

Case Number: 13-20-1300-0384

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between:

Case Number: 13-20-1300-0384

Glen Vetromile

(“Claimant”)

-vs-

Mark Alexander, on his own behalf and derivatively on behalf of Glenmark Partners, LLC

(“Respondents”)

AWARD OF ARBITRATION PANEL

We, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement in Section XI of the Operating Agreement dated as of March 5, 2010, entered into between Glen Vetromile, Claimant, and Mark Alexander, Respondent, as the sole members of Glenmark Partners, LLC, with Claimant represented by Lawrence M Gottlieb, Esq., of Haas & Gottlieb, until November 4, 2015, when Michael S. Stein, Esq. of Pashman Stein, PC, was substituted, and Respondents represented by David S. Frydman, Esq., and Glen Lenihan, Esq., of Frydman LLC, and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby, FIND, as follows:

Claimant Glen Vetromile (“Vetromile” herein) filed his Demand for Arbitration on February 20, 2013, against Respondent Mark Alexander (“Alexander” herein) regarding certain actions taken by Alexander allegedly contrary to the interests of Glenmark LLC (“Glenmark,” “GMP,” or “the LLC” herein), asserting, among other things, that such actions violated the LLC’s Operating Agreement, including actions consisting of the unilateral filing of a “baseless” mechanic’s lien in the name of Glenmark; the filing of a “false” tax return on behalf of the LLC; making misrepresentations as to the management of 550 Locust Development Partners, LLC (“Locust”), a limited liability company in which Glenmark had an interest; the “improper” seizing of control over, and freezing Claimant out of, Glenmark’s web-site, electronic mail address and checkbook; “improperly” administering a workers’ compensation claim and incurring liabilities to consultants; and failing to fund certain capital contributions related to projects undertaken by the LLC.

Vetromile has requested relief as follows: a reduction in Alexander’s equity interest in the LLC, and an affirmative declaration from the Panel that Alexander must cease and desist from representing that he is the “managing member” of the LLC; that he identify and turn over control of any Glenmark bank accounts he opened; that he turn over all documents received from Locust; that Alexander advise Locust that all communications should be directed to Vetromile; that he advise the LLC accountant that he is no longer the tax matters partner of the LLC and that all financial information should be given to Vetromile; that Alexander cede control of the LLC website and e-mail address to Vetromile; that Alexander recognize that his ownership interest in

Glenmark is reduced to 19.9%; and that the GMP LLC be dissolved. The Amended claim filed by Vetromile added a cause of action sounding in tortious interference with contract and prospective economic advantage, without stating a specific amount of damages.

Respondent Alexander argues on his own behalf and on behalf of Glenmark Partners LLC (herein Respondents) that Claimant “brazenly looted” the LLC’s interests in the Tuckahoe/Eastchester project (“Tuckahoe” herein) by usurping it, cutting out the LLC and Alexander, and taking the project for himself. Alexander also counterclaims both for himself and derivatively on behalf of GMP, for breach of fiduciary duty and of the Operating Agreement, and request a declaration of rights in addition to the return of the project to Glenmark and/or the award of compensatory damages in excess of \$4 million plus costs and expenses of the arbitration, attorneys’ fees, and punitive damages for the alleged theft of the corporate opportunity.

The hearing was held in the New York City offices of the American Arbitration Association for six days in November, 2014, and in the offices of Thompson Hine for four days in February, 2015, and had seven witnesses, and on the order of 300 exhibits. Vetromile testified for almost five hearing days, and Alexander testified for almost three hearing days.

The key questions to be decided in rendering an award are:

- I. *Did Alexander have an obligation to contribute half of the capital contribution required to fund the Tuckahoe/ Eastchester project?*
- II. *Did Alexander have proper grounds for filing the Mechanic’s Lien and making related demands to Midora (as hereinafter defined) and the new partners in Tuckahoe; and did Alexander have proper grounds for assuming managerial control of GMP and re-allocating the partners’ equity percentages in filing tax returns?*
- III. *Did Alexander edit and delete e-mails from Vetromile and an employee named Joseph Taylor from the GMP and Go-Daddy servers, and willfully fail to comply with his discovery obligations?*
- IV. *Did Vetromile breach his fiduciary duties to Alexander and Glenmark?*
- V. *Did Vetromile willfully fail to comply with his discovery obligations?*
- VI. *Findings regarding Other Claims and Allegations of Claimant Vetromile.*
- VII. *What are the appropriate remedies for the claims which have been proven?*

I. *Did Respondent Alexander have an obligation to fund the Tuckahoe project?*

What is characterized by Vetromile as “chief among many bad acts” of Alexander was his “avoidance” of funding obligations (presumably under the GMP Operating Agreement).” (See Claimant’s Post Hearing Brief dated May 8, 2015, hereinafter, “C-PHB,” at page 3). In footnote 4 on the same page, Vetromile says “The willingness and/or ability of Alexander to fund the business of Glenmark is one of the key issues,” presumably in this arbitration.

Vetromile argues that Alexander initially misrepresented his “financial willingness and thus, his ability to engage in the business purpose of Glenmark,” regarding not only his funding capabilities, but also his willingness to borrow money for such purposes, either from his brother-in-law or from Vetromile. (See C-PHB at pg. 3). Vetromile says that Alexander’s “bad faith actions paralyzed Glenmark, ultimately resulting in deadlock between the partners ... such that the contract of sale for the (Tuckahoe) project ... was allowed to lapse.” (C-PHB, at 4, parenthesis supplied).

However, it is agreed between the parties, and is clear to the Panel that the Glenmark LLC Operating Agreement (Joint Exhibit 14, hereinafter J-14) calls for management by consensus, and that “no member shall be required to make any Capital Contribution” unless both members agree. (Article 4 of J-14). Vetromile notes that he was “unable to act unilaterally by the express terms of the Operating Agreement,” (C- PHB at 4 and 27), and that was the advice of counsel to the LLC (J-146). Alexander testified that he agreed (see Transcript, hereinafter “Tr.” for 2/23/15, at 2103-2106).

It is obvious there was a disagreement between the members as to whether Tuckahoe was worth the risk of contributing additional capital. Alexander says that when they lost the possibility of funding for part of their general partner share of the capital for the project (“sponsor capital”), both were upset, but Vetromile was determined to move forward because the project was in his back yard, and it was important to him to get it done. (Tr. 2496-2499 and 2143 – 2145). Alexander, on the other hand, said “it was far too risky and far too open ended” (Tr. at 2406). They then discussed the possibility of Vetromile lending Alexander funds to cover his share of the capital that was going to be required, but those discussions broke down (Tr. 2504, 2505).

