

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE J. MARK HAYES, II

APPELLATE CASE NO. 2014-002755

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JUN 01 2015

SC Court of Appeals

Brannon Poe, CPA, LLC,

Respondent

vs.

Steve Stravolo, Stravolo & Company, P.A,
and Upstate CPAs, P.A., f/k/a Mathur & Co., PA,

Appellants

RECORD ON APPEAL

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Attorneys for Respondent

RECORD ON APPEAL INDEX

1.	Order filed October 4, 2013	001
2.	Order filed November 17, 2014	003
3.	Judgment in a Civil Case (Form 4) filed May 17, 2012	005
4.	Complaint filed July 5, 2011	007
5.	Answer of Defendants filed August 15, 2011	014
6.	Transcript of Record – Hearing held on May 14, 2012 before the Honorable J. Derham Cole	017
7.	Transcript of Record – Hearing held on December 6, 2012 before the Honorable J. Derham Cole	029
8.	Transcript of Record – Hearing held on September 11, 2013 before the Honorable J. Mark Hayes, II	038
9.	Transcript of Record – Hearing held on August 26, 2014 before the Honorable J. Mark Hayes, II	091
10.	Affidavit of Steve Stravolo filed May 10, 2012	117
11.	Asset Purchase Agreement dated November 5, 2010	121
12.	Deposition of Brannon Poe Excerpts pp. 26-29, 34, 37-40, Exhibit 3	138
13.	30b6 Deposition of Steve Stravolo Excerpts pp. 30-31, 55-56	151
14.	30b6 Deposition of Upstate CPAs Excerpts pp. 57-58, Exhibits 8 & 9	158
15.	Request to Admit dated August 25, 2011	166
16.	Answers to Requests for Admission dated September 28, 2011	174
17.	Notice of and Motion for Summary Judgment on Liability Only and On Defense of Comparative Negligence dated March 9, 2012	175
18.	Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment dated May 14, 2012	230

19.	Proposed Order transmitted to Judge Cole by letter Dated May 30, 2012	253
20.	Motion to Alter and Amend by Defendants dated May 30, 2012	261
21.	Notice of and Motion to Alter or Amend dated January 15, 2014 ...	263
22.	Respondents' Affidavits in Support of Attorney's Fees	265

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brannon Poe CPA, LLC,

Plaintiff,

v.

Steve Stravolo; Stravolo & Company, PA;
and Upstate CPAs, PA f/k/a Mathur
and Co. PA,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-42-02880

ORDER

FILED
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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter came before the court for a damages hearing and an award of attorney fees. Previously another circuit judge ruled upon the plaintiff's Motion for Partial Summary Judgment and the defendants' Motion to Seek to Alter/Amend Judgment. Both of the judge's decisions were in favor of the plaintiffs. Therefore the issues related to liability, including the issue of lack of or the existence of privity between all of the defendants to the plaintiff through the provision of the Sales Consulting Agreement, are not issues for this court to decide.

Based on a review of the documents presented, the testimony offered during the hearing, and a review of the information in the clerk's file, this court's decision is that the measure of damages and the award of attorney fees will be determined from the terms of the Sales Consulting Agreement. The terms of the agreement provide that a "performance fee" will be paid to the plaintiff, "if the firm is merged," of ten percent (10%) of the transactional value. The agreement dictates that the transactional value if a merger occurred "shall" be the gross revenue of the Firm for the year preceding the transaction.

Here the defendant's firm merged with another firm. The preceding year's gross revenues were \$298,234.00. Thus the amount due the plaintiff is \$29,823.40.

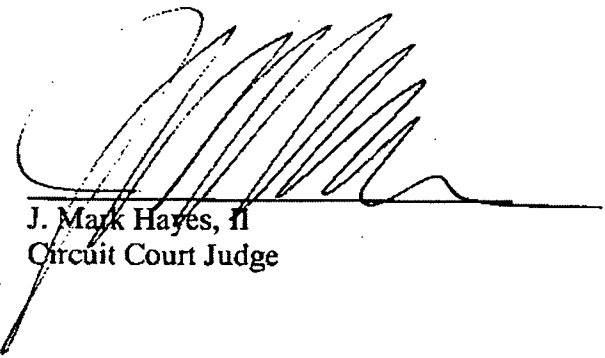


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The right to recover attorney fees is also controlled by the terms of the contract and by the terms of the contract between the plaintiff and it lawyers. The contract provides for an award of attorney fees. The plaintiff had a contract with it lawyers for a 33.33% contingent fee of any gross recovery. Therefore, the attorney fee shall be \$9941.13. Based on the affidavits presented by the attorneys, the award of this fee is reasonable and costs of \$1772.11 is also awarded.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment as outlined herein be entered in favor of the plaintiff.

IT IS SO ORDERED.



J. Mark Hayes, II
Circuit Court Judge

October 4, 2013
Spartanburg, South Carolina

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M. HOPE BLACKLEY

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Rec'd 11/20/14

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CASE NO: 11-CP-42-2880

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

ORDER

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This matter is before the court of the Defendants' Motion to Alter or Amend and Plaintiff's Motion to Alter or Amend the Order of the court filed on October 4, 2013. A hearing was held by the undersigned on August 26, 2014, and all parties were represented by counsel. The motions are denied on the following grounds:

This is a breach of contract case. The court first granted partial summary judgment to the Plaintiff on the breach of the contract liability only. Defendants moved to alter or amend the grant of partial summary judgment against the Defendants, and the court issued a reasoned order denying the motion to alter amend its Order.¹ The matter was then scheduled for a non-jury hearing on damages only. The undersigned heard testimony and received evidence on damages

¹ On May 17, 2012, the trial judge who heard the motion for partial summary judgment on liability issued a Form 4 Order stating Plaintiff's "motion for partial summary judgment is granted," and checked the box labeled see attached order (formal order to follow). It is undisputed that Plaintiff promptly submitted a proposed order and that all parties believed the court had filed the proposed order. On May 30, 2012, the Defendants filed a Motion to Alter or Amend the Order granting partial summary judgment to the Plaintiff. Thereafter, the court held a hearing at which time no party raised any issue about whether the prior formal order had been filed. The court denied the motion to alter or amend by a reasoned order filed January 4, 2013, relying on the plain language of the contract terms. It was discovered and raised for the first time on or about September 11, 2013, at the non-jury trial on damages, that the "formal order to follow" the May 17, 2012 Form 4 order, which was submitted as a proposed order, had never been file-stamped and recorded in the clerk's office by the Court. Nonetheless, the Defendants previously acknowledged its basis, were afforded the opportunity to and did, in fact, argue to alter or amend the "unfiled" order. Thus, there is no basis on which the Defendants now raise any issue as to the award of summary judgment to the Plaintiff at this time, and it is law of the case.

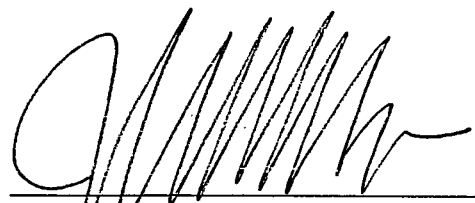
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and issued a reasoned Order granting Judgment in the favor of the Plaintiff against the Defendants on October 4, 2013.

To the extent Plaintiff is attempting to have the undersigned reconsider the rulings made previously as to issues related to the underlying liability on the contract, those are untimely and were not before the undersigned at the damages trial. As to the calculation of damages, the contract states that the plaintiff is entitled to a "performance fee," and that the fee is due whether a sale or merger occurs. Additionally, based on the facts of this case, the Defendants' distinction between sale or merger results in no monetary difference under the financial figures. Therefore, the Order does not need correction, and the motion is denied.

The Plaintiff also made a motion to alter or amend the court's calculation of attorneys' fees. While the court does not disagree with the Plaintiff's analysis, the court believes, under the facts of this case, that the price agreed to between the Plaintiff and the Plaintiff's attorneys – which was a contingency fee – is a reasonable award of attorney fees, plus the costs of the litigation. Therefore, Plaintiff's motion to alter or amend is also denied.

AND IT IS SO ORDERED.


The Hon. J. Mark Hayes, II
Seventh Judicial Circuit

November 17 2014
Spartanburg, South Carolina

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4202880

Brannon Poe Cpa Llc	Steve Stravolo Upstate Cpas Pa	Stravolo & Company P.A. Mathur & Co.,P.A. Fka
PLAINTIFF(S)		DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Voluntary Dismissal);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

is granted. it's motion for partial sum. judgment

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO: 11-CP-42-_____

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

2011-CP-42- 2880

COMPLAINT
(Jury Trial Requested)

The Plaintiff, complaining of the Defendants, alleges the following:

PARTIES AND JURISDICTION

1. The Plaintiff, Brannon Poe, CPA, LLC is a corporation organized and existing pursuant to the laws of the State of South Carolina which has its principle place of business in Charleston County, South Carolina.
2. Upon information and belief, the Defendant Steve Stravolo is a citizen and resident of Spartanburg County South Carolina, and owns Stravolo & Company, P.A. (hereinafter Stravolo Defendants), an accounting business in Spartanburg, South Carolina.
3. Upon information and belief, Defendant Stravolo currently is an owner in and operates an accounting firm known as Upstate CPAS, P.A., which is the successor in interest by merger to Stravolo & Company, P.A. and Mathur & Co. P.A with a principal place of business in Spartanburg County, South Carolina.
4. That Mathur & Co., P.A. was owned by Bharti Mathur.
5. Further, upon information and belief, Defendant Stravolo entered into a contract to be

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performed in South Carolina and committed tortious acts in Spartanburg County, South Carolina as more fully described hereafter.

6. This Court has jurisdiction over the parties and subject matter of this litigation and venue are proper in Spartanburg County.
7. That on or about July 28, 2009, the Plaintiff entered into an agreement with Defendant Stravolo entitled "Sales Consulting Agreement" (hereinafter Sales Agreement).
8. The Sales Agreement was signed by Steve Stravolo.
9. Mr. Stravolo had the legal authority and capacity to enter into a valid and binding contract with the Plaintiff on behalf of himself and/or Stravolo & Company, P.A.
10. According to the terms of the Sales Agreement, Plaintiff agreed to facilitate the sale or merger of Stravolo's accounting practice as described in the Sales Agreement attached as Exhibit A.
11. Pursuant to the terms of the Sales Agreement, Defendant Stravolo agreed to pay Plaintiff a performance fee of the greater of: (1) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/100 Dollars (\$10,000.00) (whichever applies) (the "Performance Fee").
12. Further, pursuant to the terms of the Sales Agreement, Defendant Stravolo agreed that said Performance fee shall be due Plaintiff at the closing of the sale or merger of the Practice, and that said fee is due if the sale or merger takes place (a) within the terms of this Agreement regardless of buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual buyer or other transferee is any party with whom Seller or APS had negotiations or contact

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- regarding the sale or transfer of the Practice during the term of this Agreement.
13. Further, the Sales Agreement provides that the Plaintiff had an exclusive right to sell/merge the Practice, and that Stravolo shall refer all contacts and/or inquiries regarding the sale of the Practice to Plaintiff during the terms of the Agreement.
 14. The Sales Agreement commenced on July 28, 2009, and by its terms, automatically renews for consecutive thirty-day periods until Stravolo gives Plaintiff thirty days written notice of intent to cancel.
 15. The Sales Agreement provides that in the event of non-payment of the Performance Fee, Plaintiff is entitled to an award of legal fees and court costs related to the enforcement of the Agreement.
 16. The Sales Agreement provides that it inures to the benefit of and shall be binding upon the respective successors and assigns of the parties, which would include Defendant Upstate CPAS, P.A.
 17. That from the inception of the contract until its written cancellation on November 17, 2010, Plaintiff handled over 50 inquiries from buyers, and actively marketed the accounting practice to APS's national customer base.
 18. That Plaintiff sent direct advertisements for Stravolo's accounting practice to Bharti Mathur in July 2010 and September 2010.
 19. That between July 13, 2010 and July 22, 2010, Bharti Mathur, through use of her hotmail email account, opened the APS advertisement for Defendant Stravolo's accounting practice at least four times.
 20. Upon information and belief in the Summer or Fall of 2010, Defendant Stravolo began

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negotiations with Bharti Mathur regarding a merger of Stravolo's accounting practice with Mathur's accounting practice.

21. That in addition to Plaintiff's contacts directly to Mathur in 2010, Plaintiff had brokered a prior asset sale between Defendant Stravolo and Bharti Mathur in 2007.
22. On October 12, 2007, Bharti Mathur purchased the assets of AAA Westgate Tax located at Westgate Mall Drive in Spartanburg, the accounting practice owned by Defendant Steve Stravolo.
23. Neither Mathur nor Stravolo notified Plaintiff of their negotiations regarding the listed accounting practice.
24. Upon information and belief, on or about November 16, 2010, Defendants Mathur & Co. PA and Stravolo & Company, PA merged to form Upstate CPA, P.A.
25. On or about November 17, 2010, Defendant Stravolo provided Plaintiff notice of cancellation of the Sales Agreement.
26. That despite several written demands, Defendants have not paid the Performance Fee within the terms of the Sales Agreement.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS STEVE STRAVOLO, STRAVOLO & COMPANY, P.A., AND UPSTATE CPAS, P.A.
(BREACH OF CONTRACT)

27. The Plaintiff incorporates all preceding paragraphs of this Complaint as if repeated herein verbatim.
28. The Stravolo Defendants and Upstate CPAS, PA unlawfully breached the Sales Agreement with Plaintiff.
29. The Plaintiff did not cause Defendants to breach the terms of the Sales Agreement or

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interfere in any way with Defendants' ability to comply with its obligations under the Sales Agreement.

30. The Plaintiff fully complied with its obligations under the terms of the Sales Agreement.
31. As a result of the above-alleged acts, the Plaintiff has been injured and damaged in an amount to be proved during the trial of this action, including costs and attorneys fees.

WHEREFORE, based upon the foregoing, the Plaintiff prays for judgment against the Defendants as follows:

- (A) Breach of Contract: compensatory damages as may be determined by the finder of fact plus attorneys fees and the costs of this action;



Christy Ford Allen
WILLS, MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

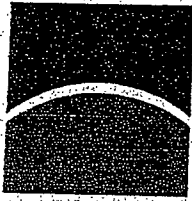
Hannah Rogers Metcalfe
Hannah Rogers Metcalfe, PA
P.O. Box 1826
Greenville, South Carolina 29602
(864) 641-7632

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
June 20, 2011

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Ex. A



ACCOUNTING PRACTICE SALES

NORTH AMERICA'S LEADER IN PRACTICE SALES

Brannon Poe, CPA
2630 Marsh Creek Drive
Charleston, SC 29414
1-888-246-0974

www.accountingpracticesales.com

Sales Consulting Agreement

This Sales Consulting Agreement ("Agreement") is entered into by and between Brannon Poe, CPA, LLC, as agent for Accounting Practice Sales, Inc. ("APS") and Steve Stravolo, CPA ("Seller") regarding the sale of the accounting firm known as: Stravolo & Company, P.A. ("the Practice") located at 189 Converse Street, Spartanburg, SC 29306.

APS is in the business of facilitating the sale of accounting practices. APS facilitates the sale of accounting practices through a combination of internet listing of available practices, screening potential buyers, and by bringing prospective buyers to sellers. Seller desires to obtain the services of APS in connection with the sale or merger of the Practice.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions in this Agreement, APS and Seller agree as follows:

1. PERFORMANCE FEE: Seller agrees to pay APS a performance fee of the greater of: (a) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/ 100 Dollars (\$10,000.00) (whichever applies, the "Performance Fee").

"Transaction Value" is defined as the total of all valuable consideration given in exchange for the assets or shares, if applicable, of the Practice. Valuable consideration is defined as broadly as possible and includes anything of value that is obtained pertaining to the assets or shares of the Firm. If the Firm is merged, the Transaction Value shall be the gross revenue of the Firm for the year preceding the transaction. Transaction Value shall include the full potential value of any contingencies.

2. WHEN PAYABLE: The Performance Fee shall be due and payable at the closing of the sale or merger of the Practice. The Performance Fee is due in full at closing based on the Transaction Value regardless of terms of the sale of the Practice. Seller authorizes buyer, or any closing or escrow agent to pay The Performance Fee directly to APS at the time of closing from Seller's proceeds. The Performance Fee shall be due and payable according to the terms and conditions of this Agreement if the Practice is sold, conveyed, merged into another practice or entity, or in any manner transferred (a) within the term of this Agreement regardless of Buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual Buyer or other transferee is any party with whom Seller or APS had negotiations or contact regarding the sale or transfer of the Practice during the term of this Agreement.

3. EXCLUSIVE RIGHT: Seller understands and agrees that APS has an exclusive right to sell/merge the Practice. During the listing period Seller will not sell or attempt to sell the practice apart from APS nor will Seller engage the services of any other agent or broker in respect of the Practice. Seller shall refer ALL contacts and/or inquiries regarding the sale of the Practice to APS during the term of this Agreement.

4. TERM OF AGREEMENT: This Agreement shall commence on the day and year set forth below and shall continue for a MINIMUM period of ninety (90) days from the date of this agreement. This

Seller Initials SSS Date 7/28/09

M. HOPE BLACKLEY

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SPARTANBURG COUNTY

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agreement shall automatically renew for consecutive thirty-day periods until Seller gives APS thirty (30) days written notice of intent to cancel.

5. DISCLOSURE: Seller represents and warrants that all information provided, or to be provided, to APS by Seller is true and complete to the best of Seller's knowledge and further represents and warrants that, to the best of Seller's knowledge, Seller has not failed to disclose any material information to APS. APS will not verify any representations made by buyer as to creditworthiness, business experience or financial condition. The decision to extend credit to a buyer is solely the decision of Seller. APS will gather from buyers what is needed to introduce a buyer to seller, but APS is not liable for any misrepresentations or omissions that may be made to Seller by a buyer.

6. GOVERNING LAW: Should any action be commenced to enforce APS' rights herein, the laws of South Carolina shall control. Suit will be brought in South Carolina.

7. RECOVERY OF COLLECTION EXPENSES: APS shall be entitled to recover the expenses connected with enforcing any of its rights hereunder, including legal fees, court costs, and/or any other reasonable collection costs that may be incurred relating to the enforcement of such rights.

8. ACKNOWLEDGEMENT: Seller acknowledges that Seller has read this Agreement and fully understands the terms and provisions of this Agreement.

9. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by Seller.

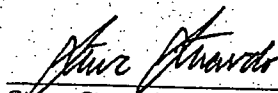
10. MISCELLANEOUS:

(a) Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(b) Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(d) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Faxed and electronic copies are binding.


Steve Stravolo, CPA

Accounting Practice Sales, Inc.

By: Brannon Poe, CPA, LLC
Its: Authorized Agent

Date signed: 7/28/09

By: _____
Brannon Poe
Its: Member

Date signed: _____

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)
Brannon Poe, CPA, LLC,)
Plaintiff,) Case No. 11-CP-42-2880
Vs.)
Steve Stravolo, Stravolo & Company,)
PA and Upstate CPAs, PA f/k/a)
Mathur & Co., PA,)
Defendants.)

ANSWER of Defendants

DEFENDANTS STEVE STRAVOLO, STRAVOLO & COMPANY, P.A. and
Upstate CPAs, PA f/k/a Mathur & Co., PA hereby answer the Complaint of the Plaintiff
filed July 5, 2011 as follows:

1. Each and every allegation of the Complaint not hereinafter admitted is deemed to be denied.
2. Paragraphs 1, 2, 4, 6, 7, 8, 9, 10, 21, 22, 23 and 25 of the Complaint are admitted.
3. Paragraphs 3, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 26, 27, 28, 29, 30 and 31 of the Complaint are denied.

FOR A SECOND DEFENSE

4. Defendants reallege and sets forth herein as if repeated verbatim its previous defense.
5. Defendants allege that, pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*, Plaintiff's Complaint shall be dismissed as it fails to set forth facts sufficient to constitute a cause of action upon which relief can be granted.

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FOR A THIRD DEFENSE

6. Defendants reallege and sets forth herein as if repeated verbatim its previous defenses.
7. Defendants allege that the Plaintiff's claims against the Defendants are barred by the doctrine of estoppel.

FOR A FOURTH DEFENSE

8. Defendants reallege and sets forth herein as if repeated verbatim its previous defenses.
9. Defendants allege that any injuries and/or damages sustained by Plaintiff any, were due to and caused by Plaintiff's own negligence, gross negligence, willfulness, wantonness and/or unlawfulness in those particulars set forth in Plaintiff's Complaint; that the aforementioned conduct on the part of the Plaintiff was greater than any alleged wrongful conduct of the Defendant, if any; and that under the comparative negligence doctrine this fact operates as a complete bar to the Plaintiff's claim; alternatively, if any wrongful conduct on the part of the Plaintiff was less than that of the Defendant, the Plaintiff's claim should be reduced and apportioned to the extent of its wrongful conduct, if any.

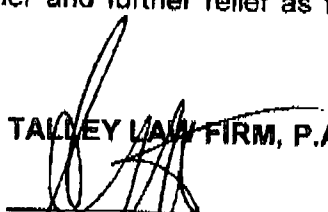
FOR A FIFTH DEFENSE

10. Defendants reallege and sets forth herein as if repeated verbatim its previous defenses.

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11. Plaintiff's claims, if any, are the result of acts and omissions of other entities over which these Defendants have no control, which bars Plaintiff's claim against these Defendants.

WHEREFORE, having answered the Complaint of the Plaintiff, Defendants pray that it be dismissed and for such other and further relief as the Court deems just and proper.


TALLEY LAW FIRM, P.A.

Scott F. Talley, Esquire
959 John B. White, Sr. Blvd.
Spartanburg, SC 29306
864-595-2966
Attorney for Defendants

August 12, 2011
Spartanburg, SC

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COMMON PLEAS COURT

Brannon Poe, CPA, LLC,
Plaintiff,

-VS-

Steve Stravolo, Stravolo &
Company, PA, and Upstate
CPAS, PA, f/k/a Mathur & Co.,
PA,

Defendants.

TRANSCRIPT OF RECORD
2011-CP-42-2880

May 14, 2012
Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

HANNAH R. METCALFE, ESQUIRE
Attorney for the Plaintiff

SCOTT F. TALLEY, ESQUIRE
Attorney for the Defendants

Linda D. Moffitt
Circuit Court Reporter

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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: This is Brannon vs. Stravolo. This is
2 plaintiff's motion for partial summary judgment.

3 MS. METCALFE: Yes, Your Honor. May it please the
4 Court.

5 My name is Hannah Rogers Metcalfe. I'm here today on
6 behalf of Brannon Poe, CPA, the plaintiff in this action,
7 and we have brought a partial summary judgment motion as to
8 liability, and that's what we're here for today.

9 Just very quickly, this is a simple breach of contract
10 case. The parties entered into a brokerage agreement. My
11 client is in the business of brokering the sale of
12 accounting practices.

13 Mr. Stravolo had an accounting practice. They entered
14 into a contract for the brokerage of that practice to be
15 sold to somebody else.

16 We have submitted a motion. I'd like to hand up to
17 the Court a memo in support of that motion with some
18 attached exhibits.

19 THE COURT: Okay.

20 MS. METCALFE: Thank you, Your Honor.

21 Attached as Exhibit A to this memo is also attached to
22 the motion, is a copy of the written contract.

23 The parties entered into the signed contract, and the
24 contract provided that Mr. Poe would be the exclusive --
25 would have the exclusive right to market and list the

1 practice, and in return for a listing the practice upon a
2 sale or merger of the accounting practice, Brannon Poe
3 would get a performance fee. It's a commission basically
4 coming out of the sale or merger of the practice.

5 There are no issues in -- no facts that are genuine
6 issues in dispute in this case. The parties agreed. They
7 entered into a written contract.

8 You will see attached to this memo are the defendant's
9 responses to the request to admit.

10 The defendant admits they entered into a written
11 contract; the defendant admits there are no other written
12 agreements; the defendant admits that the Stravolo Company,
13 PA, was listed for sale at an asking price of \$325,000; the
14 defendant admits that the company's assets were sold prior
15 to November 17th of 2010; the defendant admits it never
16 informed Poe that it had secretly sold the company or
17 merged the company with somebody else; the defendant admits
18 it then canceled its contract with Poe and then never paid
19 Poe the commission. So it's a very simple breach of
20 contract case.

21 The facts relevant to whether or not the defendant is
22 liable are not in dispute. The request -- the responses to
23 the request to admit establish that, as does the deposition
24 of my client which we submitted with the motion along with
25 the attachments to this memo.

1 The defendant did provide us with an affidavit on
2 Friday, but in that affidavit, again, the defendant does
3 not dispute the existence of the contract or that the
4 accounting practice was sold.

5 The defendant simply states that he was unhappy with
6 Mr. Poe's performance. But unhappiness with a broker's
7 performance doesn't excuse the defendant's obligation to
8 pay the performance fee under the terms of the contract.

9 I don't know anything about accounting businesses, but
10 I do know in the real estate world -- and I think it's a
11 very similar situation here. This is much like a situation
12 where a seller of a house hires a real estate broker to
13 list and market their house.

14 What the defendant did here was to go around and get a
15 secret deal with somebody else and then didn't want to pay
16 the broker.

17 Again, there are no facts in dispute with regard to
18 liability, so therefore the plaintiff moves for summary
19 judgment as to liability at this point.

20 THE COURT: Mr. Talley.

21 MR. TALLEY: Thank you, Your Honor. May it please the
22 Court, Your Honor.

23 THE COURT: I don't think I have that affidavit --

24 MR. TALLEY: I was going to ask --

25 THE COURT: -- that Ms. Metcalfe is referring to.

1 MR. TALLEY: It was filed on May the 10th.

2 Your Honor, what this case really comes down to is
3 what performance means in terms of the contract that the
4 parties entered.

5 By way of brief background and important facts in the
6 case is that back in 2007 -- spelled out in my client's
7 affidavit -- he listed another business he had with
8 Mr. Poe. Pursuant to that agreement Mr. Poe performed and
9 Mr. Poe was paid.

10 If you look at the sales consulting agreement which is
11 attached to the deposition that was previously submitted
12 with the motion that's also attached to the memorandum that
13 counsel just handed up it spells out the duties of the
14 plaintiff in regards to this transaction, and it says that
15 APS accounting practice sales, which is the listing
16 arrangement under which Mr. Poe operates, facilitates the
17 sale of an accounting practice through a combination of an
18 internet listing and available practices screening
19 potential buyers and by bringing perspective buyers to the
20 seller.

21 What is disputed in the case -- and it's referenced in
22 Mr. Poe's deposition -- is exactly what he did pursuant to
23 the agreement. And I'd call the Court's attention to the
24 deposition which was attached to the motion filed
25 March 9th, 2012, where we went through in great detail what

1 Mr. Poe does pursuant to these agreements.

2 He says on page ten, line ten, of the deposition that
3 they get inquiries and then we get the buyer to sign a
4 confidentiality agreement before we send a profile of a
5 practice.

6 In this case he never did that. In fact, if you go
7 forward to page 16, excuse me, page 13, line -- starting
8 with line 19, I asked him, "When you see somebody that's
9 visiting the same profile or opens or accesses the same
10 profile multiple times walk me through what your office
11 does at that point." His answer on line 23, page 13, is,
12 "We don't do anything. We wait for the buyer to respond to
13 us because we want that motivation."

14 That's the key in this case, because, as my client's
15 affidavit spells out, the merger of his practice with
16 another firm is somebody that was the same person that
17 bought this practice in 2007.

18 Mr. Poe admits in his deposition that this person
19 remained active in his database from 2007 through the term
20 of this listing agreement, yet he didn't do anything to
21 bring this buyer to the seller.

22 My client's affidavit goes on to say that nobody from
23 Mr. Poe's office made him aware that this buyer was even
24 out there and interested in purchasing another practice at
25 the time.

1 It was only through a separate business transaction
2 that the defendants came to the terms that they did with no
3 involvement by the plaintiff whatsoever.

4 We think that when you look at the term performance
5 fee and how that's defined in the contract which was
6 drafted by the plaintiff there are two things that the
7 Court should be aware of.

8 One is that throughout the document the way the term
9 is used and how the person's going to be paid we think
10 creates a latent ambiguity which would by itself according
11 to the case law in this state send this matter to a jury
12 for a determination as to what the terms of the agreement
13 actually were between the parties.

14 The second thing that's important is that the course
15 of dealing that was established by the parties with their
16 relationship in 2007 coming forward we think is something
17 that would potentially alter the terms of the agreement
18 and, again, goes back to the ambiguous language that the
19 plaintiff uses in his contract.

20 By his own admission in the deposition there is some
21 question as to whether or not the plaintiff performed as
22 obligated pursuant to the agreement. He's now coming in
23 after the fact and asking for a fee that we don't believe
24 he's entitled to.

25 The second thing that's referenced in the motion as

1 well as the memorandum that counsel has submitted is that
2 the defendant somehow had knowledge of Mr. Poe's
3 involvement and that there was some secret deal that was
4 going on.

5 I call your attention to not only the deposition, page
6 14, beginning at line 13, when I asked the plaintiff if he
7 had any information or evidence that would establish his
8 allegation that there was some secret negotiation meant to
9 keep out of the deal going on, and he wasn't aware of
10 anything.

11 In fact, my client states in his affidavit he didn't
12 even know that that party had contacted Mr. Poe's firm
13 until after the deal was done, and I believe that was
14 sometime late in 2010.

15 So there's no -- there's no knowledge on behalf -- the
16 part of the defendants or some secret agreement that was
17 meant to alter the terms or to get around the terms of the
18 agreement with the plaintiff.

19 So we think based on those two issues alone what the
20 term performance means, the ambiguous language that's used
21 in the contract, as well as the fact that the defendant
22 admits that he doesn't have any evidence as to this secret
23 deal they alleged, is enough that the Court should allow
24 the matter to go forward to a jury. Thank you.

25 MS. METCALFE: Very briefly, Your Honor, if I may.

1 Quickly, I'd like to address those two points. First
2 with regard to the performance means, there's no question
3 that Mr. Poe performed under the contract.

4 Attached as Exhibit B to the memorandum is the
5 internet listing. There's a service much like real estate
6 listings on line, and this is a printout that was produced
7 and is used in part of Mr. Poe's deposition. The defendant
8 asked Mr. Poe about this showing all of the people that
9 made inquiries with regard to a listing on Mr. Poe's
10 brokerage website.

11 So there's no question Mr. Poe marketed, listed the
12 prop -- the accounting practice and screened potential
13 buyers. Whether or not a buyer was qualified to be
14 referred forward is -- is not relevant to whether or not
15 Mr. Poe performed. He did perform as required.

16 The second thing is with regard to the secret deal.
17 If you look at the terms of the written agreement, the
18 contract from the parties, paragraph three says exclusive
19 right.

20 It says the seller understands -- and seller being
21 Mr. Stravolo -- "Understands and agrees that Mr. Poe has
22 exclusive right to sell or merge the practice. During the
23 listing period seller will not sell or attempt to sell the
24 practice apart from Poe, nor will seller engage the service
25 of any other agent or broker in respect to the practice.

1 Seller, Mr. Poe, shall refer all contacts and/or inquiries
2 regarding the sale of the practice to Poe during the term
3 of this agreement."

4 So that's -- when we talk about the secret agreement,
5 the secret dealings between Mr. Stravolo and the buyer,
6 that's what we're referring to.

7 Mr. Poe had the exclusive right to list and market the
8 practice and broker the sale. If there was a buyer that
9 approached Mr. Stravolo, Mr. Stravolo was obligated under
10 the agreement to refer that buyer to Mr. Poe to handle the
11 negotiations and the transaction.

12 Mr. Stravolo did not do that and instead entered into
13 an agreement to merge the business without informing
14 Mr. Poe and then canceled the brokerage agreement so that
15 he could avoid paying Mr. Poe his commission.

16 It's a very -- again, it's a very simple
17 straightforward breach of contract case. The facts that
18 are relevant to liability are not in dispute, as I said
19 before, and therefore we feel that this Court should grant
20 Mr. Poe's motion for summary judgment as to liability.

21 THE COURT: All right. I will review the memorandum
22 and the affidavits submitted and issue an order.

23 END OF REQUESTED TRANSCRIPT OF RECORD
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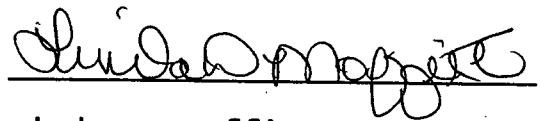
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 14th day of May 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 31, 2014



Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS COURT

4 Brannon Poe, CPA, LLC,
5 Plaintiff,

6 -vs-

TRANSCRIPT OF RECORD
2011-CP-42-2880

7 Steve Stravolo, Stravolo &
8 Company, PA, and Upstate
CPAS, PA, f/k/a Mathur & Co.,
9 PA,

Defendants.

December 6, 2012
Spartanburg, South Carolina

11
12
13 B E F O R E:

14 HONORABLE J. DERHAM COLE, JUDGE
15
16

17 A P P E A R A N C E S:

18 HANNAH R. METCALFE, ESQUIRE
19 Attorney for the Plaintiff

20 SCOTT F. TALLEY, ESQUIRE
21 Attorney for the Defendants
22
23

24 Linda D. Moffitt
Circuit Court Reporter
25

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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: This is defendant's motion for -- to
2 reconsider.

3 MR. TALLEY: Yes, sir, Your Honor. May I approach? I
4 have given counsel a copy. This is just a short memorandum
5 I prepared basically with points of reference upon which
6 this motion is based.

7 Your Honor heard a motion for partial summary judgment
8 as to liability in this action filed by the plaintiff
9 earlier this year.

10 In its filing, in its initial pleadings filed with the
11 Court and in its motion, the plaintiff basically says it's
12 a breach of contract case, which we agree with. The
13 contract should be in the Court's file.

14 The only defendant that entered into the contract with
15 the plaintiff was the individual defendant Steve Stravolo.

16 At the hearing on the plaintiff's motion we submitted
17 an affidavit from him where he obviously admits entering
18 into entering the contract, the underlying action, as to
19 certain terms within the contract. And that's what our
20 defense was based upon.

21 In its order the Court states that the plaintiff's
22 motion is granted as to all the defendants. Your Honor, we
23 think that as to the defendant Stravolo & Company, PA, and
24 Upstate CPA's PA, formerly known as Mathur & Co., even by
25 the evidence presented by the plaintiff the judgment should

1 not apply to those two defendants.

2 Like I said, the contract is in the Court's file that
3 Steve Stravolo individually signed with the plaintiff, and
4 that's what -- that's what this action is about.

5 Now, plaintiff states that we're raising this issue
6 for the first time in the filing of this motion post-entry
7 of that judgment.

8 That's just simply not true, Your Honor. If you look
9 at the pleadings that are filed in the case, which my
10 memorandum refers to, specifically the allegations the
11 plaintiff has made in paragraphs three and 16 of the
12 complaint seeking to leave the conduct of all of these
13 defendants together, but that was denied by the defendants
14 in their filing, as was paragraph 28, which alleges a
15 breach by Upstate CPAs.

16 Attached to its motion plaintiff submitted the
17 deposition of Mr. Brannon Poe who is the member of the
18 plaintiff LLC. And I have given the Court reference in the
19 memorandum to certain sections of that deposition,
20 specifically on page 16, line seven through 16, and page
21 18, lines eight through 12, where he in his own deposition
22 states that he's not aware of any conduct by the
23 defendants, Upstate CPAs and Mathur & Co., PA.

24 So the motion before the Court is asking Your Honor to
25 reconsider application of the judgment as to all the

1 defendants not only based on the pleadings that were filed
2 in the case but also the information that the plaintiff
3 relied upon in asking the Court to grant its motion earlier
4 this year.

5 THE COURT: All right.

6 MS. METCALFE: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. METCALFE: Hannah Rogers Metcalfe here today for
9 the plaintiff, Brannon Poe.

10 As we stated in our memo that was filed many months
11 ago in response to this motion, none of these issues were
12 raised before. This issue was not raised before in the
13 argument before this Court or in anything that was filed.

14 Your Honor may recall when we were here back in May
15 this case had been going on for a long time and none of
16 this was raised. And I got a copy of this memo when I
17 walked in this morning. This has been pending for a long
18 time. So you'll have to forgive me if I'm a little bit
19 trying to find things now because this is the first time
20 I've heard this argument.

21 It's a simple breach of contract case. And we served
22 discovery on the defendants. The defendants answered --
23 all of the defendants answered the complaint. All of the
24 defendants responded to the request to admit. And in the
25 request to admit they admit that the assets of

1 Mr. Stravolo's company were acquired by the other
2 defendant, Mr. Mathur.

3 The contract is between Mr. Poe and Steve Stravolo, is
4 for the sale of his company Stravolo and Company, PA. Both
5 of those defendants are parties to the contract.

6 And then the defendant admits in his request to -- in
7 response to his request to admit, which we provided to the
8 Court in support of our motion for partial summary judgment
9 as to liability under the contract, that they admit that
10 Mathur & Co. acquired the assets. That's response -- that
11 was response to request to admit No. 12. All of this was
12 before the Court when Your Honor heard this original motion
13 back in May.

14 Not -- and this new objection was never raised when we
15 were here in May. It wasn't raised in response to our
16 motion back -- that we filed back in March of 2012 in our
17 motion for summary judgment.

18 Both the Mathur Company and the Stravolo Company as
19 defendants had adequate time to file a memo or provide the
20 supporting affidavit or file something in response.

21 They didn't file anything, and this is a brand new
22 argument. Under Rule 59(e) I don't believe they can move
23 to alter or amend the judgment when they had adequate
24 opportunity to file something and to respond. So for that
25 reason I think their motion to alter or amend should be

1 denied.

2 As a factual matter it's based on the discovery and
3 the information that we presented to Your Honor. They are,
4 all the defendants are, parties to the contract. Stravolo
5 and his company -- and his company signed the contract.
6 And we provided that as Exhibit A to our motion.

7 And the Mathur Co., they admit in response to their
8 request to admit the Mathur Co. acquired the assets. So
9 they are now the same company. They're all one in the
10 same, and that's why we move for partial summary judgment
11 as to all defendants. Our motion was for all defendants.
12 That was the information that we gave Your Honor and that's
13 what Your Honor heard.

14 So for those reasons I think that the plaintiff's Rule
15 59(e) motion to alter or amend the judgment should be
16 denied.

17 THE COURT: Ms. Metcalfe, do you need any time to file
18 a responsive memorandum?

19 MS. METCALFE: I'm sorry. Say that again, Your Honor.

20 THE COURT: Do you need any time to file a response to
21 this memorandum? You indicated you just received it as I
22 did. Do you want to respond to it, or have you responded
23 to it?

24 MS. METCALFE: I believe my argument in court today is
25 probably sufficient.

1 THE COURT: Okay.

2 MS. METCALFE: It's -- my argument, again, is that
3 they had adequate time to address all of these issues.

4 We filed our motion in March. It was heard in May.
5 Your Honor may remember I was nine months pregnant when we
6 heard this in May. Since that time I now have a
7 six-month-old baby. And we've had lots of time for them to
8 raise these issues, and they were never raised. And I
9 think it's too late now under the rules.

10 THE COURT: All right. Anything further?

11 MR. TALLEY: Your Honor, it's in the file, the
12 affidavit that we previously filed of Mr. Stravolo speaking
13 to the terms of the contract. The contract's in the file.
14 The companies that she alleges are not parties to it. So I
15 just ask Your Honor to review that in light of the issues.

16 THE COURT: I will. I'll review it and issue an
17 order.

18 END OF REQUESTED TRANSCRIPT OF RECORD
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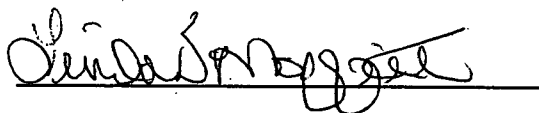
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 6th day of December 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 31, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Brannon Poe, CPA, LLC,)
)
Plaintiff,) TRANSCRIPT OF RECORD
) 2011-CP-42-2880
-vs-)
)
Steve Stravolo, Stravolo)
& Company, P.A. and)
Upstate CPAS, P.A. f/k/a)
Mathur & Co., P.A.)
)
Defendants.) September 11, 2013
) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

A P P E A R A N C E S:

CHRISTY FORD ALLEN, ESQUIRE
HANNAH ROGERS METCALFE, ESQUIRE
Attorneys for the Plaintiff

SCOTT F. TALLEY, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

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24
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INDEX

WITNESSES

PAGE

BRANNON POE

Direct examination by Ms. Allen

6

Cross-examination by Mr. Talley

15

Redirect examination by Ms. Allen

24

STEVEN JOSEPH STRAVOLO

Direct examination by Mr. Talley

31

Cross-examination by Ms. Allen

36

Certificate of reporter

53

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2
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6
7
8
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12
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Sales consulting agreement	6	7
P-2	Email dated November 23, 2010	9	9
P-3	Profit and loss statement	10	N/A
P-4	Attorney's fee affidavits	13	13
P-5	Representation Agreements	14	15
P-6	Asset purchase agreement	24	N/A
P-7	Plaintiff's request to admit	26	26
P-8	Defendants' answers to request for admission	26	26
P-9	Merger announcement email	41	42
P-10	Upstate CPA website printout	42	42
D-1	Mathur's payment schedule	36	36
C-1	Letter with proposed order	48	

MOTIONS AND MATTERS

1 THE COURT: Got the first case is the, uh, damages
2 hearing regards to, uh, Poe vs. Stravola. Uh, ---

3 MS. ALLEN: Yes, sir.

4 THE COURT: Alright.

5 MS. ALLEN: Uh, Mr. Talley just stepped out to get his
6 client so ---

7 THE COURT: Okay.

8 MS. ALLEN: --- otherwise I think we're ready.

9 (Pause.)

10 (Whereupon, Mr. Talley returned to the courtroom.)

11 MR. TALLEY: Sorry, Your Honor.

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: My understanding and, uh, just taking a quick
14 eyeball review of the file is that summary judgment was
15 granted by Judge Cole, is that correct?

16 MS. ALLEN: Yes, Your Honor.

17 THE COURT: That was as to all the defendants except this
18 one?

19 MS. ALLEN: No, Your Honor, it was as to, uh, liability
20 on the contract ---

21 THE COURT: Okay.

22 MS. ALLEN: --- as to all of the defendants and therefore
23 this is a non-jury trial basically, uh, in order to set the
24 amount of damages.

25 THE COURT: Alright, and that the damages hearing that

MOTIONS AND MATTERS

1 we're going to conduct is not as a result of a default so, uh,
2 the defendant is not limited in his ability to present
3 evidence and cross-examine?

