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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Case No. 2017-002347

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EPS Advisors, LLC . . . . . Respondent/Appellant,

vs.

Jan Fredman and Clemson-EPS Advisors, LLC . . . Appellants/Respondents.

---

# RECORD ON APPEAL

---

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF PICKENS | ) | C.A. No.: 2013-CP-39-0434 |
| | ) | |
| EPS Advisors, LLC | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | **ORDER ON DEFENDANTS' MOTION TO RECONSIDER** |
| | ) | |
| | ) | |
| Jan Fredman and Clemson-EPS Advisors, LLC, | ) | |
| | ) | |
| Defendants. | ) | |

A bench trial was held in this matter on November 3, 2016 and Order issued on May 19, 2017. This matter now comes before the Court upon Defendant's *Motion for Reconsideration and Amendment or Alteration of Judgment or in the Alternative for a New Trial* which was heard on October 13, 2017. After hearing oral argument, reviewing memoranda presented by the parties and relevant portions of the transcript, the Court would amend its Order of May 19, 2017 as follows:

1. In the May 19, 2017 Order, the Court found that Defendant Jan Fredman had converted certain furniture and equipment valued at $8,046.30. Defendants argue that this was improper since conversion had not been established and that the amount was not properly supported by the evidence. Upon review of the transcript, David Dameron attempted to testify about the value of the furniture and equipment but acknowledged that he did not "remember for sure, because I don't remember---the number I wanted to answer your question with was like twenty-five hundred ($2,500) dollars" (Tr 104)—which was the extent of his testimony about any values of the personal property in questions. The only testimony actually submitted about the value of these items was from Susan Lockwood who testified that the value of the printer was

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$1700, the furniture was $3,800 and the value of the computer was $2,500. (Tr 200-201). The evidence also showed that the printer was on lease and returned to the lease company and therefore the Court finds that this should not be included in the damages for conversion. Thus, the May 19, 2017 Order is amended to show that the actual damages for conversion against Defendant Jan Fredman for personal property would not include the value for the printer and should be reduced to $6,300.00. Further, the Court finds that due to the nature of the claim and evidence, pre-judgment would not be appropriate. For clarification, the Court did not award punitive damages as to this portion of the judgment and does not make such a finding at this point.

2. The Court previously found that Defendants' conversion of the Charles Schwab check constituted conversion and that said conversion was willful on behalf of the defendants which would entitle the Plaintiff to an award of punitive damages. Due to the nature of the Defendants' actions and the circumstances of this case and in consideration of the factors set forth in *Gamble v. Stevenson*, 406 S.E.2d 350 (S.C. Sup. 1991) as more completely outlined in the May 19, 2017 Order, the Court feels that it is appropriate to reduce the punitive damages from $35,000.00 to $20,000.00.

3. The Court has considered all other matters raised in the Defendants' Motion and Memorandum and has determined that the May 19, 2017 Order properly addresses the remaining issues and Defendants' Motion is denied as to the additional grounds.

4. Therefore, the May 19, 2017 Order is affirmed except as set forth above and the Judgment is amended as follows:

a. Judgment for the Plaintiff against Defendant Jan Fredman for $6,300.00;

b. Judgment for the Plaintiff against Defendant Jan Fredman and Clemson-EPS Advisors, LLC, jointly and severally, for $25,444.25 actual damages; and

c. Judgment for the Plaintiff against Defendants Jan Fredman and Clemson-EPS Advisors, LLC, jointly and severally for $20,000.00 punitive damages.

IT IS SO ORDERED.

October 31, 2017

***Signature Page for Perry H. Gravely as Presiding Judge attached***

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# AMENDED FORM 4

**STATE OF SOUTH CAROLINA**
**COUNTY OF PICKENS**
**IN THE COURT OF COMMON PLEAS**

***AMENDED* JUDGMENT IN A CIVIL CASE**
**CASE NUMBER 2013CP3900434**

| EPS Advisors LLC | | Jan Fredman | Clemson-EPS Advisors LLC |
|---|---|---|---|
| **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 or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ 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: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

## ORDER INFORMATION

**This order** ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| EPS Advisors LLC | Jan Fredman | $6,300 |
| EPS Advisors LLC | Jan Fredman & Clemson-EPS Advisors LLC | $25,444.25 |
| EPS Advisors LLC | Jan Fredman & Clemson-EPS Advisors LLC | $20,000 |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

10/31/2017

**Circuit Court Judge Perry Gravely** **Judge Code 2755** **Date**

## For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

**Sarah Meadows Gable** 125 Chandler Dr., Liberty, SC 29657
**Candy M. Kern-Fuller** 200 E. Main St., Easley, SC 29640

**Larry C. Brandt** P.O. Box 738, Walhalla, SC 29691

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

**Harold P Welborn, Jr. - Clerk of Court**

**Court Reporter: Deborah Garrison**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Pickens Common Pleas

**Case Caption:** EPS Advisors LLC VS Jan Fredman

**Case Number:** 2013CP3900434

**Type:** Order/Judgment Amended and Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-10-31 15:32:35 page 6 of 6

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF PICKENS | ) | C.A. No.: 2013-CP-39-0434 |
| | ) | |
| EPS Advisors, LLC | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | **ORDER** |
| vs. | ) | |
| | ) | |
| Jan Fredman and Clemson-EPS Advisors, LLC, | ) | |
| | ) | |
| Defendants. | ) | |

This matter comes before the Court for a trial without a jury and was heard on November 3, 2016.

SUMMARY OF FACTS

Plaintiff EPS Advisors, LLC (EPS Advisors) filed an action against Defendant Jan Fredman (Fredman) and Clemson-EPS Advisors, LLC (Clemson EPS) for damages resulting from the termination of a business venture between EPS Advisors and Fredman. Prior to October 5, 2009, EPS Advisors operated a financial investment firm advising clients of various investment tools available through Charles Schwab & Co (Schwab). In October, 2009, EPS Advisors entered into an arrangement with Fredman in which Fredman would manage a group of clients under the EPS Advisors' license. In exchange, EPS Advisors agreed to pay Fredman 50% of the commission earned on these accounts and provide Fredman with an office, equipment and be responsible for various overhead expenses. As a result of disputes between Fredman and David Dameron of EPS Advisors, the parties reached an amended agreement in January, 2010 in which EPS Advisors would retain 15% of the commission earned by Fredman and paid by Schwab with Fredman being paid the balance of 85% of the commissions. In exchange for this new arrangement, Fredman was to be responsible for all overhead expenses except those items specifically set forth on the written

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memorandum prepared by Dameron and Fredman. In April, 2010, Fredman terminated his arrangement with EPS Advisors and had all of his Schwab accounts transferred to Clemson EPS, an entity owned solely by Fredman which was organized on October 5, 2009 and began receiving commission payments directly from Schwab as of April 10, 2010 which covered commissions earned during the first quarter for 2010 on behalf of EPS Advisors.

EPS Advisors filed this action seeking damages for conversion, breach of contract, breach of contract with fraudulent intent, negligent misrepresentation, tortious interference with contract, fraud, conspiracy and violation of the Unfair Trade Practices Act. All of these causes of action relate to Fredman and Clemson EPS taking EPS Advisors' accounts and clients, along with the commissions from these accounts and office furniture and equipment which Fredman did not return after the termination of his arrangement with EPS Advisors. In their response, Fredman and EPS Clemson asserted that he was not prohibited from starting his own business and taking his accounts and that EPS Advisors owed him money for outstanding matters.

## FINDINGS OF FACT

After hearing the testimony of the witnesses and reviewing the evidence presented by the parties, the Court makes the following findings of fact.

The primary issue in this case resulted from Fredman taking his customers from EPS Advisors and transferring them to Clemson EPS. The new name was obviously confusing to customers and to Schwab who sent the final EPS Advisors' commission check to Clemson EPS. Even though this maneuver by Fredman would seemingly violate the ethics and moral standards of a business arrangement, especially the manner in which it was done, the legal ramifications of such actions are not as clear, especially as it relates to any recovery by the Plaintiff, EPS Advisors.