On the other hand, Vetromile himself recognized that he had a right to make personal judgments about what he would and would not do in terms of proceeding with the Tuckahoe project. When general partner funding was proposed from an entity called *Silverpeak* to co-invest with Glenmark on the required sponsor capital, Vetromile testified they did a lot of financial modeling to determine if the proposed returns would be acceptable. He concluded they would not be, “and I didn’t want to do the deal at the end of the day.” (Tr. 260-261). He did not consult with Alexander about that, just flatly said he would not do it. Obviously Alexander had the same right to decide whether he wanted to go forward or not, and his refusal to fund was not a “bad act,” as characterized by Vetromile, and was not “cleverly engineered” to produce deadlock (C-PHB at 4), but, rather, reflected the member’s right to exercise his independent judgment. The Operating Agreement between the members did not require anything else. Therefore, no proper capital calls were thereby ignored (See Respondent Pre-Hearing Brief, hereinafter R-PHB, at 7-12 and 43), and Alexander had no obligation whatsoever to accept a loan from Vetromile at 15% as offered, or on any terms.

Moreover, Vetromile contends that this case is “premised upon a profound misrepresentation perpetuated at the outset of the business relationship ... respecting Respondent’s financial willingness and thus, his ability to engage in the business purpose for which ... Glenmark was formed.” (C-PHB at 3). The panel finds no basis whatever in the evidence for concluding Alexander misrepresented his financial willingness, or that his refusal to fund was in bad faith.

Therefore, the Panel concludes from the testimony and the exhibits that the answer to the first question is “No,” Alexander did not have an obligation to fund the Tuckahoe project even if his refusal produced deadlock in the LLC, and even though the other LLC member, Vetromile, wanted very much to proceed. Such a refusal in no way breached any duty, fiduciary or otherwise, that Alexander owed to the LLC or to the other member. Moreover, any alleged promises of this type regarding Alexander’s willingness to fund capital contributions also would be barred by the merger clause of the Operating Agreement. We agree with Vetromile that this is one of the key issues in the arbitration. We find for Alexander on this question, and it is not a close call.

II. Did Respondent Alexander have proper grounds for filing the Mechanic’s Lien and making related demands of Midora and the new partners in Tuckahoe; and did Alexander have proper grounds for assuming managerial control of Glenmark and re-allocating the partners’ equity percentages in filing tax returns?

Vetromile contends that the unauthorized mechanic’s lien filing by Alexander with respect to the Tuckahoe project, and the demands made by Alexander premised upon that filing “stopped the project” and “stopped the partnership” for many months and the impact “was devastating to Vetromile and resulted in extensive damage that he seeks in this proceeding.” (See C-PHB at 30 and 31). However, Alexander’s filing of a mechanic’s lien was, in our opinion, an appropriate action under the circumstances, and undertaken with the advice and assistance of counsel.

The mechanic’s lien (“Mechanic’s Lien”) filed against the Property was in the amount of \$525,070.00 (Tr. 1391:10-1392:19; 2224:24-2225:2) which “was similar to the pre-development expenses as set forth in the 150 Main Operating Agreement (as hereinafter defined)” (C-PHB at 30), and the approximate total value of improvements and services provided by Glenmark to the Property for which Vetromile got credit in that Agreement. (Tr. 2239:18-2240:3; *see also* 493:2-495:4). Alexander’s apparent intent was to safeguard Glenmark’s interest in the improvements and services furnished to the Tuckahoe Project, and to make sure that, contrary to the assumption in the 150 Main Operating Agreement, the funds were credited to Glenmark, not to Vetromile acting in his individual capacity. (See C-PHB at 25). Nearly as much was conceded by Vetromile in confirming that the Lien amount reflects money paid for the Project “on behalf of [Glenmark]”. (Tr. 2239:18-2240:3; *see also* Tr. 493:2-495:4).

Moreover, apparently the Mechanic’s Lien filing and subsequent demands by Alexander caused no tangible injury to the project. The testimony of Philip Raffiani (hereinafter “Raffiani,” the principal of Midora Corp, the contract vendor of the Tuckahoe property), on this point is persuasive: “Q: ... The [Lien], to your understanding, did that cause any disruption to the [Project]? A: “No material disruption.” (Tr. 1968:23-1969:3). Relatedly, Vetromile was unable to explain how the Mechanic’s Lien caused any damage. (Tr. 1571:1-1572:8).

Next, Vetromile argues that “one of Alexander’s most outrageous acts was his unilateral reduction of Vetromile’s equity percentage ownership in Glenmark...” (C-PHB at 32), and what he characterizes elsewhere as Alexander’s “fraudulent altering of Glenmark ownership interests on federal tax returns. (See Claimant’s Post Hearing Memorandum dated May 22,

2015, hereinafter “C-PHRB,” at 32). While Alexander’s use of an accounting adjustment of the members’ respective capital interests without consultation with Vetromile, although arguably within Alexander’s discretion as tax matters partner, was inconsistent with the basic requirement in the GMP operating agreement for members’ consensus. Nonetheless, any damage caused Vetromile by the reduction was *de minimis*, and the issue is a moot question in any event, because we are requiring restoration of the LLC members to their original 50-50 status by this Award.

As a result, we conclude that Alexander’s filing of the mechanic’s lien and related demand of Midora and others were not improper, and whether or not Alexander had grounds for re-allocating the equity percentages in the LLC is moot because no damages were proved as a result of those acts, and this Award restores the members to 50-50 ownership percentages.

III. Did Respondent Alexander edit and delete e-mails from Claimant Vetromile and an employee named Joe Taylor from the GMP and Go-Daddy servers and willfully fail to comply with his discovery obligations?

Vetromile testified that one of his “contention(s) in this case (is) that Alexander blocked (him) from (his) Glenmark Partners’ e-mail account.” (Tr. 543). He said he did not receive a copy of the Glenmark shared hard drive which Alexander said he had put on his desk, and that he was also not provided with a complete unedited version of his e-mails maintained on the Go-Daddy site by Alexander (Tr. 134, 136). Vetromile made repeated complaints in his testimony about Alexander’s failure to produce e-mails, and said, “Whatever we got was completely edited from Mr. Alexander of anything.” (Tr. 508 – 509).

In his Post Hearing Brief Vetromile also notes his “great frustration because of Alexander’s effort to secret from discovery Vetromile’s Glenmark e-mails and other electronic data in the name of Alexander, in addition to his wholly-owned entity Alexander Development Group, which he also maintained in parallel, on the ...” server used by Glenmark ... as well as the e-mail of Claimant’s witness Joseph Taylor ... copies of which were never produced.” Further he says “that electronic data had been plundered, edited and sanitized by Alexander,” and that “Any information finally and painfully obtained from Alexander was thoroughly edited by him and had deleted critical and incriminating conversations that would otherwise have been available to Claimant to establish his case.” (C-PHB 7, 8).