4 MS. ALLEN: That's correct.

5 THE COURT: Okay. Is that ---

6 MS. ALLEN: Yes.

7 THE COURT: --- your agreement?

8 MR. TALLEY: That's my understanding, yes, sir, ---

9 THE COURT: Alright, ---

10 MR. TALLEY: --- and ---

11 THE COURT: --- may call your first witness.

12 MS. ALLEN: Yes. Uh, Your Honor, just for the record,
13 uh, my name is Christy Allen, I'm, uh, here with my co-counsel
14 Hannah Metcalfe on behalf of the plaintiff Brannon Poe, CPA,
15 LLC and I call, uh, Brannon Poe.

16 THE COURT: Sir, just come right up here and place your
17 left hand on the Bible, raise your right hand, let me swear
18 you in.

19 THE PLAINTIFF: Okay.

20 BRANNON POE, having been
21 first duly sworn, testified as follows:

22 THE CLERK: Just have a seat in that chair, sir, and, uh,
23 pull the chair if you can up to that microphone.

24 THE PLAINTIFF: Okay.

25 THE COURT: And thank you.

1 DIRECT EXAMINATION BY MS. ALLEN:

2 Q. Uh, Mr. Poe, if you could please, uh, just, uh, explain
3 to the Court, uh, what it is you do as it relates to your
4 business which is the plaintiff in this case.

5 A. Yes, uh, I run a company called Poe Group Advisors and we
6 are affiliated with a company called Accounting Practice Sales
7 and we help to facilitate the sale of accounting practices
8 where we are business brokers but we don't do anything but CPA
9 practices.

10 Q. Okay, and, uh, did you have an agreement related to, uh,
11 the defendant in this case Stravolo & Company, P.A., Mr. Steve
12 Stravolo?

13 A. Yes.

14 Q. Let me show you what I'd like to have marked as Exhibit
15 No., which I've got marked as Exhibit No. 1.

16 (Sales consulting agreement marked Plaintiff's Exhibit
17 No. 1 for identification.)

18 MS. ALLEN: Thank you.

19 (Whereupon, a discussion was held off the record.)

20 BY MS. ALLEN:

21 Q. Uh, are you, are you familiar with what I've shown ya as
22 which is marked as Exhibit No. 1?

23 A. Yes.

24 Q. And what is it?

25 A. This is our sales consulting agreement. This is the

1 contract between, uh, me and Steve Stravolo.

2 Q. Okay, and I I move to admit Exhibit No. 1.

3 MR. TALLEY: No objection.

4 THE COURT: Without objection. Now is 1 the whole
5 package or just the first tab?

6 MS. ALLEN: Just the first tab.

7 THE COURT: Okay, without objection.

8 (Plaintiff's Exhibit No. 1, sales consulting agreement,
9 admitted into evidence.)

10 BY MS. ALLEN:

11 Q. Mr. Poe, if you could, uh, point out, uh, the fee
12 provisions in the contract.

13 A. Yeah, the paragraph number 1 is the performance fee,
14 "Seller agrees to pay APS a performance fee of the greater of
15 10 percent of a transaction value or \$10,000, uh, the
16 transaction value is defined as the total of all valuable
17 consideration given in exchange for the assets or shares if
18 applicable of the practice. Uh, valuable consideration is
19 defined as broadly as possible, that includes anything of
20 value as obtained pertains to assets or shares of the firm if
21 the firm is merged, the transaction value shall be gross
22 revenue of the firm for the year preceding the tran -- the
23 transaction."

24 Q. Okay, and when is the performance fee payable in
25 accordance with this contract?

1 A. Uh, soon as the sale has closed.

2 Q. Okay.

3 A. One thing too it it the, uh, transaction value includes
4 the full potential value of any contingencies.

5 Q. Okay, what does that mean?

6 A. Uh, well I think in the agreement there was a contingency
7 arrangement so that if the clients retained in the business
8 after the sale were not full -- if they weren't fully retained
9 and there was a future adjustment downward in the purchase
10 price, uh, that does not affect my fee.

11 Q. Okay, and have you been paid a performance fee and as it
12 relates to this contract?

13 A. No.

14 Q. Uh, what happened to, uh, or did Mr. Stravolo Company,
15 CPA did that company, uh, get sold?

16 A. Uh, yes.

17 Q. Okay, and, uh, how did you -- when did you learn of that
18 sale?

19 A. Uh, I don't remember the exact date, I think it was in
20 the fall of 2010. We were considering, uh, suggesting a
21 reduction in the asking price of the sale and I tried to
22 contact, uh, Steve and, uh, I had a hard time contacting him
23 and when I finally heard from him he told me that he had
24 already merged the practice with, uh, with someone.

25 Q. Okay. Let me show you what we'll mark as Exhibit No. 2.

1 (Email dated November 23, 2010 marked Plaintiff's Exhibit
2 No. 2 for identification.)

3 Do you recognize this document?

4 A. Yes.

5 Q. What is that?

6 A. This, uh, is the printout of the email correspondence
7 that he and I had about when I asked him about the sale, uh, I
8 asked him who he ended up merging with and he told me that he,
9 uh, well the email says, We sold Westgate Tax, uh, the person
10 who we sold Westgate Tax to which by the way I helped with
11 that transaction as well, uh, he said that they formed Mathur
12 & Company and we merged to form Upstate CPAS.

13 Q. Okay. I would move to admit Exhibit Number 2.

14 MR. TALLEY: No objection.

15 THE COURT: Without objection Plaintiff's No. 2.

16 (Plaintiff's Exhibit No. 2, email dated November 23,
17 2010, admitted into evidence.)

18 BY MS. ALLEN:

19 Q. And what was the date of this email?

20 A. Uh, the date here is November 23rd 2010.

21 Q. Okay. In your listing of Mr. Stravolo's practice, were
22 you provided financial information from him?

23 A. Yes.

24 Q. Okay. Uh, what kinda financial information did he
25 provide you as relates to that listing?

1 A. Uh, well our standard practice is to get generally three
2 years of profit and loss statements from the business so we
3 get two complete years and usually a year-to-date so I don't
4 remember exactly.

5 Q. Okay. Let me show you what what's been marked as Exhibit
6 Number 3.

7 (Profit and loss statement marked Plaintiff's Exhibit
8 No. 3 for identification.)

9 Can you identify that document?

10 A. Yeah, this is a, uh, income statement, profit loss
11 statement for several years for Stravo & Company, uh,
12 beginning in 2007 and through the year ending, well the six
13 month ending June 2010.

14 Q. Okay, and is that part of your business records of your
15 company?

16 A. Yes.

17 Q. Okay, and, uh, think the email that was marked Exhibit
18 No. 2 was dated November 2010, is that correct, ---

19 A. That's correct.

20 Q. --- far as the date of the merger?

21 A. Correct.

22 Q. Okay. Uh, what is the total shown on Exhibit No. 3 for
23 gross revenues for the year preceding 2010 which is 20 --
24 2009?

25 A. Uh, \$298,234.

1 Q. Okay. Uh, using the contract and these financials, are
2 you able to calculate the transaction with a fee that you're
3 entitled to under the terms of the contract?

4 A. Yes, I would, uh, since it, you know, it was a merger, it
5 was a little bit muddy as to how the transaction took place,
6 uh, I would have assumed that we use the merger language so
7 the 10 percent a that would be \$29,823. ---

8 Q. Yeah, ---

9 A. --- .40.

10 Q. --- and you've not been paid that amount.

11 A. No.

12 Q. Okay. Does your agreement provide for the colle -- for
13 collection of costs for attorney's fees your contract?

14 A. Yes.

15 Q. Okay, can ---

16 A. Uh, that's ---

17 Q. --- locate that provision?

18 A. Sure, it's on the second page of the sales consulting
19 agreement paragraph 7, "Recovery of collection expense." "APS
20 shall be entitled to recover the expenses connected with
21 enforcing any of its rights hereunder including legal fees,
22 court cost and any other reasonable collection cost that may
23 be incurred relating to the enforcement of such rights."

24 Q. Okay, and what have you done to try to collect the fees
25 under this contract?

1 A. Well I started to try to work it out directly with Steve,
2 I tried to get him to talk to me about a settlement, uh, he
3 offered me, I can't remember ---

4 Q. Please don't, you don't need to tell us what ---

5 A. Okay.

6 Q. --- the discussions were but, uh, ---

7 A. Uh, ---

8 Q. --- what else did you do to try to collect under the
9 contract?

10 A. Then I turned the case over to you.

11 Q. Okay.

12 MS. ALLEN: Uh, Judge, I'd like to submit the, uh,
13 attorney's fee affidavits that we've filed and served, uh, in
14 addition, and I guess normally attorney, sometimes attorney's
15 fees are done via hearing post-judgment but as this is a
16 contract case, uh, what I'd like to do is just submit to the
17 court the attorney's fee affidavits and the representation
18 contracts 'cause in order to make it part a the damage trial
19 record, uh, is that -- ta -- do you have any objection to
20 that?

21 MR. TALLEY: As to them being admitted into the
22 record I don't, uh, as to the content thereof I reserve that
23 but it's -- I do -- I was served with two affidavits, one from
24 each of them so I'm not gonna object to their being admitted
25 but I'll get to their consideration.

1 THE COURT: Okay.

2 MS. ALLEN: Okay.

3 THE COURT: Alright, then ---

4 MS. ALLEN: Uh, ---

5 THE COURT: --- we'll admit them, uh, ---

6 MS. ALLEN: --- I've got copies here I can have the court
7 reporter mark ---

8 THE COURT: Okay.

9 MS. ALLEN: --- and record.

10 THE COURT: Uh, and h -- Mr. Talley does have copies
11 already?

12 MS. ALLEN: Yes.

13 MR. TALLEY: I do.

14 MS. ALLEN: Yes.

15 MR. TALLEY: Yes, I do.

16 MS. ALLEN: Yes. Uh, let me -- think I've got there's
17 three affidavits, one is myself, Ms. Metcalfe and then an
18 affidavit of Carl Muller as to the reasonableness of the
19 hourly rate and the locale but I'll, um, just have 'em marked
20 as, uh, Plaintiff's Exhibit No. 4 altogether if that's okay,
21 already been filed thank you.

22 THE COURT: And they're admitted without objection.

23 MS. ALLEN: Thank you.

24 (Attorney's fee affidavits marked Plaintiff's Exhibit
25 No. 4 for identification and admitted into evidence.)

1 BY MS. ALLEN:

2 Q. Mr. Poe, just briefly, uh, have you reviewed those
3 attorney fee affidavits?

4 A. Yes.

5 Q. And do the entries and the contents appear to be related
6 to your case?

7 A. Yes.

8 Q. Do you have any objections or concerns about the contents
9 of therein?

10 A. I do not.

11 Q. Okay. Thank you. And I'd also in light of a recent
12 ethics advisory opinion on the submission of attorney's fees
13 and representation agreements I'd like to submit into the
14 evidence the two representation agreements as it relates to
15 myself and Ms. Metcalfe which I'd like to mark as Exhibit
16 Number 5. Mr. Talley, do you have any objection to that?

17 MR. TALLEY: None, I've seen that.

18 (Representation agreements marked Plaintiff's Exhibit No.
19 5 for identification.)

20 BY MS. ALLEN:

21 Q. And, Mr. Poe, uh, have you reviewed these agreements?

22 A. Yes.

23 Q. And do they appear to be what you understand to be our
24 arrangements?

25 A. Yes.

1 MS. ALLEN: That's all I have. I have no further
2 questions. Thank you.

3 THE COURT: Alright, just so the record's clear
4 Plaintiff's 5 is without objection as well, is that correct?

5 MR. TALLEY: Plaintiff's 5 is without objection, ---

6 THE COURT: Okay.

7 MR. TALLEY: --- yes.

8 THE COURT: Alright. Sir, if you would, please answer
9 any questions that Mr. Talley might have of you.

10 THE PLAINTIFF: Okay.

11 (Plaintiff's Exhibit No. 5, representation agreements,
12 admitted into evidence.)

13 CROSS-EXAMINATION BY MR. TALLEY:

14 Q. Mr. Poe, --

15 (Whereupon, a discussion was held off the record.)

16 Do you have the exhibits? I'm sorry. Uh, Exhibit 1 who
17 was that contract between?

18 A. Uh, Brannon Poe, CPA, LLC as agent for Accounting
19 Practice Sales.

20 Q. And who?

21 A. As agent for Accounting Practice Sales.

22 Q. Right, but who was the contract between? Who were the
23 parties that ---

24 A. Uh, Steve Stravolo.

25 Q. Okay. Is Upstate CPAS mentioned at any point in this

1 contract?

2 MS. ALLEN: Your Honor, I object on the basis that this
3 issue has already been determined by Judge Cole in a specific
4 order denying the defendants' motion to alter, amend the
5 judgment on liability. Judge Cole's order held that, uh,
6 basically the defendants move to alter or amend the partial
7 summary judgment on the basis that, uh, it, the judgment
8 shouldn't be against all the named defendants and Judge Cole
9 held a motion hearing, it was brief, he issued an order dated
10 January 4th 2013 which says that it's undisputed that the
11 contract language contains that the agreement says it shall
12 enure to the benefit and shall be binding on all respective
13 heirs, personal representatives, successors and assigns of the
14 parties and that, uh, the defendants had the opportunity to
15 raise this issue prior to the summary judgment hearing and
16 they, and they tried to assert it at the first time after
17 judgment and the motion to alter or amend was denied so I
18 object on the basis I think this is outside the scope of the
19 damages hearing.

20 THE COURT: Alright. I've not, I understand there is the
21 prior order, haven't looked at the prior order so, uh, my
22 initial impression is that anything that's in the prior order
23 is in the prior order's been decided, uh, I don't know why
24 you're going into this but I'll let you go into this 'cause
25 he's on cross-examination so he has a lot of leeway

1 cross-examination.

2 MS. ALLEN: Yes, Your Honor, except for ---

3 THE COURT: I've ruled.

4 MS. ALLEN: Oh, thank you.

5 BY MR. TALLEY:

6 Q. Mr. Poe, is Upstate CPAS mentioned anywhere in this sales
7 consulting agreement?

8 A. No.

9 Q. Alright. And who do you understand to be, uh, the
10 principals of Upstate CPAS as you sit here today?

11 A. I understand that Steve Stravolo merged with Bharti
12 Mathur ---

13 Q. Okay, and in yo ---

14 A. --- to form Upstate, just what he's told me.

15 Q. Okay. And in your earlier testimony you reference being
16 involved with Ms. Mathur purchasing a prior practice of
17 Mr. Stravolo, is that correct?

18 A. That's correct.

19 Q. Alright, tell the Court what you did in that instance.

20 A. Well we, uh, that's a long time ago that transaction, uh,
21 I -- my recollection is that they were from outside of
22 Spartanburg, they were looking for a practice for their son
23 and they had actually initially looked at a different practice
24 before they looked at the tax piece of Mr. Stravolo's practice
25 so, uh, it was, what happens in a lot of our transactions is a

1 buyer will come into our network and they'll start out lookin'
2 at one practice and it's not a fit for them so they'll look at
3 something else and that's my recollection of how they came
4 about.

5 Q. Okay, and so in that initial, uh, transaction you
6 brokered the deal, did you not, between Mr. and Ms. Mathur and
7 Mr. Stravolo?

8 A. Correct.

9 Q. Okay. You remember when that was?

10 A. I would s -- I I really don't know exactly, I would say
11 sometime 2005, 2006, somewhere in there, I don't know.

12 Q. And after you entered into Exhibit 1, uh, the sales
13 consulting agreement, uh, did you receive contact regarding
14 this listing from Ms. Mathur?

15 A. I did -- we did not receive contact from her on this
16 matter that I recollect.

17 Q. Are you sure about that?

18 A. I'm not sure about that.

19 Q. In fact, didn't she respond to a blast according to your
20 deposition testimony?

21 A. Well I know she opened the blast, we don't know that she
22 responded. We know ---

23 Q. And ---

24 A. --- that she open ---

25 Q. --- you didn't get four emails from her Hotmail

1 address?

2 A. We got four, we -- what the software shows is it shows
3 the opens so we can see an email on when it was clicked open
4 and we showed four opens.

5 Q. Okay, and what was the ---

6 A. We do, just just in in context when we do email blasts we
7 literally sends out hundreds of blasts, that's part of why
8 we're able to successfully facilitate transactions is because
9 we do a large amount of marketing and email marketing is part
10 a that marketing.

11 Q. Right. In response to her viewing your email blast, did
12 APS do anything ---

13 A. No.

14 Q. --- this transaction?

15 A. No, we did not.

16 Q. You didn't do anything.

17 A. No, we did not.

18 Q. Didn't pick up the phone and call her?

19 A. No.

20 Q. Didn't send her a direct email?

21 A. Not to my knowledge.

22 Q. No further inquiry at all to a previous buyer of this
23 same ---

24 A. Not to my ---

25 Q. --- area.

1 A. --- knowledge but she didn't express any interest
2 either.

3 Q. She didn't?

4 A. She did not.

5 Q. She ended up buying it did she not?

6 A. She did.

7 Q. Okay. What did you do to consummate that sale?

8 A. Nothing.

9 MS. ALLEN: Your Honor, I'm object on the same grounds,
10 this has nothing to do with damages.

11 THE COURT: Okay.

12 MR. TALLEY: Your Honor, can I respond to that?

13 THE COURT: If you'd like, I mean, ---

14 MR. TALLEY: Yes.

15 THE COURT: --- I was gonna overrule her objection ---

16 MR. TALLEY: Okay.

17 THE COURT: --- on cross-examination, that I I give
18 people cross-examination great leeway, uh, you know.

19 MR. TALLEY: Alright, well no need to . . .

20 BY MR. TALLEY:

21 Q. Uh, what does -- Exhibit 1 is that a document that you
22 prepared?

23 A. Yes.

24 Q. Okay. Is this a, uh, what I would refer to as a standard
25 form contract that you use in your business when you list a

1 practice?

2 A. Yes.

3 Q. Okay. Uh, what what do you believe the the term in
4 paragraph 1 "performance fee" means?

5 A. Commission.

6 Q. Okay. For a sale that you consummated?

7 A. Yes, ---

8 Q. Will that ---

9 A. --- or that we -- well actually if you look at the
10 "exclusive right" paragraph in the contract, uh, seller
11 understands, agrees that APS has an exclusive right to sell or
12 merge the practice and during the listing period seller will
13 not sell or attempt to sell the practice apart from APS nor
14 will seller engage services with any other agent or broker.
15 Seller shall, and that's in bold print, refer all contacts or
16 inquiries regarding the sale of the practice to APS during the
17 term of this agreement. If we didn't have that clause, uh,
18 we'd probly have more cases like this because, you know, if
19 someone directly wants to buy a practice and the seller is not
20 gonna tell us about that then we're in a extreme disadvantage
21 in in complete the transaction.

22 Q. Alright, go go on for me and the Court please into, uh,
23 paragraph 4, "The term of the agreement," what is the term of
24 this sales consulting agreement?

25 A. It's a a 90-day term with a automatic 30-day renewal.

1 Q. Okay, and would ---

2 A. We're ---

3 Q. --- you, would you agree with me that the date this is
4 signed is July 28th 2009?

5 A. That's correct.

6 Q. Alright, so post-October 28, 2009 it's basically a 30-day
7 agreement, is it not?

8 A. That's correct.

9 Q. Alright, and Exhibit 2, uh, contains correspondence, uh,
10 several days after it was initiated, uh, between you and
11 Mr. Stravolo regarding his his sale of this practice,
12 correct?

13 A. Correct.

14 Q. Do you know when the sale of the practice was actually
15 consummated?

16 A. I I do not know exactly.

17 Q. You do not?

18 A. Well I I don't know, I think it's in the record with the
19 agreement to purchase.

20 Q. Okay. And do you know what the, uh, purchase price or
21 purchase terms of Mr. Stravolo's agreement with Ms. Mathur,
22 uh, was?

23 A. Yes, I do.

24 Q. What is that?

25 A. Uh, it was \$290,000 total, is that not correct?

1 Q. Well, I'm askin' you. You're in here askin' the Court
2 for damages based on a percentage.

3 A. Uh, it's in the contract. Uh, I have a copy of a
4 contract, I'd like to see that.

5 Q. Okay. What what are your total expenses in marketing
6 this practice?

7 A. Well it's impossible to dictate or or segregate what my
8 marketing expenses are for a single practice because we do so
9 much marketing it, you can't tie it to one practice or ---

10 Q. What marketing did you do that would have involved this
11 practice between July 28th 2009 and November of 2010?

12 A. Well we've marketed for this market for ten years now and
13 so there's a cumulative effect in the marketing. There is,
14 you know, I explain this to perspective clients all the time:
15 You you can go out, you can advertise and you can do some
16 marketing on your own but you can't compete with the
17 cumulative effect of our marketing. You know I market
18 consistently. We do direct mail, we have a full-time time
19 telemarketer on staff, we do email marketing, uh, we're at the
20 top of the search engine, uh, for the key words for for
21 "practice sales" so we attract buyers from all over the
22 country into our network so to be able to specifically
23 identify the marketing expenses on one practice would be
24 impossible.

25 Q. And how much have you paid your attorneys to date?

1 A. Uh, I have not paid any money to the -- for attorney's
2 fees.

3 Q. Okay, and is that because, uh, par, uh, Exhibit 5 is a
4 contingency fee arrangement?

5 A. That's correct.

6 Q. Okay. So you you have no out-of-pocket attorney fee
7 expense to date.

8 A. Correct.

9 Q. Alright. Have you paid any cost?

10 A. Uh, no, have not.

11 Q. Okay. And then you can't identify what expense you have
12 in marketing this practice that was ultimately sold.

13 A. That's correct.

14 Q. No further questions.

15 THE COURT: Any redirect limited to what he went into?

16 MS. ALLEN: Yes, Your Honor.

17 REDIRECT EXAMINATION BY MS. ALLEN:

18 Q. Mr. Poe, let me show you what we'll mark -- you have any
19 objection to this, Scott?

20 MR. TALLEY: No.

21 MS. ALLEN: Mark as Plaintiff's Exhibit No. 6?

22 (Asset purchase agreement marked Plaintiff's Exhibit
23 No. 6 for identification.)

24 BY MS. ALLEN:

25 Q. Mr. Poe, can you identify that document?

1 A. Yes, this is the asset purchase agreement paid between
2 Stravolo & Company and Mathur & Company.

3 Q. Okay, and if you'll turn to page number 2, does it
4 indicate purchase price?

5 A. Uh, if you add the two numbers together, it's the total
6 of \$290,000.

7 Q. And what is 10 percent of \$290,000?

8 A. Twenty-nine thousand dollars.

9 Q. And if you'll look back at Exhibit No., uh, 3 I believe
10 which is the financials of Stravolo Company, is that right?

11 A. I don't, I don't have the exhibits anymore.

12 Q. Oh sorry, I apologize.

13 (Whereupon, counsel handed the exhibits to the witness.)

14 A. Yes.

15 Q. The year prior to the sale being 2009 ten percent of the
16 gross revenues will be what?

17 A. Twenty-nine thousand eight twenty-three forty.

18 Q. Okay, thank you.

19 MS. ALLEN: Your Honor, uh, that's all I have for Mr. Poe
20 but I would in redirect like to admit the request to admit and
21 the responses to the request to admit by the defendants. Do
22 you have any objection?

23 MR. TALLEY: No.

24 THE COURT: With -- without objection.

25 MS. ALLEN: That would be Exhibit No. 7 would be the

MOTIONS AND MATTERS

1 defendant, I mean, the plaintiff's request to admit to the
2 defendants. I'm sorry for talking while I'm asking you to do
3 the stickers.

4 (Plaintiff's request to admit marked Plaintiff's Exhibit
5 No. 7 for identification and admitted into evidence.)

6 MS. ALLEN: Number 8 would be defendants' answers to the
7 request for admission.

8 (Defendants' answers to request for admission marked
9 Defendants' Exhibit No. 8 for identification and admitted into
10 evidence.)

11 MS. ALLEN: And, Your Honor, uh, when defendants answer
12 the request for admission, they did not actually write the
13 request next to the answer so therefore they're a little
14 difficult to follow, may I read the admissions into the record
15 just for clarity of the record?

16 THE COURT: Sure.

17 MS. ALLEN: Alright, uh, request to admit number 1 was,
18 Admit that the document attached as Exhibit A which is the
19 sales consulting agreement which has been admitted as
20 Exhibit 1 in this case is complete written agreement between
21 defendant Stravolo, his related entities and the plaintiff,
22 that was admitted. Request to admit number 2 says, Admit that
23 there are no written agreements other than the document
24 attached as Exhibit A, defendants admitted that. Admit --
25 number 3, Admit that Stravolo Company, P.A. was listed for

MOTIONS AND MATTERS

1 sale by plaintiff at an asking price of \$325,000 as of
2 September 30th 2010, all defendants admitted that. Number 10,
3 Admit that Mathur & Company, P.A. formally changed its name to
4 Upstate CPAS by filing an amendment with the Secretary of
5 State on November 16th 2010, defendants admitted number 10.
6 Number 12, Admit that the assets of Stravolo & Company, P.A.
7 were sold to some entity related to Mathur prior to November
8 17th 2010, all defendants admitted number 12. Number 14,
9 Admit that neither Stravolo nor anyone acting on his behalf
10 informed the plaintiff of the cont -- the contact or
11 negotiations with Mathur prior to November 17th 2010 ---

12 THE COURT: Let me ask you a question, I don't mind you
13 reading them in the record but you need to remember you're not
14 on cross-examination and if you intend to now open up Judge
15 Cole's order by you going into the issue of liability then I
16 have to let him go into the issue of liability because you are
17 right now redirecting him and I said you limit yourself to
18 what he went into so if you're opening the door to the issue
19 of liability by going into the things that are not related to
20 damages then he gets to go back into the issue of liability.

21 MS. ALLEN: Well Your Honor, ---

22 THE COURT: That's ---

23 MS. ALLEN: --- I'm trying to respond to the scope of his
24 cross which was about when the contract took place, when it
25 was terminated and these requests to admit, you know, are the

MOTIONS AND MATTERS

1 defendants' admitted statements.

2 THE COURT: See, on cross-examination a lawyer has the
3 ability to go into many different issues, issues that you
4 might perceive relate to the issue of liability but might very
5 well go into his credibility: Do I believe him. You are
6 limited in redirect on what he went into that relate to your
7 issues. Now you're opening the door to the issue of
8 liability.

9 MS. ALLEN: Well, Your Honor, then I'll withdraw the --
10 my line.

11 THE COURT: Well what do you want me to consider those
12 con -- those things that you're now publishing? To what
13 issue? How do those relate the issue of damages?

14 MS. ALLEN: I I don't believe they do, I was trying to
15 respond to Mr. Talley's cross-examination ---

16 THE COURT: Alright.

17 MS. ALLEN: --- and so I ---

18 THE COURT: Did I not make the announcement that I
19 intended to stand by what Judge Cole ---

20 MS. ALLEN: Yes, Your Honor.

21 THE COURT: --- ruled?

22 MS. ALLEN: Yes.

23 THE COURT: Make a record as you wish to make a record
24 but I will simply warn you do not, you know, if you wanna go
25 into that, you go into that, I just warn you that you're

MOTIONS AND MATTERS

1 opening the door, he might very well, if he chose to, he might
2 very well get up, I have to let him go into it.

3 MS. ALLEN: Okay, Your Honor, well I guess I'll -- I
4 withdraw the, uh, admissions and the answers.

5 THE COURT: No, I mean, they they're admitted ---

6 MS. ALLEN: Okay, Your Honor, ---

7 THE COURT: --- I just don't see the need for you now
8 once you have them admitted on an issue that I've, I think I
9 said on the record I Judge Cole's order that then they will
10 publish 'em.

11 MS. ALLEN: I I understand and, uh, yes, I'll, uh, end my
12 redirect.

13 THE COURT: Alright. Anything else?

14 MS. ALLEN: Not from the plaintiff, Your Honor.

15 THE COURT: Wanna speak with co-counsel, looks like she
16 wants to talk to you a moment.

17 (Whereupon, a discussion was held off the record.)

18 MS. ALLEN: Nothing from the plaintiff, Your Honor.

19 THE COURT: Any further cross-examination based on what
20 she went into into her redirect?

21 MR. TALLEY: No.

22 THE COURT: Thank you, sir, you may step down.

23 THE PLAINTIFF: Okay.

24 (Whereupon, the plaintiff left the stand.)

25 THE COURT: Alright, the, uh, plaintiff ready to call

MOTIONS AND MATTERS

1 their next witness?

2 MS. ALLEN: Plaintiff rests, Your Honor.

3 THE COURT: Is defense ready?

4 MR. TALLEY: I call Steve Stravolo to the stand.

5 THE COURT: Sir, just come right around up here
6 (indicating). Please place your left hand on the Bible and
7 raise your right hand let me swear ya in.

8 STEVEN JOSEPH STRAVOLO, having
9 been first duly sworn, testified as follows:

10 THE COURT: Thank you, sir. Please have a seat in the
11 chair and pull the chair up to the microphone. Let me, before
12 we go any further let me clear something up. I've been handed
13 the exhibits, uh, trying to be sure that they don't get
14 crisscrossed. Uh, Exhibit Number 5 I've got as the
15 representation agreement, uh, is that -- these are not stapled
16 or anything, Ms. ---

17 MS. ALLEN: May I approach, Your Honor?

18 THE COURT: Um-hum. Would that be all of 'em in 5, just
19 to be sure?

20 MS. ALLEN: Yes.

21 (Whereupon, a discussion was held off the record.)

22 THE COURT: Now the, uh, No. Plaintiff's 4 was the
23 attorney fees, that would be the, that that would be, first
24 page would be the August 27, 2013 letter from you to the clerk
25 of court with ---

1 MS. ALLEN: Yes, Your Honor.

2 THE COURT: --- with, uh, your affidavit, uh, looks like
3 a printout of some timesheets.

4 MS. ALLEN: A cost printout, yes, Your Honor, ---

5 THE COURT: Cost printout ---

6 MS. ALLEN: --- and a ---

7 THE COURT: --- and a, ---

8 MS. ALLEN: --- CV page.

9 THE COURT: Yeah, and then does that also include Han --
10 Hannah Metcalfe's, just her ---

11 MS. ALLEN: Hers is -- yes, that exhibit number does
12 include that and Mr. Muller's affidavit is actually attached
13 to the back of Ms. Metcalfe's affidavit, just that Carl Muller
14 as to the reasonableness of the hourly rate and the locale.

15 THE COURT: Make sure I've got that. I do. Okay, I'm
16 gonna staple all those together. Okay, I'm sorry Mr. Talley.

17 MR. TALLEY: That's alright.

18 DIRECT EXAMINATION BY MR. TALLEY:

19 Q. Sir, if you would just state your full name for the
20 record.

21 A. Steven Joseph Stravolo.

22 Q. Mr. Stravolo, did you own Stravolo & Company, P.A.?

23 A. Yes.

24 Q. You heard Mr. Poe's testimony, I'll show you what was
25 marked as Plaintiff's Exhibit 1, is that the agreement you

1 entered in July of 2009 with Mr. Poe's, uh, firm for Stravolo
2 & Company, P.A.?

3 A. Yes.

4 Q. Okay. And you heard also prior to that you had a
5 relationship with Mr. Poe, uh, in which he sold another
6 practice of yours, is that correct?

7 A. Yes.

8 Q. Alright, if you would just tell the Court about that.

9 A. In 2007, uh, uh, I entered a similar agreement with
10 Brannon Poe's company, uh, to sell AAA Westgate Tax &
11 Accounting and he, uh, within about 30 or 60 days, uh, found a
12 buyer, Bharti Mathur, and she purchased that practice from me
13 and and I did submit to him 10 percent of that fee.

14 Q. Okay. So he was paid for the prior work.

15 A. Yes.

16 Q. Okay. Alright. In, uh, the time frame between
17 Plaintiff's Exhibit 1 bein' signed in July of 2009 and
18 November of 2010, describe your relationship or contact with
19 Mr. Poe and his firm.

20 A. Uh, I I spoke with Brannon on the front end and then I
21 was turned over to another person, uh, to work on the sale,
22 uh, and it couple a times durin' that year, uh, there were
23 some offers made but, uh, they weren't really, uh, they
24 weren't real offers, they were people who wanted to be a
25 partner, uh, wanted to earn ownership or as, uh, his, uh,

1 associate told me on one offer it was a ridiculous offer but
2 she was gonna present it to me anyhow.

3 Q. Uh, in November of 2010, did you know that Ms. Mathur had
4 seen your practice listing?

5 A. No.

6 Q. When did you learn that information?

7 A. Uh, in January 2011, uh, we actually consummated the deal
8 on December 20th 2010, that's when she took ownership of our
9 our firm, uh, the day we moved she took over the employee,
10 took over the customers and I had, uh, told Brannon on the
11 phone and then in a follow up email that he requested that we
12 had sold the practice to her and then in January 2011 the day
13 of our open house in our new building, uh, I got a call from
14 Brannon, we found that we were exchangin' calls for a couple
15 weeks, uh, or week, uh, we finally hooked up and that's when
16 he told me, uh, Look, she she inquired about this practice
17 back in maybe July or August 2010, uh, I did not know that.

18 Q. Uh, at the time you discussed this with Ms. Mathur, were
19 you doing other work for her, did ya'll have a relationship
20 outside a your previous sale?

21 A. Yes, uh, when she bought our pre -- our first company in
22 2, in 2007, our agreement was that we would not compete so we
23 would send her our individual tax returns, uh, and so we had a
24 good relationship in that respect, uh, and also, uh, the day I
25 told her that, uh, I was -- Kim, my wife Kim and I were

1 lookin' to sell our firm, uh, was the day she was actually,
2 uh, investing in our, uh, giving us investment money to invest
3 for her. The reason I told her about it is I wanted her to
4 know, her and her husband, that we were, hu -- becoming a
5 hundred percent committed to investment management and that I
6 was sellin' the practice.

7 Q. I'll show you Plaintiff's Exhibit 6, are you familiar
8 with that document?

9 A. Yes.

10 Q. Is, uh, that the agreement by which you sold the practice
11 to Ms. Mathur?

12 A. Yes.

13 Q. There was some testimony earlier about a sale or merger,
14 how did you treat the transaction with Mathur?

15 A. On my tr -- tax return I, uh, treated it as a sale on the
16 corporate books of Stravolo & Company. This was an asset
17 purchase agreement, uh, we sold all the assets of Stravolo &
18 Company, uh, including furniture, customer lists. Uh, to
19 Bharti it was a contingent agreement based on the sales during
20 the 2011 so purchase price was directly related to sales from
21 2011.

22 Q. If you'll look at page 2 of that exhibit, you heard the
23 earlier testimony about \$290,000 bein' the total price, is
24 that calculation, those numbers something that you did or the
25 purchaser did?

1 A. The purchaser did this in order to allocate the purchase
2 price uh, that was initially, uh, agreed upon or we hoped that
3 sales would be 290,000 because that would have increased my,
4 uh, the sale price and the money given to me, uh, but that was
5 not the the case after the fact.

6 Q. Do you know what you actually received for these assets
7 pursuant to that agreement?

8 A. Within the next year and a half I received, uh, 220,000
9 even.

10 Q. Mr. Stravolo, wanna show you, uh, this document that, uh,
11 sets forth four payments, are you familiar with that?

12 A. Yes.

13 Q. Okay. Is that the payment, uh, schedule so to speak that
14 you received from the Mathurs?

15 A. Yes, ---

16 Q. Alright.

17 A. --- determined each, uh, we looked at sales every, uh,
18 uh, four times and the final being after the end a that
19 year.

20 Q. Okay, and is, uh, is it your belief that the way these
21 payments are structured complies with the payment terms in
22 Plaintiff's Exhibit No. 6?

23 A. Yes.

24 MR. TALLEY: Your Honor, I'd ask that this document be
25 marked as Defendants' Exhibit 1.

1 THE COURT: Any objection?

2 MS. ALLEN: No, Your Honor.

3 THE COURT: Without objection Defendants' 1 and and you
4 would call that, you would call that the Mathur's payments to
5 him?

6 MR. TALLEY: Uh, ---

7 THE DEFENDANT: To Stravolo.

8 MR. TALLEY: --- uh, yes, I do. My question was, Does
9 this represent the payments received pursuant to Plaintiff's
10 Exhibit 6, and think his testimony was yes.

11 THE COURT: Alright.

12 (Mathur's payment schedule marked Defendants' Exhibit
13 No. 1 for identification and admitted into evidence.)

14 MR. TALLEY: I have no further questions this witness
15 this time.

16 THE COURT: Sir, if you would, please answer any
17 questions that counsel may have.

18 CROSS-EXAMINATION BY MS. ALLEN:

19 Q. Mr. Stravolo, uh, take a look at, uh, what's been marked
20 Plaintiff's Exhibit No. 1, the ---

21 (Whereupon, a discussion was held off the record.)

22 (Whereupon, counsel handed the exhibit to the witness.)

23 --- and, uh, if you would take a look at No. 3 where it
24 says "Seller shall refer all contacts and/or inquiries
25 regarding the sale of the practice to APS," you see that? You

1 didn't do that, right?

2 A. No, ---

3 Q. Okay.

4 A. --- I didn't, yeah.

5 Q. And, uh, your closing date on your contract with the
6 Mathurs which I believe is marked as Exhibit No. 6 is what at
7 the top a the page?

8 A. November 5th 2010.

9 Q. Okay, and, uh, isn't it true that you waited until after
10 your deal closed with the Mathurs before you informed Mr. Poe
11 'bout the transaction?

12 A. Need to a -- I need to clarify what happened. Uh,
13 November 5th was the day that we met, uh, in the attorney's
14 office, signed all documents, uh, I went home that day
15 thinking great, the sale is done, uh, but, uh, new news was
16 they weren't ready take the firm yet so basically we changed
17 our our agreement to, uh, contingent upon moving, uh, she was
18 not gonna take over the practice ---

19 Q. Okay.

20 A. --- so wasn't consummated 'til December so in my mind I
21 told, uh, Brannon well before the deal ---

22 Q. Okay, ---

23 A. --- was consummated.

24 Q. --- but the closing, I mean, you don't have any
25 documentation to support what you just said.

1 A. I have payroll and and many many documents that show,
2 uh, ---

3 Q. Okay.

4 A. --- the date that everything moved to her.

5 Q. Uh, you sign that agreement on the 5th a November, ---

6 A. Right, ---

7 Q. --- right?

8 A. --- I'm talking about an oral agreement between ---

9 Q. Okay.

10 A. --- she and I, uh, ---

11 Q. Okay.

12 A. --- afterward.

13 Q. And you all met in whose, what lawyer's office did you
14 meet in on that day?

15 A. Scott Talley.

16 Q. Mr. Talley did this transaction.

17 A. He sure did.

18 Q. Okay. And, uh, at the time of the signing of the deal
19 November 5th you thought you were gonna get \$290,000, right?

20 A. No, we had a contingent agreement.

21 Q. Okay, well take a look at page number 2, it says, The
22 purchase price shall be allocated, and it has 30,000 plus 260
23 and that's 290, right?

24 A. Um-hum.

25 Q. So you ---

1 A. Well ya have to look in paragraph, uh, in 1.3 that says,
2 uh, As soon after June 30th as practical, purchase and seller
3 will meet to review January 1st through to, uh, to June 30th
4 revenues. On or before July 15th, purchaser shall pay the
5 seller one half of the prorated balance due seller based on
6 the contingent arrangement the parties attached as as Exhibit
7 2, so that was, Exhibit 2 was the contingent agreement, uh,
8 that we round to the nearest \$10,000 based on sales during
9 2011, so what you're looking at is an allocation for tax
10 purposes ---

11 Q. Right, but but the allocation for tax purposes totals up
12 to be \$290,000, right?

13 A. Right, because at that time we thought sales might be
14 290,000.

15 Q. Okay.

16 A. I was in, I was in in their control, the number, you
17 know, if they did not do a lotta work in 2011, I was at
18 risk ---

19 Q. Okay.

20 A. --- because I was gonna be paid on work that they would
21 do and whether our clients would stay with them in 2011. We
22 had no control over that because I don't own the company, I
23 don't have a key to the business, I don't, I've never been in
24 that business unless the Mathurs are there, ---

25 Q. Sure, ---

1 A. --- it's not my business.

2 Q. --- and you didn't hire another broker to broker this
3 deal or represent you, did you?

4 A. No.

5 Q. And you didn't pay an -- any other broker?

6 A. No.

7 Q. Okay, so you were unrepresented as far as a brokerage
8 goes.

9 A. Yeah.

10 Q. Okay. Uh, and you announced to the public that Stravolo
11 and Upstate CPAS merged after this deal, right?

12 A. Right. We we, uh, merged our two businesses together not
13 legally, not in the sense of a, of a purchase sale versus a
14 merger, uh, we basically said two businesses are coming
15 together in the same location. My wife continued, my wife who
16 was my partner, my 50/50 partner, uh, then went on to work
17 for, uh, Upstate CPAS the new company of which we own nothing
18 and never have ---

19 Q. Let me show you, ---

20 A. --- and that, and that did not go to the public, that
21 just went to our clients.

22 Q. --- let me show you what we'll -- to your clients, ---

23 A. Right, ---

24 Q. --- okay but, ---

25 A. --- not to the ---

1 Q. --- uh, ---

2 A. --- public.

3 Q. --- okay.

4 A. We didn't ---

5 Q. Okay. Let me show you what we'll mark as exhibit, I'm
6 really not sure what number we are ---

7 COURT REPORTER: Nine.

8 --- 9, let her mark it.

9 (Merger announcement email marked Plaintiff's Exhibit
10 No. 9 for identification.)

11 BY MS. ALLEN:

12 Q. And you'd agree that's an announcement for Mathur &
13 Company and Stravolo & Company that says, "We have merged to
14 better serve you together as Upstate CPAS," and it has your
15 new address, right?

16 A. Yes. Yes.

17 Q. And you you got to go ---

18 A. Not my new address, let's ---

19 Q. Well that's ---

20 A. --- make sure ---

21 Q. --- where you got to go work, right?

22 A. I don't work, I never worked for Upstate CPAS.

23 Q. Right, but you worked at 775 Spartan Boulevard.

24 A. I work in a suite downstairs, I have a totally different
25 company ---

1 Q. Okay.

2 A. --- called Stravolo Wealth Management.

3 Q. Alright, well let me show you what we'll mark as Exhibit
4 No. 10.

5 A. Okay.

6 (Upstate CPA website printout marked Plaintiff's Exhibit
7 No. 10 for identification.)

