firm could not meet payroll (*id.* at 93-95). Gold explained that they did not know Cohen was taking his full salary in violation of their agreement (*id.* at 95).

Gold also testified about the W2s. Gold testified that the firm paid him \$25,567 in salary in 2019 (tr at 94; Exhibit 11). Gold also credibly testified that the firm paid Dince \$17,465.99 in salary in 2019 (tr at 94; Exhibit 10). Unlike the other senior equity partners, Cohen received his full salary (\$279,999) (tr at 99; Exhibit 9). Cohen also admitted, in his criminal allocution (Doc 239 [Plaintiff’s Allocution] at ¶ r), that he stole more than \$275,000 from the firm in salary

beginning in 2018, and that the figure was accurate (tr at 99). Gold also testified that when the senior equity partners agreed to forgo most of their salary, the firm paid enough to enable 401k contributions, which explains the specific amounts that he and Dince received (*id.* at 94-95).

Accordingly, the court awards defendants a total of \$275,000.

7. Gordon & Silber Premises Lease Resolution (\$35,714.00)

Defendants have adequately established their entitlement to \$35,714.00, representing damages incurred with regard to the Gordon & Silber Premises Lease Resolution.

Gold credibly testified that the firm closed in April 2020 because of massive liabilities, especially the rent that it owed its landlord (*id.* at 99-100). He explained that, at the time, the firm owed over \$1,000,000 in rental arrears, and that their attorneys had to negotiate a deal in which they would pay \$325,000, of which \$125,000 Dince, Gold, Wasserman, and Kaufman paid personally. This payment was to terminate the firm's lease in lieu of the landlord commencing suit for the entire amount (*id.* at 100).

Gold clarified that Cohen did not contribute to the settlement with the landlord at all, that he owned 100 shares of stock, as did Gold and Dince, and that if Cohen had participated based upon his share ownership he should have paid \$35,714.00 (*id.* at 101). However, because Cohen would not pay, the other partners made up the difference.

Accordingly, the court awards Defendants \$35,714.00.

Conclusion

In conclusion, defendants have adequately established their *prima facie* entitlement to a total of \$2,713,377.12 in damages, consisting of: (a) \$213,726.30 for damages relating to Cohen's personal American Express credit card; (b) \$514,621.73 for damages relating to Cohen's use of the firm Elan Signature credit card; (c) \$150,907.87 for damages relating to Cohen's fraudulent

expenses; (d) \$132,007.22 for damages relating to Cohen’s use of the firm American Express credit card; (e) \$1,391,400.00 for damages relating to Cohen’s personal Bank of America credit card; (f) \$275,000.00 for damages relating to Cohen’s salary theft from the other firm partners and; (g) \$35,714.00 for damages relating to the firm’s premises lease resolution.

Plaintiff did not raise an issue of fact as to any of these amounts.

The court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the Clerk is directed to enter judgment, in favor of defendants and against plaintiff, in the amount of \$2,713,377.12, together with interest at the statutory rate from the date that the firm suspended Cohen, February 18, 2020, until the date of this decision after inquest, and thereafter at the statutory rate, as calculated by the Clerk.

7/9/2024
DATE


MELISSA A. CRANE, J.S.C.

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APPLICATION:

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