But no proof whatever was offered to support these allegations that Alexander edited or in any way doctored or deleted Vetromile or employee Joe Taylor e-mails, and the Panel gives them no credit. Although the record shows Alexander did have exclusive access to certain e-mails for a period of time (Tr. 2912-2913), and there is “he said – she said” testimony from both parties as to whether Vetromile received a copy of the shared Glenmark hard drive, and other matters, Alexander’s Post Hearing Brief correctly says “Vetromile failed to prove Alexander improperly “froze out” Vetromile from the GMP e-mail or that Vetromile suffered damages.” (R-PHB at 49). Not only did Vetromile fail to meet his burden of proof, but Alexander provided Vetromile with full access to GMP’s e-mail. In October, 2011, Alexander repeatedly asked Vetromile to back up his GMP account. (R-113, R-114). Around that time GMP’s IT consultant provided Vetromile with password and log-in

information to access the GMP e-mail account, including remote access, which Vetromile forwarded to his personal e-mail account. (See Respondent Exhibit 127, hereinafter designated as R-127, and R-128, R-133; Claimant's Exhibits are designated by the prefix "C" followed by a number. See also Tr.R 551:20-25). In fact the cross-examination of Vetromile on November 4, 2014, established rather conclusively, by Vetromile's own admission, that when they moved their offices and went on the Go-Daddy server, Alexander gave Vetromile notice to back up his accounts (Tr. 547), as did Ms. Taylor, the IT consultant, (Tr. 551: 7-19). As late as December 1, 2011, Vetromile had access to his Glenmark Partners e-mail account (Tr. 563); as late as January of 2012 Ms. Taylor was giving him the log-in information (Tr. 572); and in February, 2012 she was helping him get his 3000 contacts over successfully. (Tr. 576).

Moreover, Respondents' Post Hearing Reply Brief (R-PHRB herein) notes: "Vetromile claims he has "about 40 to 50 e-mails that were key e-mails that I sent to my personal e-mail account" that Alexander allegedly deleted. (R-PHRB, at 9; see also Tr. 509:16-19). Continuing, the Brief points out Vetromile only produced four such forwarded e-mails, and failed to explain why he did not produce even one that Alexander allegedly deleted, or how such deletion prejudiced Vetromile, who had control of the mirror copies in his personal e-mail account (Tr. 2848). It is also true, as noted in the R-PHRB at 9, that Ernst & Young, retained by the parties by Order of the Panel when they could not agree on a forensic expert to review the electronic data available on both sides, did not report that Alexander edited or deleted any e-mails.

Based on the testimony, exhibits, and the evidence produced, the answer to Question No. III is "No," because the Panel cannot conclude from the evidence that Alexander edited and/or deleted e-mails of Vetromile and Joe Taylor from the Glenmark and Go-Daddy servers, and therefore it does not appear that he breached his discovery obligations.

IV. *Did Claimant Vetromile breach his fiduciary duties to GMP and Respondent Alexander?*

It is clear to this Panel from the testimony of the parties and exhibits presented at the Hearing, that Claimant Vetromile was a *faithless servant* who breached his fiduciary duties to Respondent Alexander and to GMP and caused considerable harm to them, by misappropriating a corporate opportunity, the Tuckahoe project, for himself.

Specifically, the record shows the following:

- After Vetromile made a disclosure to Alexander on October 19, 2011, of the potential interest by Roseland ("Roseland"), a major real estate developer, in the Tuckahoe project (R-101; *see also* Tr. 894:16-22), the record indicates there was no subsequent meaningful disclosure of the negotiations that Vetromile was having with Roseland. Shortly following the October 19 disclosure, Alexander was intentionally excluded from the Roseland meeting scheduled on October 24, 2011 (Tr. 898:8-11). Vetromile's close relationship with Raffiani, his *de facto* position as the "lead" managing member in charge of the Tuckahoe project, and his private discussions with Roseland, put him in a unique position of access and knowledge that was not available to Respondent Alexander.

- On November 7, 2011, and again on November 18, 2011, Roseland sent term sheets to Vetromile. (R-130; C-135, p.1). These term sheets, inter alia, contained a clause that Roseland would cover all project costs until Vetromile's and Roseland's capital percentages became caught up, and provided for a significant imputed land value contribution in GMP's favor (that accrued to Vetromile). (C-135, p. 2; Tr. 984:13-19, 984:20-985:7).
- Vetromile's communications on November 18, 2011 (the date of the amended Roseland term sheet) with Raffiani, with respect to Raffiani's \$540,000.00 investment in the new partnership with Roseland and Mack-Cali, another development firm, confirms the existence of a pending transaction between Raffiani and Vetromile to the exclusion of GMP and Alexander. There is also compelling evidence, in the opinion of this Panel, that on November 25, 2011, Vetromile met with Raffiani to the exclusion of Alexander; and that after meeting with Vetromile on that date - which was not disclosed to Alexander - Raffiani indicated that it was not in Raffiani's best interest to meet with Alexander or Vetromile until they had "resolved their differences." (J-142; Tr. 1901:12 -1902:24). Finally, on November 30th, 2011, Vetromile received yet another term sheet from Roseland, which he again withheld from Alexander. (J-148, p. 2, Tr. 2733:21-2734:22). As Alexander's brief indicates, Raffiani admitted that, by November 30th he knew that he was doing a separate deal with Vetromile as a path to doing a deal with Roseland. (See R-PHB at 19-21). The information withheld from Alexander was "enormously important" to him. (Tr. 2734 14-22).
- On November 30, 2011 Vetromile secured his final term sheet from Roseland; and Raffiani subsequently served a notice of breach of contract on GMP. (J-150; see also Tr. 1904:23-1905:7). A draft of a proposed joint venture agreement between HVLH and Midora on December 12, 2011, only *twelve* calendar days later, clearly indicates that it was not the first draft the parties had discussed.

The foregoing conduct, coupled with Vetromile's interactions with the Village of Tuckahoe -- making use of the name "Glenmark" and creating a new entity called Glenmark Property LLC to resemble Glenmark Partners LLC -- indicates to the Panel that there was an effort to persuade other parties that they were still dealing with GMP, notwithstanding Vetromile's secret machinations. (See, Tr. 1243:20-1244:5; see also R-170, R-185, R-216 p. 2). Glen Vetromile's December 20th criticism of GMP's counsel for alerting Alexander about the conditions of the project approval, further illustrates Vetromile's efforts to keep his partner in the dark and steal the Project away from GMP (see R-PHB, at 12-24, R-158).

It is reasonable to conclude that a recast Tuckahoe project, with new partners and a new venture, to which Alexander would not have to contribute any additional equity, and to which Raffiani and others were going to contribute, would have been one that Alexander would likely have approved, had he known about it (see R-PHB at 21).