8 MS. ALLEN: Oh. Do you have any objection to Exhibit
9 No. 9 the email announcement?

10 MR. TALLEY: No, what's 10?

11 MS. ALLEN: Ten is a website.

12 THE COURT: Any objection to either one a those?

13 MR. TALLEY: None.

14 THE COURT: Alright, without objection be Plaintiff's 9
15 and 10.

16 (Plaintiff's Exhibit No. 9, merger announcement email,
17 and Plaintiff's Exhibit No. 10, Upstate CPA website printout,
18 admitted into evidence.)

19 BY MS. ALLEN:

20 Q. Mr. Stravolo, this is a printout from Upstate C,
21 12/12/2012 printout from Upstate CPAS website, ---

22 A. Yes.

23 Q. --- and you're you're listed on there as part of Upstate
24 CPAS, right, ---

25 A. Yeah.

1 Q. --- and your wife is too?

2 A. Yes.

3 Q. And that was kinda part a this deal, right? Your wife
4 got to go work there, you didn't have to shut down your entire
5 operation, right?

6 A. Uh, I, the reason I'm listed there is because just
7 because we mer, uh, merged together offices on December 20th
8 2010 doesn't mean there weren't clients that still needed help
9 from me specifically, uh, because we had ongoing work, I had a
10 client in bankruptcy, I was helping with that, ---

11 Q. Sure.

12 A. --- uh, so, uh, I still helped, I didn't get paid to
13 help, I just did it for ---

14 Q. Right, ---

15 A. --- free.

16 Q. --- because that was kinda part a your deal, right?

17 A. It wasn't part a the deal, it's just part a the right
18 thing to do.

19 Q. And your wife she, uh, does ---

20 A. She worked ---

21 Q. --- some ---

22 A. --- as a contract.

23 Q. --- work for Upstate CPAS, ---

24 A. Absolutely.

25 Q. --- correct?

1 A. Um, I also, uh, referred clients to Upstate and that's
2 another reason to have me listed, uh, on their website and I
3 list Upstate CPAS on my email signature because, uh, I want my
4 clients to still feel comfortable that I'm around and I I am,
5 in the same building and they can stop and see me any time.

6 Q. Alright, that's all I have. Thank you.

7 THE COURT: Any redirect limited to what she went into?

8 MR. TALLEY: Nothing.

9 THE COURT: Thank you, sir, you may step down.

10 (Whereupon, the defendant left the stand.)

11 MR. TALLEY: No further witnesses.

12 THE COURT: Any reply witness?

13 MS. ALLEN: None, Your Honor.

14 THE COURT: Alright, let me ask ya'll a question, uh,
15 gotta tell ya I I've not reviewed Judge Cole's order, my -- I
16 do not, since Judge Cole's order has been argued, ruled upon I
17 would not intend to go outside of Judge Cole's order since it
18 hasn't been appealed but I don't have a copy of Judge Cole's
19 order, it's not in the file..

20 MS. ALLEN: Uh, Your Honor, uh, what we have, let me hand
21 up ---

22 THE COURT: Okay.

23 MS. ALLEN: --- the order denying the 59(e).

24 THE COURT: Um-hum.

25 MS. ALLEN: This is an order denying the Rule 59(e)

MOTIONS AND MATTERS

1 motion and I think you are pointing to maybe the Form 4 ---

2 THE COURT: Um-hum.

3 MS. ALLEN: --- on partial summary judgment. Uh,
4 recently we have discovered that no one has a filed copy of
5 what we believe to be the other order which is the per --
6 written order that followed his summary judgment ---

7 THE COURT: Um-hum.

8 MS. ALLEN: --- order and what we have is our
9 correspondence to him in May enclosing it and, Scott, you
10 received a copy, I made an extra copy the proposed order.

11 (Whereupon, a discussion was held off the record.)

12 MS. ALLEN: And, Your Honor, so what happened was we
13 filed for partial summary judgment, we had a hearing fronta
14 Judge Cole, Hannah attended, I did not, I'm in Charleston, uh,
15 Judge Cole, uh, did -- he did rule from the bench? You
16 talk -- you can -- why don't you tell the judge what happened
17 since you were there.

18 MS. METCALFE: Yes, Your Honor, uh, Judge Cole ruled,
19 issued a Form 4, he asked, uh, us to draft the opinion, uh, a
20 formal order, formal order was drafted, uh, was submitted to
21 Judge, uh, Cole. Uh, Mr. Talley moved to alter or amend, uh,
22 that was subsequently heard by Judge Cole. Mr. Talley and I
23 both were present, we argued the motion to alter or amend,
24 Judge, uh, that to alter or amend his previous formal order,
25 uh, specifically with regard to which defendants were to be

MOTIONS AND MATTERS

1 liable under the contract, uh, Judge Cole, uh, declined to
2 alter or amend his previous order and, uh, asked again, uh,
3 for the plaintiff to draft the order, we did so, uh, and and
4 and Mr. Talley reviewed it and it was signed by Judge Cole,
5 uh, the motion to alter or amend. Uh, we have looked, we've
6 searched, uh, this is very, uh, vivid in my memory submitting
7 it to Judge Cole in May because I submitted to him the night
8 before I had a baby, uh, so I I remember it very well but, uh,
9 uh, no one can locate and it's not in the clerk's office his
10 signed order, uh, so we can only, we can only hand up to Your
11 Honor the unsigned version, uh, we can endeavor to work with
12 Judge Cole's office to try and find the signed one but he does
13 know he did rule on a -- motion to alter or amend and the, uh,
14 the crux of his original ruling is contained within his
15 subsequent order on the Rule 59(e) motion, uh, it's a shorter
16 version obviously, Your Honor, uh, but I -- we have no idea
17 where the signed original is.

18 THE COURT: Okay, thank you. So, Mr. Talley, you, uh,
19 she's handed me a copy of a letter dated May the 3rd 2012 it's
20 addressed to Judge Cole, do you think that's his order that
21 that he did sign?

22 MR. TALLEY: Your Honor, I have a, uh, copy of the Form 4
23 filed May 17, 2012, uh, and then I have an unsigned copy of
24 that that's attached to that letter. I was looking back at
25 our motion and it looks like I just attached it, I guess the

MOTIONS AND MATTERS

1 only thing I had at the time the unsigned copy of that order
2 to our 59(e) motion. If your question is do I dispute that
3 they sent another copy that they copied me on, think that they
4 did. I just briefly looked through our file, uh, I don't see
5 a signed copy a that order either.

6 THE COURT: So I, but is it okay if I rely on the
7 unsigned order? I mean, I I have not read it so I don't even
8 know if I need to rely on it but I was just thinking that I
9 take a look at it.

10 MR. TALLEY: But I I did receive that ---

11 THE COURT: Alright.

12 MR. TALLEY: --- in the mail.

13 THE COURT: So you think that's what he signed?

14 MR. TALLEY: I'm not tryin' to play games I assure you
15 but I I don't ---

16 MS. ALLEN: We don't know, ---

17 MR. TALLEY: I filed a motion to alter or amend it,
18 uh, ---

19 MS. ALLEN: Right.

20 MR. TALLEY: --- so ---

21 MS. ALLEN: We don't know ---

22 MR. TALLEY: --- I'll let the ---

23 MS. ALLEN: --- if he signed it or not, Your Honor,
24 because o -- for ---

25 MR. TALLEY: --- Court do that ---

MOTIONS AND MATTERS

1 MS. ALLEN: --- obvious reasons. Uh, we obviously need
2 to approach Judge Cole's office about trying to, uh, resolve
3 this technicality.

4 THE COURT: Do you have another copy a this or -- 'cause
5 I'd like part a the record this case ---

6 MS. METCALFE: Okay.

7 THE COURT: --- just to be sure.

8 (Whereupon, a discussion was held off the record.)

9 THE COURT: Alright, we'll make the ---

10 MS. ALLEN: Here's this letter, would you like me to have
11 her mark it?

12 THE COURT: We'll mark it as a Court's Exhibit.

13 MS. ALLEN: Okay.

14 THE COURT: It's the letter dated May the 3rd 2012 with
15 the attached proposed order, that be Court's Exhibit 1.

16 MS. METCALFE: Your Honor, I will state for the record
17 Mr. Talley did argue, uh, furciferously on behalf of his
18 client that that or -- that that order should be altered or
19 amended so, uh, I don't want anyone think Mr. Talley's
20 so -- in some way, uh, did not argue with regard to that
21 order.

22 MR. TALLEY: I I didn't hear that so ---

23 THE COURT: Hang on, let her mark the exhibit.

24 (Whereupon, a discussion was held off the record.)

25 (Letter with proposed order marked Court's Exhibit No. 1

1 for identification.)

2 THE COURT: Okay, let me ask couple questions. Uh,
3 plaintiff contends that the, uh, amount that is owed is the,
4 uh, due arises from Plaintiff's Exhibit 1 which he, uh, which
5 the defendant contracted with the plaintiff and that it should
6 be ten percent of the, uh, sales price.

7 MS. ALLEN: Your Honor, uh, plaintiff contends that it
8 should be ten percent of the merger, the gross revenue of the
9 firm for the year preceding the transaction which is, it was
10 \$298,000 in 2009 which is approximately \$29,800 and some
11 change. Uh, coincidentally the purchase price listed in the
12 contract is \$290,000 and so I think those are the facts that
13 we have.

14 THE COURT: Plus the, uh, provisions allowed in
15 paragraph, uh, 7.

16 MS. ALLEN: Yes, Your Honor.

17 THE COURT: Okay. Alright, and defendant contends, uh,
18 that the amount due is the amount that was, uh, ultimately
19 entered into between the defendant and Mathur?

20 MR. TALLEY: If any, yes.

21 THE COURT: If any and that ten percent a that figure?

22 MR. TALLEY: Right.

23 THE COURT: Okay, alright. Have you had a chance to take
24 a look at the what submitted for the attorney fees and costs?

25 MR. TALLEY: I received that a couple days ago.

MOTIONS AND MATTERS

1 THE COURT: Do you, uh, intend to contest the -- any
2 reasonableness of those, uh, ---

3 MR. TALLEY: As I said earlier they're introduced, I
4 don't, I don't contest necessarily the content, uh, however,
5 in light of his testimony and what the actual arrangement was
6 is my contention.

7 THE COURT: Okay, I'll take a look at it, let you know.

8 MS. ALLEN: Your Honor, uh, may I submit to the Court,
9 uh, a couple of, two cases and a, at the -- a recent ethics
10 advisory opinion as it relates to attorney's fees in contracts
11 cases? Uh, Scott, I'll give you a copy too.

12 (Whereupon, a discussion was held off the record.)

13 (Whereupon, counsel handed the documents to defense
14 counsel and the Court.)

15 THE COURT: So it's ethics ---

16 MS. ALLEN: Judge, ---

17 THE COURT: --- advisory opinion 13-07 in the case of
18 Jackson vs. Sped, S-P-E-D; case Clardy, C-L-A-R-D-Y, vs.
19 Dobolick -- D-O -- B-O-D-O-L-O-S-K-Y.

20 MS. ALLEN: Yes, Your Honor, and, I mean, just generally
21 the ethics advisory opinion is I think somewhat interesting,
22 it it just indicates what I think is maybe might be practiced
23 but I don't think it's ever been stated that the lawyer has a
24 duty to disclose all the agreements regardless of the terms
25 under which they're seeking attorney's fees which is why we've

MOTIONS AND MATTERS

1 entered in, uh, our contingency agreements, you know, into the
2 record and, uh, and I think those other two cases just support
3 what I believe the law to be, that in a contract case, uh, the
4 judge, uh, still has to make the, uh, six factual findings as
5 it relates to the reasonableness of the fees and, you know,
6 those six factors and that the fact of the contingency
7 arrangement is not determinative of the ultimate conclusion,
8 that's all I submit them for. Thank you.

9 THE COURT: Okay.

10 MR. TALLEY: May may I respond to that? I'm sorry, ---

11 THE COURT: Alright.

12 MR. TALLEY: --- readin' as fast as I can. I have, I
13 have not reviewed these, uh, cases in great detail but but my
14 contention is in essence the request there is a cite in the,
15 uh, least this *Jackson* case that says the award is to the
16 client or is to the party it, which in this case if their
17 request is granted will be Mr. Poe, uh, his contract with both
18 counsels, uh, is a contingency arrangement based on any award,
19 if any, that the Court might grant. The request that they
20 have far exceeds, uh, what that amount would be based on their
21 own contract, I probly didn't state that very clearly earlier
22 but that that is really my contention. Uh, I don't know that
23 there's anything in in these cases that would take it outside
24 the realm, while it's obviously discretionary to the Court, to
25 to alter or amend the contract that they entered into with

MOTIONS AND MATTERS

1 their client. Uh, if you look at at the amount requested, uh,
2 while I'm not denying that some a that may have been done,
3 they're fine lawyers, I respect 'em both and I consider 'em
4 friends, it it it it it is three times the amount that he may
5 be entitled to based on his contract with them, I just ask
6 Court consider that light of what evidence has been presented
7 today.

8 THE COURT: Okay. Alright, thank ya'll very much.

9 MR. TALLEY: Thank you.

10 MS. ALLEN: Thank you, Your Honor.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on September 11, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 52, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

February 4, 2015

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Brannon Poe, CPA, LLC,)
5 Plaintiff,)
6 -vs-) TRANSCRIPT OF RECORD
7 Steve Stravolo, Stravolo &) 2011-CP-42-2880
8 Company, PA, and Upstate)
9 CPAS, PA, f/k/a Mathur & Co.,)
10 PA,)
11 Defendants.) August 26, 2014
12 Spartanburg, South Carolina

13 B E F O R E:

14 HONORABLE J. MARK HAYES, II, JUDGE
15
16

17 A P P E A R A N C E S:

18 HANNAH R. METCALFE, ESQUIRE
19 Attorney for the Plaintiff

20 SCOTT F. TALLEY, ESQUIRE
21 Attorney for the Defendants
22

23 Linda D. Moffitt
24 Circuit Court Reporter
25

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INDEX

Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: All right. I've got down that we're here
2 on a motion for reconsideration filed by the -- or a motion
3 to alter or amend filed by the plaintiff. Be more than
4 happy to hear from you.

5 MR. TALLEY: Your Honor, procedurally may I just ask
6 for something?

7 THE COURT: Yes, sir.

8 MR. TALLEY: That's correct. We actually both filed
9 motions.

10 THE COURT: You -- you disagree with me because you
11 think I shouldn't have found liability in their favor.

12 MR. TALLEY: No, sir.

13 THE COURT: Or that I shouldn't have awarded any
14 attorney fees.

15 MR. TALLEY: No, sir.

16 THE COURT: Okay. Then tell me what you think.

17 MR. TALLEY: Are we going to hear both today? It was
18 our understanding that that's what we were doing. Ours was
19 filed January 13th of this year.

20 THE COURT: Okay. All right. Yes, ma'am.

21 MS. METCALFE: Your Honor, I believe the defendants
22 also have a motion to alter or amend.

23 Our motion just goes to the dollar amount of the
24 attorney's fees, and so I think it should probably be heard
25 after Mr. Tally's motion, which I understood would go to

1 liability as well as to the imposition of attorney's fees
2 at all. So whatever order Your Honor wishes to hear the
3 motions, we're happy to make our argument first, or if
4 you'd like to hear from the plaintiff first -- the
5 defendant first -- we'll be happy to be heard after the
6 defendant speaks on the liability issues.

7 THE COURT: All right. Mr. Talley, I'll let you go
8 first.

9 MR. TALLEY: All right. Thank you, Your Honor.

10 As I said earlier, we filed a motion to reconsider on
11 January 13th of 2014 specific to Your Honor's order that
12 was filed on October 4th of 2013.

13 Our motion raises three points, Your Honor. The first
14 is the terms used in the order filed October 4th of 2013
15 relate to a sales agreement, which I'm sure Your Honor is
16 familiar with. It should be in the file from the hearing.

17 But what that sales agreement, sales consulting
18 agreement, says is the plaintiff as a listing service had
19 my client's practice for sale.

20 The value of the fee to be paid to the plaintiff is
21 set out in two parts of that sales consulting agreement.
22 It's called a performance fee, and it says in paragraph one
23 of the sales consulting agreement that the transaction
24 value is defined as the total of all valuable consideration
25 given in exchange for the assets or shares if applicable of

1 the practice.

2 It goes on in that same paragraph to say if the firm
3 is merged the transaction value shall be the gross revenue
4 of the firm. If you look back at the performance-fee
5 definition it says it's ten percent.

6 Okay. Now, what Your Honor's order does from
7 October 4th of 2013 is rely solely on the merger part of
8 determining that transaction value.

9 Now, when you say liability -- and the reason I
10 respectfully disagree that we were trying to overturn
11 liability, when summary judgment was initially granted in
12 this matter by Judge Cole that order on page four,
13 paragraph 14 -- excuse me, Your Honor -- paragraph 12, the
14 liability piece -- and part of the reason Judge Cole
15 granted the motion for summary judgment as to liability is
16 set forth in paragraph 12 on page four. And it says,
17 "Admit that the assets of Stravolo & Company were sold to
18 some entity related to Mathur prior to November 17th of
19 2010."

20 In discovery and in requests for admissions the
21 plaintiff did properly raise that that clause had been
22 admitted. And the reason that clause had been admitted
23 should also be in the record from the hearing, is that the
24 agreement between my client, Mr. Stravolo, and Mathur and
25 Co. is an asset purchase agreement. And that was

1 introduced. It's in the record. It's dated November the
2 5th of 2010.

3 But if you look at it in Article One, Section 1.1, it
4 clearly says its purchase and sale of assets. "Assets to
5 be purchased and sold."

6 What the plaintiff relied upon throughout its argument
7 in this matter today is that Mathur & Co. filed post
8 transaction articles of amendment with the South Carolina
9 Secretary of State where it changed its name from Mathur &
10 Co. to Upstate CPAs, which we have never denied. And I'm
11 not standing before you today trying to deny that.

12 But the terms that the plaintiff is seeking
13 compensation on are captured in an asset purchase
14 agreement.

15 Part of the reason Judge Cole granted the motion for
16 summary judgment as to the issue of liability only was
17 based on an admission in discovery that the assets had been
18 sold.

19 So our issue with Your Honor's order from
20 October 4th of 2013 is that -- is the damages calculation,
21 which is clearly spelled out in the sales consulting
22 agreement that it should be based on the amount actually
23 paid, not a percentage of the prior's revenue -- there was
24 testimony and evidence submitted at the hearing that was
25 held before Your Honor -- should still be in the file --

1 that the amount actually paid pursuant to the asset
2 purchase agreement was some \$70,000 less than the prior
3 year's revenues.

4 The purchase price which is in Section 1.3 of the
5 asset purchase agreement sets forth certain payments that
6 are going to be made, but what it also says is that there
7 would be a prorated balance to be paid on or before
8 June 15th of 2012. That figure was not spelled out.

9 The evidence that was submitted at the hearing -- and
10 I apologize -- I don't have that exact figure in front of
11 me -- is that that amount was not some \$290,000 that led to
12 the calculation of the damages in Your Honor's order. It
13 was in the neighborhood of about \$225,000 which would
14 reduce the judgment by some \$7,000. Now, that's the first
15 point in my motion, Your Honor.

16 The second point in my motion is there was testimony
17 before the Court at the hearing that led to the October
18 4th of 2013 order that the sales consulting agreement had
19 been terminated. There's also mention of that November 17
20 of 2010 termination in Judge Cole's order.

21 We are simply asking that Your Honor's order be
22 altered or amended to reflect that there was testimony as
23 to that.

24 The defendant, Mr. Stravolo, testified at the hearing
25 that led to your October 4th order that the consummation of

1 the transaction contemplated by that October -- by that
2 November of 2010 asset purchase agreement never occurred
3 until December 20th.

4 why that matters is pursuant to the sales consulting
5 agreement written notice of termination had to be given 30
6 days prior. I don't think anybody argues that there was an
7 e-mail that was sent on November 17th of 2010. The
8 argument is over its implication. But clearly that would
9 have been 30 days prior to the sale being consummated on
10 December 20th of 2010. And Your Honor's order does not
11 reflect that.

12 The third part my motion, Your Honor, is obviously the
13 way the order is written the amount of judgment awarded to
14 the plaintiff against my client, if any, becomes relevant
15 in the attorney-fee calculation because, as the plaintiff
16 submitted at that hearing, and I know they're going to
17 argue this point today, but it was a one-third
18 contingency-fee arrangement. They put their contract with
19 their client into the record.

20 That would obviously need to be revisited based on the
21 first point I raised, and that is how the actual damages
22 were calculated based on a merger versus a sale. And so
23 we've raised that as a third issue for the Court to alter
24 or amend based on the argument I made in response to the
25 first part of our motion. I'm happy to answer any

1 questions you may have.

2 THE COURT: Tell me again the second, your second,
3 argument. What is it that -- the end result that you want
4 me to change as a result of your second argument?

5 MR. TALLEY: Well, if you -- if you look at the prior
6 orders -- and your order in the second paragraph from
7 October 4th says that based on review of documents
8 presented and the testimony and the information in the
9 clerk's file, throughout the two prior orders, that being
10 the grant of summary judgment as to liability, that being
11 the second order issued in that regard as to our motion to
12 alter or amend that judgment, there is reference to the
13 fact that my client did attempt to terminate the sales
14 consulting agreement by e-mail to the plaintiff on
15 November 17th of 2010.

16 In the damages hearing that was before Your Honor last
17 year we raised the issue that the consummation of the asset
18 purchase agreement was not truly effective until December
19 the 20th of 2010, which means that the termination e-mail
20 from November 17th would have been a 30-day notice. And
21 that was not reflected in Your Honor's order.

22 THE COURT: Resulting in?

23 MR. TALLEY: Resulting in no damages.

24 THE COURT: No damages. Okay. And the two prior
25 orders were Judge Cole's order granting summary judgment

1 and then also the order that came after that where you
2 requested him to alter or amend, and he denied that.

3 MR. TALLEY: Yes, sir. And I'm sorry. The first
4 one -- I've just got an unsigned copy, and then I've got
5 a -- I've got a January 4th of 2013 order that he issued on
6 the -- Your Honor, and just for the record, it's absolutely
7 nobody in this courtroom's fault. We both had a hard time
8 getting the orders in this case.

9 As I said, Your Honor signed an order that we're here
10 about today on October 4th of 2013. I believe it's fair to
11 say that both sides only got that order in January of this
12 year. And so that's -- I say that just to say that there
13 are two orders prior to yours. I don't have -- we know it
14 was filed and we know it was signed, but I don't have one
15 of those.

16 THE COURT: And then your -- on your first argument,
17 merger versus sale, that you argue would result in a \$7,000
18 reduction.

19 MR. TALLEY: Approximately, yes, sir, because --
20 because the transaction value as defined in the sales
21 consulting agreement assigns two different values. If the
22 Court finds it's a sale, then it's ten percent of the
23 actual monies paid. If it finds that it's a merger, it's
24 based on prior year's revenues.

25 THE COURT: Okay. Yes, ma'am.

1 MS. METCALFE: Thank you, Your Honor.

2 Quickly, I want to address the -- for the record the
3 issue with the orders.

4 Mr. Tally is correct. You signed the order in this
5 with regard to damages in October. My office inquired
6 about something else in this case in January, at which time
7 the clerk's office e-mailed us a copy of your order
8 thinking that it was what I was requesting from the clerk's
9 office. But prior to that date we had never received it.
10 So I want that -- Mr. Tally is correct, in that
11 representation, and I want the record to state that we
12 agree on that.

13 With regard to the first order on summary judgment
14 that Mr. Talley is referencing, while a proposed order was
15 submitted to the original judge who heard the motion for
16 summary judgment by the attorneys it is not in the file.
17 No one has ever seen a signed copy of that order. So the
18 only order that we know of that exists in the file is the
19 Form 4 and then the subsequent order that Judge Cole
20 signed.

21 And, Your Honor, I don't think -- it's not the fault
22 of any anybody in this courtroom. It's just it doesn't
23 exist as far as we can tell. So I just wanted that to
24 be -- and I think Mr. Tally and I both agree that that has
25 not been located.

1 Moving on to Mr. Tally's arguments, the first thing
2 I'd like to say is that I take notes when judges speak, and
3 when you spoke at the damages hearing you noted that the --
4 the ten percent of the gross revenue from 2010 was
5 \$290,000. So if the Court were to look at this as a merger
6 it would be ten percent of \$290,000.

7 You noted at the close of the hearing that
8 coincidentally the purchase price was also \$290,000. So if
9 this were a sale and not a merger it would be the same
10 number. And so this issue was addressed at the damages
11 hearing.

12 The defendant's contention is that the contract price
13 wasn't fully paid and so instead of the damages amount
14 being assessed on a \$290,000 purchase price it should be
15 based on what Mr. Stravolo actually received, which I
16 believe he contends is \$220,000.

17 Your Honor, that's of no consequence to the
18 calculation here. The contract clearly states that the
19 transaction value shall include the full potential value of
20 any contingencies. Whether or not those contingencies were
21 realized by Mr. Stravolo doesn't matter.

22 What matters is the contract price if you believe it's
23 a sale or the gross revenues if the Court were to believe
24 this is a merger. In this case, as Your Honor already
25 pointed out, those are the same number. It's \$290,000.

1 And that information was submitted to the Court without
2 objection as Exhibit 1. It was admitted that was the
3 contract as well as the revenue figures that were
4 submitted.

5 So the performance fee should be paid whether or not
6 it's a sale or merger. In Mr. Stravolo's affidavit that
7 was previously handed up he states that in his affidavit
8 that per the terms of the agreement that a performance fee
9 will be paid at closing of a sale or merger.

10 It just conveniently happens it's the same number in
11 this case. So whether the Court refers to it as a merger
12 or sale, because the transaction value is \$290,000, the
13 percentage of that, ten percent of that, is \$29,000, Your
14 Honor.

15 As to Mr. Tally's argument with regard to the date of
16 change in operations, this is really an irrelevant point.
17 It goes to liability and not to damages.

18 I believe what Mr. Tally is arguing is that they
19 terminated the -- he terminated, Stravolo terminated, the
20 agreement with Mr. Poe prior to the closing of the sale and
21 therefore he shouldn't have to pay anything that -- we
22 discussed this argument at length at the summary judgment
23 stage and again before Your Honor.

24 Mr. Poe connected the buyer and the seller, and
25 Mr. Stravolo cannot then 30 days before he knows he's going

1 to close terminate the agreement to try to avoid paying
2 Mr. Poe his broker fee. But, again, Your Honor, that goes
3 to liability and should not be included within this Court's
4 order on damages.

5 Finally, Your Honor, with regard to attorney's fees, I
6 believe that Mr. Tally's argument is that attorney's fees
7 should not be paid on top of the \$29,000 commission that
8 should have been paid under the agreement.

9 That is directly in contravention to the holding, the
10 Supreme Court's holding, in Jackson. In Jackson the
11 Supreme Court held that attorney's fees can be awarded if
12 provided for in statute or contract.

13 Paragraph seven of the contract says that APS shall be
14 entitled to recover the expenses connected with enforcing
15 any of its rights hereunder including legal fees, court
16 costs and/or any other reasonable collection costs that may
17 be incurred related to the enforcement of such rights.

18 So under Jackson there is a contract. There's a term
19 in the contract that provides for the collection of
20 attorney's fees.

21 The fees can be awarded on an hourly basis despite the
22 fact that we -- that the -- Mr. Poe and the attorneys had a
23 contingent basis. And the Court expressly states that in
24 Jackson. It affirms an award of attorney's fees based on
25 an hourly rate even though the agreement with the client

1 was contingency based. And under the factors outlined in
2 Jackson we respectfully request that this Court amend its
3 award to award the plaintiffs the full amount of the fees
4 incurred, which do not include the fees incurred addressing
5 the motion to alter or amend, and that the amount requested
6 was \$24,892.50.

7 I would note that this case looking at the first
8 Jackson factor of the nature and extent and difficulty of
9 the case, this case has been going on a long time. The
10 merger and sale occurred, or sale occurred in December of
11 2010.

12 When we came in this morning Mr. Tally asked me how my
13 baby was doing. This case has gone on so long that I have
14 become pregnant, had a baby, and my child is now starting
15 two-year-old preschool. And in the course of that time we
16 have had depositions, full discovery, extensive motions and
17 four hearings in this courthouse on this one case.

18 So I believe that the case has been of extended
19 duration and somewhat difficult. The fees are in line with
20 that charged by other counsel, and we have obtained
21 beneficial result for Mr. Poe. And so we would
22 respectfully request that the Court alter its attorney-fee
23 award to award the amount requested at \$24,892.50.

24 THE COURT: Well, how much did I award the first time?

25 MS. METCALFE: You awarded \$9,941.13, and costs

1 \$1,772.11.

2 THE COURT: And you believe I was in error because I
3 didn't award the full amount requested?

4 MS. METCALFE: Your Honor, we believe that the
5 judgment should be altered to award the full amount
6 requested.

7 I believe there was discussion at the hearing about
8 the fact that -- and in the order it states that the
9 contract between the plaintiff and the attorneys provides
10 for a 33 percent contingency.

11 And, Your Honor, I believe under the holding of the
12 Supreme Court in Jackson this court is not to look at the
13 contingent arrangement between the plaintiff and its
14 counsel in awarding fees but to look at it on an hourly
15 basis. And I'd be happy to hand up a copy of that.

16 THE COURT: You read Jackson to say that I have to do
17 that?

18 MS. METCALFE: I do not believe Jackson says you have
19 to do anything, Your Honor. Attorney's fees is solely in
20 your discretion.

21 THE COURT: I believe Jackson is written that they
22 allowed that particular judge to make that type of award
23 and that did not restrict the judge in making the award to
24 the contract that was between the client and the attorney.

25 I believe the Court said that it was not an abuse of

1 discretion for the judge to go outside of the contract. I
2 don't believe Jackson stood for the proposition that the
3 judge has to make that type of an award.

4 MS. METCALFE: I would agree, Your Honor. I'm
5 definitely not stating that, but the order reads that there
6 is a contract -- the contract provides for an award of
7 attorney's fees. The plaintiff had a contract with its
8 lawyers for 33.33 percent contingent fee and any gross
9 recovery, therefore the attorney fee shall be \$9,941.13.

10 So my less educated reading of the order would seem to
11 imply that the number was based solely on the fact that
12 there was a 33.33 percent contingency award and not based
13 on the Jackson factors.

14 And the Jackson court says when determining the
15 reasonableness of attorney's fees under a statute mandating
16 the award of attorney's fees the contract between the
17 client and its counsel does not control the determination
18 of a reasonable hourly rate.

19 So, Your Honor, just the way that is written it could
20 lead to the conclusion that it was controlled by the
21 contingent arrangement.

22 THE COURT: A contract between a lawyer and his client
23 though is -- can be persuasive to a Court in what is a
24 reasonable attorney fees.

25 MS. METCALFE: I would agree with you, Your Honor.

1 THE COURT: Okay.

2 MR. TALLEY: Briefly, Your Honor, as to the first
3 point. I just call the Court's attention to Section 1.3 of
4 the asset purchase agreement, which is what we're basing
5 our first and third points in our motion on because the two
6 interplay based on the discussion you just had with
7 counsel.

8 And while the sales consulting agreement says
9 transaction value shall include the full potential value of
10 any contingencies, Section 1.3 of the asset purchase
11 agreement says the aggregate purchase price to be paid to
12 seller, which is Mr. Stravolo, and shall be based -- is
13 contingent and shall be based on the year 2011.

14 Mind you, this was signed, nobody disagrees, in 2010.
15 So while it was contemplated that the total amount could be
16 \$290,000, it's specifically based on a specific year's
17 revenues which was not that amount, thus what we submitted
18 at the damages hearing of the \$220,000 that was actually
19 paid.

20 So I think -- I think there's a different definition
21 as far as what that transaction value is and what that
22 plays into in real numbers, is that \$7,000 difference that
23 I was arguing previously, which would also go, depending on
24 how the Court decides the plaintiff's motion, to the value
25 of the attorney's fees based on what that judgment would

1 be.

2 THE COURT: But she says that your client's affidavit
3 supports the conclusion that I made in my prior order that
4 it was \$290,000, whether I consider it as a merger or
5 whether I consider it as a sale.

6 MR. TALLEY: I don't have that affidavit in front of
7 me. I don't know that that is exactly right.

8 The numbers contemplated at the time the asset
9 purchase agreement was entered into was \$290,000, but that
10 was in 2010.

11 It spelled out two specific payments of \$75,000 each,
12 but it's clear that it was contingent upon the 2011 actual
13 revenues realized, and that is how the monies were actually
14 paid, that he testified to that at the hearing that was
15 before Your Honor last fall.

16 THE COURT: All right. I've got Mr. Stravolo's
17 affidavit that's dated May the 10th of 2012. Is that the
18 one?

19 MS. METCALFE: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. METCALFE: And I'm referring to the final sentence
22 on the first page where Mr. Stravolo attests that per the
23 terms of the sales consulting agreement APS will be paid a
24 performance fee at closing of a sale or merger of the
25 practice based on APS performing its duty as set forth

1 above.

2 THE COURT: All right.

3 MR. TALLEY: And I'm not disputing that's what his
4 affidavit said, but that doesn't go the \$290,000 figure. I
5 mean, you can't -- either the firms merged, which triggers
6 one calculation, or the firm was sold by the document
7 conveying practice and asset purchase agreement. It is a
8 clear -- it is a sale.

9 Now, the purchase price in there is contingent on a
10 next year's revenue at the time it was done. That figure
11 hoped for, contemplated, etc. was not realized, therefore
12 pursuant to the terms of the asset purchase agreement this
13 \$290,000 figure was never realized, was never paid. And
14 that's our whole argument, is that if you look at the
15 plaintiff's sales consulting agreement and how it defines
16 the transaction value under a sale it's ten percent of that
17 actually paid for the assets, which is not \$290,000.

18 THE COURT: Well, it could not -- could it not be said
19 that -- in my prior order that I made the decision that it
20 was one or the other and that I went with the higher
21 value --

22 MR. TALLEY: Well, I think if you do that --

23 THE COURT: -- because -- because I would find
24 possibly that the credibility of the defendant's position
25 is -- is somewhat questionable when I agree with

1 plaintiff's counsel's position that you cannot all of a
2 sudden just terminate an agreement once they -- you know
3 that a sale is going to take place or a merger is going to
4 take place, you can't all of a sudden just 30 days prior
5 terminate an agreement and that would entitle the person to
6 receive the fees?

7 MR. TALLEY: I think it's a different issue, Your
8 Honor, and that's -- that's the second point I argued,
9 correct.

10 THE COURT: Okay.

11 MR. TALLEY: But the transaction value has nothing to
12 do with the termination. I mean, in essence, if you find
13 that the termination is invalid, has no force and effect at
14 all, you still based on plaintiff's contract that they sued
15 under I think are bound by how the transaction value in
16 plaintiff's performance fee would be calculated.

17 And that's where the difference lies. If it's a
18 merger, then it's one way. If it's a sale, it's another
19 way. And my reference to Judge Cole's prior orders is part
20 of his grant of a liability award against my client was
21 based on the fact that, yes, we admitted it was a sale.

22 THE COURT: A prior order that no one can locate.

23 MR. TALLEY: Well, she's right.

24 I've got what we all believe was submitted following
25 up on the Form 4, but then it's also captured in his

1 January of 2013 order, I believe. I'm sorry.

2 January 4th of 2013 order.

3 THE COURT: That order denying the motion to alter or
4 amend?

5 MR. TALLEY: That's correct. And if you look in the
6 second paragraph on the first page it says in support of
7 plaintiff's motion plaintiffs submitted a copy of the
8 contract at issue -- that's the sales consulting agreement
9 that we talked about -- signed Mr. Stravolo.

10 And then the next clause says in addition plaintiff
11 provided a copy of defendant's responses to request to
12 admit.

13 In the unfound order on page four, paragraph 12, that
14 is the reference to those requests for admit, which says it
15 was a sale.

16 The January 4th of 2013 order in that same paragraph
17 goes on to say defendants admitted that the assets of
18 Stravolo & Company were sold to Mathur which subsequently
19 changed its name. So throughout that's -- it's using the
20 word sale.

21 THE COURT: And I found at a prior hearing sale versus
22 merger, that the same dollar amount applied?

23 MS. METCALFE: Yes, Your Honor.

24 You received -- I think there were ten exhibits
25 entered into evidence including profit and loss statements,

1 a number of other exhibits supporting the dollar figure
2 under a merger theory, which is \$290,000, which was not
3 disputed and the defendant admitted in response to his
4 requests to admit, that dollar figure.

5 And then, Your Honor, you also found that the contract
6 purchase price was \$290,000. And I think Mr. Tally hit the
7 nail on the head a minute ago in his argument when he said
8 it was a contingency that wasn't realized.

9 In the very last sentence in the section of the sales
10 consulting agreement that relates to the performance fee
11 the word transaction value is defined.

12 The contract says, "Traction value shall include the
13 full potential value of any contingencies. And that is
14 where Your Honor came -- at the hearing you stated that you
15 felt that the purchase price was \$290,000.

16 Mr. Tally made the argument that the purchase price
17 should have been reduced to \$220,000 because those
18 contingencies weren't realized. However, that isn't
19 relevant for the determination of the commission to be paid
20 to Mr. Poe.

21 The agreement states that the performance fee is a
22 calculation of ten percent of the transaction value at the
23 time of closing. And then it goes on again to state that
24 the value shall include the full potential value of any
25 contingencies.

1 At the time of closing the purchase price per the
2 contract is \$290,000. That was based on anticipated
3 revenues that were based on the gross revenues for 2010.
4 That's when Mr. Poe should have been paid, at the time of
5 closing.

6 whether or not Mr. Stravolo was able to fully collect
7 the remaining contingencies from the purchaser is --
8 doesn't matter.

9 I mean, I keep referring back in this case to
10 someone's buying a home. Your real estate agent or the
11 broker is entitled to their commission regardless of what
12 happens. Once the sale is consummated and that the deal is
13 closed they are to be paid their commission. And what the
14 defendant is trying to do here is to continually cut
15 Mr. Poe out of his fee that he was entitled to as the
16 broker.

17 But Your Honor already ruled on this and at the
18 hearing found the purchase price was \$290,000. That was
19 coincidentally the same amount as the gross revenues. So
20 whether or not it was a merger or a sale the -- the value
21 on which he based the performance fee is the same. And we
22 respectfully submit that we believe that's the correct
23 ruling based on a very clear interpretation and the plain
24 language of the contract.

25 MR. TALLEY: Your Honor, very briefly.

1 Respectfully, your order does not say that. And as I
2 said earlier, we never saw your order until January of this
3 year when it was sent out.

4 But in the last paragraph on the first page of your
5 order where it says the merger, it says the preceding
6 year's gross revenues were \$298,234, thus the amount due to
7 the plaintiff is ten percent of that. And it has those
8 exact numbers.

9 Nowhere in this order does it say regardless if I find
10 merger or sale the amount is the same. In fact -- and I
11 think plaintiff in their argument admits -- that's still
12 some eight thousand plus dollars difference. But the order
13 does not say that. The order just uses the prior year
14 revenue figure, which is one option under the sales
15 consulting agreement. Thank you.

16 THE COURT: Okay. I think I understand.

17 All right, sir. I'll let you know. Thank you.

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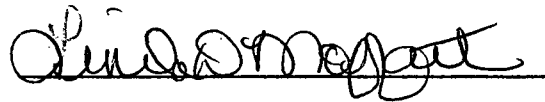
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 26th day of August 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 2, 2015

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
)
)

Brannon Poe, CPA, LLC,
Plaintiff,

)
)
) Case No. 11-CP-42-2880
)

Vs.

)
) **AFFIDAVIT OF STEVE STRAVOLO**
)

Steve Stravolo, Stravolo & Company,
PA and Upstate CPAs, PA f/k/a
Mathur & Co., PA,

)
)
) Defendants.
)

DEFENDANT STEVE STRAVOLO, first being duly sworn, deposes and states as follows:

In 2009, I decided that I wanted to sell my tax and accounting practice, Stravolo & Company, P.A., so that I could focus my attention solely on managing accounts for clients. In July 2009, I entered into a Sales Consulting Agreement with Accounting Practice Sales. I knew of Accounting Practice Sales ("APS") from an earlier transaction it handled for me in 2007. At that time, Mathur & Co., P.A. purchased a business I owned known as AAA Westgate Tax & Accounting. Brannon Poe was involved in that transaction under a similar arrangement to the Sales Consulting Agreement we entered in July 2009.

APS had the following duties under the Sales Consulting Agreement: facilitate the sale of my practice through internet listings, screening potential buyers and bringing prospective buyers to me. Over the course of the agreement, APS brought 4 potential offers to me for consideration, none of which worked out. The last offer brought to me by APS was even considered undesirable by APS. Per the terms of the Sales Consulting Agreement, APS would be paid a **PERFORMANCE FEE** (emphasis added) at closing of a sale or merger of the practice based on APS performing its duty as set forth above.

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Brannon Poe handled the sale of AAA Westgate Tax & Accounting – it was a quick 100% sale of an individual tax preparation service (like an H&R Block or Jackson Hewitt, with only 1 location). A very simple type of business. Brannon brought 3 potential buyers to the table. Negotiations were communicated by Brannon Poe. And, I paid him his performance fee immediately after the sale of my business. Two years later, I called Brannon to list 50% of the sale of Stravolo & Company, P.A. – he said the sale of 50% of a firm is harder than a 100% sale. He “handed me off” to his assistant, Stephanie, who he said was previously a banker and new to the business. I was instructed to deal with Stephanie on the sale and she is the only person who communicated with me about the sale of the business. Over the course of APS listing my tax practice, we communicated numerous times via e-mail regarding the listing itself, as well as the inquiries from potential buyers that were received by APS.

I received no offers during the 50% listing. I had 3 different CPAs who wanted to meet with me, but none of those meetings turned into an offer. These inquiries went as follows:

- a. First meeting was not with a qualified buyer – he said he did not have money and that if I made him a partner, he would “generate enough profit to pay me for his interest in the firm” – the listing specifically eliminated any seller-financing. This person told me he had just lost his job and was looking for a job.
- b. Second meeting with a potential buyer – nice guy working in a firm in NC – after months of “waiting on him to get through tax season”, he said he was not prepared to buy in to a partnership.
- c. Third meeting was with a son of a CPA firm partner out of Michigan who was looking for firms to buy (I think this is around the time I changed the sale to a 100% sale and I asked Stephanie to contact that potential buyer and give them that

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information – no interest was generated from that lead. The son was looking for a way to move back to the South. And, he was not a decision-maker.