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First, the Court will address the Plaintiff's causes of action for Breach of Contract (2nd Cause of Action), Breach of Contract with Fraudulent Intent (3rd Cause of Action), Negligent Misrepresentation (4th Cause of Action) and Fraud (6th Cause of Action). Since the nature of all of these causes of action arises out of the Defendants' conduct in transferring the EPS customers, they have been grouped together. The plaintiff has failed to establish any contract or legal basis which would have prohibited Fredman from transferring his EPS Advisors' customers to his new entity Clemson EPS. In fact, one of the Plaintiff's witness, David Dameron, who was previously one of the principles of EPS Advisors and designated as a Rule 30(b)(6) witness, testified that Fredman was not prohibited from transferring these customers as long as the customers consented to the transfer. Therefore, this conduct cannot support a cause of action for Breach of Contract nor Breach of Contract with Fraudulent Intent because the Plaintiff has not shown there was a contract breached by Defendants. For Fraud, the Plaintiff must establish all 9 elements of fraud which Plaintiff has failed to establish. *See M.B. Kahn Construction Co. v. South Carolina National Bank of Charleston*, 271 S.E.2d 414 (1980). With Negligent Misrepresentation, the Plaintiff must establish among other things that the Defendant made a false representation to the Plaintiff and that he owed a duty of care to the plaintiff. *See AMA Management Corp. v. Strasburger, 420 S.E.2d 868* (Ct. App. 1992). The Plaintiff has failed to establish these elements as well.

Under the Fifth Cause of Action, the Plaintiff seeks damages for the Defendants' Tortious Interference with Contract between the Plaintiff and its customers. To prevail on this theory, the Plaintiff must show, among other elements, that the defendant intentionally procured the breach of the contract between the Plaintiff and a third party *and* the absence of any justification of this action by the Defendant. *Broach v. Carter*, 732 S.E.2d 185 (Ct. App. 2012). Under the testimony, it appears that the Defendants convinced the customers in question to move their account from

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EPS to Clemson EPS. Although it has been inferred that Defendant accomplished this through some wrongdoing or deception, there was no direct evidence of such conduct, nor testimony from any of the customers supporting this claim. Based on the testimony, it appears that the customers had the right to transfer their accounts to whomever they wished and there was no evidence to support anything to the contrary. Therefore, this cause of action for Tortious Interference with Contract must fail as well.

Under the Seventh Cause of Action, the Plaintiff asserted a claim for Conspiracy between the Defendants and Schwab to divert customers away from the Plaintiff. The elements for civil conspiracy are the combination of two or more parties joining for the purpose of injuring the Plaintiff causing special damages to the plaintiff. *La Motte v. Punch Line of Columbia, Inc.*, 370 S.E.2d 711 (1988). As stated, the Defendants were not contractually nor legally prohibited from luring customers away from the Plaintiff and Schwab was required to honor the request to transfer accounts authorized by the customers. David Dameron as witness for the Plaintiff and a principle of EPS Advisors, acknowledged that Fredman had the right to have the customers transferred as long as EPS Advisors received its appropriate share of the commissions. Therefore, even if the actions of Schwab and Defendants resulted in the transfer of the customers to Clemson EPS and caused a loss of income for the Plaintiff, the Defendants' actions do not provide a basis for recovery under Civil Conspiracy.

The Plaintiff also contends that Defendants' actions constituted a violation of the Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.* (Eighth Cause of Action). Even though the Plaintiff established a potential loss of income as its damages, it failed to establish the remaining requirements of this Act: (1) the acts of defendants were deceptive and unfair in the conduct of trade or commerce; (3) the unfair or deceptive act has an adverse impact on the public

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interest and; (4) the act of defendants are capable of being duplicated. The Act cannot be used to address a private wrong between the parties. *Woodson v. DLI Properties, LLC*, 753 S.E.2d 428 (S.C. Sup. Ct. 2014). Without showing that this conduct impacted one of the customers or other members of the public, the Plaintiff falls short of bringing the Defendants' conduct within the parameters of this Act.

In summary, the Court finds in favor of the Defendants as to the Cause of Action for Breach of Contract (2nd Cause of Action); Breach of Contract with Fraudulent Intent ( 3rd Cause of Action); Negligent Misrepresentation (4th Cause of Action); Tortious Interference with Contract (5th Cause of Action); Fraud (6th Cause of Action); Conspiracy (7th Cause of Action); and Unfair Trade Practices Act Violations (8th Cause of Action).

Finally, in the first cause of action, the Plaintiff contends that the Defendants converted certain assets owned by the Plaintiff, specifically, the furniture and office equipment and commissions which were paid to Clemson EPS by Charles Schwab which should have been paid to EPS Advisors.

As to the furniture, witnesses for both parties testified that the furniture in question, which consisted of 2 "nice chairs", 4-5 smaller chairs and a table, were owned by the Plaintiff and were provided to Fredman as part of the arrangement between the parties. There were some additional equipment referenced but these were subject to leases and repossessed and therefore do not appear to be in issue. When Fredman left and started up his new business, the Plaintiff demanded that arrangements be made to return the items immediately. Fredman contends that he was put on trespass notice and asked not to contact the Plaintiff or its representative, so he was unable to make arrangements to return the items in question, but he kept the personal property in storage. Fredman was fully aware that this property belonged to the Plaintiff and he made no arrangement or attempt

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at having the items returned or available to the Plaintiff. In order to prevail on a cause of action for conversion, the plaintiff must prove that (1) it owned or had a right to possession of the personal property; (2) that Defendant gained control and possession of the property or prevented the plaintiff from using the property and (3) that Defendant did this without Plaintiff's permission. See *Oxford Finance Companies, Inc. v. Burgess*, 402 S.E.2d 480 (1991) and *Owens v. Andrews Bank and Trust Co.*, 220 S.E.2d 116 (1975). A claim for conversion can also be based on an unauthorized detention of property, after demand for its return has been made. *See Oxford at 480.* The Court finds that the Plaintiff has met its burden in showing that Fredman converted these items which were clearly owned by the Plaintiff, but the plaintiff was deprived of their use and the defendant held the property without the Plaintiff's permission after the termination of the business arrangement between the parties. The conversion would have occurred at such time that the return of the items was demanded by David Dameron, as President of EPS Advisors, by letter dated April 20, 2010. Susan Lockwood, as agent of the Plaintiff testified that the furniture in question had a value of $8046.30 as of the date of the conversion and there was no evidence to the contrary. Therefore, the Court finds in favor of the Plaintiff against Fredman, individually as to the conversion of the personal property. This portion of the judgment would not be against Clemson EPS since it would not have been involved with the conversion of the personal property.

Plaintiff also claims that the Defendants Fredman and Clemson EPS wrongfully held funds which were improperly paid by Schwab to Clemson EPS on April 9, 2010. Plaintiff has clearly established that this commission check in the amount of $105,352.50 should have been paid to EPS Advisors since it covered commissions earned by Fredman during the first quarter of 2010 under EPS Advisors' account. The Court finds that the Plaintiff has established that these funds were converted by Fredman and Clemson EPS when they should have been returned to EPS

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Advisors as of April 9, 2010. But under the agreement between the parties which had been entered into in January, 2010, Plaintiff was only entitled to retain 15% of the commissions, with the balance, 85%, going to Fredman. Therefore, Defendants wrongfully withheld EPS Advisors' 15% or $15,802.87. The Court finds that both Defendants benefited from this conversion, thus this Court finds that the Plaintiff is entitled to a judgment for this amount against both defendants.

In addition, the Plaintiff seeks punitive damages for Defendants' conversion. Punitive damages may be recovered for conversion when a defendant's acts have been "reckless . . . with conscious indifference to the . . . rights" of another. *Green v. Waidner,* 324 S.E.2d 331, 333 (Ct. App. 1984). The test for this standard of conduct "is whether [the conversion] has been committed in such a manner or under such circumstances that [an ordinary person] would ... have been conscious of it as an invasion of [another's] rights." *Rogers v. Florence Printing Co.,* 106 S.E.2d 258, 263 (1958).