Based on a review all of the testimony and the exhibits produced as a totality, it is also clear to the Panel that Vetromile hatched a scheme to steal the Tuckahoe project away from GMP and Alexander, and breached his fiduciary duties under the GMP Operating Agreement and at law, and thereafter, sought to cover up his actions in this arbitration.

Vetromile's actions should be looked at in the context of his duties and obligations under the Operating Agreement of Glenmark Partners LLC, and under applicable law.

The Glenmark Operating Agreement

The contractual relationship between Alexander and Vetromile was governed by the Glenmark Partners LLC operating agreement dated as of March 5, 2010 (the "GMP Operating Agreement," J-14). The GMP Operating Agreement provides for the formation of a limited liability company known as "Glenmark Partners LLC" under the New York Limited Liability Company Law (the "NYLLCL").

Article 4 of the GMP Operating Agreement provides that the management of the Company is to be undertaken by Alexander and Vetromile; and that it is the intent of the parties to manage by consensus. Section 4.5 of the GMP Operating Agreement provides that the members shall be obligated to perform their duties in good faith, and in a manner they reasonably believed to be in the best interests of the company, and with such care as an ordinarily prudent person in a similar position would use under similar circumstances.

The Law of New York

(i) The NYLLCL

Section 409(a) of the NYLLCL makes it clear that "...a manager shall perform his or her duties as a manager... in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances..." (R-PHB at 31). (This, parenthetically, is substantially the same standard that is adopted in Section 4.5 of the GMP Operating Agreement.)

(ii) The Case Law

In interpreting Section 409(a) of the NYLLCL, and in considering the nature of the LLC in light of its unique character, New York courts have generally agreed that "managing members of an LLC owe a fiduciary duty to the LLC and their fellow LLC members." The courts have also held that members of an LLC owe fiduciary duties to each other essentially on the theory that they were akin to partners and that "[t]he acts of working in concert and managing a limited liability company clearly gives rise to a relationship among the members which is analogous to that of partners who, as fiduciaries of one another, owe a duty of undivided loyalty to the partnership's interests." *McGuire Children v. Huntress*, 24 Misc. 3d 1202(A) (Sup Ct. Erie County, 6/17/09). *See also, Birnbaum v. Birnbaum*, 73 N.Y. 2d 461, 466, rearg. den., 74 NY2d 843 (1989) (R-PHB at 32). *See also, Meinhard v. Salmon*, 249 NY 458, 463-64, 164 N.E. 545 (1928) (R-PHB at 34).

At least one additional New York appellate court has agreed that managers of LLCs owe fiduciary duties to each other and to the LLC. *See, McGuire v. Huntress*, 83 A.D.3d 1418; 920 N. Y. S. 2d 531 (4th Dept. 2011), (R-PHB at 32). The *McGuire Children* case further noted that these fiduciary considerations continue until the company in which the litigants are co-members is actually dissolved.

So, what is the scope of a fiduciary's duties in the context of a real estate joint venture?

The principle of the fiduciary duty among co-venturers under New York law was laid out in the seminal New York case of *Meinhard v. Salmon*. (R-PHB at 34). Justice Cardozo's opinion has acquired an almost talismanic character, and the substance is worth restating here since the circumstances underlying the *Meinhard* litigation, and the claims in the instant proceeding are in many respects similar:

"Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court." Meinhard v. Salmon, 249 NY 458, 463-464 (1928) (R-PHB at 34)

Vetromile's Conduct

We have seen GMP was a company that was intended to be managed by consensus. There was no consensus in the unilateral actions taken by Vetromile regarding the Tuckahoe project. On the contrary, frustrated by his partner's concern with the risks of a project that Vetromile sought to complete, Vetromile decided to pursue the project on his own, unburdened by his partner's qualms and financial concerns. In doing so he violated the most basic governance provisions of the Operating Agreement of GMP.

Moreover, Vetromile's conduct not only violated the letter and spirit of Section 4.5 of the Operating Agreement, but also constituted a scheme to conceal his actions and to fail to disclose to his co-member the transactions he was engaging in on his own. The Operating Agreement required that, as a member, Vetromile was required to exercise his "...duties in good faith, and in a manner they reasonably believed to be in the best interests of the company, and with such care as an ordinarily prudent person in a similar position would use under similar circumstances." (J-14, at 4, 5). Vetromile's actions in withholding information and communications on pending transactions from his co-member and the Company, in taking actions that would result in the Company being in default on its agreement with Raffiani and Midora, and in negotiating an agreement that would deprive the Company of the fruits of its activities, all as noted above, violates this Section of the Operating Agreement. Vetromile's actions are all the more grievous since, as he was the member who assumed the lead responsibility for the project, he thus was placed in a position of unique responsibility and knowledge which enhanced his duties to his co-member and to GMP.

Vetromile's concealment of his activities with Roseland over the course of weeks when he negotiated the proposal for the new joint venture, and his secret contacts with Raffiani, violate a basic fiduciary principle, to wit: in business contexts, fiduciary duties include,

without limitation, a duty to communicate business opportunities to one another and not to exclude partners from such opportunities while the venture is ongoing. See, *Meinhard v. Salmon*, 249 NY 458 (1928) R-PHB at 34.

Vetromile excluded Alexander from information about the updated status of the project and the opportunity to continue with the venture. As noted, it is reasonable to conclude that if Alexander had known of the circumstances under which the new venture would be undertaken, he may well have agreed to it (See TR 2740:25-2743:4; R-PHB at 21; R-PHRB at 2). However, it is not necessary to reach that conclusion, since the actions of Vetromile in excluding Alexander and concealing information are enough to reach a finding that he breached his fiduciary duties to GMP and Alexander. *McGuire Children* and many other cases follow a similar pattern: a partner withholds information from his co-partner in an effort to seize an opportunity for himself. In so doing, the partner taking such action is guilty of a breach of fiduciary duty. (R-PHB at 32, 34).

In addition, the Panel believes the evidence shows it is reasonable to conclude that if Alexander had been made aware of the opportunity, he would have been willing and able to pursue it, and that it is not reasonable to conclude that he would not have done it because of a lack of resources. Moreover, in business contexts, fiduciary duties include, without limitation, a duty to communicate business opportunities to one another and not to exclude partners from such opportunities while the venture is ongoing. In that context, the Appellate Division of the New York Supreme Court has repeatedly held that a parties' financial inability to undertake the business opportunity presented does not, as a matter of law, preclude a trier of fact from finding a breach of fiduciary duty. *Owen v. Hamilton*, 44 A.D.3d 452, 454-455, 843 N. Y. S 2d 298 (1st Dept. 2007) (R-PHB at 33).

