

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

Darrin Vander Toorn,)	Case Number: 2017-CP-23-03720
Plaintiff,)	
vs.)	ORDER OF JUDGMENT BY DEFAULT
Billeter Recruiting, LLC, and William Ancar,)	
Defendants.)	
)	
)	

This matter came before the Court on motion of the Plaintiff after an Entry of Default. The Court conducted a hearing on damages, on December 5, 2017, at 10:00 am. Appearing for the Plaintiff was Peter Rutledge, of the law firm Rutledge Law, LLC, and appearing for the Defendants was Devon Puriefoy, of the law firm Truluck Thomason, LLC. In attendance in the courtroom were Plaintiff, Darrin Vander Toorn, and on behalf of the Defendants, William Ancar and Brandi Ancar.

I. Procedural Posture.

The Defendants were served with the Summons and Complaint on June 9, 2017, and having made no appearance or response to the Complaint, Defendants were put into Default by the Clerk of Court on July 12, 2017, as supported by the Affidavit of Default filed by Plaintiff's counsel. By motion dated September 1, 2017, Plaintiff moved for Judgment by Default. The Chief Administrative Judge, the Honorable Robin B. Stilwell, denied the motion and required a hearing. The matter was set for a hearing for November 8, 2017. While the matter was pending, counsel for Defendants made an appearance and moved to set aside the Entry of Default on October 17, 2017, which was heard by the Honorable Perry H. Gravely on November 8, 2017. Judge Gravely denied Defendants' motion and held the Defendants in default.

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II. Damages Evidence and Defendants' Participation at the Hearing.

Plaintiff, Darrin Vander Toorn advised the Court that he seeks damages under his Payment of Wages Act Cause of Action against both Defendants, Billeter Recruiting, LLC ("Billeter") and William Ancar ("Ancar"). Plaintiff testified under oath that he was employed by Defendants Billeter and Ancar under an Employment Agreement that promised Sixty-Thousand (\$60,000) Dollars, a Twelve Thousand (\$12,000) Dollar signing bonus, together with commissions equaling ten (10%) percent of the gross revenues from clients listed in the Employment Agreement. The Sixty-Thousand Dollar contract price was to be paid in equal amounts of Ten Thousand (\$10,000) Dollars per month, on the 15th of each month. The Employment Agreement is an exhibit to the Complaint and the compensation terms appear in paragraph 4 thereto. The signing bonus and commissions appear in paragraph 5.

Mr. Vander Toorn testified that he had not been paid the May 2017 payment of \$10,000 and the June payment of 10,000. He also seeks pre-judgment interest on those payments at a rate of 8.75% in the amount of \$1,750. Together, the unpaid salary and pre-judgment interest total **\$21,750.**

Mr. Vander Toorn testified, based on documents he reviewed both while he was employed and thereafter, including a text message from Ancar, emails from customers, and documents received from a subpoena issued in this action, that revenues to Billeter for which he is entitled to commissions amount to \$110,514. Counsel for Defendants conceded they do not dispute these revenues. Mr. Vander Toorn testified that he is entitled to commissions in the amount of \$11,051.40. He also seeks pre-judgment interest on those payments at a rate of 8.75% in the amount of \$966. Together, the unpaid commissions and pre-judgment interest total **\$12,017.40.**

Plaintiff therefore asked the Court for total damages and pre-judgment interest in the amount of **\$33,767.40**. At the hearing, and as pled in the Complaint, Plaintiff also sought a trebling of the award, based upon allegations of willfulness that are pled with specificity and in detail. Under the South Carolina Payment of Wages Act, Plaintiff is entitled to treble damages (and attorney's fees, discussed below), particularly when the failure to pay has been willful. S.C. Code Ann § 41-10-80(C). Thus, Plaintiff seeks treble damages in the amount of **\$101,302.20**.

Defendants participated in the hearing by vigorously cross-examining the Plaintiff. However, and with some latitude from the Court, Defendants exceeded the scope of direct examination and attempted to elicit testimony from Mr. Vander Toorn regarding a range of defenses that were waived by operation of the Default. They did not present evidence that contradicted the accuracy of the damages presented by the Plaintiff. By way of example, counsel for Defendants pursued lines of questioning regarding 1) whether the signing bonus should have been an offset for unpaid salary; 2) whether the aforementioned June payment constituted "wages" as "recompense for labor rendered" under the Act (S.C. Code Ann. § 41-10-10 (2)); 3) whether any commissions were due at all for various fact-intensive reasons; and 4) whether Defendants had a good faith basis not to have paid any of the amounts owed, and thus to avoid a discretionary finding of willfulness, because Ancar believed the Plaintiff had engaged in some type of fraud during his employment. These were all defense theories that were foreclosed by reason of the Default, not evidence contradicting Plaintiff's damages.

These efforts were simply misplaced by Defendants in default, at a hearing concerning damages. It is well settled law in South Carolina that a defendant's participation in a damages hearing following default judgment is limited to cross-examination and objection to *plaintiff's* evidence. Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (2013). This is true because were it

not the case, there would be no practical effect of a Default. *See Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (“It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.”). Here, Defendants did not object to or contest that Plaintiff had not been paid the sums he testified he was not paid. Defendants did not object to or contest that Billeter received the revenues entitling him to the commissions to which Plaintiff testified; instead they conceded those were accurate revenues. And as far as Plaintiff’s well-pled allegations of willfulness are concerned, Defendants were not permitted to offer defenses at a damages hearing in the first place, and their Default is deemed an admission of those allegations in any case. Therefore, there is nothing over which this Court must exercise discretion, and a trebling of the award and an award of attorneys’ fees is appropriate. As set forth above, that amount is **\$101,302.20**.

III. Attorney’s Fees and Costs.

Counsel for the Plaintiff relies upon an Affidavit seeking fees in the amount of \$5,355.00, filing fees in the amount of \$243.80, and other costs in the amount of \$160.00 that is already in the record. The total amount of fees and costs awarded is therefore **\$5,758.80**.

Defendants did not object to the amount of fees during the hearing. Although the matter of the filing fees (\$243.80) and costs (\$160.00) were not addressed in the hearing, because they were included in the Affidavit submitted by Plaintiff’s counsel, were not objected to by Defendants, and are de minimus, I find they are appropriate to include in the award of judgment.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Darrin Vander Toorn, have judgment against Defendants Billeter Recruiting, LLC, and William Ancar, in the amount of One Hundred Seven Thousand Sixty-One and zero 100ths (**\$107,061.00**), Dollars,

together with post-judgment interest on the sum total thereof accruing hereafter at the maximum legal rate.

AND IT IS SO ORDERED.

Signature Page to Follow



Greenville Common Pleas

Case Caption: Darrin Vander Toorn vs. Billeter Recruiting LLC , defendant, et al
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So Ordered

s/ Edward W. Miller

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ELECTRONICALLY FILED - 2018 Jan 23 9:07 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2303720