The Court finds that the conduct of the defendants was "reckless . . . with the conscious indifference to the rights" of the Plaintiff and therefore the Plaintiff is entitled to punitive damages for its conversion cause of action. In *Gamble v. Stevenson,* 406 S.E.2d 350 (1991), the South Carolina Supreme Court identified eight considerations for a punitive damages award. These considerations are: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Id.* at 354. In consideration of these factors and the testimony presented, the Court finds that punitive damages in the amount of $35,000.00 are appropriate.

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Therefore, the Court finds for the Plaintiff is entitled to a judgment on its cause of action for conversion as follows:

For actual damages against Defendant Fredman in the amount $8046.30 for the value for the value of the furniture, plus interest from April 20, 2010 at the prejudgment interest of 8 3/4% as provided by S.C. Code Section 34-31-10 for total interest of $4909.07 for a total actual damages of $12,955.37.

For the wrongfully held portion of the commission check, the Court finds in favor of the Plaintiff against both Defendants Fredman and Clemson-EPS for $15,802.87, plus interest of $9,641.38 for a total actual damages of $25,444.25.

With the punitive damages, the judgments against the parties will be as follows:

1) Against Defendant Jan Fredman, individually $12,955.37 actual damages.

2) Against Defendant Jan Fredman and Clemson-EPS Advisors, LLC, jointly and severally, $25,444.25 actual damages; and

3) Against Defendant Jan Fredman and Clemson-EPS Advisors, LLC, jointly and severally, punitive damages of $35,000.00.

All other relief requested by Plaintiff is hereby denied.

IT IS SO ORDERED.

***Signature Page for Perry H. Gravely as Presiding Judge attached***

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**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF PICKENS**
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**
**CASE NUMBER 2013CP3900434**

| **EPS Advisors, LLC** | **Jan Fredman and Clemson-EPS Advisors, LLC** |
|---|---|
| **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 or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ 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:

**ORDER INFORMATION**

**This order** ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| **EPS Advisors, LLC** | **Jan Fredman** | **$12,955.37** |
| **EPS Advisors, LLC** | **Jan Fredman and Clemson-EPS (jointly and severally)** | **$59,444.25** |
| | (Total Judgement for EPS Advisors, LLC | $72,399.62) |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

| | | |
|---|---|---|
| | 2755 | 5/19/2017 |
| **Circuit Court Judge** | **Judge Code** | **Date** |

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

**Candy Kern-Fuller**
**200 East Main Street**
**Easley, SC 29640**
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Larry C. Brandt**
**P.O. Box 738**
**Walhalla, SC 29691**
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter-Deborah R. Garrison**

**H. W. Welborn, Picken County Clerk Of Court - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 May 19 12:08 PM - PICKENS - COMMON PLEAS - CASE#2013CP390434

ELECTRONICALLY FILED - 2017 May 19 12:08 PM - PICKENS - COMMON PLEAS - CASE#2013CP3900434



Pickens Common Pleas

**Case Caption:** EPS Advisors LLC VS Jan Fredman

**Case Number:** 2013CP3900434

**Type:** Order/Form 4

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-05-19 11:44:49 page 11 of 11

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF PICKENS | ) | THIRTEENTH JUDICIAL CIRCUIT |
| | 2013 APR 3 PM 4 59 | |
| EPS Advisors, LLC | ) | |
| | CLERK OF COURT | |
| Plaintiff, | PICKENS COUNTY | **COMPLAINT** |
| | SOUTH CAROLINA | |
| v. | ) | |
| | ) | |
| Jan Fredman and Clemson-EPS Advisors, LLC, | ) | |
| | ) | |
| | ) | |
| Defendants. | ) | |

The Plaintiff above-named, complaining of the Defendants herein, would respectfully show unto this Honorable Court the following:

1. Plaintiff is a business incorporated on January 18, 2008, conducting business as financial investment advisors in the Upstate of South Carolina;
2. At all times referenced herein, Defendant Jan Fredman (hereinafter "Fredman") was a licensed financial broker and investment advisor who was a contract advisor for EPS Advisors, LLC from approximately December 2008 through March 2010;
3. Defendant Clemson-EPS Advisors, LLC is a business incorporated by Defendant Jan Fredman on or around October 5, 2009. Clemson-EPS Advisors, LLC conducts business in Pickens County, South Carolina as a financial investment advisory firm;
4. Upon information and belief, all events complained of occurred in Pickens County, South Carolina;

**FACTS/BACKGROUND**

5. Plaintiff incorporates the previous allegations as if fully restated herein;
6. Plaintiff operated as a financial investment advising firm from 2008 through 2012, with between two (2) and five (5) financial advisors at any given time;

7. On or around October 5, 2009, Plaintiff contracted with Fredman, as an at-will financial advisor. Throughout his engagement, Fredman regularly managed the accounts of approximately 150-250 of Plaintiff's clients. The accounts managed by Fredman averaged at approximately fifty-four million dollars ($54,000,000.00) of assets under management. Fredman used the Plaintiff's company owned equipment in furtherance of the contractual relationship, including a desk, computer, and miscellaneous office supplies;

8. Unbeknownst to Plaintiff, on or around October 9, 2009, Fredman incorporated Clemson-EPS Advisors, Inc. though he continued to work under and maintain his securities registrations under EPS Advisors, Inc. through April 30, 2010. He furthermore did not inform Plaintiff that he had incorporated a competing business or that he was operating the business of Plaintiff under a different business name.

9. Plaintiff had contracts with their clients to receive a one percent (1%) management fee on all "assets under management" for the client. This contract was between the client and the Plaintiff, not between the Defendant and the client. These fees were paid in arrears at the end of each calendar quarter. As a result, Plaintiff reconciled and billed its brokerage fees to its clients' Charles Schwab & Co accounts on a quarterly basis. All reconciliation of billing began on the first business day after the end of the quarter. On April 1, 2010, Plaintiff requested the billings from Charles Schwab and Co. for the previous quarter. On or about April 2, 2010, Charles Schwab & Co. deposited the brokerage fees into Plaintiff's account; however, the deposit was substantially less than Plaintiff's records showed it should have been. Upon further investigation the following week, Plaintiff discovered that Fredman, with the assistance of Charles Schwab & Co., transferred

approximately over 100 of Plaintiff's client accounts to Defendant Clemson-EPS Advisors, LLC during March of 2010. Unbeknownst to Plaintiff, Defendants transferred approximately twenty (20) more accounts in April of 2010. However, in both cases, Defendant took **ALL** of the management fees for all of the Plaintiff's clients' accounts for the entire prior quarter of 2010.

**FOR A FIRST CAUSE OF ACTION**
**(Conversion)**

10. Plaintiff incorporates the previous allegations as if fully restated herein;

11. Plaintiff was the lawful owner of the client accounts of the company and the information related thereto. Further Plaintiff was the lawful owner of office equipment, including a computer and a desk used by Fredman during his course of contractual relationship with Plaintiff;

12. Defendants, without knowledge to or permission from Plaintiff, transferred the client accounts from Plaintiff to Defendant Clemson-EPS Advisors, LLC for his own use. Further, Defendant removed certain items of office equipment, including a computer and a desk for his own use without the Plaintiff's permission;

13. Plaintiff is informed and believes he is entitled to damages in the amount of the actual highest value of the items converted on the date of the conversion, with interest from the date of the conversation;

**FOR A SECOND CAUSE OF ACTION**
**(Breach of Contract)**

14. Plaintiff incorporates the previous allegations as if fully restated herein;

15. Plaintiff and Fredman entered into a binding contract wherein Defendant would manage and advise clients for the benefit of Plaintiff in exchange for payment from Plaintiff. This contract was formed solely based upon the performance.

16. Fredman breached its performance contract with the Plaintiff when he diverted client broker fees to Defendant Clemson-EPS Advisors, LLC;

17. Defendant also breached the covenant of good faith and fair dealing inherent in all contract within the State of South Carolina.

18. As a result of said breaches, Plaintiff is entitled to actual damages and consequential damages naturally flowing from said breach.