For all of the foregoing reasons we conclude that Vetromile was a faithless servant and breached his fiduciary duty to GMP and to Alexander and his duty of good faith and fair dealing and caused great harm to both GMP and Alexander.

V. *Did Claimant Vetromile willfully fail to comply with his pre-hearing discovery obligations?*

The Panel answers this issue in the affirmative, finding that Vetromile willfully failed to comply with his pre-hearing discovery obligations in several respects. Indeed, while the Panel's September 5, 2014 Order, in paragraph 8, reflected Vetromile's representation to his counsel that Vetromile had conducted "an 'exhaustive search' ... and that all requested documents in the possession, custody or control of [Vetromile have] been turned over," it appears that Vetromile willfully failed to disclose and produce numerous relevant e-mails and other documents concerning the Tuckahoe Project, including agreements and drafts, financial records and handwritten notes.

Vetromile's willful failure to comply with his pre-hearing discovery obligations is underscored by the fact that he produced only two emails concerning his communications and dealings with Raffiani, the contract vendor for the property on which Tuckahoe was to be built, from the personal email accounts which Vetromile started using when he abandoned GMP. Yet Raffiani produced nearly 700 emails between himself and Vetromile using the personal e-mail accounts. (Tr. 2844:18-2847:10). Similarly, despite negotiating a complex real estate development deal with Roseland and JMP Eastchester LLC, including two

operating agreements, Vetromile produced only two emails with Roseland from his personal email accounts, and only one with JMP Eastchester LLC. (Tr. 2847:14-23). Vetromile admitted, moreover, that “I possessed about 40 to 50 e-mails that were key e-mails that I sent [from a GMP e-mail account] to my personal e-mail account,” yet he produced only four of them. (Tr. 509:16-18; 2848:7-15). He did not provide or suggest to the Panel any credible and legitimate explanation for his failure to produce the remaining 36 to 46 e-mails. (See also R- PHB at pgs. 3 and 4).

Vetromile indicated to the Panel in the pre-hearing phase of this proceeding that Respondent Alexander, through deletions or other misconduct in handling GMP’s e-mail accounts and electronic data files, deprived Vetromile of access to relevant e-discovery materials. Vetromile thus sought to cast blame on Alexander for Vetromile’s lack of document production. We find, however, that Vetromile’s attempt to shift blame is without basis (See Question IV, *supra*) and reflects a lack of good faith on Vetromile’s part. Vetromile did not identify any e-mail that Alexander allegedly deleted. Vetromile similarly failed to show how any alleged deletion of e-mails prejudiced him, given his control of the mirror copies in his personal email account. (Tr. 2848:7-15). We note that Vetromile took steps in November 2011 to ensure his future ability to use GMP’s Project documents once he abandoned GMP, by e-mailing to his personal e-mail account the passwords for GMP’s Go-Daddy e-mail server accounts, writing to GMP’s IT consultant to obtain remote access to GMP’s e-mail, and then forwarding the access information which he received to his personal e-mail account. (R-119, R-127 and R- 133).

Vetromile’s allegations of misconduct on Alexander’s part led to the retention of E&Y to review GMP’s electronic data. Yet evidence later adduced in the hearing indicates that Alexander in 2011 provided Vetromile with GMP’s electronic data, and that Vetromile did not complain. (See J-152 copying Vetromile’s attorney Andrew Chonoles, Esq.; and Tr. 1063:16-19; 2746:20-2747:6).

Vetromile’s willful failure to comply with his pre-hearing discovery obligations, including indicating to the Panel that Alexander had deprived Vetromile of access to relevant documentation, resulted in discovery-related costs for E&Y’s services and delay in the parties’ completion of the pre-hearing discovery phase of this proceeding because of the time needed for E&Y to review matters relating to issues that Vetromile raised with respect to the existence, alleged withholding or alleged destruction of various digital data. The Panel has determined to sanction Vetromile to the extent of ordering him to bear liability for the entire amount of E&Y’s fees in connection with this matter. Such relief is consistent with the arbitration clause contained in the GMP Operating Agreement. (R-34), Art. XI: member “responsible for any delays and adjournments of the arbitration proceeding will bear all of the costs, payments and arbitration fees for both sides in the dispute”). These sanctions are set forth in VII below.

VI. Findings Regarding Other Claims and Allegations of Claimant Vetromile.

- a. Vetromile’s tortious interference claims in his Amended Claim seeking damages of not less than \$3 million.*

In his Amended Claim Vetromile added causes of action sounding in tortious interference with contract and tortious interference with prospective economic advantage allegedly arising from Alexander's actions. The amount to be recovered was unspecified at the time of the filing but was subsequently quantified at not less than \$3 million. Until Vetromile testified, there was no information given as to the basis for these claims.

On October 24, 2014, as soon as Vetromile's testimony was completed, Alexander moved to dismiss the tortious interference claims upon the following grounds: 1) the Amended Claim falls outside the Arbitration Agreement between Alexander and Vetromile and, thus, Alexander did not agree to arbitrate the Amended Claim; 2) Vetromile otherwise lacks standing to bring the Amended Claim; 3) Vetromile has failed to state a claim for tortious interference; and, 4) the Amended Claim was released in paragraph 6 of the parties Release and Escrow Agreement, dated as of August 2013. The Panel denied the motion at that time with leave to Alexander to raise it again after completion of Vetromile's case. Thereafter the request was renewed in Alexander's Post Hearing Brief at page 47, asking that the panel rule on the letter motion.

Vetromile argues in his Post Hearing Brief that Alexander interfered with the Tuckahoe project and Vetromile allegedly suffered the consequences through, HVLH, an entity wholly owned by Vetromile, which became a member of 150 Main, LLC, the new entity formed by Vetromile with two real estate developers, Roseland and Mack-Cali, to develop Tuckahoe without GMP and Alexander. He said the filing of the Mechanic's Lien and Alexander's "subsequent interactions" with partners in 150 Main led Vetromile to suffer damages. (C-PHB at 48).

However, Respondents' Post Hearing Brief in Point IX argues convincingly that Vetromile has failed to prove his tortious interference claims and has not suffered any damages, and says, and we agree, he did not prove Alexander interfered with a contract, or with prospective business advantage, or improperly "froze out" Vetromile from the GMP e-mail. (R-PHB, 47- 50; see also answers to Questions II and IV above). Thus we do not have to reach the questions presented by the other grounds argued in the Motion since Vetromile did not prove his case on the claims in the Amended Claim. Therefore, the Motion to Dismiss the Amended Claim of Vetromile by Alexander is hereby granted.

b. Vetromile's assertion that if we find the Tuckahoe project was terminated pursuant to the express terms of the contract with Midora, damages are not recoverable by Alexander.