In 2010, I decided to sell 100% of Stravolo & Company, P.A. because I could not handle running 2 businesses anymore and I needed to get Stravolo & Company, P.A. sold. I mentioned to Stephanie that now it should be easier to sell, based upon what Brannon had previously discussed with me (that 100% is easier than 50%). We had 1 formal offer (the “ridiculous offer”) from a CPA firm in Spartanburg after the 100% listing took effect. By its own admission, APS was aware that Bharti Mathur, Principal with Mathur & Co., P.A., was interested in obtaining another practice in the Upstate area. APS linked us in 2007. During the course of this litigation, I discovered that Bharti viewed the listing of my practice 4 times. Yet, APS never reached out to her, to inform her of the practice and our prior relationship. Likewise, they didn’t reach out to me that Bharti was inquiring. I was not informed of her inquiries by Stephanie or anyone else at APS.

Bharti and her husband Sam mentioned opening an investment account with me to manage to “see how we performed” before considering us to manage the rest of their money to manage. I met with Sam and Bharti at their office to discuss their investments and my recommendations. We met again to sign paperwork to open an investment account for them. We discussed their firm and I told them that I had put my CPA firm on the market to sell it because I wanted to dedicate 100% of my energy to the wealth management business. Bharti and Sam said that they would like to discuss our CPA firm in more detail – that they may be interested in buying our practice. We began holding preliminary discussions about the practice. At that time, I did not know that they had viewed our listing APS put out. Quite frankly, I had

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not heard from APS regarding any reasonable offers, or any offers that were potentially productive at this time, so I continued my discussions with Bharti and Sam.

On December 20, 2010, Stravolo & Company ceased operations and we immediately transitioned our clients to Bharti's new firm Upstate CPAs, P.A. The team members of Stravolo & Company, P.A. were immediately hired by Upstate CPAs, P.A. It was only after the deal I structured with Bharti was finalized that I learned from Brannon that Bharti had viewed my profile on his company's listings. He only informed me of this when I asked him to pull the listing. He has admitted in his deposition that neither he nor Stephanie pursued Bharti because they wanted to see if people that viewed the profiles were truly interested by making further inquiry. In essence, he had a fish on the hook and did not reel it in. I do not feel that he has performed pursuant to the terms of our agreement.


Steve Stravolo

WITNESSED BY MIKE IRVIN, NOTARY PUBLIC

05/10/2012

Michael T. Irvin

MY COMMISSION EXPIRES ON 01/22/2018

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ASSET PURCHASE AGREEMENT

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the benefit of both parties, and any such conflict which may exist, if any, is waived by the parties. The Purchaser and Seller also agree to equally divide any such closing costs incurred in consummating this transaction.

Subject to the fulfillment or waiver of the conditions set forth in Article V, the following shall take place at the Closing:

- (a) Seller shall convey the Purchased Assets to Purchaser by appropriate instruments of transfer;
- (b) Purchaser shall pay all sums due hereunder to Seller as provided in Section 1.3 hereunder.

SECTION 1.3. PURCHASE PRICE. The aggregate purchase price (the "Purchase Price") to be paid to Seller is contingent and shall be based on year 2011 (January 1 to December 31) revenues compared to revenues realized from January 1, 2010 to December 31, 2010 to be paid as follows: \$75,000.00 due at closing with an additional \$75,000.00 due on or before January 15, 2011. As soon after June 30, 2011 as practical, Purchaser and Seller will meet to review January 1, 2011 to June 30, 2011 revenues. On or before July 15, 2011, Purchaser shall pay to Seller one-half of the pro-rated balance due Seller based on the contingent arrangement of the parties attached hereto as Exhibit 2. The remaining payment due Seller, if any, based on the 2011 revenues shall be paid on or before January 15, 2012.

The Purchase Price is allocated as follows:

- (a) Equipment/Furniture/Inventory. In consideration of the Equipment, Furniture and Inventory conveyed hereunder as set forth on Exhibit 1 attached hereto and incorporated herein, Purchaser shall pay \$ 30,000.00 Dollars.
- (b) Goodwill. The parties agree that \$ 260,000 Dollars is allocated to goodwill.

Seller and Purchaser acknowledge that the foregoing allocation of the Purchase Price is based upon the fair market values of the Purchased Assets, determined by arms-length negotiations, and each hereby agrees to adhere to such allocation in all reports, returns and other documents filed with any governmental authority.

Further, as this Purchase Price is based on future revenues, Purchaser agrees to maintain best efforts and reasonable business practices in an effort to maintain and grow, if possible, existing client base of Seller.

SECTION 1.4. NO ASSUMPTION OF LIABILITIES. Nothing in Section 1.1(a) shall be deemed to require Purchaser to assume or otherwise acquire any liabilities or obligations of Seller, whether known or unknown, contingent or otherwise. Without limiting the generality of the foregoing, it is specifically understood and agreed that Purchaser shall not assume any of the Excluded Liabilities. As used in this Agreement, the "Excluded Liabilities" means the following

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obligations, liabilities, covenants, commitments and undertakings of Seller existing on the Closing Date:

(a) All accrued fees, expenses and other costs to be borne by Seller pursuant to Section 1.6 of this Agreement;

(b) Any obligations or liabilities of Seller, whether civil or criminal in nature, arising out of any violation by Seller of any term or provision of any federal, state or local law, rule, regulation, judicial or administrative order, judgment or decree, or governmental permit, license, approval or authorization, or of any state common law or any contractual law concerning its employees or any individuals with whom Seller has contracted for the performance of services;

(c) Any obligations or liabilities of Seller under any employee benefit plan or arrangement of Seller, including, without limitation, obligations and liabilities in respect to severance or separation pay policies, accrued, vacation pay or benefits, or life, health, and medical benefits (including any liability of Seller under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") and all liabilities of Seller with respect to or under any employment or other agreement with any employee or other person or entity providing services to Seller;

(d) Any liability of Seller for federal, state or local income, franchise, sales (other than as set forth in Section 1.6), use, social security, unemployment, or withholding taxes, or any penalties, interest, fines or assessments in connection therewith;

(e) Any liability of Seller for ad valorem property taxes and intangibles taxes that accrue prior to the Closing Date with respect to the Purchased Assets or that accrue at any time with respect to assets of Seller other than the Purchased Assets (Seller hereby agrees to pay all property taxes assessed on property of Stravolo & Company, P.A. for year 2010);

(f) Any of Seller's obligations, liabilities, covenants, commitments and undertakings under this Agreement or any instrument or agreement entered into pursuant hereto;

(g) Any of Seller's liabilities for any services performed by Seller on or prior to the Closing Date;

(h) Any obligations or liabilities, whether arising before or after the Closing Date, related to, based upon, or arising from the Benefit Plans (as defined in Section 2.10 below); or

(i) Any other obligations, liabilities, covenants, commitments or undertakings of Seller, except as expressly assumed by Purchaser herein.

SECTION 1.5. OTHER AGREEMENTS.

(1) Purchaser and Seller both agree that a material term of this agreement is confidentiality regarding the merger of the businesses of Purchaser and Seller contemplated by this Asset Purchase Agreement. Both parties to this agreement hereby covenant that any such

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media communication, client communication or marketing of the business will be mutually agreed by both parties. Each party further agrees to inform the other party of any suspected breach or possible breach of this confidentiality agreement. Any breach of this particular agreement may subject the party causing/condoning or permitting such breach to suffer damages. The parties further agree that they will mutually arrange for client notification, client greeting and staff communication regarding the merger of their entities pursuant to this agreement.

Any and all client information shall be maintained confidential by both parties; this provision includes any online/electronic posting of client information, and each party agrees to hold the other harmless from any breach of this particular confidentiality provision should such occurrence take place after the Closing Date.

(2) Seller agrees to assist Purchaser in all aspects of the Business, including, but not limited to daily operations for the mutual benefit of both Purchaser and Seller following the Closing Date.

(3) Seller further agrees that it, its shareholders, its officers and employees will not directly or indirectly recruit or otherwise solicit any current client or employee to use services other than those provided by Purchaser pursuant to this agreement for a period of four (4) years from the Closing Date. This non-compete is binding on the shareholders of Seller and shall apply to any work performed or employment by an accounting firm for the time period stated. Furthermore, Steve & Kim Stravolo (the Sellers) and the firm affirm that its business purpose is not to set-up or build another "CPA Practice" similar to Mathur & Company/Stravolo & Company, where generally expected services offered by a CPA firm will be the primary purpose of the business. This agreement will cover a period of four years.

(4) Purchaser agrees to enter into a contract with Kimberly Stravolo for payment based on billable hours for all work performed on or after November 1, 2010 that will be billed for and collected for the benefit of Purchaser.

SECTION 1.6. PRORATED EXPENSES. Purchaser shall not be responsible for any business, occupation, withholding, or similar tax, or any taxes of any kind relating to any period before the Closing Date. If actual taxes and/or other items of income or expense are unknown at the Closing Date, estimates shall be made and subsequent proration adjustments shall be made based upon the actual amounts of such items of income or expense which are paid or received.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE SELLER

To induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as of the date hereof that:

SECTION 2.1. AUTHORITY. This Agreement constitutes, and all bills of sale, assignments, agreements and other instruments and documents to be executed and delivered by Seller hereunder will constitute Seller's legal, valid and binding obligations, enforceable against Seller in accordance with their respective terms.

SECTION 2.2. ABSENCE OF CONFLICTS AND CONSENT REQUIREMENTS.

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Seller's execution and delivery of this Agreement and the performance of its obligations hereunder, including the sale of the Purchased Assets, will not conflict with, violate or result in any default under any mortgage, indenture, agreement, instrument or other contract to which Seller is a party or by which Seller or its property is bound, nor will they violate any judgment, order, decree, law, statute, regulation or other judicial or governmental restriction to which Seller is subject. Seller's execution and delivery of this Agreement and the performance of its obligations hereunder, including the sale of the Purchased Assets will not require the consent of or any prior filing with or notice to, any governmental authority or other third party.

SECTION 2.3. TITLE TO ASSETS.

(a) General. Seller has good and marketable indefeasible fee simple title to the Purchased Assets, such title being free and clear of all liens, charges, security interests, easements, reservations, restrictions, encumbrances and other defects in title (collectively, the "Encumbrances"), has the right to convey the Purchased Assets to Purchaser, and at the Closing shall have conveyed to Purchaser good and marketable indefeasible fee simple title to the Purchased Assets free and clear of all Encumbrances whatsoever. Seller shall warrant and defend the title to the Purchased Assets in Purchaser against the lawful claims of all persons whomsoever.

SECTION 2.4. CONDITION OF TANGIBLE ASSETS. Except for ordinary wear and tear, all of the Equipment is in good operating condition and repair.

SECTION 2.5. LEASES. None of the Purchased Assets are leased by Seller from any other party.

SECTION 2.6 LITIGATION. There are no claims, actions, suits or other proceedings pending, or to the knowledge of Seller threatened, against Seller or any of the Purchased Assets before any court, agency or other judicial, administrative or other governmental body or arbitrator.

SECTION 2.7 COMPLIANCE WITH LAW.

(a) Conduct of Business. Seller has conducted the business so as to comply with, and is in compliance with, all laws, statutes, regulations, rules and other requirements of any governmental authority applicable to it, with which the noncompliance or the curing of such noncompliance might have a material adverse effect on Seller or the Business or the Purchased Assets.

(b) Judgements and Orders. There are no outstanding judgments, orders, writs or decrees of any judicial or other governmental authority binding upon Seller or the Purchased Assets, other than judgments, orders, writs or decrees with which Seller has complied and which have no future applicability.

(c) Licenses. Seller is not presently in violation or default under any license. There does not exist any circumstance which with notice or the passage of time, or both, would result

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in such a violation or default, and there is no proceeding pending, or to Seller's or the Shareholder's knowledge threatened, with respect to the revocation or limitation of any license.

(d) Improper Payments. Neither Seller nor, to the knowledge of Seller, any officer, director, employee, or other representative of Seller acting or purporting to act on behalf of Seller or of any business enterprise with which Seller has been associated or affiliated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, in violation of applicable law, (i) as a kickback or bribe to any person or (ii) to any political organization nor the holder of, or any aspirant to, any elective or appointive office of any nation, state, political subdivision hereof, or other governmental body or instrumentality.

SECTION 2.8. TAXES.

(a) Returns and Payment of Taxes. All tax returns required to be filed on or prior to the Closing Date by Seller with all taxing authorities have been or prior to the Closing Date will have been filed; and all taxes due and payable on such returns, all other taxes, duties and other governmental charges payable by Seller and for the payment of which there may arise any lien upon the Purchased Assets sold hereunder subsequent to such sale, and all deficiencies, assessments, penalties and interest with respect thereto, notice of which has been received by Seller, in each case due and payable on or before the Closing Date, have been, or prior to the Closing Date will have been paid.

(b) Withholding of Taxes. There has been withheld or collected from each payment made to each employee of Seller the amount of all taxes (including without limitation federal income taxes, Federal Insurance Contributions Act taxes, and state and local income, payroll and wage taxes) required to be withheld or collected therefrom, and the same have been paid to the proper tax depositories or collecting authorities.

(c) Ad Valorem Taxes. All ad valorem property taxes for years prior to 2010 imposed on Seller with respect to, or which may have become a lien on, the Purchased Assets have been paid in full. Seller agrees to pay any such taxes for the year 2010 to Spartanburg County as well on or before the date due.

SECTION 2.9. EMPLOYEE BENEFIT PLANS: EMPLOYMENT CONTRACTS.

Purchaser shall have no liability or responsibility with respect to any of the following benefit plans, employment contracts or other arrangements (as hereafter defined) of Seller which relate to or cover the employees of the Business and no lien, charge, encumbrance, or other claim with respect to the Purchased Assets shall arise under or pursuant to such benefit plan, employment contract or other arrangement, including without limitation:

(a) Any and all "employee welfare benefit plans" and "employee pension plans" as defined respectively in Section 3(1) and 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including multi-employer plans as defined in Section 3(37) of ERISA and any other pension, profit sharing, retirement, deferred compensation, stock purchase, stock option, incentive, bonus, vacation, severance, disability, hospitalization, medical insurance or other employee benefit plan, program or arrangement, whether written or unwritten,

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formal or informal, which Seller or any subsidiary or any other entity which constitutes a controlled group (within the meaning of Section 4001(b) of ERISA and/or Section 414(b)-(n) of the Internal Revenue Code of 1986, as amended (the "Code") maintains or to which Seller has any present or future obligation to contribute (the "Benefit Plans").

(b) Any agreement or other contract relating to the employment of any person by Seller, including in particular, any provisions thereof relating to the payment of additional compensation or other amounts to any such person upon the occurrence of any transaction contemplated by this Agreement.

SECTION 2.10. EMPLOYEE MATTERS AND RELATIONS.

(a) Employee Contracts. Seller is not a party to any employment or other contract relating to the performance of services for Seller or the Business which materially affects or is likely to materially affect the Business, the Purchased Assets, or the transactions contemplated hereby.

(b) Restrictions on Employees. To Seller's knowledge, no officer or employee of Seller is subject to any agreement with any other person or entity which requires such officer or employee to assign any interest in inventions or other intellectual property or keep confidential any trade secrets, proprietary data, employee or client lists or other business information or which restricts such officer or employee from engaging in competitive activities or solicitation of clients.

SECTION 2.11. CERTAIN CONTRACTS AND TRANSACTIONS. Seller is not party to any contract or agreement (including an option) which is material to the Business or materially affects its assets, operations, profitability, or prospects.

SECTION 2.12. CLIENTS. Seller believes that its business relationships with the clients of the Business are satisfactory, and Seller has no knowledge or notice of any termination, cancellation, or adverse material change in this business relationship with any client, except as noted in the records provided to Purchaser.

SECTION 2.13. PROSPECTIVE CHANGES. Seller knows of no impending change in its business, assets, liabilities, relations with its clients, or in any governmental actions or regulations affecting the Business, which, if they occur, could have a material adverse effect on Seller, the Business or its assets.

SECTION 2.14. NO MATERIAL MISSTATEMENTS OR OMISSIONS.

The representations and warranties of Seller in this Agreement do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein not misleading.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PURCHASER

To induce Seller to enter into this Agreement, Purchaser represents and warrants that:

SECTION 3.1. ABSENCE OF CONFLICTS AND CONSENT REQUIREMENTS.

Purchaser's execution and delivery of this Agreement and the performance of its obligations hereunder, including the purchase of and payment for the Purchased Assets hereunder, do not and will not conflict with, violate or result in any default under any agreement, instrument or other contract to which Purchaser is a party or any judgment, order, decree, law, statute, regulation or other judicial governmental restriction to which Purchaser is subject. Purchaser's execution and delivery of this Agreement and the performance of its obligation hereunder, including the purchase of and payment for the Purchased Assets, do not and will not require the consent of, or any prior filing with or notice to, any governmental authority or other third party.

SECTION 3.2. NO MATERIAL MISSTATEMENTS OR OMISSIONS.

The representations and warranties of Purchaser in this Agreement do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein not misleading.

ARTICLE IV

CERTAIN COVENANTS AND AGREEMENTS

SECTION 4.1. CONDUCT PRIOR TO CLOSING.

(a) Ordinary Course of Business. From the date hereof, through the Closing Date (the "Interim Period"), unless Purchaser consents otherwise, Seller shall conduct its business only in the ordinary course, shall not dispose of any of the Purchased Assets, shall not enter into any contract, lease, agreement, transaction or arrangement which, if existing on the date hereof, would be required to be disclosed herein, and shall not take any other action which would cause any representation or warranty made in Article II hereof to be incorrect in any material respect if such representation or warranty were made on any date during the Interim Period.

Specifically, during the Interim Period, Seller shall not have, without the written consent of Purchaser which shall not be unreasonably withheld,:

(i) Canceled any material debts or claims, or waive any rights of substantial value, or sold or otherwise disposed of or transferred any of the Purchased Assets, other than by transactions and actions in the ordinary course of business.

(ii) Permitted or allowed any of the Purchased Assets to be mortgaged, pledged, subjected to security interests or otherwise encumbered.

(iii) Made or incurred any account payable other than in the ordinary course of

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business or incurred any unusual or long-term commitment or other material obligation (whether absolute, accrued, contingent or other and whether due or to become due) affecting the Business or the Purchased Assets.

(iv) Granted or paid any increase in salary or other type of bonus or compensation pursuant to any bonus, pension, profit-sharing or other plan or commitment, or otherwise, to any employee other than increases in the ordinary course of business.

(v) Revealed to third persons any client or employee lists or other confidential or proprietary information, or acting otherwise in any manner which may materially adversely affect the Business or any of the Purchased Assets.

(vi) Engaged in any other transactions which affect the amount of the Purchased Assets, or which would be required to be disclosed herein, other than transactions made in the ordinary course of business.

(b) Access. During the Interim Period, Seller shall give Purchaser and its agents, attorneys and representatives full access to such of its properties, books, records and documents as Purchaser may reasonably request.

(c) Insurance. During the Interim Period, Seller shall maintain in effect insurance policies sufficient to preserve the value of the purchased assets and the Business.

(d) Preservation of Business. During the Interim Period, Seller will use its best efforts to (i) preserve its present business organization intact, and (ii) preserve the present relationships of Seller with its clients and other persons with whom it has business dealings.

SECTION 4.2. FURTHER ASSURANCES. Seller and Purchaser hereby covenant and agree that at any time and from time to time each will promptly execute and deliver to the other such further assurances, instruments and documents and take such further action as the other may reasonably request in order to carry out the full intent and purpose of this Agreement.

SECTION 4.3 CONSENTS. Seller shall, at its expense, obtain and furnish to Purchaser at Closing written consents to the sale and assignment of the Purchased Assets to Purchaser, in each case where the approval or other consent of any other person is required.

SECTION 4.4 PAYMENT OF LIABILITIES. Seller covenants and agrees that it will pay, perform and discharge all liabilities and obligations of Seller that could give rise to a claim on or against or a lien upon the Purchased Assets, in each case as and when due and payable.

ARTICLE V

CONDITIONS TO CLOSING

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SECTION 5.1. CONDITIONS TO THE PURCHASER'S OBLIGATIONS. The obligations of Purchaser to complete the Closing are contingent upon the fulfillment of each of the following conditions on or before the Closing Date, except to the extent that Purchaser may, in its absolute discretion, waive any one or more thereof in whole or in part:

(a) Bringdown. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as though made on the Closing Date. All terms, covenants and conditions to be complied with and performed by Seller under this Agreement on or before the Closing Date shall have been duly complied with and duly performed.

(b) Instruments of Transfer. Seller shall deliver to Purchaser a bill of sale necessary to convey to Purchaser all of the Purchased Assets.

(c) Lease. Purchaser shall have entered into a new lease, if necessary, with respect to the location of the Business.

SECTION 5.2. CONDITIONS TO SELLER'S OBLIGATIONS. The obligations of Seller to complete the Closing are contingent upon the fulfillment of each of the following conditions on or before the Closing Date, except to the extent that Purchaser may, in its absolute discretion, waive any one or more thereof in whole or in part:

(a) Bringdown. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct in all material respects on the Closing Date with the same force and effect as though made on the Closing Date; all terms, covenants, and conditions to be complied with and performed by Purchaser under this Agreement on or before the Closing Date shall have been duly complied with and duly performed; and Purchaser shall have delivered to Seller at Closing a certificate, dated the Closing Date, to such effect.

(b) Payment of Purchase Price. Purchaser shall have transferred to Seller the Purchase Price by certified check, cash or as agreed to by the parties as set forth herein and due on the Closing Date.

ARTICLE VI

INDEMNIFICATION

SECTION 6.1. INDEMNIFICATION BY SELLER AND THE SHAREHOLDERS. Subject to the procedures and limitations set forth in this Article VI, Seller hereby agrees that it will indemnify and save harmless Purchaser from and against any and all loss, liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Purchaser arising out of any of the following:

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(a) Breach of Warranty. The falsity or incorrectness of any representation or warranty made by Seller in this Agreement or in any instrument or document delivered by Seller to Purchaser pursuant to this Agreement;

(b) Breach of Covenants. The failure of Seller duly to perform any covenant or agreement to be performed by it under this Agreement or under any instrument or document delivered by Seller to Purchaser pursuant to this Agreement;

(c) Liabilities. Any liability or obligation, or alleged liability or obligation, of Seller (including without limitation any such liability or obligation arising from actions taken by Seller prior to the Closing Date but accruing or asserted thereafter), to the extent that such liabilities arise out of occurrences, circumstances, actions or inactions occurring or in existence prior to the Closing Date, whether or not such occurrences, circumstances, actions or inactions are known by Seller or Purchaser on or prior to the Closing date or are disclosed herein;

(d) Claims Against Purchased Assets. Any levy or other claim by any third party against or with respect to the Purchased Assets, or any other claim by any third party against Purchaser, arising out of any act or omission or alleged act or omission of Seller prior to the closing.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1 MERGER CLAUSE. This Agreement contains the final, complete and exclusive statement of the agreement between the parties with respect to the transactions contemplated herein and all prior or contemporaneous written or oral agreements with respect to the subject matter hereof are merged herein.

SECTION 7.2. AMENDMENTS. No change, amendment, qualification or cancellation hereof shall be effective unless in writing and executed by the parties hereto individually or by their duly authorized officers or fiduciary.

SECTION 7.3. BENEFITS AND BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 7.4. NOTICES. All notices, requests, and demands and other communications hereunder must be in writing and shall be deemed to have been duly given (a) when personally delivered to the intended party.

SECTION 7.5. CAPTIONS. The captions are for convenience of reference only and shall not be construed as a part of this Agreement.

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SECTION 7.6. GOVERNING LAW. This Agreement shall be construed, interpreted, enforced and governed by and under the laws of the State of South Carolina.

SECTION 7.7. EXHIBITS. All of the Exhibits hereto referred to in this Agreement are hereby incorporated herein by reference and shall be deemed and construed to be a part of this Agreement for all purposes.

SECTION 7.8. SEVERABILITY; PARTIAL INVALIDITY. If any provision of this Agreement or any instrument or document delivered in connection herewith is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement (the "Offending Provision"), the Offending Provision shall be fully severable; this Agreement shall be construed and enforced as if the Offending Provision had never comprised a part of this Agreement; and the remaining provisions of this agreement shall remain in full force and effect and shall not be affected by the Offending Provision or by its severance from this Agreement. Furthermore, in lieu of the Offending Provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to the Offending Provision as may be possible and be legal, valid and enforceable.

SECTION 7.9. REMEDIES. No single or partial exercise of any right, remedy, power or privilege hereunder shall in any way preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers or privileges provided by law.

SECTION 7.10. COUNTERPARTS. This Agreement may be executed in any number of counterparts all of which shall constitute one and the same instrument.

SECTION 7.11. DISCLOSURE AND CONSENT. Purchaser and Seller hereby acknowledges that Scott F. Talley, Esquire of Scott F. Talley, P.A. is serving as closing agent and any conflict, if any, is waived based on his representation/involvement in this transaction.

000132

SSS
Bmw
11/10

SECTION 7.12 DEFAULT.

(1) Seller's Default. If the sale and purchase of the Assets contemplated by this Agreement is not consummated by the Closing Date on account of Seller's default hereunder (including the breach of a representation or warranty without taking into account any supplements to the schedules added after the execution of this Agreement), the Purchaser shall have, in addition to any right or remedy available pursuant to this Agreement or the laws of the State of South Carolina, the right to seek specific performance of this Agreement.

(2) Purchaser's Default. If the sale and purchase of the Assets contemplated by this Agreement is not consummated by the Closing Date solely because of Purchaser's default, Seller shall have all rights and remedies as permitted by law.

IN WITNESS WHEREOF, Purchaser has each caused this Agreement to be executed under seal by its respective duly authorized officer and has caused its corporate seal to be affixed hereto, and the Seller has executed this Agreement under seal by its respective duly authorized officer and has caused its corporate seal to be affixed hereto,, in each case as of the day and year first above written.

WITNESSES
AS TO SELLER:

Chand Mathur
Nicci Massie

Chand Mathur
Nicci Massie

STRAVOLO & COMPANY, P.A.

Steve Stravolo
BY: Steve Stravolo
ITS: President

Kimberly D Stravolo
BY: Kimberly Stravolo
ITS: Vice President

WITNESSES
AS TO PURCHASER:

Chand Mathur
Nicci Massie

MATHUR & COMPANY, P.A.

Bharti Mathur
BY: Bharti Mathur

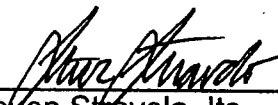
ITS: President

000133

BILL OF SALE

In consideration of the Purchase Price as set forth in that certain Asset Purchase Agreement of even date, the undersigned hereby sells, conveys and transfers to MATHUR & COMPANY, P.A. all of its right, title and interest in and to those certain purchased assets as set forth in the aforementioned Asset Purchase Agreement and more particularly described on Exhibit A attached hereto and incorporated herein.

STRAVOLO & COMPANY, PA

By: 
Steven Stravolo, Its President

By: Kimberly D Stravolo
Kimberly Stravolo, Its Vice President

000134

11/5/10

List of assets being sold

- Customer List / Relationships / Contracts – all clients included in the detailed listing, including tax, accounting, audit, compilation, fixed price agreements, agreed-upon procedures and any other CPA services (excluding financial services)
- Accounts receivable (post-closing)
- Website and web address
- Sharefile data (portal)
- Imagine Time data and program
- ProfitCents data (online)
- UltraTax data files
- Drake data files
- QuickBooks data files
- Other client files (Payroll, Excel, Word, etc)
- Desk (Steve M's office)
- Credenza (Steve M's office)
- Desk (Dianne C's office)
- Credenza (Dianne C's office)
- Desk (bookkeeping office)
- Bookshelf in Dianne C's office
- Bookshelf in bookkeeping office
- Bookshelf in Joanne's office
- Steve M's computer
- Steve M's dual monitors
- Dianne C's computer
- Dianne C's dual monitors
- Bookkeeping office computer
- Bookkeeping office dual monitors
- Printer #1
- Printer #2
- Printer #3
- Lateral File Cabinet
- Lateral File Cabinet
- Vertical File Cabinet 1
- Vertical File Cabinet 2
- Vertical File Cabinet 3
- Round Conference table and 4 burgundy chairs
- Office Chair (Steve M's office)

000135

SSS
for
11/5/

- Office Chair (Dianne C's office)
- Blue Chairs (Dianne C's office)
- 4 blue stacking chairs
- 4 phones
- Safe

List of assets NOT being sold

- Phone system and phones
- Network computer and exchange software
- Accounts receivable – pre-closing
- Utility and other deposits
- Steve S's desk
- Mike I's desk (in basement)
- Jenn's desk and credenza
- Kim's desk and credenza
- Joanne's desk and return
- Desk in upstairs conference room
- Conf table and 6 brown chairs (squared arms)
- 4 brown chairs (rounded arms)
- All desk chairs not listed in "Assets Being Sold"
- Lobby furniture
- Steve's color printer
- Copier (new)
- Copier (old)
- Bookshelves (4 tall, 1 short (all matching))
- Security system
- Refrigerator
- Microwave
- Coffee Maker
- Kitchen supplies
- Folding tables (white and brown)
- Folding chairs
- Chalk board (convert to white board)
- Shredder
- Postage scale
- Shelving in supply room
- Supply cabinets (2)
- Office Supplies
- Typewriter
- Cutter
- Pictures
- Hand trucks

000136

StS
Bone
11/5/11

- Tools
- Sound system including speaker/mixer/microphones
- Projector #1
- Projector #2
- All rugs
- Pictures
- TV
- Locking file cabinets (in network room)
- File cabinets (not listed in "Assets Being Sold")
- File cabinet in Kim's office
- File cabinet in Steve's office
- Steve's computer and dual monitors
- Kim's computer and dual monitors
- Mike's computer and dual monitors
- Jenn's computer and dual monitors
- Joanne's computer and monitor
- Adobe Professional
- Coffee maker
- Microwave
- Toyota Tundra

000137

SOS
Bm
11'

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

BRANNON POE, CPA, LLC,

Plaintiff,

vs.

CASE NO. 2011-CP-42-2880

STEVE STRAVOLO, STRAVOLO & COMPANY, P.A., and UPSTATE
CPAs, PA f/k/a MATHUR & CO., P.A.,

Defendant.

DEPOSITION OF: BRANNON POE

DATE: February 9, 2012

TIME: 10:00 a.m.

LOCATION: WILLS, MASSALON & ALLEN, LLC
97 Broad Street
Charleston, SC

TAKEN BY: Counsel for Defendants

REPORTED BY: Karen V. Andersen, RMR, CSR

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

000138

1 APPEARANCES:

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5 BY: CHRISTY FORD ALLEN
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7 Charleston, SC 29401
8 (843) 727-1144
9 callen@wmalawfirm.net

10 ATTORNEYS FOR THE DEFENDANT
11 STEVE STRAVOLO, STRAVOLO & COMPANY, P.A.,
12 and UPSTATE CPAs, P.A., f/k/a
13 MATHUR & CO., P.A.:

14 TALLEY LAW FIRM, P.A.
15 BY: SCOTT F. TALLEY
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17 Spartanburg, SC 29306
18 (864) 595-2966
19 scott@talleylawfirm.com

20 (INDEX AT REAR OF TRANSCRIPT)

21
22
23
24
25 000139

1 the same discovery I just mentioned. We are doing
2 that just to keep the record clean. Don't worry
3 about page numbers and all this stuff.

4 A. Okay.

5 Q. If you don't mind, just kind of tell me
6 what that is.

7 A. This is -- we use a program called
8 Salesfirst.com to maintain our database. This was --
9 each practice that we have available has an
10 opportunity record, which is the way it's referred to
11 in the sales force.

12 Q. All right. Tell me what that is.

13 A. Okay. An opportunity record, so we have a
14 contact record, which would be Steve Stravolo, and
15 then we have an opportunity record, which represents
16 the listing. It's just a separate record. And so
17 what really we maintain in the opportunity record is
18 a list of all of the buyers who have made an inquiry,
19 so they have expressed -- you know, they've replied
20 to one of our e-mails, they've responded to some
21 marketing that we've done. And so within that
22 opportunity record, there's a list of each inquiry.
23 And each inquiry has a number. So this represents
24 all of the people who have inquired on that practice.

25 Q. When you say inquired, that can mean they

000140

1 opened the e-mail?

2 A. No.

3 Q. No? All right. Tell me -- define for me
4 what you mean by inquiry then.

5 A. It means they have done something to
6 demonstrate interest.

7 Q. All right. Well --

8 A. Meaning they have responded to an e-mail
9 that we have sent, or they have called us, or they
10 have registered on our website specifically
11 identifying that particular practice as one that they
12 are interested in.

13 Q. All right. And these are all the people
14 that fit that category in response to this practice?

15 A. Correct, correct.

16 Q. And I think it looks like -- do you give
17 every practice a number?

18 A. Yes.

19 Q. I see SC1036 on a lot of this.

20 A. Correct.

21 Q. That's the number that got assigned to
22 Stravolo when he listed with you?

23 A. Correct.

24 Q. All right. And so all of the folks on
25 these two pages, Bates Stamp 9 and 10, would have

000141

1 done something more than open an e-mail?

2 A. Correct.

3 Q. Okay. Just so I'm clear, you've got a
4 column labeled inquiry stage.

5 A. Uh-huh.

6 Q. When you say withdrew, does that mean that
7 the person who initially inquired withdrew their
8 interest?

9 A. Correct.

10 Q. Obviously, I understand what these mean.
11 Profile sent, that would be when you send what you
12 referred to earlier as the paragraph blurb?

13 A. Correct. No, that's the full profile.

14 Q. Okay.

15 A. So once they give us a confidentiality
16 agreement signed --

17 Q. The buyer?

18 A. The buyer. -- then we send the formal
19 profile that we have built on the practice that
20 contains a good deal of information about the
21 practice, financial statements.

22 Q. Now, if it had gone to the next step, if
23 after you send that, something else happened, would
24 this have changed?

25 A. Correct.

000142

1 Q. And then the other designation you've got
2 is request buyer's agreement.

3 A. Right.

4 Q. What does that mean?

5 A. That means that we've sent them a
6 confidentiality agreement, and they never sent it.

7 Q. Okay. So these folks that it says profile
8 sent, you would have sent to them, they would have
9 sent it, you send them this profile, and then for
10 some reason, probably unknown to us, they just don't
11 respond; is that fair?

12 A. That happens.

13 Q. I want to show you Poe 14 through Poe 19.
14 And as I understood the response, this is kind of
15 your Bharti Mathur file. Take a look at that. Is
16 that the information you have about Ms. Mathur?

17 A. Yep, yes. Now, the record doesn't show --
18 this record, there's some attachments that were also
19 part of that record that are not here. And I don't
20 know where these attachments are. They are in my
21 system. We have probably -- here it is. We have a
22 buyer's agreement, financial statement,
23 authorization.

24 Q. Okay.

25 A. But this is the sales force contact

000143

1 A. Probably both. We do a lot of marketing.
2 Okay? We send postcards about practices. We send
3 mailers every month. We also send e-mails about
4 multiple practices across the state or across the
5 region. And we also send e-mails that are more
6 targeted just in, you know, certain region for a
7 particular practice.

8 Q. Okay. And just so I'm clear, when we look
9 at the activity history that we just looked at in
10 those Pages 13 through 18, the e-mails listed would
11 have looked like this?

12 A. Could I see that again?

13 Q. Sure. I probably should mark this one
14 since I'm referring to it now. Let me get this
15 marked as an exhibit.

16 (DFT.EXH. 2, E-mails Bates Labeled
17 Pages 14 through 19, marked for identification.)

18 THE WITNESS: She would have gotten a
19 specific e-mail about a Charlotte area practice, a
20 book that I've written, a North Columbia practice, a
21 North Columbia practice, a High Point practice, a
22 beach practice, entire state of North Carolina,
23 entire state of South Carolina.

24 BY MR. TALLEY:

25 Q. So would that be this?

000144

1 A. Since 1994.

2 Q. I think that's all the questions I have
3 for you.

4 EXAMINATION

5 BY MS. ALLEN:

6 Q. I have just a couple. You mentioned the
7 profile that you create for each listing earlier.
8 How is it that you get the information that goes into
9 that?

10 A. The seller supplies us with certain
11 worksheets, financial statements. And we spend a
12 good deal of time on the front end talking with the
13 seller to get a complete understanding that we try to
14 put into that profile.

15 Q. Okay. And who communicated with
16 Mr. Stravolo in this instance?

17 A. I remember when Steve was contemplating
18 the sale, he was contemplating going into financial
19 services business, and I recommended -- I told him I
20 thought he would make more money if he did that, and
21 I think he probably is.

22 Q. So you've talked to him?

23 A. I talked to him sort of strategizing. I
24 remember we had a lot of discussions about selling
25 the portion. He wanted to sell half. I suggested he

000145

1 sell all of it. And then as far as getting the
2 profile built, Stephanie handled that.

3 Q. Okay. How many times do you think you've
4 talked to him on the telephone?

5 A. I don't know.

6 Q. Ballpark?

7 A. Five or six

8 Q. How about by e-mail?

9 A. Just a handful of times.

10 Q. And Stephanie would have had additional
11 communications with him?

12 A. Stephanie, once the profile was built, she
13 would have been the primary point of contact.

14 Q. Okay. Did his profile ever change
15 throughout the process?

16 A. It did. He finally decided that he would
17 prefer to sell the whole practice rather than sell
18 half the practice.

19 Q. What do you mean when you say finally?
20 What do you mean by that?

21 A. Well, he realized that we were not
22 getting -- we were having buyers withdraw. We
23 weren't getting responses. We weren't getting that
24 interest. And that's quite common when someone wants
25 to sell a portion of their practice. You have fewer

000146

1 buyers that want to be a partner with someone that
2 they don't know.

3 Q. Okay. So what was -- when you initially
4 began to market his practice, what was it that he
5 wanted to sell?

6 A. He wanted to sell basically a 50 percent
7 or 49 percent stake in his company.

8 Q. Okay. And so you sent out your initial
9 marketing blast, was on that basis; is that right?

10 A. I don't know that we would have disclosed
11 that it was half of a practice. I can't remember.
12 We might not have. We might have just disclosed the
13 revenue amount as being half of his practice.

14 Q. And --

15 A. That would have been in the profile when
16 they had looked at it, they would have gotten the
17 full --

18 Q. If a buyer responded to your initial
19 marketing and then provided their own confidentiality
20 agreement and authorization, the actual detailed
21 profile that you sent out would have included
22 reference to it being a 49 percent share?

23 A. Correct.

24 Q. Okay. And how long throughout the process
25 was it before that changed?

000147

1 A. I believe it was a full year
2 approximately.

3 Q. And how did it change?

4 A. He made the decision to go ahead and sell
5 the entire practice. So we changed the profile. We
6 changed the -- basically, the profile was drastically
7 changed because we had to recast the financial
8 statements. We would have updated the financial
9 statements for another year that had passed, and, you
10 know, we would have taken out the part that it was a
11 half and, you know, just change his reason for
12 selling. Probably a lot of the data entries in that
13 profile would have changed.

14 Q. And how did the responses change?

15 A. I think we got more serious interest after
16 that point.

17 Q. There was some discussion about this data
18 that you have in your file that shows Ms. Mathur
19 opened this particular e-mail about the Spartanburg
20 practice. Do you look to see if people are opening
21 e-mails in your process generally?

22 A. Generally, no.

23 Q. Okay. And when, if you know, did you look
24 into your computer system in order to get that
25 information?

000148

Inquiries: SC1036 Spartanburg Stravolo
Displaying records 1 - 57



Number of records: 57

Inquiry ID	Contact	Notes	Attitude	Financial Strength	Inquiry Stage	Created Date
INQ0002650					Post Listing Inquiry	12/23/2010
INQ0000621		wants to focus on financial services			Withdrew	8/10/2009
INQ0000674		divorce left his credit bad.			Withdrew	8/21/2009
INQ0000877		not interested in partnership			Withdrew	9/30/2009
INQ0001203		not what he is looking for.			Withdrew	12/14/2009
INQ0001398		not interested in partnership			Withdrew	3/8/2010
INQ0001400		not interested in partnership			Withdrew	3/10/2010
INQ0002417		no reason given			Withdrew	11/3/2010
INQ0001524			Friendly		Meeting completed-waiting for offer	4/21/2010
INQ0000709		phone meeting on 9/15 at 11am			Meeting Scheduled	8/26/2009
INQ0000789					Meeting Scheduled	9/11/2009
INQ0000875					Request Buyer's meeting forms(CA, FS, Resume)	9/30/2009
INQ0000626					Profile Sent	8/11/2009
INQ0000630					Profile Sent	8/11/2009
INQ0000851					Profile Sent	8/17/2009
INQ0000864					Profile Sent	8/19/2009
INQ0000867					Profile Sent	8/19/2009
INQ0000868		he wants to look again 8/10/10			Profile Sent	8/19/2009
INQ0000669					Profile Sent	8/19/2009
INQ0000673					Profile Sent	8/21/2009
INQ0000677					Profile Sent	8/24/2009
INQ0000776					Profile Sent	9/9/2009
INQ0000816					Profile Sent	9/15/2009
INQ0000881					Profile Sent	10/1/2009
INQ0000897					Profile Sent	10/6/2009
INQ0000928					Profile Sent	10/12/2009
INQ0000959					Profile Sent	10/26/2009

000149
pos000009

INQ0001230		Profile Sent	12/28/2009
INQ0001385		Profile Sent	3/1/2010
INQ0001386		Profile Sent	3/2/2010
INQ0001496		Profile Sent	4/5/2010
INQ0001560		Profile Sent	5/5/2010
INQ0001720		Profile Sent	6/9/2010
INQ0001722		Profile Sent	6/11/2010
INQ0001785	Friendly	Profile Sent	6/28/2010
INQ0001855		Profile Sent	7/13/2010
INQ0001857		Profile Sent	7/13/2010
INQ0001952		Profile Sent	7/30/2010
INQ0001958		Profile Sent	8/2/2010
INQ0001975		Profile Sent	8/5/2010
INQ0002058		Profile Sent	8/31/2010
INQ0002079		Profile Sent	9/2/2010
INQ0002092		Profile Sent	9/7/2010
INQ0002099		Profile Sent	9/7/2010
INQ0002243		Profile Sent	9/30/2010
INQ0002338		Profile Sent	10/18/2010
INQ0002444		Profile Sent	11/8/2010
INQ0002530		Profile Sent	11/17/2010
INQ0002531		Profile Sent	11/17/2010
INQ0001138		Request Buyer's Agreement	11/24/2009
INQ0001534		Request Buyer's Agreement	4/27/2010
INQ0001856		Request Buyer's Agreement	7/13/2010
INQ0001859		Request Buyer's Agreement	7/13/2010
INQ0001893		Request Buyer's Agreement	7/18/2010
INQ0001946		Request Buyer's Agreement	7/27/2010
INQ0002033		Request Buyer's Agreement	8/24/2010
INQ0002116		Request Buyer's Agreement	9/10/2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) C.A. NO. 11-CP-42-2880

BRANNON POE, CPA, LLC,)
)
) PLAINTIFF,)
)
VERSUS)
)
STEVE STRAVOLO, STRAVOLO & COMPANY,)
P.A., AND UPSTATE CPAS, P.A. F/K/A)
MATHUR & CO., P.A.,)
)
DEFENDANTS.)