**FOR A THIRD CAUSE OF ACTION**
**(Breach of Contract with Fraudulent Intent)**

19. Plaintiff incorporates the previous allegations as if fully restated herein;

20. Defendant Fredman entered into a binding contract with Plaintiff by his words and mutual performance;

21. Defendant Fredman breached its performance contract with the Defendants by diverting client broker's fees to Defendant Clemson-EPS Advisors, LLC;

22. Defendant Fredman had fraudulent intent in breaching the contract because Fredman represented to Plaintiff that Defendant was still doing business under and for the benefit of Plaintiff despite the fact that he had long before incorporated Defendant Clemson-EPS Advisors, LLC, was doing business as Defendant Clemson-EPS Advisors, and then transferred all of Plaintiff's client accounts that Defendant Fredman managed to Defendant Clemson-EPS Advisors, LLC and pocketed all of the prior quarter's billing for management services performed under the registration of Plaintiff;

23. Fredman knew that the his promise to perform was false;

24. Plaintiff did not know the promise to perform was false and properly relied on Fredman's performance;

25. The false representation by Defendant Fredman was material to the ongoing relationship between Defendant Fredman and Plaintiff and Defendant Fredman intended for Plaintiff to act by not separating him from the contractual relationship so that Fredman could complete his conversion of the client accounts.

26. Plaintiff had a right to rely upon the representations of Defendant Fredman. However, as a result of the fraud that Defendant Fredman perpetrated in connection with the breach of contract, Plaintiff suffered actual and consequential damages for all action naturally flowing from said breach and, further, requests that the Defendants further award such punitive damages as the Court and triers of fact deem proper and just;

**FOR A FOURTH CAUSE OF ACTION**
**(Negligent Misrepresentation)**

27. Plaintiff incorporates the previous allegations as if fully restated herein;

28. Fredman represented to Plaintiff that he was working for the benefit of Plaintiff despite the fact that he had incorporated Clemson-EPS Advisors, LLC and transferred Plaintiff's client accounts to Clemson-EPS Advisors, LLC, without knowledge to or permission from Plaintiff as well as converted Plaintiff's management fees for the first quarter of 2010;

29. Fredman had a pecuniary interest in this representation;

30. Fredman had a duty of care to see that truthful information was communicated to the Plaintiff in that Fredman possessed expertise and special knowledge that would ordinarily make it reasonable for the Plaintiff to rely on him. Additionally, Fredman had a pecuniary interest in the transaction;

31. Fredman failed to use the amount of care required by the duty owed to Plaintiff;

32. Plaintiff justifiably relied on Fredman's representation;

33. Plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation;

34. Plaintiff requests that the Court award such actual damages the Court and triers of fact deem proper and just;

**FOR A FIFTH CAUSE OF ACTION**
**(Tortious Interference with Contract)**

35. Plaintiff incorporates the previous allegations as if fully restated herein;

36. Plaintiff entered into a binding contract with certain clients, in which Plaintiff agreed to advise and manage the clients investments account in return for payment;

37. Fredman was aware of the contract between Plaintiff and clients;

38. Fredman intentionally, and without justification, transferred the client accounts to Clemson-EPS Advisors, LLC, thereby causing the clients to breach their agreement with Plaintiff;

39. Plaintiff suffered damages as a result of Fredman's actions;

40. Plaintiff requests that the Court award such actual, compensatory and punitive damages as the Court and triers of fact deem proper and just;

**FOR A SIXTH CAUSE OF ACTION**
**(Fraud)**

41. Plaintiff incorporates the previous allegations as if fully restated herein;

42. Fredman represented to Plaintiff that he was working for the benefit of Plaintiff, using Plaintiff's resources, clients, and business records;

43. Fredman's representation was false, in that he incorporated a competing business and transferred Plaintiff's personal property, clients and business records to Clemson-EPS

Advisors, LLC. Fredman deliberately concealed this information from Plaintiff until on or after April 5, 2010;

44. Fredman's representation was material in that Plaintiff would not have permitted him to continue business under Plaintiff's name if it knew of Defendants' intent and actions;

45. Fredman had actual knowledge that his statements and representations to Plaintiff were false;

46. Fredman intended for Plaintiff to act upon his representation;

47. Plaintiff was ignorant of the falsity of Fredman's representation;

48. Plaintiff relied on Fredman's representation and had a right to rely thereon;

49. Defendant acted in reckless or conscious disregard of Plaintiff's rights under its contracts with the client and under the South Carolina Trade Secrets law, and as a result, Plaintiff suffered injury and damages;

50. Plaintiff requests this Court award actual and punitive damages as the Court and trier of fact deem just and proper;

**FOR A SEVENTH CAUSE OF ACTION**
**(Conspiracy)**

51. Plaintiffs incorporate all allegations as if set further verbatim herein;

52. Defendants and Charles Schwab and Co. combined for the purpose of Defendants' own financial gain at the economic loss to Plaintiff;

53. As a result of these actions, Plaintiff were specially damaged;

54. Accordingly, Plaintiffs request this Court award it actual damages and such other and further relief deemed appropriate by this Court;

55. Further, Plaintiffs allege Defendants' actions were willful, intentional and/or in flagrant disregard of law and, therefore, they are entitled to punitive damages, litigation costs and attorney's fees from Defendants;

**FOR AN EIGHTH CAUSE OF ACTION**
**(Unfair Trade Practices Act violations)**

56. Plaintiff realleges all previous paragraphs as if fully restated herein;

57. Defendants' actions, as described hereinabove, constitute unfair and deceptive methods of doing business that adversely affect the South Carolina general public. Specifically, had Plaintiffs enforced their contracts against their clients, the clients would have been billed *twice* for their investment advisor management fees;

58. Defendants' actions are capable of repetition and need to be deterred so that others citizens are not harmed in a similar fashion;

59. Accordingly, the above-referenced actions of the Defendants constitute unfair trade practices for the purposes of the South Carolina Unfair Trade Practices Act, §39-5-20 of the South Carolina Code of Laws, as amended. Accordingly, Shaw respectfully requests that the Court and/or trier of fact award such actual and treble damages and attorney's fees and costs as it may deem appropriate and proper;

**WHEREFORE**, having fully set forth its claims, Plaintiff prays for relief as follows:

1) A jury trial on all claims;

2) Prejudgment interest as may be deemed appropriate by the triers of fact;

3) Actual damages and consequential damages as may be awarded by a jury, for all damages naturally flowing from the Defendant's unlawful acts;

4) Attorney's fees and costs as a consequential damage of the Breach of Contract, including expert fees and all other costs incurred by the Plaintiffs in the bringing of this action;

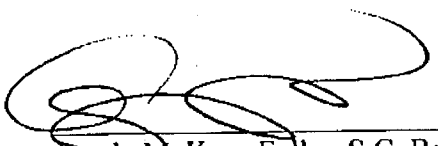
5) Treble damages for the Unfair Trade Practices Act violations;

6) Attorney's fees and costs for the Unfair Trade Practices Act violations;

7) Punitive damages, where available, to deter Defendants from future similar actions;

8) Such other and further relief as this Court, and a jury of Plaintiffs' peers, deem just and proper.

Respectfully submitted,



Candy M. Kern-Fuller, S.C. Bar #11392
**Upstate Law Group, LLC**
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3446 (Facsimile)
Candy@upstatelawgroup.com

Date: 4/13/2018

**ATTORNEY FOR PLAINTIFF**

STATE OF SOUTH CAROLINA )
) COURT OF COMMON PLEAS
COUNTY OF PICKENS )

EPS Advisors, LLC,

Plaintiff,

vs.

Jan Fredman and Clemson-EPS Advisors, LLC,

Defendants.

**ANSWER OF DEFENDANTS**

**Case #2013-CP-39-434**

The Defendants, Jan Fredman and Clemson-EPS Advisors, LLC, answering the Complaint of the Plaintiff would respectfully show the Court as follows:

1. All allegations of the Complaint, not hereinafter specifically admitted, modified or otherwise explained, are emphatically denied.