Vetromile's Post Hearing Brief argues that the Tuckahoe contract was terminated by Raffiani of Midora because of Alexander's refusal to fund the project causing deadlock between the LLC members, resulting in Glenmark's failure to pay the \$50,000.00 required by the Second Amendment to the contract. He concludes that this termination caused the LLC to no longer have a "tangible expectancy" of consummating the transaction, and that even Alexander acknowledged that by trying to pursue the deal on his own after the termination. (C-PHB at 44 and 45).

However, the evidence, and Respondents' Post Hearing Brief, show conclusively that Vetromile engaged in a deliberate scheme to steal the project for himself, and, without notice to Alexander, re-negotiated the land contract with Raffiani, and had extensive discussions with new partners well before the termination of Glenmark's interest in the contract for the project, when such an "expectancy" still existed. (See R-PHB 12-21, and Section V above).

Yes, we find the agreement with Midora for the Tuckahoe project ground was terminated by Raffiani pursuant to the express terms of the contract, but contrary to Vetromile's allegation, and as discussed more fully below with respect to remedies, punitive damages are payable to Alexander because Vetromile had previously breached his fiduciary duty to Glenmark and Alexander by secretly stealing the project from the LLC.

c. Vetromile's assertion that to find for Respondent Alexander we must find that Roseland, Mack-Cali and Raffiani/Midora participated in the scheme to steal the Tuckahoe project from Glenmark.

Vetromile's Post Hearing Brief asserts that to find for Respondent we would have to "suspend disbelief," and characterizes Alexander's argument as "a circumstantial case of legerdemain by Vetromile with presumably, the assistance of Raffiani as well as the public company Mack-Cali-Roseland." (C-PHB at page 6).

We disagree. Our finding for Respondent Alexander that Vetromile breached his fiduciary duty to Glenmark and stole the Tuckahoe project is in no way circumstantial, but made out by Vetromile's extensive testimony, the documents, and the evidence. (See Section V above). And our findings are no way dependent on a conclusion that any of Vetromile's new partners were co-conspirators, and we make no such findings here, although it is clear Alexander thinks at least Raffiani was involved. (R-PHB at 17, 19 and 22). It was Vetromile who had the fiduciary duty to Glenmark, and it is the breach of that duty which has been proved by overwhelming evidence that leads to our finding that damages are payable to Alexander as a result (see VII below).

VII. What are the appropriate remedies for the claims which have been proven?

As indicated above, (See Question IV supra) the Panel has found that Respondents have established that Claimant Vetromile breached his fiduciary duties to them by misappropriating the Tuckahoe Project, wrongfully depriving Respondents of its benefits. Similarly, the Panel finds that Vetromile breached the Escrow Agreement in consummating (or at least in attempting to consummate) the transfer of an interest in the Tuckahoe Project to Mark Ravesloot through the sale (or attempted sale) to him of a five (5%) percent interest in HVLH; in failing to pay to the Escrow Agent the consideration received for that transfer; and through transferring a ten (10%) percent interest to Midora. (See R-PHB at pg. 41). The Panel has further found that Vetromile willfully failed to comply with his pre-hearing discovery obligations in this proceeding (See Question V supra). Accordingly, the following relief is awarded in favor of Respondents and against Vetromile.

- A. **Constructive Trust.** A constructive trust is hereby imposed for the benefit of GMP and its members on all property rights and interests, distributions, proceeds, developer fees, consulting fees, rents, royalties and other income, and all other monetary consideration and rights and benefits relating to the Tuckahoe Project (“Tuckahoe Project Proceeds”) heretofore and hereafter received and/or becoming due and to be received by Vetromile, either directly or beneficially through any person, or through any entity controlled by him, or in which he directly or indirectly holds an interest including, without limitation, the Ravesloot payment (if it is to be retained) and the Midora payment. The following decisions cited in Respondents’ Post-Hearing Brief at 39 – 40 support the granting of such relief: *Schneidman v. Tollman*, 593 N.Y.S.2d 23, 24 (1st Dep’t 1993) (constructive trust and accounting imposed on wrongful transfer of partnership interest to new entity to exclusion of co-partner). *See also* *A.G. Homes, LLC v. Gerstein*, 860 N.Y.S.2d 582, 583-584 (2d Dep’t 2008) (imposing constructive trust on real property where member of 50/50 LLC “conceal[ed] his dealings,” “fail[ed] to disclose pertinent information” and usurped real property from LLC); *Fellner v. Morimoto*, 862 N.Y.S.2d 349, 350 (1st Dep’t 2008) (holding constructive trust on profits from opportunities diverted from LLC proper remedy).
- B. **Accountings.** Within 45 days hereof, Vetromile shall submit an accounting to Alexander and GMP, with a copy thereof simultaneously delivered to the Special Master appointed pursuant to paragraph D hereof, by which Vetromile shall report to Alexander and GMP all distributions, interests, proceeds, developer fees, consulting fees, income, and other monetary consideration and benefits relating to the Tuckahoe Project heretofore and hereafter received and/or becoming due and to be received by Vetromile, either directly or beneficially through any entity controlled by him or in which he directly or indirectly holds an interest, including, without limitation, HVLH (hereinafter “Tuckahoe Proceeds”).

The following decisions cited in Respondent’s Post-Hearing Brief at 40 support the granting of such relief: *Wolff v. Wolff*, 499 N.Y.S.2d 665, 667 (1986) (where “an officer has been found to have diverted corporate assets and opportunities, he may be held accountable for the fruits of his wrongdoing”); *Unitel Telecard Distrib. Corp. v. Nunez*, 936 N.Y.S.2d 17, 18 (1st Dep’t 2011) (fiduciary relationship supports claims for accounting).

Vetromile shall thereafter provide such additional periodic accountings of Tuckahoe Proceeds as the Special Master may reasonably request in order to fulfill the purposes of his appointment herein. The foregoing accountings shall be prepared by Kyle Wissel of the accounting firm of Weisers Mazars LLP, 135 West 50th Street, New York, NY 10020, an accountant whom the parties have advised the Panel was mutually agreeable to them. To facilitate Mr. Wissel’s preparation of the initial and any subsequent accountings to be provided by Vetromile pursuant to the foregoing provisions of this paragraph, Vetromile shall as soon as possible, and in any event within 14 days following the date hereof, make fully available to Mr. Wissel all financial books and records in Vetromile’s possession, custody or control relating in any way to GMP and/or Tuckahoe,

including any and all such financial books and record of Vetromile and of any entity controlled by him or in which he directly or indirectly holds an interest. Vetromile shall bear the cost of initial and any subsequent accountings to be provided pursuant to this paragraph.