30 (B) (6) DEPOSITION OF
STEVE STRAVOLO

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE 30 (B) (6) DEPOSITION OF
STEVE STRAVOLO WAS TAKEN ON THE 23RD DAY OF JANUARY, 2013,
COMMENCING AT THE HOUR OF 2:50 P.M., AT THE LAW OFFICES OF
TALLEY LAW FIRM, P.A., 2500 WINCHESTER PLACE, SUITE 100,
SPARTANBURG, SOUTH CAROLINA 29301.

REPORTED BY: KAREN E. HOLLEY, CVR-M

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000151

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ATTORNEY FOR DEFENDANTS.

000152

INDEX

STIPULATIONS, WAIVER AND OATH.....	4
EXAMINATION BY MS. ALLEN.....	4
CERTIFICATE OF REPORTER.....	77

EXHIBITS:

PLAINTIFF'S EXHIBIT NUMBER FOURTEEN (AMENDED NOTICE - 5 PAGES).....	6
PLAINTIFF'S EXHIBIT NUMBER FIFTEEN (PROFIT AND LOSS)...	47
PLAINTIFF'S EXHIBIT NUMBER SIXTEEN (EMAILS).....	56
PLAINTIFF'S EXHIBIT NUMBER SEVENTEEN (SECOND REQUESTS TO PRODUCE TO DEFENDANTS - 2 PAGES).....	70
PLAINTIFF'S EXHIBIT NUMBER EIGHTEEN (LETTER TO MR. TALLEY FROM MS. ALLEN - 2 PAGES).....	72

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

000153

1 agreement in the loose sense of the word about referral
2 fees --

3 A. Right.

4 Q. -- for example. Has he paid you any referral fees?

5 A. For 2011, there were some new clients, but he didn't
6 have a whole year of revenue, so there were -- it was a
7 very small amount. I can't remember. It might have
8 been 1,000, it might have been 2,000, but it wasn't a
9 lot of money. He has not paid us for clients for this
10 past year yet.

11 Q. Okay.

12 A. I have no idea what that number is. But he wants to
13 see a full year.

14 Q. Do you all have an agreement on the terms of that?

15 A. Oral agreement.

16 Q. Or do you just wait for a check?

17 A. He'll show us the clients who came on. He'll show Kim
18 and me, because we both send referrals 'cause we're
19 connected here in Spartanburg, and he'll -- he'll just
20 show us, within the next few weeks, all the clients and
21 we'll basically say "These are the ones we sent."

22 Q. All right. And you guys have a non-compete with
23 Upstate CPAs?

24 A. Right. Don't plan to compete either.

25 Q. And then there's this provision that Upstate CPAs

000154

1 agrees to enter into a contract with your wife. What
2 do you understand that to be?

3 A. I think they wanted -- I'm just thinking; I didn't put
4 that in there. I don't remember that clause, unless
5 they wanted to make sure she didn't go work somewhere
6 else...

7 Q. And she's continued to work there part-time?

8 A. Yes; very part-time; during tax season mostly or maybe
9 at deadlines, she'll go in and help. She does
10 participate in team meetings, you know, status updates,
11 even things to better the practice.

12 Q. Does she do anything else?

13 A. No.

14 Q. Other than --

15 A. No, mostly just tax, or review; she'll review.

16 Q. She doesn't have any other employment outside of the
17 home, other than this?

18 A. Oh, no; no.

19 Q. Do you believe that they have an obligation to continue
20 to allow her to do that?

21 A. Not at all. And in fact, you know, I don't -- I think
22 it's more of a burden for her to work with the children
23 we have and so...

24 Q. Do you know approximately how much money she's earned?

25 A. Yeah, I hear about it. It's not enough to do -- to do

1 the contract.

2 A. Oh, now I'm on the contract.

3 Q. Well, my next question was going to be where in the
4 contract does it say that, so you're one ahead of me.

5 A. Let's see. Most of it was discussed, how we would
6 portray this. I don't think that clause is --

7 Q. Are you referring to the merger clause?

8 A. Yeah, that's not the clause -- maybe it was just an
9 oral agreement.

10 Q. I'm not aware that there's any provision in this
11 contract that addresses what you all would say about
12 the deal. What was -- what was your understanding of
13 your agreement about how you would present the deal to
14 the public?

15 A. That the -- the clients of Mathur and Company and the
16 clients of Stravolo and Company would now be served
17 under one roof, basically, as Upstate CPAs. I didn't
18 pick the name; I didn't pick the logo; I didn't design
19 that website. I didn't put my face on that website,
20 but I think because we would continue to help, I helped
21 free, my wife worked -- did taxes on a contract basis,
22 that in essence clients would see us still around. So
23 we didn't want clients to bail thinking that Kim and I
24 bailed, you know, which we did not. The word merger --

25 Q. But you weren't really --

000156

1 A. The word merger was just for PR, not -- not a legal
2 term as evidenced by that assets -- Asset Purchase
3 Agreement.

4 Q. And did you discuss that with the Mathurs prior to the
5 deal?

6 A. Yes; in front of Scott; yes.

7 Q. Okay.

8 A. That it was -- it was in our best interest on both
9 sides that clients see this as two firms coming
10 together, but I have no -- I have no ownership and my
11 wife has no ownership of Upstate CPAs.

12 Q. Okay, and you do not --

13 A. Never have.

14 Q. You do not work for them?

15 A. No. I haven't been paid anything. But I do provide --
16 I do provide free work for them and their clients.

17 Q. Let me show you what we'll mark as Number -- I think
18 we're on Sixteen.

19 (Plaintiff's Exhibit Number Sixteen is marked for
20 identification.)

21 Examination resuming by Ms. Allen:

22 Q. All right, this is an email from you to Brannon Poe
23 dated November 23rd. And what is -- what do you tell
24 him in this email?

25 A. I'm telling them who -- who it was because he was

000157

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF SPARTANBURG) C.A. NO. 11-CP-42-2880

BRANNON POE, CPA, LLC,)
)
) PLAINTIFF,)
)
)
VERSUS)
)
STEVE STRAVOLO, STRAVOLO & COMPANY,)
P.A., AND UPSTATE CPAS, P.A. F/K/A)
MATHUR & CO., P.A.,)
)
)
DEFENDANTS.)

30 (B) (6) DEPOSITION OF
SHAILENDRA NATH MATHUR

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT
IN THE ABOVE-ENTITLED CASE, THE 30 (B) (6) DEPOSITION OF
SHAILENDRA NATH MATHUR WAS TAKEN ON THE 23RD DAY OF
JANUARY, 2013, COMMENCING AT THE HOUR OF 1:06 P.M. , AT
THE LAW OFFICES OF TALLEY LAW FIRM, P.A., 2500 WINCHESTER
PLACE, SUITE 100, SPARTANBURG, SOUTH CAROLINA 29301.

REPORTED BY: KAREN E. HOLLEY, CVR-M

FREELANCE REPORTING SERVICES
Certified Verbatim Reporters
Post Office Box 170637
Spartanburg, South Carolina 29301
(864) 587-7050 or (864) 706-1241
FreelanceRpt@charter.net

000158

1 Q. Explain, please.

2 A. Stravolo Wealth Management, I mean, has requested us
3 that, you know, if we have any clients who would like
4 to use the services of wealth management, we should
5 encourage that; but we have no relationship with
6 Stravolo Wealth Management at all, neither any of our
7 clients. I shouldn't say that because we could have
8 common clients. I wouldn't know that.

9 Q. Okay.

10 A. But our clients would have a relationship with
11 Stravolo, but it's not through us.

12 Q. All right, let's take a look at the second page, which
13 I believe is the, maybe "About Us," tab. This is your
14 wife, right?

15 A. Yes.

16 Q. Bharti. And then it lists Steve Stravolo, CPA.

17 A. Right.

18 Q. Right? Under the Upstate CPAs top heading?

19 A. Yes.

20 Q. But what you told me today is that he doesn't work for
21 Upstate CPAs?

22 A. That is correct.

23 Q. And then it has got his wife at the bottom.

24 A. Kim; she does.

25 Q. She does? Okay.

000159

1 And then Salil Mathur, that's your son?

2 A. That is correct.

3 Q. And then Kim Johnson --

4 A. That is true.

5 Q. -- she's a CPA there as well?

6 A. Yes. Obviously, this is not very current. We have
7 some other -- like I mentioned to you, there are other
8 employees --

9 Q. Okay.

10 A. -- now, which are not in this.

11 Q. And you'd agree it's somewhat misleading also?

12 A. Well, that one was deliberate.

13 Q. That was not my question.

14 A. Okay.

15 Q. I understand it was deliberate.

16 A. Yeah.

17 Q. My question was and you'd agree it's somewhat
18 misleading, in that this --

19 A. I --

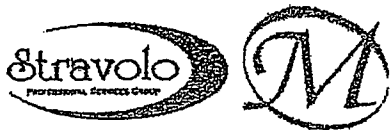
20 Q. -- shows -- it looks like Steve Stravolo is a CPA
21 employed by Upstate CPAs?

22 A. That is your interpretation, I understand that.

23 Q. Okay, what is your interpretation?

24 A. Because we wanted to project that image, that he is
25 still involved and that is a true statement, that he

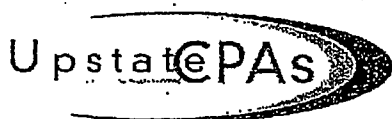
000160



MATHUR AND COMPANY
&
STRAVOLO AND COMPANY

have merged to better serve you

Together we are Upstate CPAs



www.UpstateCPAs.com



We have also moved

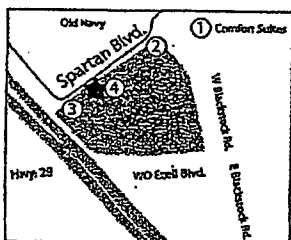
New Address:

Upstate CPAs, P.A.
775 Spartan Blvd. Suite 202
Spartanburg, SC 29301

(864) 587-0567

(864) 587-1611

Starting December 20, 2010
we will be located in the
Pointe West Building
Two story Office Building next to Costco
just past Old Navy Store

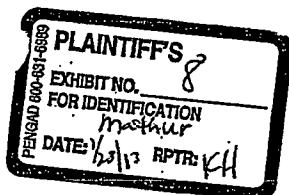


Landmarks:

1. Across from Comfort Suites on Blackstock Rd.
2. West Gate Crossings Sign
3. COSTCO
4. Pointe West Building

Upstate CPAs, P.A.
775 Spartan Blvd. Suite 202
Spartanburg, SC 29301

www.vlstaprint.com

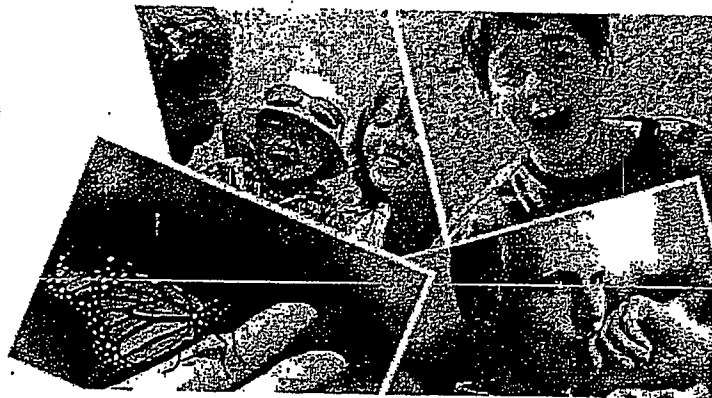


000161

Upstat@CPAs

Looking Forward.....

864-587-0667



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with your business, comply with tax rules,
minimize your tax burden,
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.....

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to increase results from your business.

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- Fixed Price Agreements
- Coaching for Business Owners
- Financial Plan for Life
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- Our Commitment
to Less Paper & Efficiencies

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Our Team - Each team member has an area of expertise. Using a team approach, we provide effective advice in a manner that is efficient and timely... [READ MORE](#)

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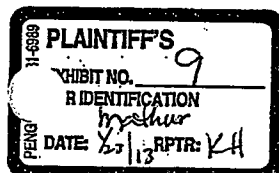
Who We Are -We are a local CPA firm in Spartanburg, SC, offering tax, accounting and professional advice to individuals and business owners. We take a comprehensive approach with each client, leading by example - only providing advice that we would also follow. [READ MORE](#)

CPA POWER
COACH

AICPA

Stravolo
WEALTH MANAGEMENT

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000162



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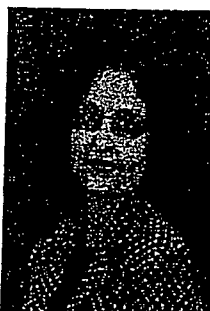
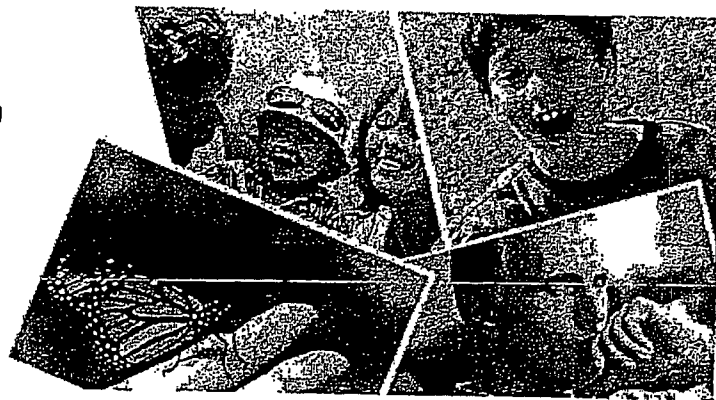
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Bharti Mathur, CPA

Bharti is the managing partner and chief executive officer of Upstate CPAs, P.A., a regional certified public accounting and business advisory firm excelling in accounting, tax, and consulting services for a wide range of clients.

Bharti has extensive experience in all areas of taxation for individuals and businesses in the retail, service, manufacturing and distribution industries. Her experience includes managing client relationships and assisting individuals and businesses improve their efficiency and profitability through hands on consulting and managing. Bharti also helps new business owners take the right steps to properly launch their business. Bharti is a graduate of East Carolina University in Greenville, NC. She graduated *Summa Cum Laude* with a Bachelor of Science degree in Accounting. She has been practicing as a CPA since 1997. In 2000, she formed her own tax and accounting practice and has recently merged her CPA firm with Stravolo & Company, P.A., forming Upstate CPAs, P.A.

Bharti and her husband Sam have two grown sons. One of her sons, Salil, works closely with Bharti in the firm helping clients in the areas of individual tax preparation, accounting and payroll. Bharti and Sam live in Simpsonville, SC. They enjoy traveling and discovering new places around the world together. Bharti also enjoys spending her personal time exercising (including yoga) and reading.

bmathur@upstatecpas.com



Steve Stravolo, CPA

With a major in accounting from Wofford College (1990) and a Master of Accountancy from the University of South Carolina (1991), Steve Stravolo became a CPA in 1993. After working in the large "Big Six" international accounting firms, he and his wife Kim founded Stravolo & Co. in 1994.

Steve is known for his business strategic planning and financial coaching skills. He spends a great deal of his time either helping a business owner take his or her business to the next level or working face-to-face with individuals helping them prepare for their financial future.

Recognizing CPAs are positioned to provide planning services to their clients, Steve developed a unique advisory system, which combines these planning services with the CPA's professional integrity and tax knowledge. Steve and his team at Stravolo Wealth Management continue to assist CPAs around the country with their clients' special planning needs.

sstravolo@upstatecpas.com

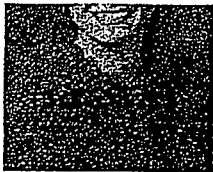


Kim Stravolo, CPA

Kim, co-founder of Stravolo & Co., majored in accounting at Columbia College (1991) and earned a Master of Taxation from the University of South Carolina (1992). Kim worked for one of the large "Big Six" international accounting firms and in 1994, co-founded Stravolo & Co. with her husband Steve.

Kim spends her time in the areas of individual, corporate and fiduciary tax preparation, planning and review.

000163

kstravolo@upstatecpas.com**Salil Mathur**

Salil is a Senior Director for Upstate CPAs, P.A. He is responsible for individual taxation, payroll, local/state compliance, and building the business development and growth initiatives of the firm. Salil has worked in tax accounting for eight years and has extensive experience in all aspects of tax and financial planning for individuals. He provides each client with a personalized, well-developed tax plan for the future. Currently, he oversees all payroll and human resources departments for a number of clients as well as internally, and has extensive experience in Quickbooks.

smathur@upstatecpas.com**Kim Johnson**

Kim Johnson joined Upstate CPAs, PA in July of 2011. She received her Bachelors of Science degree in Accounting from Coker College in Hartsville, SC in 1998. She has over 10 years of experience in public accounting and is currently responsible for bookkeeping, accounting, and tax services for various corporate clients.

kjohnson@upstatecpas.com



Looking Forward.....

864-587-0667

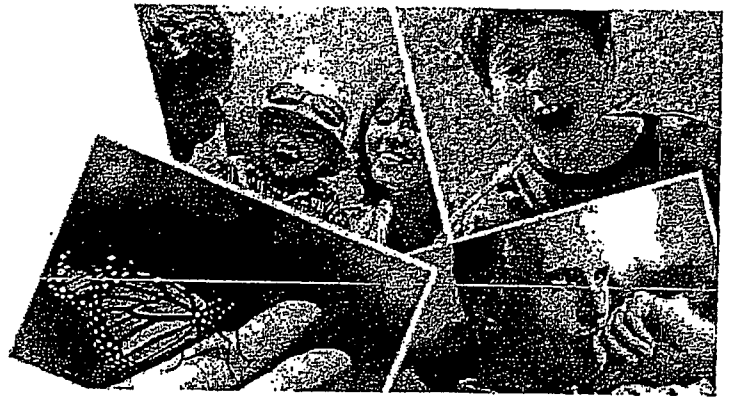
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For more information about our firm and how we can assist you, please call or email:

Office Number: (864) 587-0667

Bharti Mathur, Managing Partner

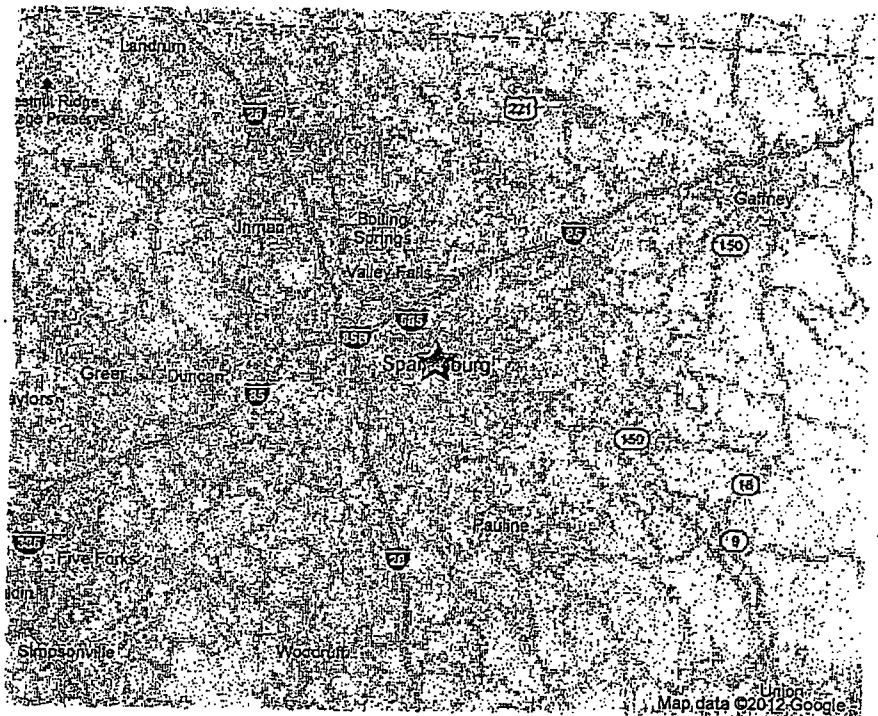
bmathur@upstatecpas.com

Address:

Upstate CPAs, PA

775 Spartan Boulevard

Spartanburg, SC 29301



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000165

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

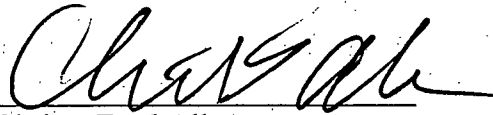
CASE NO: 11-CP-42-2880

REQUESTS TO ADMIT

- A 1. Admit that the document attached as Exhibit A-- "Sales Consulting Agreement" is the complete written agreement between Defendant Stravolo or his related entities and Plaintiff.
- A 2. Admit that there are no written agreements other than the document attached as Exhibit A.
- A 3. Admit that Stravolo & Company PA was listed for sale by Plaintiff at an asking price of \$325,000 as of 9/30/10.
4. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either calendar year or some other fiscal year) exceeded \$250,000.
5. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either by calendar year or some other fiscal year) exceeded \$300,000
6. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either by calendar year or some other fiscal year) exceeded \$350,000.
- A 7. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar

year or some other fiscal year) exceeded \$250,000.

- A 8. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar year or some other fiscal year) exceeded \$300,000.
- D 9. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar year or some other fiscal year) exceeded \$350,000.
- A 10. Admit that Mathur & Co. PA formally changed its name to Upstate CPAs, PA by filing an amendment with the Secretary of State on November 16, 2010 per Exhibit B.
- D 11. Admit that on some date prior to November 17, 2010 Defendants Mathur & Co. PA and Stravolo & Company, PA merged to form Upstate CPA, P.A.
- D 12. Admit that the assets of Stravolo & Company, PA were sold to some entity related to Mathur prior to November 17, 2010.
- D 13. Admit that the assets previously owned, at least in part and in some manner, by Steve Stravolo are now owned by Mathur or some entity related to Mathur.
- A 14. Admit that neither Stravolo nor anyone acting on his behalf informed Plaintiff of the contact or negotiations with Mathur prior to November 17, 2010.
- A 15. Admit that neither Mathur nor anyone acting on her behalf informed Plaintiff of the contact or negotiations with Stravolo prior to November 17, 2010.
- A 16. Admit that the email attached as Exhibit C and dated November 17, 2010 is the only written notice of cancellation by Defendant Stravolo to Plaintiff.
- A 17. Admit that no remuneration has been paid by any Defendant to the Plaintiff.

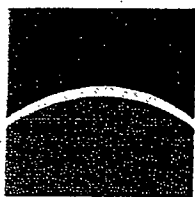


Christy Ford Allen
WILLS, MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

Hannah Rogers Metcalfe
Hannah Rogers Metcalfe, PA
P.O. Box 1826
Greenville, South Carolina 29602
(864) 641-7632

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
August 25, 2011



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Brannon Poe, CPA

2630 Marsh Creek Drive

Charleston, SC 29414

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Sales Consulting Agreement

This Sales Consulting Agreement ("Agreement") is entered into by and between Brannon Poe, CPA, LLC, as agent for Accounting Practice Sales, Inc. ("APS") and Steve Stravolo, CPA ("Seller") regarding the sale of the accounting firm known as: Stravolo & Company, P.A. ("the Practice") located at 189 Converse Street, Spartanburg, SC 29306.

APS is in the business of facilitating the sale of accounting practices. APS facilitates the sale of accounting practices through a combination of internet listing of available practices, screening potential buyers, and by bringing prospective buyers to sellers. Seller desires to obtain the services of APS in connection with the sale or merger of the Practice.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions in this Agreement, APS and Seller agree as follows:

1. PERFORMANCE FEE: Seller agrees to pay APS a performance fee of the greater of: (a) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/ 100 Dollars (\$10,000.00) (whichever applies, the "Performance Fee").

"Transaction Value" is defined as the total of all valuable consideration given in exchange for the assets or shares, if applicable, of the Practice. Valuable consideration is defined as broadly as possible and includes anything of value that is obtained pertaining to the assets or shares of the Firm. If the Firm is merged, the Transaction Value shall be the gross revenue of the Firm for the year preceding the transaction. Transaction Value shall include the full potential value of any contingencies.

2. WHEN PAYABLE: The Performance Fee shall be due and payable at the closing of the sale or merger of the Practice. The Performance Fee is due in full at closing based on the Transaction Value regardless of terms of the sale of the Practice. Seller authorizes buyer, or any closing or escrow agent to pay The Performance Fee directly to APS at the time of closing from Seller's proceeds. The Performance Fee shall be due and payable according to the terms and conditions of this Agreement if the Practice is sold, conveyed, merged into another practice or entity, or in any manner transferred (a) within the term of this Agreement regardless of Buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual Buyer or other transferee is any party with whom Seller or APS had negotiations or contact regarding the sale or transfer of the Practice during the term of this Agreement.

3. EXCLUSIVE RIGHT: Seller understands and agrees that APS has an exclusive right to sell/merge the Practice. During the listing period Seller will not sell or attempt to sell the practice apart from APS nor will Seller engage the services of any other agent or broker in respect of the Practice. Seller shall refer ALL contacts and/or inquiries regarding the sale of the Practice to APS during the term of this Agreement.

4. TERM OF AGREEMENT: This Agreement shall commence on the day and year set forth below and shall continue for a MINIMUM period of ninety (90) days from the date of this agreement. This

Seller Initials SS Date 7/28/01

000169

agreement shall automatically renew for consecutive thirty-day periods until Seller gives APS thirty (30) days written notice of intent to cancel.

5. DISCLOSURE: Seller represents and warrants that all information provided, or to be provided, to APS by Seller is true and complete to the best of Seller's knowledge and further represents and warrants that, to the best of Seller's knowledge, Seller has not failed to disclose any material information to APS. APS will not verify any representations made by buyer as to creditworthiness, business experience or financial condition. The decision to extend credit to a buyer is solely the decision of Seller. APS will gather from buyers what is needed to introduce a buyer to seller, but APS is not liable for any misrepresentations or omissions that may be made to Seller by a buyer.

6. GOVERNING LAW: Should any action be commenced to enforce APS' rights herein, the laws of South Carolina shall control. Suit will be brought in South Carolina.

7. RECOVERY OF COLLECTION EXPENSES: APS shall be entitled to recover the expenses connected with enforcing any of its rights hereunder, including legal fees, court costs, and/or any other reasonable collection costs that may be incurred relating to the enforcement of such rights.

8. ACKNOWLEDGEMENT: Seller acknowledges that Seller has read this Agreement and fully understands the terms and provisions of this Agreement.

9. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by Seller.

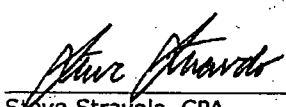
10. MISCELLANEOUS:

(a) Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(b) Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable; and the singular shall include the plural, if applicable.

(d) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Faxed and electronic copies are binding.


Steve Stravolo, CPA

Accounting Practice Sales, Inc.

By: Brannon Poe, CPA, LLC
Its: Authorized Agent

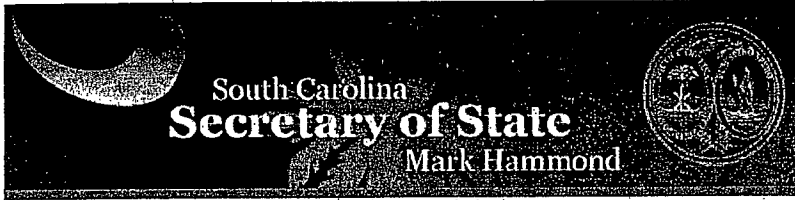
Date signed: 7/28/09

By: _____
Brannon Poe
Its: Member

Date signed: _____

000170

"B"

**UPSTATE CPAS, P.A.**

Note: This online database was last updated on 5/15/2011 6:01:29 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

**STATE OF INCORPORATION
/ ORGANIZATION:**SOUTH CAROLINA
Profit**REGISTERED AGENT INFORMATION****REGISTERED AGENT NAME:**

BHARTI MATHUR

ADDRESS:

220 WESTGATE MALL DR

CITY:

SPARTANBURG

STATE:

SC

ZIP:

29301

SECOND ADDRESS:

SUITE 6

FILE DATE:

11/02/2007

EFFECTIVE DATE:

11/02/2007

DISSOLVED DATE:

//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Amendment	11/16/2010	CHANGED NAME FROM-MATHUR & CO.,P.A./PRINCIPAL OFFICE ADDRESS	
Incorporation	11/02/2007	PROFESSIONAL CORPORATION	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC
29201

<http://www.scsos.com/index.asn?n=18&n=4&s=18&corporateid=498648>

5/16/2011

000171

"C"

From: Steve Stravolo [<mailto:Steve@stravolo.com>]
Sent: Wednesday, November 17, 2010 8:32 PM
To: Brannon Poe
Cc: Stephanie Smith
Subject: RE: update

11/17/10

Hello Brannon,

Sorry I didn't get back to you sooner. I've been in Atlanta.

Please pull the listing of the sale of Stravolo & Company, P.A. as soon as possible. As I mentioned, we have merged with another firm in Spartanburg, SC.

I will call you back before the end of the week.

Steve Stravolo, CPA
Stravolo Professional Services Group
CPAs, Business Guidance, Wealth Management
www.stravolo.com
www.stravolowealth.com

P.O. Box 5109
Spartanburg, SC 29304
(864) 587-1685

From: Brannon Poe [<mailto:poe@knology.net>]
Sent: Wed 11/17/2010 4:35 PM
To: Steve Stravolo
Cc: 'Stephanie Smith'
Subject: update

Hi Steve,

Stephanie told me a little about your transaction. Congratulations. Can you please email me something official for my headquarters so I can pull the listing.

By the way, I left you a message the other day. Thank you,

Brannon



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DIRECT 843.225.5580
<http://www.AccountingPracticeSales.com>

"The biggest obstacle to learning something new is the belief that you already know it."

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

Vs.

Steve Stravolo, Stravolo & Company,
PA and Upstate CPAs, PA f/k/a
Mathur & Co., PA,

Defendants.

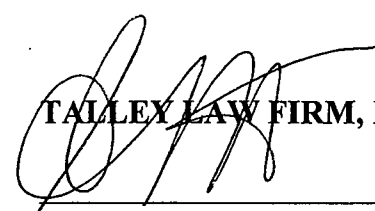
) IN THE COURT OF COMMON PLEAS
)
)

)
)
) Case No. 11-CP-42-2880
)

)
) **DEFENDANTS ANSWERS TO**
) **REQUESTS FOR ADMISSION**
)
)
)
)

**TO: PLAINTIFF, BY AND THROUGH ITS ATTORNEY, CHRISTY F. ALLEN,
ESQUIRE:**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied.
6. Denied.
7. Admitted.
8. Denied.
9. Denied.
10. Admitted.
11. Denied.
12. Admitted.
13. Denied.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.


TALLEY LAW FIRM, P.A.

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September 28, 2011
Spartanburg, SC

000174

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO: 11-CP-42-2880
Brannon Poe, CPA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S
	)	NOTICE OF AND MOTION FOR
Steve Stravolo, Stravolo & Company, P.A.	)	SUMMARY JUDGMENT ON
and Upstate CPAS, P.A. f/k/a Mathur &	)	LIABILITY ONLY AND ON
Co., P.A.,	)	DEFENSE OF COMPARITIVE
	)	NEGLIGENCE
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Plaintiff through its counsel, will move before the presiding judge of the Forty-Second Judicial Circuit at the Spartanburg County Judicial Center, Spartanburg, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting summary judgment on liability in this breach of contract action and granting summary judgment on the Defendants' affirmative defense of comparative negligence to the Plaintiff and pursuant to SCRCP 54, leaving only the matter of damages on this breach of contract action to be tried.

The grounds for this motion are the following:

(1) Plaintiff has brought this action for breach of contract against the Defendants. The following are undisputed material facts:

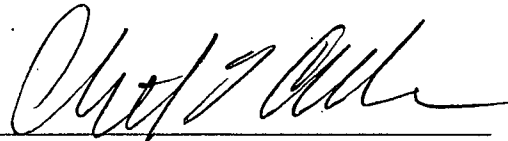
- a. There was a written contract between the parties for the listing and marketing of the Defendant Stravolo's accounting practice;
- b. The Plaintiff performed pursuant to the terms of said contract; and
- c. The Defendants failed to pay for the services in accordance with the terms of

000175

said contract.

- (2) This is a breach of contract case, and therefore comparative negligence is not an applicable defense as a matter of law.

This motion is being filed with the depositions of Plaintiff Brannon Poe and will also be further supported by a memorandum of law and arguments of counsel.



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CHARLESTON, SC
March 9, 2012

000176

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

BRANNON POE, CPA, LLC,

Plaintiff,

vs.

CASE NO. 2011-CP-42-2880

STEVE STRAVOLO, STRAVOLO & COMPANY, P.A., and UPSTATE
CPAs, PA f/k/a MATHUR & CO., P.A.,

Defendant.

DEPOSITION OF: BRANNON POE

DATE: February 9, 2012

TIME: 10:00 a.m.

LOCATION: WILLS, MASSALON & ALLEN, LLC
97 Broad Street
Charleston, SC

TAKEN BY: Counsel for Defendants

REPORTED BY: Karen V. Andersen, RMR, CSR

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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000177

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20

21

22 (INDEX AT REAR OF TRANSCRIPT)

23

24

25

000178

1 STIPULATION

2 It is stipulated by and between Counsel
3 that the deponent does waive reading and signing
4 of this deposition.

5 * * * * *

6 BRANNON POE,

7 having been duly sworn, testifies as follows:

8 EXAMINATION

9 BY MR. TALLEY:

10 Q. Mr. Poe, good morning. My name is Scott
11 Talley. We met briefly just a few moments ago. I
12 appreciate you being here today. First let me ask
13 you, have you ever had your deposition taken before?

14 A. No.

15 Q. Okay. I want to explain the rules to you.
16 They are not that difficult. I will also tell you at
17 the outset, it's not my intent to be asking you
18 questions trying to trip you up or anything today.
19 This is just my opportunity to learn more about the
20 lawsuit you filed and the allegations that you've
21 made.

22 A. Okay.

23 Q. In essence, the rules are, if you've got
24 any questions about what I ask, or if you don't
25 understand a question, please stop me and direct that

000179

1 to me. I would ask during the deposition you not
2 discuss any of my questions or look to your counsel
3 for any answers to my questions. Okay?

4 A. Okay.

5 Q. Second, and for everybody's benefit, but
6 certainly for her benefit, I will do my best not to
7 talk over you, and would ask that you not talk over
8 me, simply so she can keep a clean transcript of
9 everything that we are saying. And also, in that
10 regard, if all your responses can be verbal, you and
11 I can see each other shaking our head yes or no, but
12 if we ever need to look back at this transcript, it
13 makes it easier for you to say yes or no in response
14 to a question rather than give a head nod. Okay?

15 A. Okay.

16 Q. I don't think we will be here too long,
17 but if at any point you need a break, stop for a few
18 moments, just tell me, and I will be happy to do
19 that. Okay?

20 A. Okay.

21 Q. You gave her your name already. Do you
22 live here in Charleston County?

23 A. I do.

24 Q. How long have you lived here?

25 A. Almost 12 years.

- 000180

1 Q. And are you the only member of Brannon
2 Poe, CPA, LLC?

3 A. That's correct.

4 Q. When did you form that company?

5 A. I believe it was April 2005.

6 Q. Okay. Have you been the sole member of
7 the company since that time?

8 A. Yes.

9 Q. And what's that company's purpose?

10 A. We broker accounting practices.

11 Q. Are you licensed as a broker in the state
12 of South Carolina?

13 A. No, I'm not.

14 Q. Do you have any licenses issued by the
15 state of South Carolina?

16 A. I have a CPA.

17 Q. And did you practice accounting before you
18 started brokering practices?

19 A. Yes.

20 Q. Do you still have an active accounting
21 practice?

22 A. No.

23 Q. So is your sole work now related to this
24 brokerage business?

25 A. Yes.

000181

1 Q. Okay. How many employees do you have?

2 A. We have two.

3 Q. And that would be who?

4 A. Stephanie Smith and Martha Robbins.

5 Q. How long has Stephanie been employed with
6 your company?

7 A. Three years, I believe. I'm not sure
8 about that.

9 Q. That's all right. And Martha has been
10 employed how long?

11 A. Martha was full-time probably about five
12 years ago. She's part-time now; had a baby.

13 Q. What is Stephanie's job description?

14 A. Her job description is basically closing
15 coordinator.

16 Q. And what about Martha?

17 A. Martha is administrative coordinator.

18 Q. Your attorney and I have exchanged a lot
19 of documents to date, and I've gone through them.
20 And it's not my purpose here today to belabor the
21 point by going back through them, but I also don't
22 want to put words in your mouth. It looks to me like
23 when somebody signs an agreement for you to list
24 their practice, in exchange, you have a database of
25 potential buyers; am I right so far?

000182

1 A. Yes.

2 Q. And you, in turn, through some things I
3 want to ask you about, send information about the
4 listing you have to that database of potential
5 buyers; still right?

6 A. Correct.

7 Q. Walk me through what you do when somebody
8 decides they are going to list their practice with
9 you and how you market that practice as part of that
10 agreement?

11 A. Well, the first thing we do is we prepare
12 a profile of the practice. So we get -- we try to
13 get the most thorough understanding of the practice
14 that we can. And we put together an Excel
15 spreadsheet that has financial information. It has a
16 lot of background about the practice, the history of
17 the practice, the strengths, the weaknesses, the
18 revenue trend, the revenue make-up, for example, if
19 it's a tax practice, how many tax returns do they do,
20 do they do any audits, reviews, so forth.

21 Now, that document does not have the name
22 of the practice on it, because one of the key
23 concerns that practice owners have is the
24 confidentiality. They don't want us to broadcast the
25 fact that they are selling. So we have to market as

000183

1 confidentially as we can.

2 Once we have a profile built with the
3 practice, then we discuss it with the seller, and we
4 make sure that we are in agreement on the asking
5 price and, you know, make sure that the seller is
6 comfortable with the profile that we put together.
7 Then we market the practice. We put it on several
8 business brokerage websites,
9 Accountingpracticesales.com is an established website
10 that will generally come up at the top of all of the
11 search engines. And we spend a great deal of time,
12 money, and effort to make that happen.

13 Q. Let me stop you right there, if I may.
14 Accountingpracticesales.com?

15 A. Right.

16 Q. Do you pay a fee to participate on that
17 website?

18 A. Yes, I do.

19 Q. What's that fee?

20 A. Well, I have an agency agreement with them
21 that's a percentage of each closing.

22 Q. I didn't mean to cut you off.

23 A. We also market it on several general
24 business brokerage websites. Actually,
25 Accountingpracticesales takes care of that, so it

000184

1 doesn't come to mind right away which sites those
2 are, but it's like bizbuysell.com, Bizquest. I
3 believe there are five or six of them in total.

4 Q. Okay.

5 A. Accounting practice sales is an
6 affiliation of, I believe, last count, 16 agents
7 throughout North America. We do more marketing to
8 the accounting profession than anybody else in the
9 business. So we do more direct mail, more telephone
10 marketing, more e-mail marketing. We are in the
11 Journal of Accountancy every month. We are in almost
12 all of the state publications that the trade journals
13 advertise to the accounting profession, I'm in there
14 every month, have been for years.

15 So this network of advertising brings in
16 not just buyers from the state of South Carolina, or
17 Spartanburg County, but it's national. And we often
18 do have buyers from other states that will buy a
19 practice and move for that purchase. So, you know,
20 when we put a practice on the market, it's getting
21 absolutely maximum exposure you can get. And that's
22 what our clients pay us for. Because, you know, what
23 the bottom line is, what you sell your practice for
24 and the term you get is a direct -- is directly
25 impacted by the number of buyers that you have in the

000185

1 mix.

2 So with that being said, what we do is we
3 put a blurb about the practice that doesn't reveal
4 what -- we can't put too much information on the
5 general listings, because people in that area will
6 know which practice that is. So, again, the
7 confidentiality is a very important element of this.
8 So we put a -- it's usually about a paragraph
9 description of the practice, the size of the practice
10 and the asking price on the sites. We get inquiries,
11 and then we get the buyer to sign a confidentiality
12 agreement before we send that profile.

13 Furthermore, if the seller has given us
14 instructions not to send a profile to someone, or if
15 they've given us instructions that they want to have
16 control over who that profile goes to, we have to
17 honor that as well. So when a buyer inquires, we get
18 the confidentiality agreement, and then we send the
19 profile. If they are interested, then they have to
20 fill out some more paperwork. We get a one-page
21 buyer's profile.

22 So we ask the buyer several questions, you
23 know, like what is your public accounting experience,
24 because a lot of what we do is match making. There
25 are numerous buyers that aren't going to be qualified

000186

1 to buy a particular practice. And so, you know, a
2 lot of the beauty of our process is that we don't bog
3 the seller down with every single inquiry, because
4 they don't want to be tied up with it, you know, that
5 often. They have a business to run.

6 So you know, if people don't send forms
7 back, that's usually very telling. And how fast they
8 send those back is telling their level of motivation.
9 If they don't respond, we typically are not going to
10 chase that buyer, because our experience is that a
11 buyer that you chase is not going to end up in a
12 closed sale. It's that you want to see that level of
13 motivation coming from the buyer.

14 If the buyer sends us the buyer profile,
15 then we send it to -- you know, we discuss that buyer
16 with the seller. If the seller wants to proceed with
17 that buyer, then we go back to the buyer, and we ask
18 for financial documents. So they have to supply a
19 financial statement that's pretty simple. It's a
20 one-page very simple document. And then they also
21 have to give us authorization to pull their credit
22 report. We do not pull the credit report at that
23 time generally. We just have the authorization ready
24 to go.