2. The allegations of Paragraph 1 are admitted.

3. So much of Paragraph 2 that alleges Defendant, Jan Fredman, ***hereinafter "Fredman,"*** was a licensed financial broker and investment advisor and that he was affiliated with Plaintiff, ***hereinafter "EPS Advisors,"*** from approximately December 2008 through March 2010, is admitted; however, any allegations of said paragraph alleging and/or inferring Fredman was an employee of EPS Advisors, LLC or that he was doing anything but splitting the fees he earned from his clients with Plaintiff in return for office rent and certain benefits provided to him by Plaintiff at any time, are emphatically denied.

4. The allegation of Paragraph 3 that alleges Clemson-EPS Advisors, LLC is a business incorporated by Defendant, Jan Fredman, on or around October 5, 2009, is

admitted; however, all other allegations of said Paragraph 3 are emphatically denied. Further answering, Clemson-EPS Advisors, LLC conducts business as a financial investment advisory firm in Oconee County, South Carolina, and not Pickens County, South Carolina, as alleged.

5. Answering Paragraph 4 of the Complaint, it is denied that all events complained of occurred in Pickens County, South Carolina.

6. Answering Paragraph 5 of the Complaint, Defendants reallege and incorporate herein by reference all answers hereinabove set forth as if restated verbatim.

7. The allegations of Paragraph 6 are admitted.

8. The allegations of Paragraph 7 are denied. Further answering said paragraph, Fredman will show that, in or around October 2008, EPS Advisors and Fredman entered into an arrangement whereby EPS Advisors would furnish Fredman with a fully equipped office, together with other resources/amenities, and provide the administrative support and oversight required by regulatory authorities to allow Fredman to manage the accounts of his clients which he previously had and/or could thereafter recruit in consideration for which Fredman would pay to EPS Advisors fifty (50%) percent of all fees earned as they were collected; however, from the inception of the relationship, EPS Advisors breached its end of the bargain by not paying the office rent, phone and other bills when due and, on several occasions, phone service was disconnected, computers went down and were not immediately fixed or repaired, and ejectment was threatened. As a result, Fredman had to pay EPS Advisors' debts/bills from his own money in order to avoid ejectment and to keep the office equipment operational so that he could properly and professionally serve his clients and earn a livelihood. Upon the debt

problems of EPS Advisors surfacing, Fredman confronted Dameron, President of EPS Advisors, about the embarrassment that EPS Advisors' failing to pay bills in a timely manner was causing him, especially with his clients, and told Dameron that he was not going to pay EPS Advisors fifty (50%) percent of his fees earned. Fredman also advised Dameron that he was not going to stay at EPS Advisors if his actions continued. Fredman and EPS Advisors, by and through Dameron, then agreed that Fredman would continue to operate from EPS Advisors' offices upon Dameron's solemn promise that EPS Advisors would make sure that all bills were timely paid and that there would be no further disruption of operations. EPS Advisors, by and through Dameron, also agreed that the amount that Fredman would pay to EPS Advisors would be reduced from fifty (50%) percent of fees earned to fifteen (15%) percent of fees earned.

9. The allegations of Paragraph 8 are denied. It is admitted, however, that, in or around October 2009, Fredman incorporated Clemson-EPS Advisors, LLC while he was still operating his business and maintaining his securities registrations under EPS Advisors, LLC at its location in Clemson, South Carolina; however, EPS Advisors and, in particular, Dameron, knew he had incorporated his own business and was going to begin operating his business under his own corporate or business name, separate and apart from EPS Advisors, LLC and that, on or about April 30, 2010, he removed his securities registration from EPS Advisors, LLC and discontinued his relationship with EPS Advisors. This action was with the knowledge and approval of Charles Schwab & Co. who licensed EPS Advisors as its representative, as well as Fredman. It was also necessitated in the interest of Fredman's clients because Dameron continued to be inattentive to the office and Fredman's needs, and to otherwise engage in activities which were embarrassing to

Fredman and others associated with EPS Advisors, LLC and Charles Schwab & Co. Fredman also learned that Dameron was borrowing money from clients to run EPS Advisors which was totally unethical and prohibited by security regulators, and that, in January 2010, Dameron had used money belonging to Fredman and had converted same to his and/or EPS Advisors own use and, notwithstanding numerous attempts by Fredman to meet with Dameron to discuss these matters, Dameron avoided him and refused to do so.

10. The allegations of Paragraph 9 are denied. Further answering said paragraph, Defendants will show that Fredman received from his clients a one (1%) percent management fee on all "assets which he managed" while affiliated with EPS Advisors, a portion of which was remitted to EPS Advisors; however, because of securities regulations only, a management contract was signed between Defendants' clients and EPS Advisors; however, at all times, the parties knew, understood and agreed that the clients were always to belong to Fredman, individually, and that EPS Advisors had no proprietary interest in same. It will be further shown that fees that were due to Fredman were reconciled by EPS Advisors, were billed to the clients' Charles Schwab & Co. accounts on a quarterly basis, and, upon receipt of the fees, EPS Advisors would withhold its agreed percentage and then pay over to Fredman the remainder. It will also be shown that, at all times, the clients were to be Fredman's personal clients with no proprietary ownership in EPS Advisors, LLC and that the only monies that EPS Advisors, LLC was to receive from the fees earned was the agreed percentage in consideration for the amenities and administrative support supplied to Fredman by EPS Advisors. Accordingly, Fredman, at all times, had the right to transfer or move his clients' accounts to other entities and/or to

leave EPS Advisors and take his clients with him and that EPS Advisors, LLC had no interest in any fees earned on the accounts after they were transferred, assigned or taken away by Fredman.

**FOR A FIRST CAUSE OF ACTION**
**(Conversion)**

11. Answering Paragraph 10 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

12. The allegations of Paragraph 11 which allege that EPS Advisors was the lawful owner of Fredman's client accounts and information related thereto, is denied. It is admitted, however, that EPS Advisors was the lawful owner of office equipment, including a computer and a desk used by Fredman during his affiliation and/or relationship with EPS Advisors, but Defendants emphatically deny that there was any contractual relationship existing between them and EPS Advisors other than as Defendants have previously set forth herein.

13. The allegations of Paragraphs 12 and 13 are denied.

**SECOND CAUSE OF ACTION**
**(Breach of Contract)**

14. Answering Paragraph 14 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

15. The allegations of Paragraph 15 are denied. Further answering said paragraph, Fredman would show that at no time did he ever agree with EPS Advisors to

advise clients for the benefit of EPS Advisors or that EPS Advisors was to have or claim any proprietary interest in his clients' accounts but, instead, the agreement between EPS Advisors and Defendants was solely one allowing Fredman to work under and maintain his securities registrations under EPS Advisors, LLC so as to comply with securities law and to provide him with a fully equipped office and administrative support in exchange for a percentage of the fees earned by Fredman from his own clients; however, at no time, was Fredman ever an employee of EPS Advisors nor were any of the clients which he brought into the firm and/or which Fredman serviced ever clients of EPS Advisors.

16. The allegations of Paragraphs 16, 17 and 18 are denied.

**AS TO THE THIRD CAUSE OF ACTION**
**(Breach of Contract with Fraudulent Intent)**

17. Answering Paragraph 19 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

18. The allegations Paragraphs 20, 21, 22, 23, 24, 25 and 26 are emphatically denied.

**AS TO THE FOURTH CAUSE OF ACTION**
**(Negligent Misrepresentation)**

19. Answering Paragraph 27 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

20. The allegations of Paragraphs 28, 29, 30, 31, 32, 33 and 34 are denied.

**AS TO THE FIFTH CAUSE OF ACTION**
**(Tortious Interference with Contract)**

21. Answering Paragraph 35 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

22. The allegations of Paragraphs 36, 37, 38, 39 and 40 are denied.

**AS TO THE SIXTH CAUSE OF ACTION**
**(Fraud)**

23. Answering Paragraph 41 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

24. The allegations of Paragraphs 42, 43, 44, 45, 46, 47, 48, 49 and 50 are denied.

**AS TO THE SEVENTH CAUSE OF ACTION**
**(Conspiracy)**

25. Answering Paragraph 51 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

26. The allegations of Paragraphs 52, 53, 54 and 55 are denied.

**AS TO THE EIGHTH CAUSE OF ACTION**
**(Unfair Trade Practices Act Violation)**

27. Answering Paragraph 56 of the Complaint, Defendants reallege and incorporate herein by reference all previous allegations of this Answer as if restated verbatim.