The Panel finds that Vetromile should bear the costs of the foregoing accountings because the need for such relief is primarily, if not exclusively due to his refusal to produce relevant financial records, including his relevant bank statements and records concerning Roseland's reimbursement of Vetromile's alleged expenses (*see, e.g.*, Tr. 846:23-847:11: admits possession of bank records and admits failure to produce; 851:10-21: admits failure to produce HLVH bank records; 1440:1-7: admits failure to produce records of invoices submitted to Roseland and payments Vetromile and Raffiani received from Roseland), and because Vetromile's misappropriation of the Tuckahoe Project puts GMP and Alexander in a position where they may not hereafter have access to financial books and records relevant to all Tuckahoe Proceeds.

In addition, both Vetromile and Alexander shall within 45 days of the date hereof provide a full and complete accounting to each other and to GMP, with a copy simultaneously delivered to the Special Master appointed pursuant to paragraph D hereof, of and with respect to (i) any and all funds of GMP that he paid or otherwise transferred from or on behalf of GMP to himself or any other person or entity, and/or (ii) any and all funds of GMP that he caused to be paid or otherwise transferred from or on behalf of GMP to himself or any other person or entity, and/or (iii) any and all funds of GMP that he received either directly from GMP or indirectly through any other person or entity. The foregoing accountings to be provided by Vetromile and Alexander pursuant to this paragraph shall be prepared by Kyle Wissel. To facilitate Mr. Wissel's preparation of the accountings to be provided by Vetromile and Alexander pursuant to this paragraph, Vetromile and Alexander shall both as soon as possible, and in any event within 14 days following the date hereof, make all financial books and records in his respective possession, custody or control relating in any way to GMP and its funds fully available to Mr. Wissel. Vetromile and Alexander shall each bear the cost of his respective accounting to be provided pursuant to this paragraph.

If for any reason, either Vetromile or Alexander believes that the accountant will not be able to complete an accounting report required by this Award in time to meet the relevant deadline set forth in this Award, then Vetromile or Alexander, as the case may be, shall so inform the Special Master appointed pursuant to paragraph D hereof who is hereby authorized to confer directly with the accountant with respect to the time needed to render the accounting report in question and provide such additional time for the accountant's completion of the accounting report in question as may be reasonably required.

- C. Adjustments of Vetromile's and Alexander's Membership Interests and Capital Accounts in GMP.** The Panel has concluded the benefits of the Tuckahoe Project shall be and are hereby disgorged from Vetromile and hereby

restored to GMP, and the respective membership interests of Vetromile and Alexander are hereby restored to their original shares of fifty (50%) percent each, and GMP, under the supervision and oversight of the Special Master appointed pursuant to paragraph D hereof, shall make all allocations to their respective capital accounts, including, without limitation, allocations of gain and loss as well as all income distributions to Vetromile and Alexander in equal shares in accordance with their respective fifty (50%) percent interests with respect to the Horizon Project as well as the Tuckahoe Project. In addition to the foregoing adjustments and reapportionments, GMP shall make such adjustments and reapportionments of Vetromile's and Alexander's respective membership interests and capital accounts in GMP as may be required by reason of the information provided by the accounting reports to be made by Vetromile and Alexander pursuant to paragraph B hereof. Moreover, if the *Ravesloot* transaction either previously resulted in or hereafter requires a transfer of a five (5%) percent interest in HVLH to *Ravesloot*, then GMP shall adjust allocations to Vetromile and Alexander of gain and loss relating to the Tuckahoe Project, as well as income distributions to Vetromile and Alexander relating to the Tuckahoe Project, so as to allocate and charge solely to Vetromile any loss of distributions, interests, proceeds, developer fees, consulting fees, income, or other monetary consideration and benefits, resulting from such transfer of an interest in HVLH to *Ravesloot*. Any sums disgorged from Vetromile and restored to GMP shall bear interest at the rate of 4.5%.

D. Appointment of Special Master. William K. Lenhart, CPA, of WKL Advisors, LLC, 92 Robinhood Lane, New City, NY 10956, whom party-appointed representatives for Claimant and Respondent have selected with the approval of the Panel, is hereby appointed as a Special Master to oversee and manage all matters affecting or relating to the affairs of GMP, including,

1. Receive, review and evaluate the completeness of the accounting reports required to be made by Vetromile and Alexander pursuant to paragraph B hereof. If and to the extent that the Special Master has questions as to whether any accounting report to be provided by Vetromile with respect to Tuckahoe Proceeds provides a complete accounting with respect to distributions, interests, proceeds, developer fees, consulting fees, income, and other monetary consideration and benefits relating to the Tuckahoe Project heretofore and hereafter received and/or becoming due and to be received by Vetromile, either directly or through any entity controlled by Vetromile or in which Vetromile holds an interest, the Special Master shall confer with Vetromile and/or the accountant who prepared the accounting report in order to determine and obtain disclosure from them of such additional information or documents as may exist and be required in order to render a complete accounting with respect to such matters. Similarly, if and to the extent that the Special Master has questions as to whether either of the accounting reports to be provided by Vetromile and

Alexander with respect to the payment, other transfer, or receipt of funds of GMP provides a complete accounting with respect to such matters, the Special Master shall confer with Vetromile and/or the accountant who prepared the accounting report in order to determine and obtain disclosure from them of such additional information or documents as may exist and be required in order to render a complete accounting with respect to such matters.

2. Supervise and oversee the process by which GMP implements adjustments and reapportionments of Vetromile's and Alexander's respective membership interests and capital accounts in GMP so as to conform to the terms of paragraph C of this Award and the information provided by the accounting reports to be made by Vetromile and Alexander pursuant to paragraph B hereof.
3. Receive on behalf of GMP all distributions of income, capital and other payments of any kind made to GMP by any third parties, Vetromile or Alexander.
4. Account to Vetromile and Alexander no less frequently than once every 60 days as to all amounts received on behalf of GMP. Promptly deposit all amounts received on behalf of GMP in FDIC-insured bank accounts maintained by the Special Master in the name of GMP with a national bank.
5. Make distributions to Vetromile and Alexander of amounts received by GMP in accordance with their respective adjusted membership interests, in such amounts and at such times as the Special Master reasonably determines appropriate. If and to the extent that Vetromile fails to pay the fees of E&Y as provided in paragraph E hereof, the Special Master is hereby authorized and empowered to withhold the amount of such unpaid fees from distributions otherwise payable to Vetromile and to transfer the amounts so withheld to E&Y in order to effectuate the payment of its fees in accordance with paragraph E hereof.
6. Supervise and oversee all tax matters of GMP, including the preparation and filing of all income tax returns of GMP, and the provision to Vetromile and Alexander of all tax information required to be given to them as members of GMP. Since the evidence clearly establishes the inability of Vetromile and Alexander to operate without conflicts and disputes under the provisions of the GMP Operating Agreement, and in the interest of avoiding future conflicts and disputes with respect to matters within the scope of the Tax Manager duties and responsibilities, Alexander shall not hereafter act as the Tax Manager of GMP, and all duties and responsibilities of the Tax Manager shall be carried out by the Special Master