25 And then we set up phone meetings with the

000187

1 seller and the buyer. And after the phone meeting,
2 if the interest is mutual and still there, then the
3 two parties would meet. Once they meet, then we try
4 to influence the -- I mean, the buyer to make an
5 offer.

6 Q. All right. In this particular instance,
7 the complaint, I think, alleges that Ms. Mathur
8 accessed this particular listing several times. Are
9 you familiar with that?

10 A. Yes.

11 Q. Okay.

12 A. When you say accessed, what do you mean?

13 Q. Well, it just says, the word used here is
14 opened, opened the APS advertisement for defendant
15 Stravolo's accounting practice at least four times,
16 and that's a -- gives dates of July 13 through July
17 22nd, 2010. So I used the word access. Complaint
18 says open.

19 If I'm out there and I'm a buyer, and I do
20 what that says, I go in and I open, what do I see at
21 that point?

22 A. You see basically the blurb that I
23 mentioned. What we do in our e-mail marketing is the
24 blurb that we put -- I missed a step in describing
25 some of our efforts. We do other things that I

000188

1 probably missed. And one of those is we do an e-mail
2 blast. So we have numerous registered buyers in each
3 area. And we have a very good database that helps us
4 target which areas they are interested in.

5 Ms. Mathur was interested in -- previously
6 had been interested in numerous areas, North
7 Carolina, I think she first came in our system
8 looking at a practice in Cary, North Carolina. And
9 then she wanted to expand her search into South
10 Carolina, and regionally, if I'm not mistaken.

11 So when she opened that e-mail, she would
12 have gotten the paragraph with the price, the revenue
13 and the description, just a brief description of the
14 practice.

15 Q. Okay. And from your standpoint,
16 obviously, there's a way you can track who's opening
17 what profile; is that correct?

18 A. That's correct.

19 Q. And so you see somebody that visits the
20 same profile, or opens or accesses the same profile
21 multiple times; walk me through what your office does
22 at that point as far as --

23 A. ~~We don't do anything. We wait for the~~
24 ~~buyer to respond to us, because we want that~~
25 ~~motivation~~ If they are not going to respond to an

000189

1 e-mail to buy a business or pick up the phone, then
2 they are probably not that interested.

3 Q. Okay. So in this particular instance, am
4 I correct in saying there was never a reach-out to
5 Ms. Mathur based on her visiting or accessing this
6 site?

7 A. Not to my knowledge.

8 Q. Okay. Would that be something that you
9 would do within your office?

10 A. No.

11 Q. Or would one of your employees do that?

12 A. We generally don't do that.

13 Q. Okay. So to your knowledge, would there
14 have been anything Ms. Mathur would have seen in
15 opening that profile that would have told her this is
16 a Stravolo practice?

17 A. I think a lot of times buyers have a
18 suspicion about who it is, if they are close to them,
19 if they know the practice. It's interesting, because
20 I think sellers -- I think people know when someone's
21 wanting to sell, just sort of instinctively. So it
22 wouldn't be uncommon for a buyer to suspect who the
23 seller is. That actually happens frequently. I will
24 have a buyer that calls me and they will say, is this
25 so and so's practice? And we can't let that

000190

1 information out at that time.

2 Q. Do you know if that happened in this
3 particular instance --

4 A. I do not.

5 Q. -- that she, Ms. Mathur, called? Okay.

6 All right.

7 A. And our e-mail blast generally, they
8 number in the hundreds. So it's not like we are
9 sending out ten e-mails. We are sending out --

10 Q. You mean there's 100 plus recipients?

11 A. Correct.

12 Q. You don't send 100 e-mails on one
13 practice?

14 A. Yes.

15 Q. You do?

16 A. Yes, sometimes more.

17 Q. Okay. How many did you send in this
18 instance?

19 A. I don't have that information right now.
20 I don't know.

21 Q. You and I may not just be understanding
22 each other. Hundreds of people get your e-mail, but
23 you don't send the same e-mail 100 times?

24 A. Correct.

25 Q. Okay. I understand that.

000191

1 A. Right.

2 Q. I think we were getting confused.

3 A. Yeah.

4 Q. Because what I've seen, it looks like this
5 may have gone out three or four times.

6 A. That's probably it.

7 Q. I just want to make sure we were clear on
8 that. All right. There's another allegation in your
9 complaint that says in the summer or fall of 2010,
10 Stravolo began negotiations with Bharti Mathur
11 regarding a merger of accounting practices. Tell me
12 your information on that.

13 A. I have no information on that prior to
14 this suit. Is that what you are asking me?

15 Q. Yes.

16 A. I have no knowledge of it.

17 Q. Okay. Now, there was a deal in 2007 that
18 your firm participated in between these defendants?

19 A. Correct.

20 Q. Correct? What, if any, follow-up is done
21 with either party after you close a sale?

22 A. Our deals are very transactional, so
23 usually shares very little or no follow-up.

24 Q. Would the first dialogue or discussion
25 your firm had with Ms. Mathur after the '07 sale had

000192

1 been when you started marketing this practice for
2 Stravolo?

3 A. Well, she continued to be on our buyer
4 list. She has a son who is also an accountant, so we
5 felt that she may continue to be a possible buyer.
6 So she continued to receive our e-mails for -- she
7 was on our e-mail list for -- she never came off of
8 that list.

9 Q. Did she respond to -- we are using
10 different words. Your complaint says open access;
11 now says respond. And I meant what I said earlier,
12 I'm not trying to trick you.

13 A. Right.

14 Q. So we are on the same page, did she open
15 or look at other profiles that you had e-mailed out?

16 A. I don't know.

17 Q. You don't know? Okay. Have you ever met
18 her?

19 A. No, I have not.

20 Q. Have you ever met her husband, Sam?

21 A. No.

22 Q. Just so I'm clear, since Ms. Mathur didn't
23 do anything other than open this profile for the
24 Stravolo practice, we are talking about --

25 MS. ALLEN: Object to the form.

000193

1 BY MR. TALLEY:

2 Q. Strike that. You didn't do anything
3 directly to Ms. Mathur based on her opening these
4 e-mails, did you?

5 A. What do you mean?

6 Q. All right. She opened -- you sent out
7 e-mail that contained this profile, correct? She
8 opens it. Based on what you told me earlier, I
9 thought I understood that because she didn't call or
10 inquire further, there was no direct communication
11 between your firm and her.

12 A. Correct.

13 Q. It also looks like from the document in
14 discovery to date, there were about three or four
15 other interested parties in this practice. And what
16 I mean by that is, it looks like to me they sent you
17 information, and there's a couple resumes, et cetera;
18 is that accurate?

19 A. That sounds accurate. I would have to
20 look back.

21 Q. I'm not holding you to that number. I ask
22 that because I want to understand the process. What
23 did they do that got them to that point?

24 A. They went through our process. I mean,
25 that's -- we had a statistic from our broker in

000194

1 Wisconsin that -- it was like 85 or 86 percent of the
2 buyers who actually made it to the finish line and
3 closed on a deal gave us everything that we asked for
4 without any hesitation. So that goes back to what I
5 was saying about motivation. You've got to have a
6 motivated party to get a deal to the closing table.
7 And so the parties that we had that actually talked
8 with the seller had to go through all those steps.
9 They had to supply the buyer's profile form. They
10 had to sign a confidentiality agreement. They had to
11 supply credit report authorization, financial
12 statement, and some sort of background about their
13 professional experience, either a resume or a
14 website, if they are currently in practice, something
15 of that nature. So those are the steps they had
16 taken, and they had demonstrated to us that they were
17 serious.

18 Q. At what point, do you go to the seller and
19 say, hey, I think here's somebody that might be worth
20 looking at?

21 A. When they complete that buyer profile --
22 and let me back up. The buyer profile is something
23 we implemented, I believe, during that time I was in
24 contract with Steve, you know, just formalized what
25 we were doing. But once -- now the way our process

000195

1 works is when the buyer profile is submitted, we
2 generally forward that onto the seller, unless the
3 seller has said, you know, don't send me buyer
4 profiles unless they meet certain criteria.

5 We are very -- we tailor our approach to
6 each seller. I mean, you know, we have to listen to
7 what they want and how they want the process to work
8 for them. Some sellers want to talk to everybody.
9 Some sellers want to only talk to people if they've
10 had ten years of experience, for example, or, you
11 know, mid-size firm experience. I mean, there's
12 certain criteria that they feel is necessary for
13 somebody to be successful in their practice.

14 Q. How many firms do you have listed for sale
15 now?

16 A. I don't know; generally, we list about 30.

17 Q. And you said generally; is that
18 consistent, usually about 30?

19 A. I mean, you know, it's a business that's
20 very -- you know, it's very cyclical. It's a
21 seasonal business. So it does fluctuate quite a bit,
22 but 30 is probably a fairly good estimate.

23 Q. Do you remember back 2009/2010 time frame
24 how many you had listed?

25 A. It was probably less than that, because

000196

1 with the downturn, we actually had a decline in
2 business in 2009/2010.

3 Q. Was there ever any communication to Steve
4 Stravolo from your firm about Ms. Mathur's possible
5 interest in this practice?

6 A. No, not to my knowledge.

7 Q. It looks to me like most of the
8 communication in this instance was between you and
9 Mr. Stravolo, or Stephanie and Mr. Stravolo. Would
10 Martha have had any communication?

11 A. No, not likely.

12 Q. When you were dealing with Stravolo, did
13 you ever deal with anybody but Steve Stravolo?

14 A. I don't believe so.

15 Q. The agreement, and I will just show you
16 the copy of it, I think we all acknowledge what the
17 agreement is, this is a document sales consulting
18 agreement. Are you familiar with that?

19 A. Yes.

20 Q. Okay. Now, is that the standard sales
21 consulting agreement that you use in listing a
22 practice?

23 A. Yes.

24 Q. I mean, in essence, my question is, do you
25 basically have the same agreement with everybody, but

000197

1 for names and dates and things of that nature?

2 A. Yes.

3 Q. Okay. The copies I've seen, did you ever
4 sign one of these?

5 A. Yes.

6 Q. So that document is out there signed by
7 you somewhere. Every copy I've ever got didn't have
8 a signature on it, but --

9 A. I think those were just electronic copies,
10 but I do have an original in my file.

11 Q. That's fine.

12 (Whereupon Stephanie Smith arrives.)

13 BY MR. TALLEY:

14 Q. Have you ever brought any other lawsuits
15 besides this one?

16 A. Yes.

17 Q. Tell me about those.

18 A. There was one in Raleigh, North Carolina.

19 Q. When was that?

20 A. Two to three years ago. I'm not sure
21 exactly.

22 Q. Who was the defendant?

23 A. Her name was Cindy Anderson.

24 Q. Has that case been resolved?

25 A. Yes.

000198

1 Q. Was it settled, or did it go to trial?

2 A. It was settled.

3 Q. Were the allegations in that similar to
4 this?

5 A. Very similar, it was a merger done behind
6 my back, same thing.

7 Q. Any other lawsuits you've commenced?

8 A. No.

9 Q. Was that in federal or state court in
10 Raleigh? Probably not a fair question.

11 A. I don't know.

12 Q. That's all right. Have you ever been a
13 defendant in any lawsuit?

14 A. I have.

15 Q. Tell me about that.

16 A. This was probably about five years ago. I
17 contracted with a computer software developer, I
18 guess would be his title, to help me implement a
19 customer service relationship management software,
20 and he did not meet his deadline and was causing
21 severe disruption in my business. He had never done
22 this type of project before. I tried to work with
23 him. I fired him. I paid him for his materials,
24 because I thought that was fair. I had to pay
25 another vendor about twice what I had contracted with

000199

1 him to repair what he had done and get me up and
2 running. He tried to sue me for the contract amount.

3 Q. Where was that suit?

4 A. He was in -- I want to say he was in
5 Greenville, but I don't know if the suit was filed in
6 Greenville or if it was filed in Charleston. I'm not
7 sure.

8 Q. Okay. And you said five years ago, so in
9 some form or fashion, that's been resolved?

10 A. Yes, that's been resolved. He actually
11 dropped the case.

12 Q. All right. Any other suits --

13 A. No.

14 Q. -- which you've been named as a defendant?
15 Okay. You made reference in response to some earlier
16 questions about a buyer's agreement. And I'm showing
17 you a two-page document entitled buyer's agreement;
18 is that that form?

19 A. Correct, that's what I referred to earlier
20 as the confidentiality agreement.

21 Q. Okay. In this particular instance, did
22 Ms. Mathur ever sign one of those?

23 A. She had signed one for -- back when she
24 bought the previous book of business from Steve. But
25 she never requested to move forward in the process.

000200

1 the same discovery I just mentioned. We are doing
2 that just to keep the record clean. Don't worry
3 about page numbers and all this stuff.

4 A. Okay.

5 Q. If you don't mind, just kind of tell me
6 what that is.

7 A. This is -- we use a program called
8 Salesfirst.com to maintain our database. This was --
9 each practice that we have available has an
10 opportunity record, which is the way it's referred to
11 in the sales force.

12 Q. All right. Tell me what that is.

13 A. Okay. An opportunity record, so we have a
14 contact record, which would be Steve Stravolo, and
15 then we have an opportunity record, which represents
16 the listing. It's just a separate record. And so
17 what really we maintain in the opportunity record is
18 a list of all of the buyers who have made an inquiry,
19 so they have expressed -- you know, they've replied
20 to one of our e-mails, they've responded to some
21 marketing that we've done. And so within that
22 opportunity record, there's a list of each inquiry.
23 And each inquiry has a number. So this represents
24 all of the people who have inquired on that practice.

25 Q. When you say inquired, that can mean they

000201

1 opened the e-mail?

2 A. No.

3 Q. No? All right. Tell me -- define for me
4 what you mean by inquiry then.

5 A. It means they have done something to
6 demonstrate interest.

7 Q. All right. Well --

8 A. Meaning they have responded to an e-mail
9 that we have sent, or they have called us, or they
10 have registered on our website specifically
11 identifying that particular practice as one that they
12 are interested in.

13 Q. All right. And these are all the people
14 that fit that category in response to this practice?

15 A. Correct, correct.

16 Q. And I think it looks like -- do you give
17 every practice a number?

18 A. Yes.

19 Q. I see SC1036 on a lot of this.

20 A. Correct.

21 Q. That's the number that got assigned to
22 Stravolo when he listed with you?

23 A. Correct.

24 Q. All right. And so all of the folks on
25 these two pages, Bates Stamp 9 and 10, would have

000202

1 Q. And then the other designation you've got
2 is request buyer's agreement.

3 A. Right.

4 Q. What does that mean?

5 A. That means that we've sent them a
6 confidentiality agreement, and they never sent it.

7 Q. Okay. So these folks that it says profile
8 sent, you would have sent to them, they would have
9 sent it, you send them this profile, and then for
10 some reason, probably unknown to us, they just don't
11 respond; is that fair?

12 A. That happens.

13 Q. I want to show you Poe 14 through Poe 19.
14 And as I understood the response, this is kind of
15 your Bharti Mathur file. Take a look at that. Is
16 that the information you have about Ms. Mathur?

17 A. Yep, yes. Now, the record doesn't show --
18 this record, there's some attachments that were also
19 part of that record that are not here. And I don't
20 know where these attachments are. They are in my
21 system. We have probably -- here it is. We have a
22 buyer's agreement, financial statement,
23 authorization.

24 Q. Okay.

25 A. But this is the sales force contact

000203

1 record.

2 Q. For Ms. Mathur?

3 A. For Ms. Mathur.

4 Q. Let's go back to your point just so I
5 understand. When you say there would be attachments,
6 does that mean on one practice that was listed, she
7 actually signed a buyer's agreement?

8 A. Well, she did before when she bought --

9 Q. Talking about 2007?

10 A. Correct.

11 Q. Is that the one that refers to?

12 A. Correct.

13 Q. Okay. All right. So Poe's 2007
14 transaction, she never signed another buyer's
15 agreement, to your knowledge?

16 A. To my knowledge, no.

17 Q. Okay. Starting on Bates Page 15, there's
18 a section activity history that's got, it looks like,
19 several entries; what is that?

20 A. Right. Each time we do an e-mail
21 campaign, it's logged into the record. And that's
22 what these represent, is an e-mail campaign that went
23 out.

24 Q. So each of the entries under activity
25 history, she was on a list of recipients to an e-mail

000204

1 your firm sent out?

2 A. Correct.

3 Q. Is there anything in this document that
4 would indicate what she viewed or how many times she
5 viewed it?

6 A. If they are sent in HTML format, it will
7 tell you how many times an e-mail was opened.

8 Q. And that looks like that's on Page 18 of
9 Bates Number 10.

10 A. Correct, yes.

11 Q. And just so I understand, what's listed
12 there as opened would also be on this activity
13 listing that we were just looking at, or would those
14 be additional?

15 A. Well --

16 Q. This is my ignorance, I promise. I just
17 don't understand your system.

18 A. It's a formatting. And I don't completely
19 understand how Salesforce works, but you can send
20 e-mails in an HTML format and you can send -- a lot
21 of our e-mails have gone through a service called
22 vertical response, which is kind of a blast e-mail
23 service that integrates with our Salesforce.com
24 system. And those e-mails don't go out in HTML
25 format, so we do not have a record when those were

000205

1 opened.

2 Q. Okay.

3 A. So that's why you see some of these don't
4 have that information, and some do.

5 Q. Okay. All right. So it could be that
6 these are all separate?

7 A. It could be -- well, they are all separate
8 e-mails. I'm not understanding what --

9 Q. Well, I'm just trying -- let's use this
10 one, the first one on Page 18. It's an e-mail that's
11 sent 5/6/10.

12 A. Right.

13 Q. At 4:34.

14 A. Right.

15 Q. This appears to be --

16 A. Okay. There is some duplication.

17 Q. The same somewhere, right here.

18 A. If I'm not mistaken, if it's sent HTML, it
19 also is sent in text format, I think.

20 Q. That's fine.

21 A. There could be some duplication. In other
22 words, if it's sent in HTML, I believe that it also
23 logs it under this activity. But if it's sent in
24 text, but not sent in HTML, it will not show up here.

25 Q. All right. We will figure that out

000206

1 another day.

2 A. Clear as mud, huh?

3 Q. That's all right. I want to ask you about
4 30 and 31, which has information on it; what is that?

5 A. This is a -- this looks like -- okay.
6 This is a vertical response e-mail template that we
7 would have sent out.

8 Q. Is that what one of these e-mails in this
9 list we were just talking about would look like?

10 A. Yes.

11 Q. So your e-mail just has the information
12 that's reflected here, and then you get the
13 information about somebody opening it or accessing
14 it, whichever word we are going to use now, by
15 clicking on a link that's provided within the e-mail?

16 A. No, if they open the e-mail. So we may
17 not know which practice they are interested in.

18 Q. Is there a way to track that?

19 A. To track what?

20 Q. Which practice they are interested in?

21 Here's why I ask, just getting to the point. You've
22 alleged that Ms. Mathur accessed information about
23 this practice four times. So would it be that she
24 just opened an e-mail that contained this practice or
25 she --

000207

1 A. Probably both. We do a lot of marketing.
2 Okay? We send postcards about practices. We send
3 mailers every month. We also send e-mails about
4 multiple practices across the state or across the
5 region. And we also send e-mails that are more
6 targeted just in, you know, certain region for a
7 particular practice.

8 Q. Okay. And just so I'm clear, when we look
9 at the activity history that we just looked at in
10 those Pages 13 through 18, the e-mails listed would
11 have looked like this?

12 A. Could I see that again?

13 Q. Sure. I probably should mark this one
14 since I'm referring to it now. Let me get this
15 marked as an exhibit.

16 (DFT.EXH. 2, E-mails Bates Labeled
17 Pages 14 through 19, marked for identification.)

18 THE WITNESS: She would have gotten a
19 specific e-mail about a Charlotte area practice, a
20 book that I've written, a North Columbia practice, a
21 North Columbia practice, a High Point practice, a
22 beach practice, entire state of North Carolina,
23 entire state of South Carolina.

24 BY MR. TALLEY:

25 Q. So would that be this?

000208

1 A. And we got a specific campaign just for
2 this practice that we sent to her on July the 13th,
3 2010.

4 Q. Okay. So what you are looking at --

5 A. That is the one that she opened four
6 times, the one that was specifically for his
7 practice.

8 Q. Okay. And that's -- okay. And that's
9 labeled relaunch something?

10 A. Yeah. We call that a quick campaign.

11 Q. Do you have a copy of that e-mail that was
12 specific for this practice?

13 A. I do not.

14 Q. Would that e-mail exist somewhere and
15 could we get a copy of it?

16 A. I don't know if we have a copy of that.

17 Q. It looks like Bates Stamp 75 -- are you
18 familiar with that screen shot? It looks to me like
19 that's just another record of that e-mail we were
20 just talking about.

21 A. It basically is, yes.

22 Q. That would be the only record you have of
23 that particular e-mail?

24 A. That I know of, yes.

25 Q. Let me ask you about this, just since it

000209

1 was on the last page. It was 95. Are you familiar
2 with that individual?

3 A. I'm not, but we have --

4 Q. Would that have been somebody that
5 inquired? The reason I asked is, I wanted to make
6 sure it was supposed to be in my stack. It's just a
7 resume.

8 A. I honestly don't know. We have thousands
9 of buyers in our system.

10 Q. Sure. And we do that, sometimes something
11 gets in. And these guys are CPAs, so I believe maybe
12 this is somebody who inquired.

13 A. It could have been. If I could check for
14 you --

15 Q. That's all right. Maybe Christy knows.
16 It wasn't anything --

17 MS. ALLEN: We can go off the record.

18 (Off-the-record conference.)

19 BY MR. TALLEY:

20 Q. Mr. Poe, have you ever met Mr. Stravolo?

21 A. No, I haven't.

22 Q. Would you know him if he walked in?

23 A. No.

24 Q. All right. Before you started this LLC in
25 2005, how long were you a licensed CPA?

000210

1 A. Since 1994.

2 Q. I think that's all the questions I have
3 for you.

4 EXAMINATION

5 BY MS. ALLEN:

6 Q. I have just a couple. You mentioned the
7 profile that you create for each listing earlier.
8 How is it that you get the information that goes into
9 that?

10 A. The seller supplies us with certain
11 worksheets, financial statements. And we spend a
12 good deal of time on the front end talking with the
13 seller to get a complete understanding that we try to
14 put into that profile.

15 Q. Okay. And who communicated with
16 Mr. Stravolo in this instance?

17 A. I remember when Steve was contemplating
18 the sale, he was contemplating going into financial
19 services business, and I recommended -- I told him I
20 thought he would make more money if he did that, and
21 I think he probably is.

22 Q. So you've talked to him?

23 A. I talked to him sort of strategizing. I
24 remember we had a lot of discussions about selling
25 the portion. He wanted to sell half. I suggested he

000211

1 sell all of it. And then as far as getting the
2 profile built, Stephanie handled that.

3 Q. Okay. How many times do you think you've
4 talked to him on the telephone?

5 A. I don't know.

6 Q. Ballpark?

7 A. Five or six

8 Q. How about by e-mail?

9 A. Just a handful of times.

10 Q. And Stephanie would have had additional
11 communications with him?

12 A. Stephanie, once the profile was built, she
13 would have been the primary point of contact.

14 Q. Okay. Did his profile ever change
15 throughout the process?

16 A. It did. He finally decided that he would
17 prefer to sell the whole practice rather than sell
18 half the practice.

19 Q. What do you mean when you say finally?
20 What do you mean by that?

21 A. Well, he realized that we were not
22 getting -- we were having buyers withdraw. We
23 weren't getting responses. We weren't getting that
24 interest. And that's quite common when someone wants
25 to sell a portion of their practice. You have fewer

000212

1 buyers that want to be a partner with someone that
2 they don't know.

3 Q. Okay. So what was -- when you initially
4 began to market his practice, what was it that he
5 wanted to sell?

6 A. He wanted to sell basically a 50 percent
7 or 49 percent stake in his company.

8 Q. Okay. And so you sent out your initial
9 marketing blast, was on that basis; is that right?

10 A. I don't know that we would have disclosed
11 that it was half of a practice. I can't remember.
12 We might not have. We might have just disclosed the
13 revenue amount as being half of his practice.

14 Q. And --

15 A. That would have been in the profile when
16 they had looked at it, they would have gotten the
17 full --

18 Q. If a buyer responded to your initial
19 marketing and then provided their own confidentiality
20 agreement and authorization, the actual detailed
21 profile that you sent out would have included
22 reference to it being a 49 percent share?

23 A. Correct.

24 Q. Okay. And how long throughout the process
25 was it before that changed?

000213

1 A. I believe it was a full year
2 approximately.

3 Q. And how did it change?

4 A. He made the decision to go ahead and sell
5 the entire practice. So we changed the profile. We
6 changed the -- basically, the profile was drastically
7 changed because we had to recast the financial
8 statements. We would have updated the financial
9 statements for another year that had passed, and, you
10 know, we would have taken out the part that it was a
11 half and, you know, just change his reason for
12 selling. Probably a lot of the data entries in that
13 profile would have changed.

14 Q. And how did the responses change?

15 A. I think we got more serious interest after
16 that point.

17 Q. There was some discussion about this data
18 that you have in your file that shows Ms. Mathur
19 opened this particular e-mail about the Spartanburg
20 practice. Do you look to see if people are opening
21 e-mails in your process generally?

22 A. Generally, no.

23 Q. Okay. And when, if you know, did you look
24 into your computer system in order to get that
25 information?

000214

1 A. Just when I prepared this information for
2 you guys.

3 Q. Okay. So when you learned about the
4 merger?

5 A. Correct.

6 Q. Okay. How did you learn about the merger?

7 A. He basically told us.

8 Q. Did he tell you after it happened or
9 before?

10 A. After it happened. We had redone the
11 profile. We were refreshing, trying to refresh the
12 profile again, and we were contacting him about some
13 of those changes and he said, well, I will work
14 something out on my own.

15 Q. And what was your response?

16 A. My reaction was that I wanted him to
17 document as much as I could get him to document,
18 because he had never given me any formal
19 cancellation. He had never given me any
20 cancellation. We had no idea that he was unhappy.
21 We had no idea that he, you know, was working
22 something on the side. So I was surprised. What was
23 your question again?

24 Q. What your response was to his disclosure?

25 A. I said, please send me a formal

000215

1 cancellation of the listing.

2 Q. Okay.

3 A. Because he had not given me one prior to
4 that, so I just sort of formalized the canceling of
5 the listing at that point.

6 Q. Do you have an idea of the -- well, how do
7 you calculate under your contracts how much you get
8 paid?

9 A. It's a percentage of the gross selling
10 price.

11 Q. Okay. And what do you believe your fee
12 should be under this contract?

13 A. Since it was a merger, sometimes in these
14 purchase agreements, the remuneration is not
15 completely clear. And we know this from experience.
16 And that's why the sales consulting agreement has a
17 stipulation that in the case of a merger, our fee is
18 10 percent of the prior year's gross revenue. So I
19 believe his gross revenue was in the neighborhood of
20 \$300,000, which would put our fee at \$30,000.

21 Q. And what is that belief based on?

22 A. Well, we had his financial statements. We
23 were -- we had -- we were privy to that information,
24 so I have no reason to believe that that was false.

25 MS. ALLEN: Okay. That's all I have.

000216

1 Thank you.

2 MR. TALLEY: No questions.

3

4 (The deposition was concluded at 11:05 a.m.)

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000217

1 CERTIFICATE OF REPORTER
2

3 I, Karen V. Andersen, Registered Professional
4 Reporter and Notary Public for the State of South
5 Carolina at Large, do hereby certify that the
6 foregoing transcript is a true, accurate, and
7 complete record.

8 I further certify that I am neither related
9 to, nor counsel for, any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 10th day of February, 2012, at
13 Charleston County, South Carolina.
14
15
16
17
18
19
20
21
22

23 _____
24 Karen V. Andersen, RMR, CSR
25 My Commission expires:

000218

I N D E X

EXAMINATION

Witness Name	Page
STIPULATION	3
BRANNON POE	
BY MR. TALLEY	3
BY MS. ALLEN	37
CERTIFICATE OF REPORTER	44

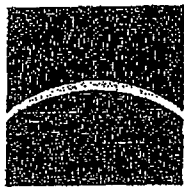
EXHIBITS

Exhibit	Page	Line
DFT. EXH. 1	25	16
Sales Consulting Agreement		
DFT. EXH. 2	34	16
E-mails Bates Labeled Pages 14 through 19		

REQUESTED INFORMATION

(No Information Requested)

000219



ACCOUNTING PRACTICE SALES

NORTH AMERICA'S LEADER IN PRACTICE SALES

Brannon Poe, CPA
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Charleston, SC 29414
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Sales Consulting Agreement

This Sales Consulting Agreement ("Agreement") is entered into by and between Brannon Poe, CPA, LLC, as agent for Accounting Practice Sales, Inc. ("APS") and Steve Stravolo, CPA ("Seller") regarding the sale of the accounting firm known as: Stravolo & Company, P.A. ("the Practice") located at 189 Converse Street, Spartanburg, SC 29306.

APS is in the business of facilitating the sale of accounting practices. APS facilitates the sale of accounting practices through a combination of internet listing of available practices, screening potential buyers, and by bringing prospective buyers to sellers. Seller desires to obtain the services of APS in connection with the sale or merger of the Practice.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions in this Agreement, APS and Seller agree as follows:

1. PERFORMANCE FEE: Seller agrees to pay APS a performance fee of the greater of: (a) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/ 100 Dollars (\$10,000.00) (whichever applies, the "Performance Fee").

"Transaction Value" is defined as the total of all valuable consideration given in exchange for the assets or shares, if applicable, of the Practice. Valuable consideration is defined as broadly as possible and includes anything of value that is obtained pertaining to the assets or shares of the Firm. If the Firm is merged, the Transaction Value shall be the gross revenue of the Firm for the year preceding the transaction. Transaction Value shall include the full potential value of any contingencies.

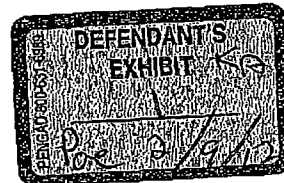
2. WHEN PAYABLE: The Performance Fee shall be due and payable at the closing of the sale or merger of the Practice. The Performance Fee is due in full at closing based on the Transaction Value regardless of terms of the sale of the Practice. Seller authorizes buyer, or any closing or escrow agent to pay The Performance Fee directly to APS at the time of closing from Seller's proceeds. The Performance Fee shall be due and payable according to the terms and conditions of this Agreement if the Practice is sold, conveyed, merged into another practice or entity, or in any manner transferred (a) within the term of this Agreement regardless of Buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual Buyer or other transferee is any party with whom Seller or APS had negotiations or contact regarding the sale or transfer of the Practice during the term of this Agreement.

3. EXCLUSIVE RIGHT: Seller understands and agrees that APS has an exclusive right to sell/merge the Practice. During the listing period Seller will not sell or attempt to sell the practice apart from APS nor will Seller engage the services of any other agent or broker in respect of the Practice. Seller shall refer ALL contacts and/or inquiries regarding the sale of the Practice to APS during the term of this Agreement.

4. TERM OF AGREEMENT: This Agreement shall commence on the day and year set forth below and shall continue for a MINIMUM period of ninety (90) days from the date of this agreement. This

Seller Initials SSS Date 7/23/09

000220



agreement shall automatically renew for consecutive thirty-day periods until Seller gives APS thirty (30) days written notice of intent to cancel.

5. DISCLOSURE: Seller represents and warrants that all information provided, or to be provided, to APS by Seller is true and complete to the best of Seller's knowledge and further represents and warrants that, to the best of Seller's knowledge, Seller has not failed to disclose any material information to APS. APS will not verify any representations made by buyer as to creditworthiness, business experience or financial condition. The decision to extend credit to a buyer is solely the decision of Seller. APS will gather from buyers what is needed to introduce a buyer to seller, but APS is not liable for any misrepresentations or omissions that may be made to Seller by a buyer.

6. GOVERNING LAW: Should any action be commenced to enforce APS' rights herein, the laws of South Carolina shall control. Suit will be brought in South Carolina.

7. RECOVERY OF COLLECTION EXPENSES: APS shall be entitled to recover the expenses connected with enforcing any of its rights hereunder, including legal fees, court costs, and/or any other reasonable collection costs that may be incurred relating to the enforcement of such rights.

8. ACKNOWLEDGEMENT: Seller acknowledges that Seller has read this Agreement and fully understands the terms and provisions of this Agreement.

9. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by Seller.

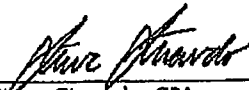
10. MISCELLANEOUS:

(a) Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(b) Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(d) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Faxed and electronic copies are binding.


Steve Stravolo, CPA

Accounting Practice Sales, Inc.

By: Brannon Poe, CPA, LLC
Its: Authorized Agent

Date signed: 7/28/09

By: _____
Brannon Poe
Its: Member

Date signed: _____

000221



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Bharti Mathur

Contact Owner	Brannon Poe	Phone	(252) 355-4659
Name	Bharti Mathur	Mobile	(864) 422-7740
Suffix		Email	bhartimathur@hotmail.com
Account Name	Bharti Mathur	Email 2	
Title	President	Reports To	
Age		Attitude	
Type	Buyer; Buyer of Closed Sale		

Contact Information

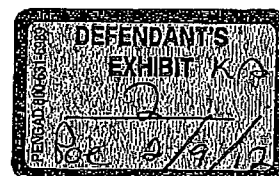
Do Not Mail	☐	Do Not Call	☐
Email Opt Out	☐	Fax Opt Out	☐

Address Information

Mailing Address	101 Chardmore Court Simpsonville, SC 29681	Other Address	
Home Street		Metro Area	
Home City			
Home State			
Home Zip			

Additional Information

Fax		Lead Source	Outlook Import
Home Phone	(864) 297-3133	Last Stay-In-Touch Request Date	
Other Phone		Last Stay-In-Touch Save Date	
Assistant		Birthdate	
Asst. Phone		Department	



Description Buyer-Rocky Mount ; Buyer-Raleigh ; Buyer-Charlotte ; Buyer-Greensboro ; Buyer-High Point ; Buyer-Spartanburg ; Buyer-Regional

NC1033-sent profile 9/11/07; too small
SC1025-sent profile 9/12/07

Goes by "Sam" wife is Bharti

BA, FS, CA on file, very qualified buyer!

I am very interested in buying an existing tax service business for my son in NC. The business must already be capable of doing RALs and Efilng. Have owned a tax practice for 6 years and would like my son to start his own.
Wants tax only, no bookkeeping. Wife is CPA, very nice.

000222

poe000014

Amount to Invest: \$150-200K

Other email: mathurs_sam@yahoo.com
Purchased Steve Stravol's practice**Buyer Information****Financial Strength**

States Interested In Regional, NC, SC

Cities Interested In Rocky Mount, Raleigh, Charlotte, Greensboro, High Point, Spartanburg, Regional

Special Request NC1033-sent profile 9/11/07; too small SC1025-sent profile 9/12/07

System Information

Created By Brannon Poe, 1/27/2009 7:07 PM

Last Modified By Brannon Poe, 3/4/2009 8:30 PM

Custom Links [Google Search](#)
[Yahoo! Weather](#)[Google Maps](#)[Send Gmail](#)**Activity History****VerticalResponse Mass Email: Charlotte Area CPA Practice Available!!!!**

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Task ☒

Due Date 1/25/2011

Assigned To Stephanie Smith

Last Modified Date/Time 1/25/2011 12:57 PM

Comments

VerticalResponse Mass Email: Accountant's Flight Plan Now Available

Related To

Task ☒

Due Date 12/9/2010

Assigned To Stephanie Smith

Last Modified Date/Time 12/8/2010 4:35 PM

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VerticalResponse Mass Email: High Quality North Columbia CPA Practice Available

Related To

Task ☒

Due Date 12/2/2010

Assigned To Stephanie Smith

Last Modified Date/Time 12/1/2010 3:28 PM

Comments

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Comments

000223

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VerticalResponse Mass Email: Highpoint CPA Practice Available!!!

Related To
Task ✓
Due Date 11/18/2010
Assigned To Stephanie Smith
Last Modified Date/Time 11/18/2010 1:12 PM
Comments

VerticalResponse Mass Email: CPA Practice at the Beach!

Related To
Task ✓
Due Date 11/9/2010
Assigned To Stephanie Smith
Last Modified Date/Time 11/9/2010 2:42 PM
Comments

VerticalResponse Mass Email: High Quality North Columbia CPA Practice Available

Related To
Task ✓
Due Date 10/19/2010
Assigned To Stephanie Smith
Last Modified Date/Time 10/18/2010 4:30 PM
Comments

VerticalResponse Mass Email: North Carolina Practices for Sale!

Related To
Task ✓
Due Date 10/6/2010
Assigned To Stephanie Smith
Last Modified Date/Time 10/6/2010 8:01 AM
Comments

VerticalResponse Mass Email: North Carolina Practices for Sale!

Related To
Task ✓
Due Date 10/6/2010
Assigned To Stephanie Smith
Last Modified Date/Time 10/6/2010 7:53 AM
Comments

VerticalResponse Mass Email: North Carolina Practices for Sale!

Related To
Task ✓
Due Date 10/6/2010
Assigned To Stephanie Smith
Last Modified Date/Time 10/5/2010 9:36 PM
Comments

VerticalResponse Mass Email: South Carolina Accounting Practices For Sale!!!

Related To
Task ✓

000224

poe000016

Due Date 9/30/2010
Assigned To Stephanie Smith
Last Modified Date/Time 9/29/2010 8:29 PM
Comments

VerticalResponse Mass Email: CPA Practice at the Beach

Related To
Task ✓
Due Date 9/28/2010
Assigned To Stephanie Smith
Last Modified Date/Time 9/27/2010 5:00 PM
Comments

Mass Email: SC1041 Quick Campaign

Related To
Task ✓
Due Date 8/2/2010
Assigned To Stephanie Smith
Last Modified Date/Time 8/2/2010 2:39 PM
Comments

Mass Email: NC1060 Quick Campaign

Related To
Task ✓
Due Date 7/14/2010
Assigned To Stephanie Smith
Last Modified Date/Time 7/14/2010 1:45 PM
Comments

Mass Email: SC1036 Relaunch QC

Related To
Task ✓
Due Date 7/13/2010
Assigned To Stephanie Smith
Last Modified Date/Time 7/13/2010 11:03 AM
Comments

Mass Email: NC1045 Quick Campaign

Related To
Task ✓
Due Date 6/17/2010
Assigned To Brannon Poe
Last Modified Date/Time 6/17/2010 5:13 PM
Comments

Mass Email: NC1058 Quick Campaign

Related To
Task ✓
Due Date 5/25/2010
Assigned To Stephanie Smith
Last Modified Date/Time 5/25/2010 1:59 PM
Comments

000225

poe000017

Mass Email:

Related To
 Task ✓
 Due Date 5/6/2010
 Assigned To Stephanie Smith
 Last Modified Date/Time 5/6/2010 4:34 PM
 Comments

Mass Email: NC1049 qulick campaign nov 09

Related To
 Task ✓
 Due Date 11/9/2009
 Assigned To Stephanie Smith
 Last Modified Date/Time 11/9/2009 12:10 PM
 Comments:

Mass Email:

Related To
 Task ✓
 Due Date 11/4/2009
 Assigned To Stephanie Smith
 Last Modified Date/Time 11/4/2009 11:34 AM
 Comments

Mass Email:

Related To
 Task ✓
 Due Date 8/24/2009
 Assigned To Stephanie Smith
 Last Modified Date/Time 8/24/2009 9:29 AM
 Comments

HTML Email Status**Mass Email: SC1041 Quick Campaign**

Date Sent 8/2/2010 2:39 PM
 Date Opened 8/2/2010 3:32 PM
 # Times Opened 1
 Last Opened 8/2/2010 3:32 PM

Mass Email: NC1060 Quick Campaign

Date Sent 7/14/2010 1:45 PM
 Date Opened 7/14/2010 2:17 PM
 # Times Opened 1
 Last Opened 7/14/2010 2:17 PM

Mass Email: SC1036 Relaunch QC

Date Sent 7/13/2010 11:03 AM
 Date Opened 7/13/2010 1:11 PM
 # Times Opened 4
 Last Opened 7/22/2010 4:03 PM

Mass Email: NC1045 Quick Campaign

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 Date Opened
 # Times Opened 0
 Last Opened

Mass Email: NC1058 Quick Campaign

Date Sent 5/25/2010 1:59 PM
 Date Opened 5/26/2010 8:25 AM
 # Times Opened 1
 Last Opened 5/26/2010 8:25 AM

Mass Email:

Date Sent 5/6/2010 4:34 PM
 Date Opened 5/7/2010 2:36 PM
 # Times Opened 7
 Last Opened 5/10/2010 2:12 PM

000226

poe000018

Mass Email: NC1049 quick campaign nov 09

Date Sent 11/9/2009 12:10 PM
 Date Opened
 # Times Opened 0
 Last Opened

Mass Email:

Date Sent 11/4/2009 11:34 AM
 Date Opened
 # Times Opened 0
 Last Opened

Mass Email:

Date Sent 8/24/2009 9:29 AM
 Date Opened 8/24/2009 3:26 PM
 # Times Opened 1
 Last Opened 8/24/2009 3:26 PM

Campaign History**Book Recipient-Buyer Gift**

Start Date 10/8/2010
 Type Other
 Status Sent
 Responded
 Member Status Updated 1/18/2011 2:31 PM

Christmas List

Start Date 12/7/2009
 Type Direct Mail
 Status Sent
 Responded
 Member Status Updated 12/9/2009 2:09 PM

Notes & Attachments**Mathur, Sam-BA FS CA.pdf**

Type Attachment
 Last Modified Martha Robbins
 Description
[View file](#)

Notes

Type Note
 Last Modified Brannon Poe
 Buyer-Rocky Mount ; Buyer-Raleigh ; Buyer-Charlotte ; Buyer-Greensboro ; Buyer-High Point ; Buyer-Spartanburg ; Buyer-Regional
 Description NC1033-sent profile 9/11/07; too small
 SC1025-sent profile 9/12/07
 Goes by "Sam" wife is Bharti
 BA, FS, CA on file, very qual

000227

poe000019

Inquiries: SC1036 Spartanburg Stravolo
Displaying records 1 - 57



Number of records: 57

Inquiry ID	Contact	Notes	Attitude	Financial Strength	Inquiry Stage	Created Date
INQ0002650					Post Listing Inquiry	12/23/2010
INQ0000621		wants to focus on financial services			Withdrew	8/10/2009
INQ0000674		divorce left his credit bad.			Withdrew	8/21/2009
INQ0000877		not interested in partnership			Withdrew	9/30/2009
INQ0001203		not what he is looking for.			Withdrew	12/14/2009
INQ0001398		not interested in partnership			Withdrew	3/8/2010
INQ0001400		not interested in partnership			Withdrew	3/10/2010
INQ0002417		no reason given			Withdrew	11/3/2010
INQ0001524			Friendly		Meeting completed-waiting for offer	4/21/2010
INQ0000709		phone meeting on 9/15 at 11am			Meeting Scheduled	8/26/2009
INQ0000789					Meeting Scheduled	9/11/2009
INQ0000875					Request Buyer's meeting forms(CA, FS, Resume)	9/30/2009
INQ0000626					Profile Sent	8/11/2009
INQ0000630					Profile Sent	8/11/2009
INQ0000651					Profile Sent	8/17/2009
INQ0000664					Profile Sent	8/19/2009
INQ0000667					Profile Sent	8/19/2009
INQ0000666		he wants to look again 8/10/10			Profile Sent	8/19/2009
INQ0000669					Profile Sent	8/19/2009
INQ0000673					Profile Sent	8/21/2009
INQ0000677					Profile Sent	8/24/2009
INQ0000776					Profile Sent	9/9/2009
INQ0000816					Profile Sent	9/15/2009
INQ0000881					Profile Sent	10/1/2009
INQ0000897					Profile Sent	10/6/2009
INQ0000928					Profile Sent	10/12/2009
INQ0000959					Profile Sent	10/26/2009

000228

pos000009

INQ0001230		Profile Sent	12/28/2009
INQ0001385		Profile Sent	3/1/2010
INQ0001386		Profile Sent	3/2/2010
INQ0001496		Profile Sent	4/5/2010
INQ0001560		Profile Sent	5/5/2010
INQ0001720		Profile Sent	6/9/2010
INQ0001722		Profile Sent	6/11/2010
INQ0001785	Friendly	Profile Sent	6/28/2010
INQ0001855		Profile Sent	7/13/2010
INQ0001857		Profile Sent	7/13/2010
INQ0001952		Profile Sent	7/30/2010
INQ0001958		Profile Sent	8/2/2010
INQ0001975		Profile Sent	8/5/2010
INQ0002058		Profile Sent	8/31/2010
INQ0002079		Profile Sent	9/2/2010
INQ0002092		Profile Sent	9/7/2010
INQ0002099		Profile Sent	9/7/2010
INQ0002243		Profile Sent	9/30/2010
INQ0002338		Profile Sent	10/18/2010
INQ0002444		Profile Sent	11/8/2010
INQ0002530		Profile Sent	11/17/2010
INQ0002531		Profile Sent	11/17/2010
INQ0001138		Request Buyer's Agreement	11/24/2009
INQ0001534		Request Buyer's Agreement	4/27/2010
INQ0001858		Request Buyer's Agreement	7/13/2010
INQ0001859		Request Buyer's Agreement	7/13/2010
INQ0001893		Request Buyer's Agreement	7/18/2010
INQ0001946		Request Buyer's Agreement	7/27/2010
INQ0002033		Request Buyer's Agreement	8/24/2010
INQ0002116		Request Buyer's Agreement	9/10/2010

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

vs.