28. The allegations of Paragraphs 57, 58 and 59 are emphatically denied.

**WHEREFORE,** Defendants having fully answered the Complaint of the EPS Advisors, pray that this Complaint be dismissed with prejudice, that costs be taxed to the EPS Advisors, and that such other and further relief as this Court deems just and proper be awarded to them.

Respectfully submitted,

LARRY C. BRANDT, P.A.
P.O. Box 738
3691 Blue Ridge Blvd.
Walhalla, SC 29691
864/638-5406
864/638-7873 (fax)

BY: _____
Larry C. Brandt (Bar #856)
***Attorney for Defendants***

September 9, 2013
Walhalla, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | COURT OF COMMON PLEAS |
| COUNTY OF PICKENS | ) | |
| | | |
| EPS Advisors, LLC, | ) | |
| | ) | |
| Plaintiff, | ) | **DEFENDANTS' MEMO** |
| vs. | ) | |
| | ) | Case #2013-CP-39-434 |
| Jan Fredman and Clemson-EPS Advisors, LLC, | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

**Rule 8(c), SCRCP**, does not list set-off as an affirmative defense that must be pled.

**Rule 8(f), SCRCP**, also provides: "All pleadings shall be so construed as to do substantial justice to all parties."

**Broome v. Watts, 319 S.C. 337, 461 S.E.2d 46 (S.C. App. May 11, 1998)** specifically held that set-off is not affirmative defense that must be pled in order to be pursued at trial.

Fredman's claim is not really a set-off, however, as set-off is defined by ***Black's Law Dictionary*** as a *"counter-demand which Defendant holds against Plaintiff arising out of a transaction extrinsic of Plaintiff's cause of action."* Fredman's claim for monies owed to him pursuant to the contract upon which Plaintiff has brought suit is not extrinsic to Plaintiff's claim.

## BREACH OF LOYALTY

Breach of loyalty claims rest upon the relationship between the parties. In this case, Fredman was not an employee of EPS nor was he an officer of EPS. He was merely a *"contract producer"* of money. There was no non-compete agreement or an agreement for any specific term. Fredman was free to leave at any time and had the right to take his accounts with him. The only restriction was that until he was terminated on March 31, 2010, he had to share with EPS the income he produced in accordance with his agreement with EPS. He did that. EPS had no proprietary interest in Fredman's clients beyond March 31, 2010 so, even if there was a technical breach of loyalty, there was/is no resulting damage.

## TORTIOUS INTERFERENCE WITH CONTRACT

**Broach v. Carter, 399 S.C. 434, 732 S.E.2d 185 (Ct. App. 2012)**
**DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (Sup. Ct. 1981)**

The elements of tortious interference with contract are: (1) the contract; (2) the wrongdoer's knowledge thereof; (3) wrongdoer's intentional procurement of its breach; (4) absence of justification; and damages resulting therefrom.

In this case, the testimony of David Dameron as a **Rule(30)(b)(6)** designated witness, as well as his testimony at trial, clearly establishes that Fredman had a right to do what he did -i.e., taking his clients with him after March 31, 2010. All he was required to do was pay to EPS its share of the fees earned during the period of his agreement with EPS - that is, from the inception of his contract with EPS until he was terminated on March 31, 2010. This he did and Dameron admits EPS got all the money it was entitled to and the books are balanced.

## BREACH OF CONTRACT

According to the testimony of Dameron, no breach occurred but, even assuming a breach for arguments sake, all EPS was entitled to was its share of fees billed Fredman's clients through March 31, 2010. EPS received its share, therefore, no damages.

## BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

To prove breach of contract accompanied by a fraudulent act, a plaintiff must prove three (3) elements: (1) a breach of contract; (2) fraudulent intent relating to the breach of contract and not merely to its making; and (3) fraudulent act accompanying the breach. **[RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004)]**

Based on the evidence not a single one of the three (3) elements were proven, plus no damages resulted to EPS from any acts of Fredman.

## CONVERSION

It is well established that a contractual duty or performance of a duty is discharged or excused where performance is subsequently prevented by other party, act of God or the law. **[Moon v. Jordan, 301 S.C. 361, 390 S.E.2d 488 (Ct. App. 1990)]** The trespass notice rendered return of the items by Fredman or his emissaries unlawful and, therefore, discharged his duty to return the items. Fredman has not used the items, converted them to his own use or refused to let EPS come and re-take repossession of them. He has, however, in good faith stored the items in a safe and secure location. Additionally, EPS has offered no proof as to the value of the items on any date after the purchase in 2008 which is fatal to its claim.

## FRAUD

As stated, during Fredman's contract with EPS, he did work for the benefit of EPS within the terms of his contract and made no false representations to EPS (Dameron) that he was setting up Clemson EPS in October 2009. EPS (Dameron) also testified that he was aware that Fredman was thinking about leaving in early January 2010 and that Fredman had a right to do so at any time and take his clients with him. Based upon the evidence, there was no fraudulent misrepresentation or any representation upon which EPS relied to its detriment. EPS also failed to prove that it suffered any damage as a result of Fredman leaving.

## UNFAIR TRADE PRACTICES ACT

Under **S.C. Code §39-5-10, et. seq.,** in order to bring an action under SCUTPA: (1) the act has to be deceptive or unfair in the conduct of trade or commerce; (2) the plaintiff must suffer actual ascertainable damages as a result; (3) the unfair or deceptive act has to have an adverse impact on the public interest; and (4) the act has to be capable of being duplicated.

SCUTPA is not available to address a private wrong; unfair deceptive acts that affect only the parties is beyond the scope of the Act. **[Woodson v. DLI Properties, LLC, 406 S.C. 517, 753 S.E.2d 428 (Sup. Ct. 2014)]** Even the intentional breach of a valid contract without more does not constitute a violation of the SCUTPA. **[Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993)]** An unfair or deceptive act or practice must have an impact upon the public interest. **[Columbia East Associates v. Bi-Lo, Inc., 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989)]** To recover under SCUTPA, plaintiff must prove violation of the UTPA, proximate cause and damages. **[Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc., 379 S.C. 181, 666 S.E.2d 247 (Sup. Ct. 2008)]**

Requirements for maintaining and recovery under the SCUTPA have not been met; therefore, this claim of the Plaintiff also fails.

Respectfully submitted,

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November 10, 2016
Walhalla, South Carolina

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| STATE OF SOUTH CAROLINA<br>COUNTY OF PICKENS | ) | IN THE COURT OF COMMON PLEAS<br>THIRTEENTH JUDICIAL CIRCUIT |
| EPS Advisors, LLC<br>Plaintiff,<br><br>v.<br><br>Jan Fredman and Clemson-EPS Advisors, LLC,<br>Defendants. | ) | C.A. No. 2013-CP-39-434<br><br>**PLAINTIFF'S LEGAL POINTS** |

Plaintiff filed suit against Defendants for Conversion, Breach of Contract, Negligent Misrepresentation, Tortious Interference with Contract, Fraud, Conspiracy and Unfair Trade Practices.

**Conversion**

Fredman admitted that the contracts of the clients for whom he took commissions directly from were between the clients and EPS Advisors and EPS Advisors would have received those first quarter commissions directly, but for Fredman's transfer of them immediately before the end of the first 2010 quarter. (Fredman designations, p. 25, 37-38, 47-48). Fredman also admitted that EPS provided him furniture and equipment for this office, which he retains today. (Fredman designations, p. 43).