7. Take all such action as may be necessary and appropriate to obtain payment for the benefit of GMP, and derivatively for Alexander as a member of GMP, from Vetromile and any and all entities controlled by him, or in which he holds an interest, of all amounts subject to the constructive trust imposed by the award of the arbitrators with respect to the Tuckahoe project.
8. Supervise and oversee the payment of amounts owed by GMP to any non-member third parties, and account to Vetromile and Alexander no less frequently than once every 60 days as to all amounts paid on behalf of GMP to any other individual or entity.
9. Initiate court proceedings and engage on behalf of GMP, at its expense, such attorneys, accountants and other service providers whose services as may be necessary and appropriate to accomplish the foregoing, to implement the Special Master's orders and directives, and/or to otherwise protect the interests of GMP.

The appointment of the Special Master shall continue until: (a) GMP ceases to exist by reason of dissolution; or (b) GMP sells or otherwise transfers all of its assets and distributes to its members, in accordance with their respective membership interests, the proceeds (if any) of such sales or other transfers; or (c) GMP's members agree to terminate the appointment on such terms as they may mutually agree and which may include, if the parties so agree, provision for appointment of a successor Special Master; or (d) the Special Master is removed for malfeasance, misfeasance, or nonfeasance at the request of any member of GMP by a court or other tribunal of competent jurisdiction; or (e) the Special Master resigns his appointment and provides written notice of his resignation to GMP and its members; or (f) the Special Master's appointment is terminated by a court of competent jurisdiction in connection a bankruptcy or insolvency proceeding filed with respect to GMP.

- E. **Discovery Sanctions.** By reason of Vetromile's willful failure to comply with his pre-hearing discovery obligations, Vetromile is hereby sanctioned and directed and required to pay the full amount of all fees charged by E&Y for its services herein. To the extent that Alexander has previously paid any fees charged by E&Y for its services herein, Vetromile shall forthwith reimburse Alexander for the amount all such fees previously paid by him. To the extent that any fees remaining due and owing to E&Y as of the date hereof, Vetromile is hereby declared to be solely responsible for the payment thereof and shall forthwith pay and cause to be paid all such amounts without contribution by GMP or Alexander.
- F. **Punitive Damages.** By reason of Vetromile's misappropriation of the Tuckahoe Project and consequent breach of fiduciary duties, Vetromile is hereby directed to pay to Alexander as and for punitive damages the sum of Four Hundred Thousand (\$400,000) Dollars. The following decisions cited in Alexander's Post-Hearing Brief at 47 support the granting of such relief: *Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC*, 813 F. Supp. 2d 489, 526 (S.D.N.Y. 2011)

(“New York courts allow punitive damages against disloyal employees”); *Don Buchwald & Assoc., Inc. v. Rich*, 723 N.Y.S.2d 8, 8 (1st Dep’t 2001) (“The limitation of an award for punitive damages to conduct directed at the general public applies only in breach of contract cases, not in tort cases for breach of fiduciary duty”). In fixing the amount of such damages, the Panel has considered, among other things, the evidence establishing Claimant’s payment of that sum to Raffiani to secure his cooperation in excluding GMP from the Tuckahoe Project after November 2011. C-48, J-159, J-161; Tr. 1244:15-25, 1823:2-9. Such payment shall be made by Vetromile to Alexander not later than 90 calendar days following the date of this Award.

Although Vetromile requested an award ordering the dissolution of GMP, the Panel has determined not to grant such relief. Dissolution does not appear to be feasible in light of GMP’s ongoing interests in the Tuckahoe and Horizon projects. GMP’s interests in those projects could possibly be impaired by the dissolution of GMP. In addition, continuation of GMP’s existence appears to be required for the adjustments to membership interests and capital accounts of Vetromile and Alexander to be implemented as herein provided.

Although Alexander requested an award of attorneys’ fees, the Panel has determined not to grant such relief. The GMP Operating Agreement, does not contain a provision authorizing such an award nor is an award of attorneys’ fees authorized by any applicable statute. Similarly, the AAA Commercial Arbitration Rules do not authorize such an award where, as here, only one party to an arbitration proceeding has requested such relief.

Accordingly, we AWARD as follows ...

Respondents are the prevailing parties. Claimant Vetromile shall be subject to the following:

- A) Claimant Vetromile shall pay Respondent Alexander the sum of \$400,000.00 in punitive damages in accordance with this Award;
- B) Claimant Vetromile shall reimburse Alexander for any and all sums paid to Ernst & Young (E&Y) by Alexander, and shall promptly pay the entire E & Y invoice that is due for the work done on this matter;
- C) A constructive trust is hereby imposed for the benefit of GMP and its members on all Tuckahoe Project Proceeds as defined herein, and Claimant Vetromile shall receive, hold and dispose of all Tuckahoe Project Proceeds subject to and in accordance with said constructive trust for the benefit of GMP and its members, as detailed herein;
- D) Both Claimant Vetromile and Respondent Alexander shall provide to each other and to GMP the accountings as detailed herein, and shall pay or be charged with any and all sums the Special Master appointed herein deems appropriate that are due GMP or its members based on the accountings to be prepared as required herein;

E) The interests of Vetromile and Alexander in GMP shall be restored to fifty-fifty as provided in the Operating Agreement and as required by this Award.

William K. Lenhart, CPA, of WKL Advisors, LLC, 92 Robinhood Lane, New City, NY 10956, is hereby appointed as a Special Master to oversee and manage all matters affecting or relating to the affairs of GMP, as detailed herein.

Vetromile’s claims are denied in their entirety.

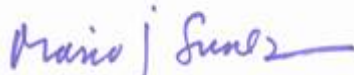
The administrative fees and expenses of the American Arbitration Association totaling \$28,900.00 shall be borne equally, which in this case is as incurred; and the compensation and expenses of the arbitrators totaling \$316,813.01 shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims and counterclaims not expressly granted herein are hereby denied.

Date January 18, 2016


Signed by the Panel: 
Philip S. Cottone, Esq., Chair


Eli. R Mattioli, Esq., Panelist


Mario Suarez, Esq., Panelist


I, Philip S. Cottone, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

January 18, 2016
Date


Philip S. Cottone, Esq., Chair

I, Eli. R Mattioli, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

January 18, 2016
Date



Eli. R Mattioli, Esq., Panelist

I, Mario Suarez, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is our Final Award.

January 18, 2016
Date



Mario Suarez, Esq., Panelist