Steve Stravolo, Stravolo & Company, P.A., and
Upstate CPAs, P.A. f/k/a Mathur & Co, P.A.

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2011-CP-42-2880

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiff, by and through his undersigned counsel of record, replies to Defendants' Motion for Summary Judgment as follows:

This is a simple breach of contract case. Plaintiff, Brannon Poe, CPA, LLC ("Poe") brokers the sale of accounting practices. In July 2009, the parties entered into a written contract between the parties for the listing and marketing of the Defendant Steve Stravolo's accounting practice, Stravolo & Company, P.A.. A copy of the written contract is attached hereto as **Exhibit A**. Poe proceeded to list Stravolo's practice for sale and actively marketed the business for sale, including marketing the business through Poe's online business brokerage website and via email. A copy of the online inquiries into the listing of Stravolo's practice is attached hereto as **Exhibit B**. The accounting practice was listed for sale at an asking price of \$325,000. Pursuant to the terms of the written contract, Stravolo agreed to pay Poe a brokerage fee of the greater of: (1) 10 % of the transaction value or (b) \$10,000 ("Performance Fee"). See Exhibit A, ¶ 1. This Performance Fee was due at the closing of the sale or merger of the Practice and was due if the sale or merger takes place "(a) within the terms of this Agreement regardless of buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual buyer or other

000230

transferee is any party with whom Seller or [Poe] had negotiations or contact regarding the sale or transfer of the Practice during the terms of this Agreement.” See Exhibit A, ¶ 2. The contract further provided that Poe had the exclusive right to sell or merge the practice and that Defendant Stravolo would “refer ALL contacts and/or inquiries regarding the sale of the Practice to [Poe] during the term of the Agreement.” See Exhibit A, ¶ 3.

At some point in the summer or fall of 2010, Defendant Stravolo began negotiations with Bharti Mathur regarding merger of Stravolo’s accounting practice with Mathur’s accounting practice. Neither Stravolo nor Mathur notified Poe of their negotiations regarding the listed accounting practice. On or before November 16, 2010, Defendants Mathur & Co. PA and Stravolo & Company, PA merged to form Upstate CPA, PA. The Defendants did not inform Poe of the merger. On November 17, 2010, Defendant Stravolo provided Poe notice that he was cancelling the sale contract. Since that time, despite numerous demands by Poe, the Defendants have failed to pay the Performance Fee owed to Poe within the terms of the Sales Agreement.

All of the facts outlined above are undisputed by the Defendants. In fact, the key facts at issue in this case -- the existence of the brokerage contract, the secret negotiations and subsequent merger of the Stravolo accounting practice with the Mathur accounting practice, the failure to inform Poe of these negotiations, and the subsequent failure to pay Poe any Performance fee related to this merger – are all admitted by the Defendants. Specifically, in their Response to Plaintiff’s Request to Admit, Defendants “admitted” to the following Requests to Admit:

1. Admit that the document attached as Exhibit A -- “Sales Consulting Agreement” is the complete written agreement between Defendant Stravolo or his related entities and Plaintiff.
2. Admit that there are no written agreements other than the document attached as Exhibit A.
3. Admit that Stravolo & Company PA was listed for sale by Plaintiff at an asking price of \$325,000 as of 9/30/10.

000231

10. Admit that Mathur & Co. PA formally changed its name to Upstate CPAs, PA by filing an amendment with the Secretary of State on November 16, 2010 per Exhibit B.
12. Admit that the assets of Stravolo & Company, PA were sold to some entity related to Mathur prior to November 17, 2010.
14. Admit that neither Stravolo nor anyone acting on his behalf informed Plaintiff of the contact or negotiations with Mathur prior to November 17, 2010.
15. Admit that neither Mathur nor anyone acting on her behalf informed Plaintiff of the contact or negotiations with Stravolo prior to November 17, 2010.
16. Admit that the email attached as Exhibit C and dated November 17, 2010 is the only written notice of cancellation by Defendant Stravolo to Plaintiff.
17. Admit that no remuneration has been paid by any Defendant to the Plaintiff.

See Requests to Admit attached hereto as **Exhibit C** and Responses to Requests to Admit attached hereto as **Exhibit D**.

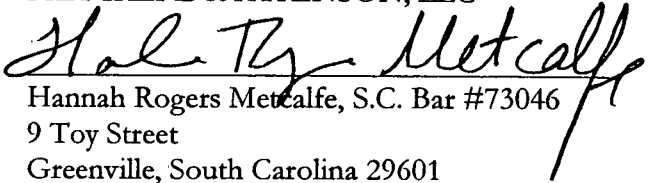
“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001). This is just the sort of case where summary judgment is appropriate. There are no issues of material fact in this case and the plaintiff is entitled to judgment as a matter of law as to liability. A motion for summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCF. In this breach of contract case, the Defendants admit (1) the parties entered into a brokerage contract for the listing and sale of Stravolo’s accounting practice by Poe, (2) there were no other contracts, (3) while Stravolo’s business was exclusively listed with Poe for sale or merger, Stravolo secretly merged the accounting practice with Mathur’s accounting practice without

000232

informing Poe, (4) the merger of the accounting practice took place prior to the cancellation of the brokerage contract with Poe, and (5) the Defendants have failed to pay Poe the Performance Fee due and owing under the contract. Thus, Poe's motion should be granted because the pleadings, depositions and admissions show that there is truly no genuine issue as to any materials fact and Poe is entitled to a judgment as a matter of law as to liability.

Respectfully submitted,

METCALFE & ATKINSON, LLC


Hannah Rogers Metcalfe, S.C. Bar #73046
9 Toy Street
Greenville, South Carolina 29601
864-214-2319
hmetcalfe@malawfirm.com

Christy Ford Allen
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

ATTORNEYS FOR PLAINTIFF

May 14, 2012

Greenville, South Carolina

000233

EXHIBIT A

000234



ACCOUNTING PRACTICE SALES

NORTH AMERICA'S LEADER IN PRACTICE SALES

Brannon Poe, CPA
2630 Marsh Creek Drive
Charleston, SC 29414
1-888-246-0974

www.accountingpracticesales.com

Sales Consulting Agreement

This Sales Consulting Agreement ("Agreement") is entered into by and between Brannon Poe, CPA, LLC, as agent for Accounting Practice Sales, Inc. ("APS") and Steve Stravolo, CPA ("Seller") regarding the sale of the accounting firm known as: Stravolo & Company, P.A. ("the Practice") located at 189 Converse Street, Spartanburg, SC 29306.

APS is in the business of facilitating the sale of accounting practices. APS facilitates the sale of accounting practices through a combination of internet listing of available practices, screening potential buyers, and by bringing prospective buyers to sellers. Seller desires to obtain the services of APS in connection with the sale or merger of the Practice.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions in this Agreement, APS and Seller agree as follows:

1. PERFORMANCE FEE: Seller agrees to pay APS a performance fee of the greater of: (a) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/ 100 Dollars (\$10,000.00) (whichever applies, the "Performance Fee").

"Transaction Value" is defined as the total of all valuable consideration given in exchange for the assets or shares, if applicable, of the Practice. Valuable consideration is defined as broadly as possible and includes anything of value that is obtained pertaining to the assets or shares of the Firm. If the Firm is merged, the Transaction Value shall be the gross revenue of the Firm for the year preceding the transaction. Transaction Value shall include the full potential value of any contingencies.

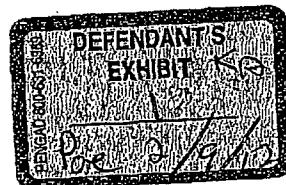
2. WHEN PAYABLE: The Performance Fee shall be due and payable at the closing of the sale or merger of the Practice. The Performance Fee is due in full at closing based on the Transaction Value regardless of terms of the sale of the Practice. Seller authorizes buyer, or any closing or escrow agent to pay The Performance Fee directly to APS at the time of closing from Seller's proceeds. The Performance Fee shall be due and payable according to the terms and conditions of this Agreement if the Practice is sold, conveyed, merged into another practice or entity, or in any manner transferred (a) within the term of this Agreement regardless of Buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual Buyer or other transferee is any party with whom Seller or APS had negotiations or contact regarding the sale or transfer of the Practice during the term of this Agreement.

3. EXCLUSIVE RIGHT: Seller understands and agrees that APS has an exclusive right to sell/merge the Practice. During the listing period Seller will not sell or attempt to sell the practice apart from APS nor will Seller engage the services of any other agent or broker in respect of the Practice. Seller shall refer ALL contacts and/or inquiries regarding the sale of the Practice to APS during the term of this Agreement.

4. TERM OF AGREEMENT: This Agreement shall commence on the day and year set forth below, and shall continue for a MINIMUM period of ninety (90) days from the date of this agreement. This

Seller Initials SSS Date 7/28/09

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agreement shall automatically renew for consecutive thirty-day periods until Seller gives APS thirty (30) days written notice of intent to cancel.

5. DISCLOSURE: Seller represents and warrants that all information provided, or to be provided, to APS by Seller is true and complete to the best of Seller's knowledge and further represents and warrants that, to the best of Seller's knowledge, Seller has not failed to disclose any material information to APS. APS will not verify any representations made by buyer as to creditworthiness, business experience or financial condition. The decision to extend credit to a buyer is solely the decision of Seller. APS will gather from buyers what is needed to introduce a buyer to seller, but APS is not liable for any misrepresentations or omissions that may be made to Seller by a buyer.

6. GOVERNING LAW: Should any action be commenced to enforce APS' rights herein, the laws of South Carolina shall control. Suit will be brought in South Carolina.

7. RECOVERY OF COLLECTION EXPENSES: APS shall be entitled to recover the expenses connected with enforcing any of its rights hereunder, including legal fees, court costs, and/or any other reasonable collection costs that may be incurred relating to the enforcement of such rights.

8. ACKNOWLEDGEMENT: Seller acknowledges that Seller has read this Agreement and fully understands the terms and provisions of this Agreement.

9. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by Seller.

10. MISCELLANEOUS:

(a) **Successors.** This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(b) **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable, and the singular shall include the plural, if applicable.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Faxed and electronic copies are binding.


Steve Stravolo, CPA

Accounting Practice Sales, Inc.

By: Brannon Poe, CPA, LLC
Its: Authorized Agent

Date signed: 7/28/09

By: _____
Brannon Poe
Its: Member

Date signed: _____

000236

EXHIBIT B

000237



Inquiries: SC1036 Spartanburg Stravolo
Displaying records 1 - 57

Number of records: 57

Inquiry ID	Contact	Notes	Attitude	Financial Strength	Inquiry Stage	Created Date
INQ0002650					Post Listing Inquiry	12/23/2010
INQ0000621		wants to focus on financial services			Withdrew	8/10/2009
INQ0000674		divorce left his credit bad.			Withdrew	8/21/2009
INQ0000877		not interested in partnership			Withdrew	9/30/2009
INQ0001203		not what he is looking for.			Withdrew	12/14/2008
INQ0001398		not interested in partnership			Withdrew	3/8/2010
INQ0001400		not interested in partnership			Withdrew	3/10/2010
INQ0002417		no reason given			Withdrew	11/3/2010
INQ0001524			Friendly		Meeting completed-waiting for offer	4/21/2010
INQ0000709		phone meeting on 9/15 at 11am			Meeting Scheduled	8/26/2009
INQ0000789					Meeting Scheduled	9/11/2009
INQ0000875					Request Buyer's meeting forms(CA, FS, Resume)	9/30/2009
INQ0000626					Profile Sent	8/11/2009
INQ0000830					Profile Sent	8/11/2009
INQ0000851					Profile Sent	8/17/2009
INQ0000864					Profile Sent	8/19/2009
INQ0000867					Profile Sent	8/19/2009
INQ0000666		he wants to look again 8/10/10			Profile Sent	8/19/2009
INQ0000669					Profile Sent	8/19/2009
INQ0000873					Profile Sent	8/21/2009
INQ0000877					Profile Sent	8/24/2009
INQ0000776					Profile Sent	9/9/2009
INQ0000816					Profile Sent	9/15/2009
INQ0000881					Profile Sent	10/1/2009
INQ0000897					Profile Sent	10/6/2009
INQ0000928					Profile Sent	10/12/2009
INQ0000959					Profile Sent	10/26/2009

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INQ0001230		Profile Sent	12/28/2009
INQ0001385		Profile Sent	3/1/2010
INQ0001386		Profile Sent	3/2/2010
INQ0001498		Profile Sent	4/5/2010
INQ0001560		Profile Sent	5/5/2010
INQ0001720		Profile Sent	6/9/2010
INQ0001722		Profile Sent	6/11/2010
INQ0001785	Friendly	Profile Sent	6/28/2010
INQ0001855		Profile Sent	7/13/2010
INQ0001857		Profile Sent	7/13/2010
INQ0001952		Profile Sent	7/30/2010
INQ0001958		Profile Sent	8/2/2010
INQ0001975		Profile Sent	8/5/2010
INQ0002058		Profile Sent	8/31/2010
INQ0002079		Profile Sent	9/2/2010
INQ0002092		Profile Sent	9/7/2010
INQ0002099		Profile Sent	9/7/2010
INQ0002243		Profile Sent	9/30/2010
INQ0002338		Profile Sent	10/18/2010
INQ0002444		Profile Sent	11/8/2010
INQ0002530		Profile Sent	11/17/2010
INQ0002531		Profile Sent	11/17/2010
INQ0001138		Request Buyer's Agreement	11/24/2009
INQ0001534		Request Buyer's Agreement	4/27/2010
INQ0001856		Request Buyer's Agreement	7/13/2010
INQ0001859		Request Buyer's Agreement	7/13/2010
INQ0001893		Request Buyer's Agreement	7/18/2010
INQ0001946		Request Buyer's Agreement	7/27/2010
INQ0002033		Request Buyer's Agreement	8/24/2010
INQ0002116		Request Buyer's Agreement	9/10/2010

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EXHIBIT C

000240

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PID

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Brannon Poe, CPA, LLC,)
)
Plaintiff,)
)
v.)
)
Steve Stravolo, Stravolo & Company, P.A.)
and Upstate CPAS, P.A. f/k/a Mathur &)
Co., P.A.,)
)
Defendants.)
_____)

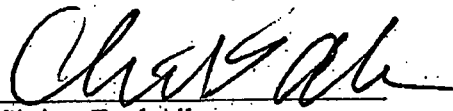
IN THE COURT OF COMMON PLEAS
CASE NO: 11-CP-42-2880

REQUESTS TO ADMIT

1. Admit that the document attached as Exhibit A-- "Sales Consulting Agreement" is the complete written agreement between Defendant Stravolo or his related entities and Plaintiff.
2. Admit that there are no written agreements other than the document attached as Exhibit A.
3. Admit that Stravolo & Company PA was listed for sale by Plaintiff at an asking price of \$325,000 as of 9/30/10.
4. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either calendar year or some other fiscal year) exceeded \$250,000.
5. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either by calendar year or some other fiscal year) exceeded \$300,000
6. Admit that the gross revenues of Stravolo & Company, PA in 2009 (either by calendar year or some other fiscal year) exceeded \$350,000.
7. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar

year or some other fiscal year) exceeded \$250,000.

8. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar year or some other fiscal year) exceeded \$300,000.
9. Admit that the gross revenues of Stravolo & Company, PA in 2010 (either by calendar year or some other fiscal year) exceeded \$350,000.
10. Admit that Mathur & Co. PA formally changed its name to Upstate CPAs, PA by filing an amendment with the Secretary of State on November 16, 2010 per Exhibit B.
11. Admit that on some date prior to November 17, 2010 Defendants Mathur & Co. PA and Stravolo & Company, PA merged to form Upstate CPA, P.A.
12. Admit that the assets of Stravolo & Company, PA were sold to some entity related to Mathur prior to November 17, 2010.
13. Admit that the assets previously owned, at least in part and in some manner, by Steve Stravolo are now owned by Mathur or some entity related to Mathur.
14. Admit that neither Stravolo nor anyone acting on his behalf informed Plaintiff of the contact or negotiations with Mathur prior to November 17, 2010.
15. Admit that neither Mathur nor anyone acting on her behalf informed Plaintiff of the contact or negotiations with Stravolo prior to November 17, 2010.
16. Admit that the email attached as Exhibit C and dated November 17, 2010 is the only written notice of cancellation by Defendant Stravolo to Plaintiff.
17. Admit that no remuneration has been paid by any Defendant to the Plaintiff.

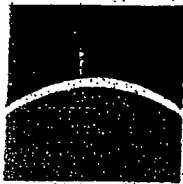


Christy Ford Allen
WILLS, MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

Hannah Rogers Metcalfe
Hannah Rogers Metcalfe, PA
P.O. Box 1826
Greenville, South Carolina 29602
(864) 641-7632

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
August 25, 2011



ACCOUNTING PRACTICE SALES

NORTH AMERICA'S LEADER IN PRACTICE SALES

Brannon Poe, CPA

2630 Marsh Creek Drive

Charleston, SC 29414

1-888-246-0974

www.accountingpracticesales.com

Sales Consulting Agreement

This Sales Consulting Agreement ("Agreement") is entered into by and between Brannon Poe, CPA, LLC, as agent for Accounting Practice Sales, Inc. ("APS") and Steve Stravolo, CPA ("Seller") regarding the sale of the accounting firm known as: Stravolo & Company, P.A. ("the Practice") located at 189 Converse Street, Spartanburg, SC 29308.

APS is in the business of facilitating the sale of accounting practices. APS facilitates the sale of accounting practices through a combination of Internet listing of available practices, screening potential buyers, and by bringing prospective buyers to sellers. Seller desires to obtain the services of APS in connection with the sale or merger of the Practice.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions in this Agreement, APS and Seller agree as follows:

1. PERFORMANCE FEE: Seller agrees to pay APS a performance fee of the greater of: (a) Ten per cent (10%) of the Transaction Value or (b) Ten Thousand and No/ 100 Dollars (\$10,000.00) (whichever applies, the "Performance Fee").

"Transaction Value" is defined as the total of all valuable consideration given in exchange for the assets or shares, if applicable, of the Practice. Valuable consideration is defined as broadly as possible and includes anything of value that is obtained pertaining to the assets or shares of the Firm. If the Firm is merged, the Transaction Value shall be the gross revenue of the Firm for the year preceding the transaction. Transaction Value shall include the full potential value of any contingencies.

2. WHEN PAYABLE: The Performance Fee shall be due and payable at the closing of the sale or merger of the Practice. The Performance Fee is due in full at closing based on the Transaction Value regardless of terms of the sale of the Practice. Seller authorizes buyer, or any closing or escrow agent to pay The Performance Fee directly to APS at the time of closing from Seller's proceeds. The Performance Fee shall be due and payable according to the terms and conditions of this Agreement if the Practice is sold, conveyed, merged into another practice or entity, or in any manner transferred (a) within the term of this Agreement regardless of Buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual Buyer or other transferee is any party with whom Seller or APS had negotiations or contact regarding the sale or transfer of the Practice during the term of this Agreement.

3. EXCLUSIVE RIGHT: Seller understands and agrees that APS has an exclusive right to sell/merge the Practice. During the listing period Seller will not sell or attempt to sell the practice apart from APS nor will Seller engage the services of any other agent or broker in respect of the Practice. Seller shall refer ALL contacts and/or inquiries regarding the sale of the Practice to APS during the term of this Agreement.

4. TERM OF AGREEMENT: This Agreement shall commence on the day and year set forth below and shall continue for a MINIMUM period of ninety (90) days from the date of this agreement. This

Seller Initials SS Date 7/28/09

000244

agreement shall automatically renew for consecutive thirty-day periods until Seller gives APS thirty (30) days written notice of intent to cancel.

5. DISCLOSURE: Seller represents and warrants that all information provided, or to be provided, to APS by Seller is true and complete to the best of Seller's knowledge and further represents and warrants that, to the best of Seller's knowledge, Seller has not failed to disclose any material information to APS. APS will not verify any representations made by buyer as to creditworthiness, business experience or financial condition. The decision to extend credit to a buyer is solely the decision of Seller. APS will gather from buyers what is needed to introduce a buyer to seller, but APS is not liable for any misrepresentations or omissions that may be made to Seller by a buyer.

6. GOVERNING LAW: Should any action be commenced to enforce APS' rights herein, the laws of South Carolina shall control. Suit will be brought in South Carolina.

7. RECOVERY OF COLLECTION EXPENSES: APS shall be entitled to recover the expenses connected with enforcing any of its rights hereunder, including legal fees, court costs, and/or any other reasonable collection costs that may be incurred relating to the enforcement of such rights.

8. ACKNOWLEDGEMENT: Seller acknowledges that Seller has read this Agreement and fully understands the terms and provisions of this Agreement.

9. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by Seller.

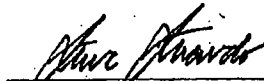
10. MISCELLANEOUS:

(a) **Successors.** This Agreement shall inure to the benefit of and shall be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

(b) **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced. The masculine pronoun, when used herein, shall include the feminine and neuter pronoun, if applicable; and the singular shall include the plural, if applicable.

(d) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Faxed and electronic copies are binding.


Steve Stravolo, CPA

Accounting Practice Sales, Inc.

By: Brannon Poe, CPA, LLC
Its: Authorized Agent

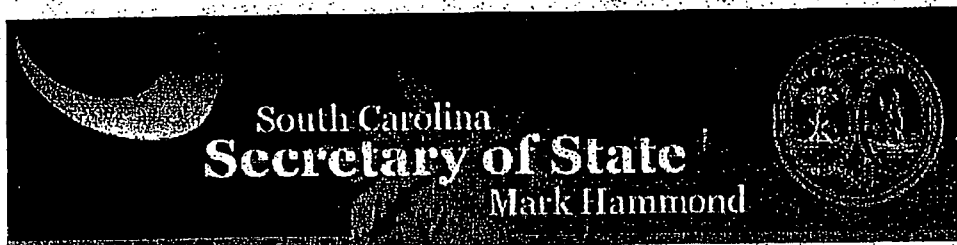
Date signed: 7/28/09

By: _____
Brannon Poe
Its: Member

Date signed: _____

000245

"B"

**UPSTATE CPAS, P.A.**

Note: This online database was last updated on 5/15/2011 6:01:29 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:

Domestic

STATUS:

Good Standing

**STATE OF INCORPORATION
/ ORGANIZATION:**SOUTH CAROLINA
Profit**REGISTERED AGENT INFORMATION****REGISTERED AGENT NAME:**

BHARTI MATHUR

ADDRESS:

220 WESTGATE MALL DR

CITY:

SPARTANBURG

STATE:

SC

ZIP:

29301

SECOND ADDRESS:

SUITE 6

FILE DATE:

11/02/2007

EFFECTIVE DATE:

11/02/2007

DISSOLVED DATE:

11

Corporation History Records

CODE	FILE DATE	COMMENT
Amendment	11/16/2010	CHANGED NAME FROM MATHUR & CO., P.A./PRINCIPAL OFFICE ADDRESS
Incorporation	11/02/2007	PROFESSIONAL CORPORATION

Document

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

000246

"C"

From: Steve Stravolo [mailto:Steve@stravolo.com]
Sent: Wednesday, November 17, 2010 8:32 PM
To: Brannon Poe
Cc: Stephanie Smith
Subject: RE: update

11/17/10

Hello Brannon,

Sorry I didn't get back to you sooner. I've been in Atlanta.

Please pull the listing of the sale of Stravolo & Company, P.A. as soon as possible. As I mentioned, we have merged with another firm in Spartanburg, SC.

I will call you back before the end of the week.

Steve Stravolo, CPA
Stravolo Professional Services Group
CPAs, Business Guidance, Wealth Management
www.stravolo.com
www.stravolowealth.com

P.O. Box 5109
Spartanburg, SC 29304
(864) 587-1685

From: Brannon Poe [mailto:poe@knology.net]
Sent: Wed 11/17/2010 4:35 PM
To: Steve Stravolo
Cc: 'Stephanie Smith'
Subject: update

Hi Steve,

Stephanie told me a little about your transaction. Congratulations. Can you please email me something official for my headquarters so I can pull the listing.

By the way, I left you a message the other day. Thank you,

000247

Brannon



**ACCOUNTING
PRACTICE
SALES**

NORTH AMERICA'S LEADER IN PRACTICE SALES

Brannon Poe, CPA
Accounting Practice Sales
North America's Leader in Practice Sales

TOLL FREE TEL/FAX 888.246.0974
DIRECT 843.225.5580
<http://www.AccountingPracticeSales.com>

"The biggest obstacle to learning something new is the belief that you already know it."

000248

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 25, 2011, a copy of the Plaintiff's Interrogatories, Requests for Production and Requests to Admit were placed in an envelope, with first-class postage prepaid, and mailed to:

Scott F. Talley, Esquire
Scott F. Talley, PA
959 John B. White, Sr. Blvd.
Spartanburg SC 29306

ATTORNEYS FOR DEFENDANTS


WILLS MASSALON & ALLEN LLC

000249

EXHIBIT D

000250

IN THE COURT OF COMMON PLEAS

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)

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1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied.
6. Denied.
7. Admitted.
8. Denied.
9. Denied.
10. Admitted.
11. Denied.
12. Admitted.
13. Denied.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.

~~TALLEY LAW FIRM, P.A.~~

Scott F. Talley, Esquire
959 John B. White, Sr. Blvd.
Spartanburg, South Carolina 29306
864-595-2966
Attorneys for Defendants

September 28, 2011
Spartanburg, SC

RECEIVED

OCT 04 2011

WINS & MASSALON
000251

) IN THE COURT OF COMMON PLEAS

)

)

)

Case No. 11-CP-42-2880

)

)

CERTIFICATE OF SERVICE

))

)

)

TALLEY LAW FIRM, P.A.

Scott F. Talley, Esquire
959 John B. White, Sr. Blvd.
Spartanburg, SC 29306
864-595-2966
Attorney for Defendants

762-1
762-1

METCALFE & ATKINSON, LLC
ATTORNEYS AT LAW

May 30, 2012

The Honorable J. Derham Cole
P O Box 1744
180 Magnolia Street, 2nd Floor
Spartanburg, SC 29304-1744

Re: Brannon Poe v. Steve Stravolo
C.A. No.: 11-CP-42-2880

Dear Judge Cole:

Please find enclosed a proposed Order Granting Partial Summary Judgment in the above-captioned matter. If you require any changes, additions or corrections, please advise.

By copy of this letter, I am providing all counsel of record with a copy of the proposed order.

With best regards, I remain

Respectfully,

Hannah Rogers Metcalfe

Hannah Rogers Metcalfe
hmetcalfe@malawfirm.com

HRM/cjm
Enclosure

cc: Christy Ford Allen
F. Scott Talley

RECEIVED

JUN 01 2012

Wills & Massalori

000253

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO: 11-CP-42-2880

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

ORDER GRANTING SUMMARY
JUDGMENT AGAINST DEFENDANTS
ON LIABILITY ONLY

This matter came before the court on the Plaintiff's Motion for Partial Summary Judgment on the issue of liability in this breach of contract action. The matter was heard before the undersigned at a hearing on May 14, 2012, after which time the motion was granted by Form 4 Order dated May 16, 2012 with a request by the undersigned for formal written order. All parties were present or represented by counsel at the hearing.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (S.C. 2002) (citation omitted)); Rule 56(c), SCRC. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id. at 493-94, 567 S.E.2d at 860. Summary judgment is proper where, after sufficient time for discovery, a party fails to make a sufficient showing on an essential element of its case. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the

000254

adverse party may not rest upon the mere allegations of his pleadings. Instead his response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him." Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449, 452-53 (Ct. App. 1988).

FACTUAL BACKGROUND AND ANALYSIS

This is a breach of contract case. Plaintiff, Brannon Poe, CPA, LLC ("Poe") brokers the sale of accounting practices. In July 2009, the parties entered into a written contract ("Sales Agreement") for the listing and marketing of the Defendant Steve Stravolo's accounting practice, Stravolo & Company, P.A. Poe proceeded to list Stravolo's practice for sale and actively marketed the business for sale, including marketing the business through Poe's online business brokerage website and via email. The accounting practice was listed for sale at an asking price of \$325,000.

The Sales Agreement provides that Poe would facilitate and market the sale or merger of Stravolo's accounting practice, similar to that of a real estate listing agreement. The Sales Agreement provides that Poe had an exclusive right to sell/merge the Practice, and that Stravolo shall refer all contacts and/or inquiries regarding the sale of the Practice to Plaintiff during the term of the Agreement. Stravolo agreed to pay Poe a performance fee of the greater of: (1) Ten percent (10%) of the Transaction Value or (b) Ten Thousand and No/100 Dollars (\$10,000.00) (the "Performance Fee".) Stravolo agreed that said Performance Fee was payable at the closing of the sale or merger of the accounting practice. The Sales Agreement provides that the fee is due if the sale or merger takes place (a) within the terms of this Agreement regardless of buyer or other transferee taking part in such transaction, or (b) within three (3) years after the termination of this Agreement if the eventual buyer or other transferee is any party with whom Seller or Poe

had negotiations or contact regarding the sale or transfer of the Practice during the term of the Agreement. In the event of non-payment of the Performance Fee, the Sales Agreement provides that Poe is entitled to an award of legal fees and court costs related to the enforcement of the Agreement, and provides that the Agreement inures to the benefit of and shall be binding upon the respective successors and assigns of the parties.

At some point in the Summer or Fall of 2010, Defendant Stravolo began negotiations with Bharti Mathur regarding merger of Stravolo's accounting practice with Mathur's accounting practice. Neither Stravolo nor Mathur notified Poe of their negotiations regarding the listed accounting practice. On or before November 16, 2010, Defendants Mathur & Co. PA and Stravolo & Company, PA merged to form Upstate CPA, PA. The Defendants did not inform Poe of the merger. On November 17, 2010, Defendant Stravolo provided Poe notice that he was cancelling the Sales Agreement. Since that time, despite numerous demands by Poe, the Defendants have failed to pay the Performance Fee owed to Poe within the term of the Sales Agreement.

All of the facts outlined above are undisputed by the Defendants. In fact, the key facts at issue in this case -- the existence of the brokerage contract, the secret negotiations and subsequent merger of the Stravolo accounting practice with the Mathur accounting practice, the failure to inform Poe of these negotiations, and the subsequent failure to pay Poe any Performance fee related to this merger - are all admitted by the Defendants. Specifically, Stravolo admitted the following Requests to Admit:

1. Admit that the document attached as Exhibit A-- "Sales Consulting Agreement" is the complete written agreement between Defendant Stravolo or his related entities and Plaintiff.

000256

2. Admit that there are no written agreements other than the document attached as Exhibit A.
3. Admit that Stravolo & Company PA was listed for sale by Plaintiff at an asking price of \$325,000 as of 9/30/10.
10. Admit that Mathur & Co. PA formally changed its name to Upstate CPAs, PA by filing an amendment with the Secretary of State on November 16, 2010 per Exhibit B.
12. Admit that the assets of Stravolo & Company, PA were sold to some entity related to Mathur prior to November 17, 2010.
14. Admit that neither Stravolo nor anyone acting on his behalf informed Plaintiff of the contact or negotiations with Mathur prior to November 17, 2010.
15. Admit that neither Mathur nor anyone acting on her behalf informed Plaintiff of the contact or negotiations with Stravolo prior to November 17, 2010.
16. Admit that the email attached as Exhibit C and dated November 17, 2010 is the only written notice of cancellation by Defendant Stravolo to Plaintiff.
17. Admit that no remuneration has been paid by any Defendant to the Plaintiff.

As additional support for this motion, Plaintiff Poe submitted sworn and uncontradicted evidence that from the inception of the contract until its written cancellation on November 17, 2010, Poe handled over 50 inquiries from buyers, and actively marketed Stravolo's the accounting practice to APS's national customer base. [Poe Depo, p. 26-29, 34, 37-40, Def. Ex. 3]. Defendant Stravolo filed an Affidavit in opposition to the motion prior to the hearing which contained Stravolo's complaints about the offers he had received through Poe's listing, and stated that he did not feel Poe had performed pursuant to the contract. However, taken in the light most favorable to the non-moving party, none of the assertions in Stravolo's Affidavit

address the material facts as to liability on this breach of contract action and the plain terms of the Sales Agreement. Defendant Stravolo's Affidavit fails to present a mere scintilla of evidence sufficient to withstand the motion for summary judgment.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 445, 548 S.E.2d 868, 874 (S.C 2001). This is just the sort of case where summary judgment is appropriate. There are no issues of material fact in this case and the plaintiff is entitled to judgment as a matter of law as to liability. A motion for summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

In this breach of contract case, the Defendants admit (1) the parties entered into a brokerage contract for the listing and sale of Stravolo's accounting practice by Poe, (2) there were no other contracts, (3) while Stravolo's business was exclusively listed for sale or merger, Stravolo merged the accounting practice with Marthur's accounting practice without informing Poe, (4) the merger of the accounting practice took place prior to the cancellation of the brokerage contract with Poe, and (5) the Defendants have failed to pay Poe the Performance Fee due and owing under the contract.¹

CONCLUSION

Poe's motion for summary judgment in liability only is granted because the pleadings, deposition submitted and admissions show there is truly no genuine issue as to any material fact.

¹ The Plaintiff includes a request for summary judgment on the defense of comparative negligence. As this is a breach of contract case only and comparative negligence is only a tort defense and because the plaintiff made no submission or argument on that issue, summary judgment is granted as a matter of law on that issue as well.

Plaintiff's Motion for Partial Summary Judgment on Liability is GRANTED;
AND, IT IS SO ORDERED.

Spartanburg, South Carolina

6

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-42-2880

Brannon Poe, CPA

Plaintiff,

vs.

Steve Stravolo, et al.

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Hannah Rogers Metcalfe, Bar No. 73046

Address:

9 Toy Street, Greenville, SC 29601

Phone: 864-214-2319 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Scott F. Talley, Bar No. _____

Address:

959 John B. White Sr. Blvd. Spartanburg, SC
29306

Phone: _____ Fax _____

E-mail: _____ Other: _____

- ☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted _____

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

000260

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

762-1
P.C.D.
) IN THE COURT OF COMMON PLEAS
)
)

Brannon Poe, LLC,
Plaintiff,

)
) Case No. 11-CP-42-2880
)

Vs.

) NOTICE OF MOTION AND
) MOTION TO ALTER/AMEND
) JUDGMENT
)

Steve Stravolo, et al.,

)
) Defendants.
)

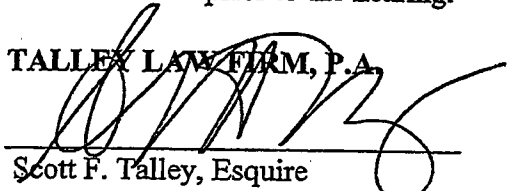
TO: PLAINTIFF, BY AND THROUGH HIS ATTORNEY, CHRISTY ALLEN, ESQ.:

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorney, will move on the tenth (10th) day after service hereof or as soon thereafter as counsel can be heard for an order altering or amending this Court's judgment filed May 17, 2012, said Motion made pursuant to Rule 59(e), South Carolina Rules of Civil Procedure based on the following:

- (1) Plaintiff's Motion seeking partial summary judgment as well as its Memorandum in support of said Motion states that it is on a breach of contract claim; only one party Defendant was a party to the Contract complained of yet the Court's ruling does not state as to which Defendant the Plaintiff's Motion was granted.

This motion is based on the pleadings in this case, discovery in the case, and such documents, including memorandums, and affidavits which have been submitted prior to the hearing.

TALLEY LAW FIRM, P.A.


Scott F. Talley, Esquire
Attorney for Defendants
959 John B. White, Sr. Blvd.
Spartanburg, SC 29306
(864) 595-2966

Spartanburg, SC
June 29, 2011

RECEIVED

JUN 04 2012

Wills & Massaror

FILED
CLERK OF COURT
2012 MAY 30 PM 1:22
000261

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

Vs.

Steve Stravolo, Stravolo & Company,
PA and Upstate CPAs, PA f/k/a
Mathur & Co., PA,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
)

)
) Case No. 11-CP-42-2880
)

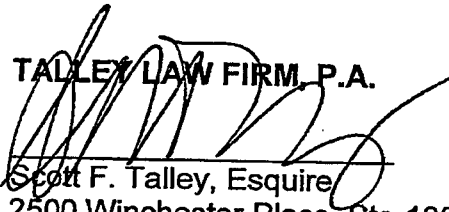
)
) **CERTIFICATE OF SERVICE**
)
)
)
)
)

It is hereby certified that a filed copy of the Defendant's Notice of and 59(e) Motion in this matter was served upon counsel for the Plaintiff the date entered below with proper postage addressed as follows:

Christy Ford Allen, Esquire
PO Box 859
Charleston, SC 29402

May 30, 2012
Spartanburg, SC

TALLEY LAW FIRM, P.A.


Scott F. Talley, Esquire
2500 Winchester Place, Ste 100
Spartanburg, SC 29301
864-595-2966
Attorney for Defendants

RECEIVED

JUN 04 2012

Wills & Massaia,

FILED
CLERK OF COURT
2012 MAY 30 PM 1:22
RECEIVED CLERK
000262

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 11-CP-42-2880

PLAINTIFF'S
NOTICE OF AND MOTION
TO ALTER OR AMEND

YOU WILL PLEASE TAKE NOTICE that Plaintiff through its counsel, will move before the presiding judge of the Forty-Second Judicial Circuit at the Spartanburg County Judicial Center, Spartanburg, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order altering or amending the judgment pursuant to SCRCP 52(b).¹

The grounds for this motion are the following:

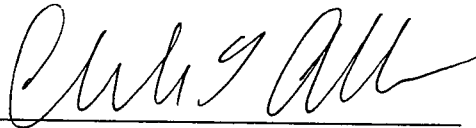
1. The court's order on attorneys' fees failed to address the factors as set out in Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997) and failed to address the reasonable hourly fee in accordance with the Attorney Fee Affidavits and back up documentation filed herein.
2. The court's order erred in considering the one-third (1/3) contingency agreement as the determining factor on the award of attorneys' fees.

¹ The Court's order appears to have been filed in the clerk's office on October 4, 2013. However, upon information and belief, no copy of the order was ever mailed nor was notice of the entry of judgment mailed from the clerk's office to any party as set forth in SCRCP, Rule 77(d). Upon inquiry to the clerk's office related to a different question, a copy of the order emailed, and shortly thereafter said order was provided to Plaintiff's counsel by mail, and as referenced in Defendant's motion to alter or amend of today's date, received on January 6, 2014.

000263

3. The attorneys' fees submission made by the submission of three (3) Affidavits and supporting documentation at trial supports an attorneys' fee award in the amount of \$24,892.50. There is nothing in record which disputes this evidence.

This motion will also be further supported by a memorandum of law and arguments of counsel.



Christy Ford Allen
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144

and

Hannah R. Metcalfe, Esquire
Metcalfe Perkins & Atkinson, LLC
P.O. Box 1826
9 Toy Street (29601)
Greenville SC 29602

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC
January 15, 2014

000264

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Brannon Poe, CPA, LLC,

Plaintiff,

v.

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 11-CP-42-2880

FILED
CLERK OF COURT
CHARLOTTE COUNTY
2013 SEP 19 PM 2:36
M. HOPE BLACKLEY

AFFIDAVIT OF CHRISTY FORD ALLEN

Christy Ford Allen, being duly sworn, gives the following Affidavit:

1. I am a lawyer in Charleston, South Carolina.
2. I represent Plaintiff in this contract case.
3. I am employed by Wills Massalon & Allen LLC, and my law practice is focused on business and real estate litigation.
4. I am a member of the South Carolina Bar, and have been in private practice in Charleston for over 12 years. I regularly appear in state and federal courts on various matters.
5. I undertook the representation of Brannon Poe CPA, LLC pursuant to a written fee agreement wherein we agreed to a 1/3 contingency fee arrangement.
6. As with matters handled on an hourly basis, we create contemporaneous and detailed time entries in our law firm billing software.
7. The attached is a consolidated and revised time and costs report for this case.