In order to prove conversion, the plaintiff must first prove that the plaintiff owned or had a right to possess a certain piece of personal property. *Oxford Fin. Co. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991). The plaintiff must then show that the defendant gained control and possession of the property or prevented the plaintiff from using the property. *Owens v. Andrews Bank and Trust Co.*, 265 S.C. 490, 220 S.E.2d 116 (1975). Finally, the plaintiff must show that the defendant did this without the plaintiff's permission. *Id.*

Conversion occurs when a defendant wrongfully gets or takes property. *McLean v. Godwin Props., Inc.*, 292 S.C. 518, 357 S.E.2d 473 (Ct. App. 1987). This was the case with the $105,352.50 in EPS commissions. In this case, the conversion took place when the defendants got the property. *Id.*

A conversion can also occur when defendants legally got property, then refused to give it back when asked. In this case, the conversion takes place when the defendant refused to give the property back to the plaintiff after the plaintiff asked the defendant to return the property. *Oxford Fin. Co., Inc. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991). Dameron, on behalf of EPS, clearly demanded the return of both the commissions Fredman diverted and the furniture and equipment. (April 20, 2010 letter of Dameron to Fredman demanding return by April 23, 2010). As such, the value of the award be the highest value of the property should include interest on the furniture and equipment and the commissions up until the time of trial. *Industrial Welding Supplies, Inc. v. Atlas Vending Co.*, 276 S.C. 196, 277 S.E.2d 885 (1981).

Further, the Defendants' acts were willful, reckless, and/or committed with conscious indifference to the rights of others and Plaintiff is entitled to punitive damages. *Oxford Fin. Co., Inc. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991).

Though Fredman argues he was entitled to retain an 85% commission on the first quarter 2010 commissions he converted, he was not entitled to any compensation for services performed during the period he engaged in activities constituting a breach of his duty of loyalty, even though part of those services may have been properly performed. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 608 (1999). In this case, Fredman admitted that he initiated contact with Schwab with the intent of starting a competing entity in January 2010. (Fredman designations, p. 27).

**Breach of Contract, Negligent Misrepresentation and Fraud**

Fredman told Dameron Clemson-EPS Advisors was to be a joint venture with EPS and that was why Clemson-EPS Advisors absorbed EPS' name. (Fredman designations, p. 21-22, 26-27, 45).

As a part of this "joint venture," Plaintiff's principal and Fredman met in January 2010 to work out an agreement on the responsibilities of each and the compensation for Fredman was be increased to an 85% commission with Fredman assuming all responsibility for the utilities and expenses for his office. (Dameron 30(b)(6) p. 13). Fredman alleges that he committed the tortious acts he did was because bills weren't being paid that, according to the January 2010 agreement the parties made, Fredman should have then been paying. In making that agreement in mid-January, 2010, Fredman represented that they had an agreement on the working terms and that all was well from there. Fredman was to provide advising services to clients and "pay his own way" and EPS Advisors was to provide compliance and "back office support." EPS had a right to rely on the truth of the false representations made to it by Fredman. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

However, less than a half a month later, Fredman began seeking out Schwab and began implementing a plan to breach this contract with EPS and take his clients and their commissions over to his own business. (Fredman designations, p. 27).

In order to prevail on an action for fraud and deceit, Plaintiff must prove all nine elements of fraud by clear, cogent, and convincing evidence. *M.B. Kahn Constr. Co. v. South Carolina Nat'l Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980); *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002). In this case, Mr. Fredman made a representations orally, in writing, and by his acts and conduct and by his false impressions meant to deceive EPS. *Southern Iron & Equip. Co. v. Bamberg, Ehrhardt & Walterboro Ry. Co.*, 151 S.C. 506, 149 S.E. 271 (1929).

Fraud may even include the false representations made to third parties (EPS' clients) with reason to expect that the third party would rely on the representation and that their conduct would be influenced by the representation. *Chisolm v. Gadsen*, 1 Strob. 200 (1846). Fredman admits those representations were false.

Further, "there exists in every contract an implied covenant of good faith and fair dealing." *Williams v. Riedman*, 339 S.C. 251, 267 (Ct. App. 2000).

As testified to by Dameron, prior to the "come to Jesus" meeting he had with Fredman in January, 2010, he was prepared to terminate EPS' relationship with Fredman. But, based on the meeting and resulting agreement, he did not. This evidences that the representations made by Fredman at that meeting were material as it shows that the representations by Fredman to support the new 85/15 were material because they influenced EPS' decisions regarding how it dealt with Fredman. 37 Am. Jur.2d Fraud and Deceit § 177.

Both Dameron and Fredman admitted that EPS did not know of Fredman's plans start a competing company, take all EPS's clients and their commissions. (Fredman designations, p. 21-22, 26-27, 45-47 and Exhibit 2 thereto).

As such, not only did Fredman breach his contract and the covenant of good faith and fair dealing therein, he committed negligent and/or intentional misrepresentations (i.e. fraud) to EPS.

**Tortious Interference with Contract**

Fredman admits he took all the clients of EPS for whom he acted as their RIA *and their commissions due to EPS* Advisors for the first quarter of 2010. (Fredman designations, p. 46-47 and Exhibit 2 thereto). In doing so, he caused those clients to breach their contract for services and payment with EPS. As testified to by Dameron and Defendant Fredman, when Fredman induced the Clients into signing new agreements with Clemson-EPS Advisors, they were also under an obligation to pay EPS Advisors for the same services. This caused EPS not to receive the funds they were directly due for the first quarter of advising, thus procuring a breach of those agreements between EPS and the clients.

**Unfair Trade Practices Act**

Fredman had numerous previous issues, as reported on his FINRA report and as admitted by him, including fraud and misuse of client funds over a long span of years. (Fredman designations, pp.13-15, 18 and Ex. 1 thereto - FINRA Report). Fredman's acts were (as discussed in the fraud part), "unfair" and/or "deceptive" acts or practices. These actions are capable of repetition based on the lengthy FINRA report of other fraudulent behavior by Fredman over a span of years. The public harm, as testified to by Defendant Fredman, wasthat the public owed two advising fees for the same services because Fredman induced the Clients into signing new agreements with Clemson-EPS Advisors while they were also under an obligation to pay EPS Advisors for the same services. It was further deceptive because Fredman used (and still does) the Clemson-EPS Advisors name to conduct business under, thus causing confusion as to whether he was a separate entity from Plaintiff.

**Civil conspiracy**

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff." *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988). Fredman admittedly joined with Kevin Chalk, a representative of Schwab, to effect his tortious plan against EPS and could not have done so without the assistance of Schwab. (Dameron 30(b)(6), p. 51; Fredman designations, p. 27). But for the assistance of Schwab, the actions taken could not have occurred.

**Punitive damages**

Fredman admitted that at the time EPS Advisors took him in, he was "damaged goods" and he wouldn't have the business he has today without them doing so. (Fredman designations, pp. 18-19, 43). Fredman now grosses $600,000.00 a year and nets $500,000.00 per year in a business that he admittedly would not have had but for EPS Advisors. (Fredman designations, pp. 48-49). Conversely, Plaintiff is now out of business.

In *Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc.*, 397 S.C. 348 (Ct. App. 2012), the Court cited the standard and considerations for punitive damages:

> In *Mitchell*, our state supreme court implemented the constitutional limitations set forth in *Campbell, Gore*, and *Haslip*. The *Mitchell* opinion confirmed that *Gore* and *Haslip* addressed the excessiveness of punitive damages awards and that *Campbell* prohibited any punitive damages award for conduct unrelated to the plaintiff's harm or conduct that was insufficiently reprehensible. 385 S.C. at 584-86, 686 S.E.2d at 183-84. Further, in *Campbell*, the United States Supreme Court stated:
>
> > [P]unitive damages should only be awarded if the defendant's culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *Campbell*, 538 U.S. at 419. This language dovetails with *Sample's* requirement that "when . . . a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights, it is not only the right but the duty of the jury to award punitive damages." 183 S.C. at 410, 191 S.E. at 214 (emphasis added).