000265

8. I have personally reviewed all time and costs entries on the attached report, and believe it to be accurate and kept in the regular course of our business.
9. I removed several time entries from the attached report because said entries were not directly related to this breach of contract case.
10. I believe that the rate of \$250.00 per hour is a reasonable and customary rate for this kind of litigation, especially considering the favorable outcome for our client.
11. As of the date of this Affidavit, the following is a summary of the hours worked and corresponding hourly rate and costs, as set forth in detail in Exhibits A-B.

<u>Name</u>	<u>Type</u>	<u>Hours</u>	<u>Rate/Hr.</u>	<u>Total</u>
Christy Ford Allen	Attorney	56.00	250.00	14,000.00
Faith Frink	Paralegal	7.90	75.00	592.50
Krystal Parrish				

12. I anticipate that I will expend an additional 15 hours of attorney time preparing for and conducting the damages trial in this matter, which would be approximately an additional \$3750.00 in attorneys' fees, rendering the **GRAND TOTAL OF ATTORNEYS FEES:**
- \$18,342.50.**

13. The costs or expenses incurred contain the following:

Filing Fees:	\$175.00
Court Reporters:	\$ 970.60
Photocopies	\$ 257.47
Telephone:	17.90
Postage:	\$ 50.29
Mileage	\$ 222.00
GRAND TOTAL OF COSTS:	\$ 1,693.26

14. For this type of commercial litigation, I customarily charge between \$250- \$300 per hour, if handled on hourly rate.

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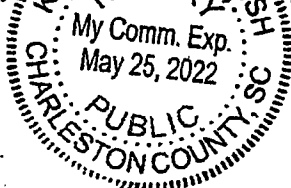
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15. I associated Attorney Hannah Metcalfe to assist with the case and tasks which could be done more economically by an attorney located in the Upstate. I do not believe we have duplicated any efforts, and I believe that her time should be similarly compensated.
16. The nature, extent, and difficulty of this case comports with the amount of attorneys' fees requested. Plaintiff is a business located in Charleston County, South Carolina and was required to file suit in Spartanburg in order to recover his commission related to the sale of an accounting practice. While the legal issues (breach of contract) were not particularly difficult, the complete lack of justification for non-payment and the Defendants continued refusal to pay the amounts owed necessitated Plaintiff maintaining this matter, now for over two (2) years prior to Judgment on the claims due.
17. Attached is my current biographical information as it relates to my professional standing as counsel.
18. There was a contingency to the potential compensation in that Defendants have maintained they do not owe Plaintiffs monies under the contract.
19. The undersigned is also submitting an Affidavit of Attorney Carl Muller on the issue of fees customarily charged in the locality and on the professional standing of counsel.
20. The undersigned was successful, as the Plaintiff, in obtaining an award of Summary Judgment against the Defendants on the Breach of Contract claim, without the necessity of a trial. That is a beneficial result.


Christy Ford Allen

SWORN TO before me this
07 day of August, 2013

 (seal)
Notary Public for South Carolina
My Commission Expires: May 2022



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000267

			PCLaw Time Listing Summary 762-1	
Christy F. Allen	Jan 27/2011	Poe, Brannon	Review file and prepare demand letter	2.00
Christy F. Allen	Jan 24/2011	Poe, Brannon	Receipt and review documents from Brannon Poe, telephone conference with B Poe, and open new file	1.00
Christy F. Allen	Feb 14/2011	Poe, Brannon	Receipt and review of letter from defense attorney	0.20
Christy F. Allen	Feb 25/2011	Poe, Brannon	Prepare detailed letter to Attorney Talley	0.50
Christy F. Allen	Apr 6/2011	Poe, Brannon	Telephone call to Attorney S Talley re Poe v. Stravalo	0.10
Christy F. Allen	Apr 20/2011	Poe, Brannon	Telephone conference with Brannon Poe re settlement demand	0.20
Christy F. Allen	Apr 20/2011	Poe, Brannon	Prepare correspondence to Attorney Scott Talley re settlement	0.10
Christy F. Allen	May 16/2011	Poe, Brannon	Prepare complaint	3.00
Christy F. Allen	May 17/2011	Poe, Brannon	Finalize complaint and electronic correspondence exchange with Attorney H Metcalfe re upstate affiliate	1.50
				0.00
				0.00
				0.00
				0.00
Christy F. Allen	May 23/2011	Poe, Brannon	Revise complaint	0.20
				0.00
Christy F. Allen	Apr 15/2011	Poe, Brannon	Prepare complaint for filing	0.50
Christy F. Allen	Jun 2/2011	Poe, Brannon	Telephone conference with Stephanie re emails and contacts with Mathur	0.50
Christy F. Allen	Jun 3/2011	Poe, Brannon	Revise complaint	0.40
				0.00
Christy F. Allen	Jun 23/2011	Poe, Brannon	Prepare co-counsel letter, telephone conference with H Metcalfe, send complaint to Faith for filing prep	1.00
Christy F. Allen	Jun 30/2011	Poe, Brannon	Finalize complaint for filing	0.10
Christy F. Allen	Aug 23/2011	Poe, Brannon	Receipt and review of Defendant's discovery requests, and prepare interrogatories and requests to admit to Defendants	1.50
Christy F. Allen	Aug 25/2011	Poe, Brannon	Finalize written discovery to Defendants, interrogatories, requests to produce and requests to admit	1.40
Christy F. Allen	Sep 19/2011	Poe, Brannon	Prepare discovery responses	0.30
Christy F. Allen	Sep 19/2011	Poe, Brannon	Telephone conference with B Poe and S Smith re discovery	1.50
Christy F. Allen	Sep 21/2011	Poe, Brannon	Electronic correspondence exchange with S Talley re extensions on discovery	0.10

000268

Christy F. Allen	Sep 27/2011	Poe, Brannon	Prepare answers to interrogatories to defendants	FILED CLERK OF COURT CLATSOP COUNTY 2011 SEP 29 PM 2:35	1.00
Christy F. Allen	Sep 29/2011	Poe, Brannon	Finalize discovery responses to defendants		0.50
Christy F. Allen	Sep 30/2011	Poe, Brannon	Prepare affidavit in support of motion for summary judgment, and motion for partial summary judgment		1.00
Christy F. Allen	Oct 6/2011	Poe, Brannon	Finalize discovery responses	M. HOPE BLACKLEY	0.50
Christy F. Allen	Oct 14/2011	Poe, Brannon	Receipt and review of defendants discovery responses		0.20
Christy F. Allen	Dec 7/2011	Poe, Brannon	Electronic correspondence exchange with Attorney S Talley and Brannon Poe re rescheduling of depositions		0.10
Christy F. Allen	Jan 31/2012	Poe, Brannon	Electronic correspondence exchange with Scott Talley re depositions		0.20
Christy F. Allen	Feb 3/2012	Poe, Brannon	Telephone conference with and email with Brannon Poe re deposition prep and scheduling		0.30
Christy F. Allen	Feb 9/2012	Poe, Brannon	Attend depositions of Brannon Poe and Stephanie Smith		2.00
Christy F. Allen	Feb 9/2012	Poe, Brannon	Prepare for deposition		0.50
Christy F. Allen	Mar 8/2012	Poe, Brannon	Review depositions of Brannon Poe and Stephanie Smith for motion for partial Summary judgment		1.00
Christy F. Allen	Mar 8/2012	Poe, Brannon	Finalize motion for partial summary judgment		0.50
Christy F. Allen	Mar 9/2012	Poe, Brannon	Prepare motion for partial summary judgment		1.00
Christy F. Allen	Apr 19/2012	Poe, Brannon	Follow up with H Metcalfe and B Poe re getting motion scheduled		0.40
Christy F. Allen	May 10/2012	Poe, Brannon	Work on prep for Summary Judgment motion, prepare requests to admit and receipt and review of Stravolo affidavit, and telephone conference with H Metcalfe		2.00
Christy F. Allen	May 11/2012	Poe, Brannon	Exchange email with H Metcalfe re prep for hearing		0.50
Christy F. Allen	May 13/2012	Poe, Brannon	Telephone conference with H Metcalfe re motion hearing		0.50
Christy F. Allen	May 16/2012	Poe, Brannon	Prepare email to B Poe re results of motion hearing		0.20
Christy F. Allen	May 29/2012	Poe, Brannon	Prepare proposed order on Summary Judgment liability		2.00
Christy F. Allen	Jun 5/2012	Poe, Brannon	Receipt and review of motion to alter or amend and email with H Metcalfe re same		0.50
Christy F. Allen	Jun 6/2012	Poe, Brannon	Exchange email re motion to alter or amend		0.40
Christy F. Allen	Jun 4/2012	Poe, Brannon	Receipt and review of motion to alter or amend order		0.60
Christy F. Allen	Jul 24/2012	Poe, Brannon	Follow up with S Talley re motion to compel		0.20
Christy F. Allen	Jul 10/2012	Poe, Brannon	Follow up on status		0.20
Christy F. Allen	Sep 21/2012	Poe, Brannon	Follow up on status with B Poe and H Metcalfe		0.20
Christy F. Allen	Oct 23/2012	Poe, Brannon	Email re new hearing date on 59e motions		0.10
Christy F. Allen	Nov 7/2012	Poe, Brannon	Receipt and review of hearing notice		0.10
Christy F. Allen	Dec 10/2012	Poe, Brannon	Finalize deposition notices and letter to Attorney Scott Talley		0.30

000269

Christy F. Allen	Dec 12/2012	Poe, Brannon	Prepare damages calculations and alternatives	0.50
Christy F. Allen	Dec 12/2012	Poe, Brannon	Pull upstate CPA and Stravolo Wealth management website information	0.20
Christy F. Allen	Dec 21/2012	Poe, Brannon	Revise proposed order denying motion to alter or amend	0.30
Christy F. Allen	Dec 4/2012	Poe, Brannon	Review file in preparation of hearing, telephone conference with H. Metcalfe re same	1.00
Christy F. Allen	Dec 6/2012	Poe, Brannon	Telephone conference with H. Metcalfe re events of hearing, pull admissions for review	0.50
Christy F. Allen	Dec 6/2012	Poe, Brannon	Prepare detailed demand letter with deposition notices for Steve Stravolo on outstanding discovery and damages	1.00
Christy F. Allen	Dec 7/2012	Poe, Brannon	Prepare 30(b)(6) topics for Defendants	0.50
Christy F. Allen	Dec 7/2012	Poe, Brannon	Electronic correspondence exchange with H Metcalfe re winning motion to alter or amend denial	0.10
Christy F. Allen	Jan 2/2013	Poe, Brannon	Electronic correspondence exchange with Scott Talley re deposition schedule	0.10
Christy F. Allen	Jan 8/2013	Poe, Brannon	Electronic correspondence exchange with S Talley re rescheduling deposition	0.20
Christy F. Allen	Jan 8/2013	Poe, Brannon	Receipt and review of Receipt and review of additional document re sale , and email exchange with B Poe re same	0.20
Christy F. Allen	Jan 21/2013	Poe, Brannon	Prepare exhibits for deposition	2.00
Christy F. Allen	Jan 23/2013	Poe, Brannon	Conduct depositions of Upstate's CPA 30b6, Stravolo & Company 30b6, and Steve Stravolo	4.00
Christy F. Allen	Jan 24/2013	Poe, Brannon	Travel from S Burg to Charleston from depositions of defendants	3.50
Christy F. Allen	Feb 1/2013	Poe, Brannon	Work on settlement demand, review FNRA regs on reporting of judgments	1.00
Christy F. Allen	Feb 4/2013	Poe, Brannon	Prepare detailed settlement letter	1.00
Christy F. Allen	Jan 23/2013	Poe, Brannon	Travel to Spartanburg, SC for depositions of defendants	3.50
Christy F. Allen	Mar 7/2013	Poe, Brannon	Follow up re damages trial date	0.20
Christy F. Allen	May 2/2013	Poe, Brannon	Telephone conference with H Metcalfe about scheduling of damages trial	0.30
Christy F. Allen	May 8/2013	Poe, Brannon	Follow up with Attorney Metcalf re trial date	0.20
Christy F. Allen	May 9/2013	Poe, Brannon	Electronic correspondence exchange with H Metcalf and B Poe(3x) re getting non jury date for damages trial	0.40
Christy F. Allen	Jun 24/2013	Poe, Brannon	Telephone conference with H Metcalf re hearing date In September and email B Poe re same	0.50
Christy F. Allen	Jul 18/2013	Poe, Brannon	Prepare notice of hearing	0.20
Christy F. Allen	Jul 18/2013	Poe, Brannon	Prepare supplemental interrogatories on damages	0.50
Christy F. Allen	Aug 8/2013	Poe, Brannon	Prepare draft affidavit fo C Muller on attorneys fees	1.00
			Attorney hour subtotal	56.00

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			FILED CLERK OF COURT STARK COUNTY	
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Faith Frink	Jun 24/2011	Poe, Brannon	Finalize letter to Mr. Poe re: association of Hannah Metcalfe;	0.20
Faith Frink	Jun 27/2011	Poe, Brannon	Prepare Acceptance of Service for Scott Talley, Esq.; Prepare letter to Scott Talley with pleadings and request to accept service	0.50
Faith Frink	Jun 30/2011	Poe, Brannon	Prepare Civil Cover Sheet; Prepare letter to Clerk of Court filing Summons and Complaint; Finalize Summons and Complaint;	0.40
Faith Frink	Jul 11/2011	Poe, Brannon	Revise letter to Scott Talley, Esq. re: Service of Summons and Complaint; revise Acceptance of Service forms	0.30
Faith Frink	Aug 25/2011	Poe, Brannon	Prepare letter to Brannon Poe with Defendant's Answer; Prepare letter to Scott Talley serving Interrogatories, Requests for Production and Requests to Admit; Begin preparation of responses to Defendant's Interrogatories and Requests for Production	1.10
Faith Frink	Oct 7/2011	Poe, Brannon	Prepare letter to Scott Talley serving responses to Interrogatories and Requests for production; copy documents/exhibits for production	0.30
Faith Frink	Oct 17/2011	Poe, Brannon	Prepare electronic correspondence to client with responses to Admissions, Interrogatories and Requests for Production; review and scan discovery responses	0.40
Faith Frink	Nov 1/2011	Poe, Brannon	Telephone conference with Brannon Poe x2 re: scheduling depositions; telephone call to Stephanie Smith re: depositions	0.30
Faith Frink	Nov 2/2011	Poe, Brannon	Telephone conference with Stephanie Smith re: deposition testimony	0.10
Faith Frink	Nov 8/2011	Poe, Brannon	Telephone conference with Kelly Talley, Paralegal to Scott Talley, re: depositions of Plaintiff and Stephanie Smith	0.20
Faith Frink	Dec 7/2011	Poe, Brannon	Telephone conference with Stephanie Smith re: deposition testimony	0.10
Faith Frink	Feb 2/2012	Poe, Brannon	Receipt and review Notice of Taking Depositions of Brannon Poe and Stephanie Smith; Prepare letter to Brannon Poe with Notices	0.30
Faith Frink	Feb 10/2012	Poe, Brannon	Receipt, review and download exhibits from depositions of Brannon Poe and Stephanie Smith	0.20
Faith Frink	Mar 5/2012	Poe, Brannon	Telephone conference with Court Reporter re: transcripts of Brannon Poe and Stephanie Smith; Email correspondence from Wm. Roberts & Assoc; download transcripts to file	0.20
Faith Frink	Mar 9/2012	Poe, Brannon	Prepare letter to Clerk of Court filing Motion for Summary Judgment; prepare motion slip; check request to Katie; prepare copies and mail	0.30

000271

Krystal Parrish	Jun 7/2012	Poe, Brannon	Prepare Plaintiffs Response in Opposition to Defendants Motion to Alter or Amend for filing with Spartanburg County Clerk of Court, Letter to Judge Blackley, re copy of same to Judge Cole, Attorney Metcalfe and Brandon Poe	0.20
Krystal Parrish	Dec 10/2011	Poe, Brannon	Prepare 3 Sets of Letters and Deposition Notices for Steve Stravolo, 30b6 Stravolo Co & 30b6 Upstate CPAS, copy to Brandon Poe, Hanna Metcalfe and Scott Talley	1.30
Krystal Parrish	Jan 8/2013	Poe, Brannon	Prepare Amended Notices of Depositions for Steve Stravolo, Upstate CPAs 30(b)(6) and Stravolo Company. Find and schedule court reporter for Spartanburg	1.50
			Paralega hours subtotal	7.90

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SPARTANBURG COUNTY
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Client Costs Journal

Aug/14/2013
Massalon & Allen LLC
Page 1

Client Costs Journal

To Aug/14/2013

Wills
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Date	Paid To	Ref#	G/L	Acct	Source
Matter	Client Name				
Amount	Explanation				
Entry#					

Jan/31/2011	Expense Recovery				CER
762-1	Poe, Brannon	00789	820		- Client
EX	4.96				
300337	In-house photocopies (January 2011)				

Total for Jan/31/2011 : 4.96

Feb/ 8/2011	Expense Recovery				CER
762-1	Poe, Brannon	00788	820		- Client
EX	2.22				
300240	In-house photocopies (January 2011)				

Total for Feb/ 8/2011 : 2.22

Mar/31/2011	Expense Recovery				CER
762-1	Poe, Brannon	00793	820		- Client
EX	6.00				
303744	In-house photocopies (February and March 2011)				

Client Costs Journal

Total for Mar/31/2011 : 6.00

Jun/30/2011 Spartanburg County Clerk of Court GB
 762-1 Poe, Brannon 1864 820 - Client
 EX 150.00
 309562 Filing Fees (Summmons & Complaint) Poe v.

Jun/30/2011 Expense Recovery CER
 762-1 Poe, Brannon 00801 820 - Client
 EX 16.74
 310252 In-house photocopies (June 2011)

Total for Jun/30/2011 : 166.74

Jul/31/2011 Expense Recovery CER
 762-1 Poe, Brannon 00805 820 - Client
 EX 4.36
 311330 In-house postage (July 2011)

Jul/31/2011 Expense Recovery CER
 762-1 Poe, Brannon 00806 820 - Client
 EX 5.86
 311360 In-house photocopies (July 2011)

Total for Jul/31/2011 : 10-22

Oct/18/2011 AT&T Teleconference Services GB
 762-1 Poe, Brannon 2176 820 - Client
 EX 17.90
 321305 Conference Calls (Acct ID 47829306-000012)

Total for Oct/18/2011 : 17.90

Oct/31/2011 Expense Recovery CER

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Client Costs Journal

762-1 Poe, Brannon 00815 820 - Client
 EX 15.24
 317771 In-house postage (October 2011)

Oct/31/2011 Expense Recovery CER
 762-1 Poe, Brannon 00816 820 - Client
 EX 83.16
 317921 In-house photocopies (October 2011)

Total for Oct/31/2011 : 98.40

Nov/30/2011 Expense Recovery CER
 762-1 Poe, Brannon 00820 820 - Client
 EX 0.18
 320255 In-house photocopies (November 2011)

Total for Nov/30/2011 : 0.18

Feb/17/2012 A. William Roberts Jr. & Associates GB
 762-1 Poe, Brannon 2532 820 - Client
 EX 158.25
 325504 Court Reporter Fees (Depo of Brannon Poe and

Total for Feb/17/2012 : 158.25

Mar/ 9/2012 Spartanburg County Clerk of Court GB
 762-1 Poe, Brannon 2593 820 - Client
 EX 25.00
 327349 Filing Fees (Motion for Summary Judgment)

Total for Mar/ 9/2012 :

Apr/11/2012 Expense Recovery CER
 762-1 Poe, Brannon 00834 820 - Client
 EX 18.75

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Client Costs Journal
328867 In-house postage (March 2012)

Apr/11/2012	Expense Recovery		CER
762-1	Poe, Brannon	00835 820	- Client
EX	18.47		
328913	In-house photocopies (March 2012)		

Total for Apr/11/2012 : 37.22

Jun/30/2012	Expense Recovery		CER
762-1	Poe, Brannon	00846 820	- Client
EX	6.04		
333780	In-house photocopies (June 2012)		

Jun/30/2012	Expense Recovery		CER
762-1	Poe, Brannon	00847 820	- Client
EX	4.35		
333829	In-house postage (June 2012)		

Total for Jun/30/2012 : 10.39

Jul/31/2012	Expense Recovery		CER
762-1	Poe, Brannon	00850 820	- Client
EX	1.54		
335079	In-house photocopies (July 2012)		

Aug/14/2013
Massalon & Allen LLC
Page 2

Client Costs Journal

To Aug/14/2013

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STAFFORD COUNTY
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Client Costs Journal

Date Matter	Paid To Client Name	Ref# G/L Acct	Source
Amount Entry#	Explanation		

Total for Jul/31/2012 : 1.54

Aug/31/2012	Expense Recovery		CER
762-1	Poe, Brannon	00852 820	- Client
Ex	1.54		
336900	In-house photocopies (August 2012)		

Total for Aug/31/2012 : 1.54

Dec/31/2012	Expense Recovery		CER
762-1	Poe, Brannon	00868 820	- Client
Ex	8.38		
343444	In-house photocopies (December 2012)		

Total for Dec/31/2012 : 11.93

Dec/31/2012	Expense Recovery		CER
762-1	Poe, Brannon	00869 820	- Client
Ex	3.55		
343473	In-house postage (December 2012)		

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Jan/24/2013	Christy Ford Allen		GB
762-1	Poe, Brannon	3555 820	- Client
Ex	222.00		
344702	Travel to/from Spartanburg, SC for depositio		

Total for Jan/24/2013 : 222.00

Client Costs Journal

Jan/30/2013 Expense Recovery CER
 762-1 Poe, Brannon 00878 820 - Client
 EX 89.46
 345345 In-house photocopies (January 2013)

Jan/30/2013 Expense Recovery CER
 762-1 Poe, Brannon 00879 820 - Client
 EX 4.15
 345383 In-house postage (January 2013)

Total for Jan/30/2013 : 93.61

Feb/ 8/2013 Freelance Reporting Services GB
 762-1 Poe, Brannon 3616 820 - Client
 EX 812.35
 345834 Court Reporter Fees (Depositions on 01/23/20)

Total for Feb/ 8/2013 : 812.35

Feb/28/2013 Expense Recovery CER
 762-1 Poe, Brannon 00887 820 - Client
 EX 1.90
 347068 In-house photocopies (February 2013)

Feb/28/2013 Expense Recovery CER
 762-1 Poe, Brannon 00888 820 - Client
 EX 1.46
 347122 In-house postage (February 2013)

Total for Feb/28/2013 :

Jul/31/2013 Expense Recovery
 762-1 Poe, Brannon 00909 820
 EX 2.78

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 ST. LOUIS COUNTY
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 M. HOPKINS
 CER
 Client

Client Costs Journal
356541 In-house postage (June & July 2013)

Jul/31/2013	Expense Recovery		CER
762-1	Poe, Brannon	00908 820	- Client
EX	6.67		
356554	In-house photocopies (June & July 2013)		

Total for Jul/31/2013 : 9.45

*** Client Costs

Journal - G/L Account Summary ***

G/L Account	Debit
Credit	
5010 - Client Disbs and Re	1693.26
820 - Client Expenses	
1693.26	
Total:	1693.26
1693.26	

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 STATE OF MISSISSIPPI
 2013 SEP 19 PM 2:36
 MADRID BLACKLEY



Christy Ford Allen

Location: Charleston, South Carolina
Phone: 843-727-1144
Fax: 843-727-7696
Email: [E-mail Me](#)



Areas of Practice

- Commercial Litigation
- Construction Litigation
- Personal Injury
- Premises Liability
- Products Liability
- Professional Negligence

Bar Admissions

- South Carolina, 1998
- U.S. District Court District of South Carolina
- U.S. Court of Appeals 4th Circuit
- U.S. Supreme Court

Education

- University of South Carolina School of Law, Columbia, South Carolina
J.D. (*Cum Laude*) - 1998
- Clemson University
B.A. (*Magna Cum Laude*) - 1995

Published Works

Intentional Infliction of Emotional Distress in South Carolina Damages, 2nd ed., SC Bar, 2009

Honors and Awards

The SC Chapter of the Federal Bar Association was presented with the Chapter Activity Presidential Citation Award in recognition of the 2010 Ethics and Annual Meeting at the FBA Annual Meeting and Convention held Sept. 22-25 in New Orleans

South Carolina Super Lawyers: Rising Stars, 2012

Professional Associations and Memberships

- American Bar Association
- Charleston County Bar Association
- Federal Bar Association, South Carolina Chapter, Board of Directors, 2003 - 2010
- Federal Bar Association, South Carolina Chapter, Past-President, 2010
- South Carolina Bar Association
- South Carolina Women Lawyers Association

Past Employment Positions

The Hon. P. Michael Duffy, USDCSC, Law Clerk, 1998 - 2000

Pro Bono Activities

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Juvenile Diabetes Research Foundation, 2009 - Present

Previous Names

Christy E. Ford, October 27, 2001

Wills Massalon & Allen LLC
97 Broad Street
P.O. Box 859 (Zip Code 29402)
Charleston, SC 29401
Phone: 843-727-1144
Fax: 843-727-7696
[Charleston Law Office Map](#)

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M. HOPE BLACKLEY

000281

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF SPARTANBURG

)

CASE NO: 11-CP-42-2880

Brannon Poe, CPA, LLC,

)

Plaintiff,

)

)

v.

)

)

Steve Stravolo, Stravolo & Company, P.A.
and Upstate CPAS, P.A. f/k/a Mathur &
Co., P.A.,

)

)

)

Defendants.

)

)

)

AFFIDAVIT OF HANNAH ROGERS METCALFE

Hannah Rogers Metcalfe, being duly sworn, gives the following Affidavit:

1. I am a lawyer in Greenville, South Carolina.
2. I represent Plaintiff in this contract case.
3. I am employed by Metcalfe & Atkinson, LLC, and my law practice is focused on business and general civil litigation.
4. I am a member of the South Carolina Bar, and have been in private practice in Greenville for over 9 years. I regularly appear in state and federal courts on various matters.
5. I was associated on this case by Ms. Allen, and we undertook the representation of Brannon Poe CPA, LLC pursuant to a written fee agreement wherein we agreed to a 1/3 contingency fee arrangement.
6. As with matters handled on an hourly basis, we create contemporaneous and detailed time entries in our law firm billing software.

7. The attached is a consolidated and revised time and costs report for this case.
8. I have personally reviewed all time and costs entries on the attached report, and believe it to be accurate and kept in the regular course of our business.
9. I believe that the rate of \$250.00 per hour is a reasonable and customary rate for this kind of litigation, especially considering the favorable outcome for our client.
10. As of the date of this Affidavit, the following is a summary of the hours worked and corresponding hourly rate and costs, as set forth in detail in Exhibits A-B.

<u>Name</u>	<u>Type</u>	<u>Hours</u>	<u>Rate/Hr.</u>	<u>Total</u>
Hannah Rogers Metcalfe	Attorney	16.20	250.00	\$4,050.00

11. I anticipate that I will expend an additional 10 hours of attorney time preparing for and conducting the damages trial in this matter, which would be approximately an additional \$2500.00 in attorneys' fees, rendering the **GRAND TOTAL OF ATTORNEYS FEES: \$6,550.00.**

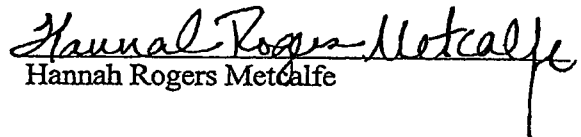
12. The costs or expenses incurred contain the following:

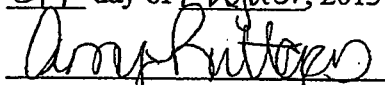
Process Server:	\$ 75.00
Postage:	\$ 3.85
GRAND TOTAL OF COSTS:	\$ 78.85

13. For this type of commercial litigation, I customarily charge between \$250- \$300 per hour, if handled on hourly rate.
14. I was associated by Attorney Christy Allen to assist with the case and tasks, which could be done more economically by an attorney located in the Upstate. I do not believe we have duplicated any efforts, and I believe that my time should be similarly compensated.
15. The nature, extent, and difficulty of this case comports with the amount of attorneys' fees requested. Plaintiff is a business located in Charleston County, South Carolina and was

required to file suit in Spartanburg in order to recover his commission related to the sale of an accounting practice. While the legal issues (breach of contract) were not particularly difficult, the complete lack of justification for non-payment and the Defendants continued refusal to pay the amounts owed necessitated Plaintiff maintaining this matter, now for over two (2) years prior to Judgment on the claims due.

16. Attached is my current biographical information as it relates to my professional standing as counsel.
17. There was a contingency to the potential compensation in that Defendants have maintained they do not owe Plaintiffs monies under the contract.
18. The undersigned is also submitting an Affidavit of Attorney Carl Muller on the issue of fees customarily charged in the locality and on the professional standing of counsel.
19. The undersigned was successful, as the Plaintiff, in obtaining an award of Summary Judgment against the Defendants on the Breach of Contract claim, without the necessity of a trial. That is a beneficial result.

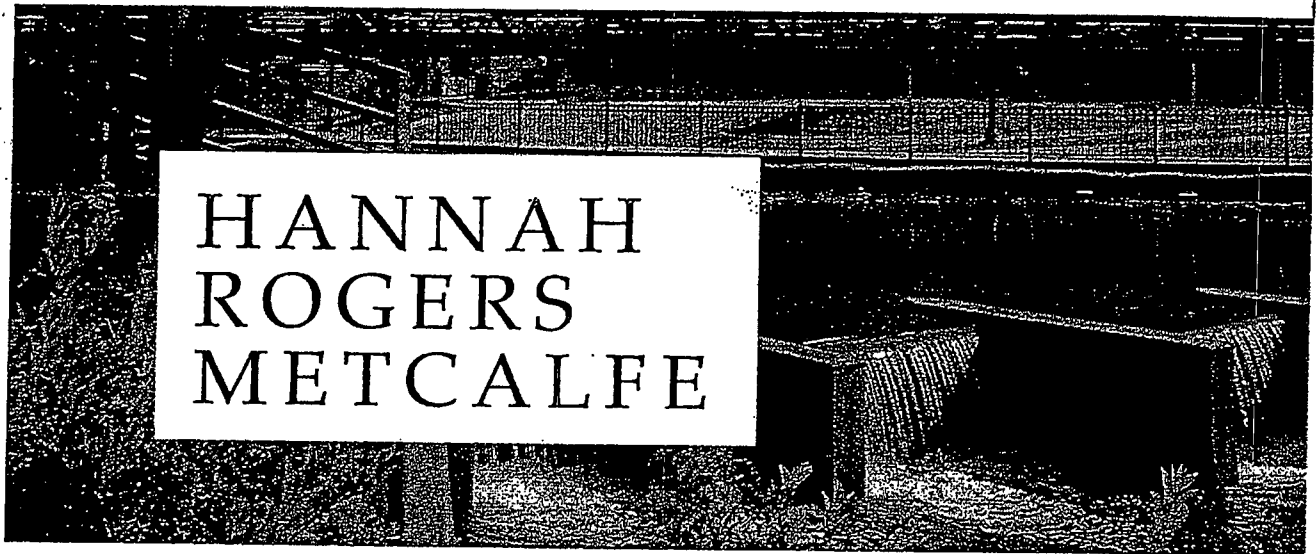

Hannah Rogers Metcalfe

SWORN TO before me this
29th day of August, 2013
 (seal)
Notary Public for South Carolina
My Commission Expires: 3/3/2019

METCALFE & ATKINSON

ATTORNEYS AT LAW

THE FIRM
+PRACTICE
AREAS
+ATTORNEYS
NEWS
CONTACT



**Hannah Rogers
Metcalfe**

T. 864-214-2340

F. 864-214-3067

hmetcalfe@malawfirm.com

Practice Areas

- Antitrust and Trade Regulation
- Appellate
- Class Action Litigation
- First Amendment
- Health Care
- Litigation
- Media and Communications
- Product Liability

Representative Matters

- Hannah has represented defendants in complex litigation including class actions in both federal and state court. Hannah has also served as counsel in federal trademark

000285

litigation for a Fortune 500 company with over 100 trademarks at issue; represented clients in numerous business litigation contests; has assisted in the representation of health care providers; and has assisted in the representation of the plaintiff in a medical malpractice trial that resulted in a multi-million dollar verdict.

Bar and Court Admissions

- New York Bar, 2004
- South Carolina Bar, 2004
- United States District Court, Southern District of New York, 2005
- United States Court of Appeals for the Fourth Circuit, 2004
- United States District Court, District of South Carolina, 2007

Educational Background

- J.D. Columbia University School of Law, Harlan Fiske Stone Scholar; Recipient, Parker School Certificate in International & Comparative Law; Columbia Law Review, 2002
- B.S.F.S. Georgetown University, Edmund A. Walsh School of Foreign Service, 1999

Awards and Honors

- Leadership Greenville, Class 35
- Connections: Women Leadership of the Upstate

Publications & Presentations

Placeholder

Professional Activities and Memberships

- President Elect, Federal Bar Association

Representative Community Activities

- Board Member, Downtown Symphony Club
- Board Member, Speech Hearing and Learning Center
- Member, United Way of Greenville, Building a Health Community Impact Council

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000287



Metcalfe & Atkinson, LLC

9 Toy Street
Greenville, SC 29601

INVOICE

Invoice # 629
Date: 09/05/2013
Due Upon Receipt

poe

Statement of Account

Outstanding Balance	New Charges	Amount In Trust	Payments Received	Total Amount Outstanding
(\$0.00	+ \$4,128.85	)-(\$0.00	+ \$0.00	)= \$4,128.85

1009.0001-hrm

Poe v. Stravolo

Services

Type	Date	Description	Attorney	Quantity	Rate	Total
Service	06/14/2011	Review emails from Ms. Allen	Hannah Metcalfe	0.40	\$250.00	\$100.00
Service	06/22/2011	Telephone conference with MS. Allen; review Complaint	Hannah Metcalfe	0.30	\$250.00	\$75.00
Service	08/25/2011	Review discovery	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	03/09/2012	Review motion for partial summary judgment	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	04/19/2012	Review emails from Ms. Allen re: summary judgment motion hearing scheduling and contact court re: same	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	04/23/2012	Follow up on motion scheduling; email with Ms. Allen and Mr. Poe re: same	Hannah Metcalfe	0.30	\$250.00	\$75.00
Service	04/24/2012	Review hearing notice and email with Christy Allen re: same	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	04/25/2012	Draft letter with notice of hearing to Mr. Talley	Hannah Metcalfe	0.10	\$250.00	\$25.00

Service	05/10/2012	Telephone call with Ms. Allen re: summary judgment hearing; review pleadings; email with Ms. Allen; review affidavit of Mr. Stravolo	Hannah Metcalfe	1.20	\$250.00	\$300.00
Service	05/11/2012	Telephone call and email with Ms. Allen; begin drafting memo in support of motion for summary judgment; review defendant's affidavit	Hannah Metcalfe	1.00	\$250.00	\$250.00
Service	05/13/2012	Review pleadings and discovery; draft memo in support of motion for summary judgment; preparation for argument	Hannah Metcalfe	3.20	\$250.00	\$800.00
Service	05/14/2012	Preparation for and attend hearing; travel to and from Spartanburg; telephone conference with Ms. Allen	Hannah Metcalfe	3.50	\$250.00	\$875.00
Service	05/29/2012	Email with Ms. Allen re: proposed order; review and revise draft proposed order and email with Ms. Allen re: same.	Hannah Metcalfe	0.40	\$250.00	\$100.00
Service	09/21/2012	Review email from Ms. Allen re: scheduling motion hearing and inquire re: same with court	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	10/17/2012	E-mail with Ms. Allen and Mr. Poe re motion to reconsider.	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	10/22/2012	Contact clerk's office regarding hearing	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	10/22/2012	Review calendar details from clerk; e-mail Ms. Allen and Mr. Poe.	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	12/05/2012	Telephone conversation with Ms. Allen re: hearing preparation.	Hannah Metcalfe	0.40	\$250.00	\$100.00
Service	12/05/2012	Preparation for hearing.	Hannah Metcalfe	0.40	\$250.00	\$100.00
Service	12/06/2012	Travel to and from hearing; argue against motion to alter judgment at hearing; telephone call with Ms. Allen	Hannah Metcalfe	1.50	\$250.00	\$375.00
Service	12/06/2012	Review email from Ms. Allen.	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	12/07/2012	Review email from Court re: denying motion to alter or amend judgment	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	12/20/2012	Draft proposed order denying motion to alter or amend; email with Ms. Allen re: same.	Hannah Metcalfe	0.80	\$250.00	\$200.00
Service	12/20/2012	Forward proposed order to law clerk for Judge Cole; provide copy of same to Mr. Poe.	Hannah Metcalfe	0.10	\$250.00	\$25.00

Service	01/02/2013	Email with counsel re: rescheduling depositions of defendants.	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	01/08/2013	Review latest discovery.	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	01/22/2013	Email Ms. Allen re depositions.	Hannah Metcalfe	0.10	\$250.00	\$25.00
Service	02/04/2013	review settlement demands and email Ms. Allen regarding same.	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	05/08/2013	Telephone call to court re: damages hearing; email Ms. Allen re: same.	Hannah Metcalfe	0.20	\$250.00	\$50.00
Service	06/25/2013	Telephone call to clerk's office re: damages hearing; telephone call with Ms. Allen.	Hannah Metcalfe	0.40	\$250.00	\$100.00

Quantity Subtotal 16.2

Services Subtotal \$4,050.00

Expenses

Type	Date	Description	Quantity	Rate	Total
Expense	05/30/2012	Postage	1.00	\$3.85	\$3.85
Expense	09/05/2013	Process Service	1.00	\$75.00	\$75.00

Expenses Subtotal \$78.85

Time Keeper	Position	Quantity	Rate	Total
Hannah Metcalfe	Attorney	16.2	\$250.00	\$4,050.00

Quantity Total 16.2

Subtotal \$4,128.85

Total \$4,128.85

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
629	09/05/2013	\$4,128.85	\$0.00	\$4,128.85
Outstanding Balance				\$4,128.85

Invoice # 629 - 09/05/2013

Total Amount Outstanding \$4,128.85

Please make all amounts payable to: Metcalfe & Atkinson, LLC

Remittance Advice

Checking Information

Remit checks to: Metcalfe & Atkinson, LLC
9 Toy Street
Greenville, SC 29601

Please include the Invoice Number 629 as an additional reference so we may accurately identify and apply your payment.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO: 11-CP-42-2880
	)	
Brannon Poe, CPA, LLC.	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF CARL F. MULLER, ESQ.
v.	)	
	)	
Steve Stravolo, Stravolo & Company, P.A.	)	
and Upstate CPAS, P.A. f/k/a Mathur &	)	
Co., P.A.,	)	
	)	
Defendants.	)	

I, Carl F. Muller, being duly sworn, give the following Affidavit:

1. I am a lawyer in the Greenville-Spartanburg area of South Carolina.
2. My practice includes commercial litigation, constitutional law, mergers and acquisitions, health care, and professional malpractice.
3. I am a member of the South Carolina Bar, and have practiced law in the upstate of South Carolina for over 30 years.
4. When I charge by the hour, my customary rate is \$385 per hour.
5. I have known and worked with Christy Ford Allen and Hannah Rogers Metcalfe, separately, in different types of commercial litigation, and I believe that they both have reputations of providing their clients a high quality of legal advice and that they both are regarded as effective advocates for their clients. Certainly, my experience with them is that each is an excellent lawyer.
6. Based on my knowledge and experience, I believe that an hourly rate of \$250.00 per hour in a matter such as this one is more than reasonable and entirely customary in this

000293

locale. If anything, it is low for lawyers such as Ms. Allen and Ms. Metcalfe.

Carl F. Muller
Carl F. Muller

SWORN TO before me this
of 29th day of August, 2013
Don P. Hally (seal)
Notary Public for South Carolina
My Commission Expires: 11/24/13

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RECEIVED

JUN 01 2015

CERTIFICATE OF COUNSEL

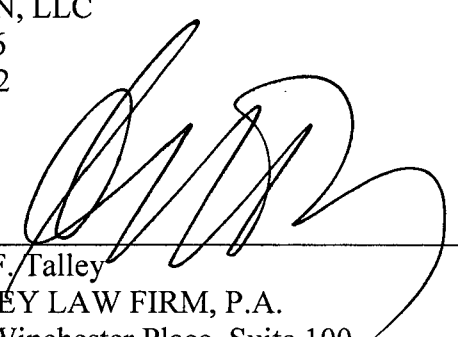
SC Court of Appeals

IT IS HEREBY CERTIFIED that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. This Certification was served upon Counsel for Respondent, Christy Ford Allen, Esquire and Hanna R. Metcalfe, Esquire, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

Christy Ford Allen, Esquire
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, SC 29402

Hannah R. Metcalfe, Esquire
METCALFE & ATKINSON, LLC
Post Office Box 1826
Greenville, SC 29602

May 29, 2015



Scott F. Talley
TALLEY LAW FIRM, P.A.
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301
(864) 595-2966
Attorney for Appellants

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 01 2015

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

THE HONORABLE J. MARK HAYES, II

APPELLATE CASE NO. 2014-002755

Brannon Poe, CPA, LLC,

Respondent

vs.

Steve Stravolo, Stravolo & Company, P.A.,
and Upstate CPAs, P.A., f/k/a Mathur & Co., PA,

Appellants

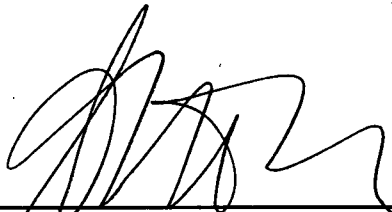
PROOF OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing RECORD ON APPEAL in this action was served upon Counsel for Respondent, Christy Ford Allen, Esquire and Hannah R. Metcalfe, Esquire, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

Christy Ford Allen
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, SC 29402

Hannah R. Metcalfe
METCALFE & ATKINSON, LLC
Post Office Box 1826
Greenville, SC 29602

May 29, 2015



Scott F. Talley
TALLEY LAW FIRM, P.A.
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301
(864) 595-2966
Attorney for Appellants