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**Date:** November 11, 2016

**ATTORNEY FOR PLAINTIFF**

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| STATE OF SOUTH CAROLINA ) | |
| ) | COURT OF COMMON PLEAS |
| COUNTY OF PICKENS ) | |
| EPS Advisors, LLC, ) | **AMENDED DEFENDANTS' MOTION FOR RECONSIDERATION AND AMENDMENT OR ALTERATION OF JUDGMENT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL** |
| Plaintiff, ) | |
| vs. ) | |
| Jan Fredman and Clemson-EPS Advisors, LLC, ) | |
| Defendants. ) | **Case #2013CP3900434** |

Defendants, pursuant to ***Rule 59, SCRCP,*** hereby move for the Court to reconsider and alter or amend its judgment, filed on May 19, 2017, in the above captioned matter to enter judgment for Defendants on Plaintiff's conversion claim or, in the alternative, grant Defendants a new trial on the conversion issues. This Motion is based upon the following:

1. The Court erred in holding that the Defendants converted the sum of $15,802.77 contrary to the unrefuted evidence presented. The entire sum was paid by credits or setoffs for monies previously owed by Plaintiff to Defendants and the payment of the sum of $7,674.11 by Fredman to Plaintiff. Fredman presented specific evidence which Mr. Dameron did not refute and with which he agreed at trial showing that Plaintiff had, in fact, received more payment than $15,802.77. At trial, Dameron, as the managing partner of Plaintiff and as the previously designated 30(b)(6) witness, testified that benefits were received and that the Defendants do not owe anything to Plaintiff. Dameron also testified in his 30(b)(6) deposition, as well as at trial, that Fredman paid to him $7,674.11 and his letter of April 20, 2010 shows the payment occurred prior to his letter.

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2. The Court erred in awarding interest on the entire $15,802.77 in complete disregard of the unrefuted evidence that no conversion occurred. Defendants paid the entire amount within days of receiving the money from Schwab by way of satisfying a prior indebtedness of Plaintiff to Defendants in the amount of $6,345.00, applying Defendants' share (85%) of the $3,485.00 which Plaintiff received directly from Schwab on fees generated by Fredman and to which Defendants were entitled, and the payment to Dameron of $7,674.11, which Dameron, in his 30(b)(6) deposition, admits receiving. Trial testimony also established that $3,485.00 was collected by Plaintiff directly from Schwab for fees earned upon Fredman's accounts and that Fredman was entitled to 85% of those fees consistent with the Court Order. Surely, Fredman is entitled to a credit against the $15,802.77 for his share of those funds or $2,962.25. To hold otherwise would render the Order internally inconsistent and contradictory. Clearly, Plaintiff received the total sum of $16,981.36 which exceeds the $15,802.77 to which Plaintiff was entitled from the monies paid by Schwab to Defendants. In other words, Plaintiff received $1,178.59 ($16,981.36 less $15,802.77) in excess of its share (15%) of the total fees earned or generated by Fredman during the period of January 1, 2010 through March 31, 2010.

3. The Court erred in failing to give Defendants credit for monies owed to them by Plaintiff from a previous quarter of $6,345.00. Fredman presented this by way of his testimony and a computation of the distribution of the money that was not challenged in any way by Plaintiff other than a statement of Susan Lockwood that she had looked and could not find an entry in the Plaintiff's books where the $7,674.11 had been deposited into the Plaintiff's accounts; however, Mr. Dameron testified in his 30(b)(6) deposition that Fredman wrote him a check and he cashed it. Since he admitted receiving the money in the 30(b)(6) deposition, the Plaintiff is stuck with that answer which conclusively proves that the money was paid.

4. The Court erred in failing to consider the testimony of Mr. Dameron in his Rule 30(b)(6) deposition, as well as his testimony at trial, that Defendants have paid the $15,802.77 and that Defendants do not owe any money to Plaintiff. When asked at trial if the pot was right and the money was where it was supposed to be, he confirmed that is was. He further testified at trial that, as the managing partner, he did not want to pursue the claim and thought the claim had been dismissed as the Defendants owed nothing, but was told he could not do so notwithstanding that he was designated as Plaintiff's 30(b)(6) witness and called to testify at trial on all of the relevant and material issues.

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5. The Court erred in awarding interest on the entire $15,802.77 for the period of April 9, 2010 through date of trial when the unrefuted evidence clearly is that, assuming a technical conversion occurred, the period of conversion was at a maximum only eleven (11) days, April 9-20, 2010; therefore, interest, if any, should have only been taxed on the appropriate amount for the period that Defendants had funds in their possession to which they were not entitled, not to date of trial. Once the full value had been received by Plaintiff - that is - the money restored to Plaintiff, any arguable conversion was terminated.

6. The Court erred in ruling that a conversion of the furniture occurred on April 20, 2010, the date Mr. Dameron, the managing partner of Plaintiff EPS Advisors, wrote a letter to Defendants demanding return of the items, notwithstanding that within a few days thereof, Dameron also served upon Fredman a trespass notice hindering and precluding Defendants and/or any of their emissaries or representatives from coming upon the premises of the Plaintiff. To hold as the Court did ignores basic bailment and/or contract law that a party cannot benefit from a breach of a duty of another if the actions of the party to whom the duty is owed prevents or impedes the other party from performing the duty. Stated more succinctly, where Defendant is prevented from performing his part of a contract by the conduct of the Plaintiff, the Defendant cannot be held liable for its nonperformance and Plaintiff cannot benefit therefrom. Under the circumstances, Defendants clearly exercised due care in protecting the goods. Plaintiff has never attempted to retrieve the goods from Defendants nor have Defendants refused to let Plaintiff have the goods. Furthermore, Defendants have exercised due care in the protection of the property from waste and damage and the items are still available for Plaintiff to pick up.

7. The Court erred in holding that the value of the furniture was $8,046.30 at the time it was allegedly converted as there was no evidence presented by Plaintiff to establish that value on April 20, 2010. The burden is upon the Plaintiff to prove each element of the claim and, while there may have been testimony of $8,046.30, at the time the items were purchased approximately a year or more earlier, that is not the value on April 20, 2010. It is submitted that a closer or more careful review of the Transcript of Record may even show that Plaintiff did not firmly establish the dates of purchase or dates acquired. Plaintiff also claimed that the items allegedly converted were the type that would depreciate rapidly in value from the date of the purchase thereby proving that the $8,046.30 is not a valid number that may be used as the value of the goods converted on April 20, 2010.

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8. The Court erred in awarding punitive damages in the amount of $35,000.00 for the alleged conversions of the sum of $15,802.77 and the furniture ($8,046.30) when the evidence fails to prove that Defendants converted the money and/or the furniture.

9. The Court erred in awarding punitive damages for the two (2) alleged conversions collectively without prorating them between the separate conversions - that is - the punitive damages awarded for the alleged money conversion of $15,802.77 and the alleged furniture conversion of $8,046.30. The Court should, at least, prorate the punitive damages to facilitate a fair adjustment of the verdicts in the event an appeal by the Defendants is successful and the Court is reversed on one or the other.

10. The Court erred in not wording its Order in such a manner that the two (2) issues, the money conversion and the furniture conversion, could be separately considered on appeal and, if one or the other is overturned, the punitive damages would not require a new trial or remand for redetermination of punitive damages for the remaining conversion.

11. The Court erred in not binding Plaintiff to the deposition and trial testimony of its designated Rule 30(b)(6) witness, David Dameron. Some of the more important parts of his deposition testimony that were seemingly ignored, or misconstrued or misapprehended include:

**Page 16, lines 1-5 [Dameron's Rule 30(b)(6) deposition]**:
Mr. Dameron stated that he is and was the managing member of the Plaintiff Corporation and, in relation to that, he testified at trial that he did not want to go through with the case and, in fact, thought that it had been dismissed sometime previously. He further stated that he was satisfied that Plaintiff had received everything to which it was entitled.

**Page 38, line 6 - Page 39, line 10 [Dameron's Rule 30(b)(6) deposition]:**
Mr. Dameron admits that Defendants wrote a check to EPS Advisors or him for $7,674.00 and that he cashed the check, so that portion of the $15,802.77 was paid and cannot be considered in computing the amount of any conversion.

Based upon that admission alone and even without allowing any credits for other sums owed by Plaintiff to Defendants, the conversion is not $15,802.77 but the difference between $15,802.77 and the $7,674.00, or the sum of $8,128.77. That difference, however, was accounted for by other monies owed to Plaintiff for the quarter ended December 31, 2009, a fact testified to by Fredman and unrefuted by any evidence of the Plaintiff. The Court, in the

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Order, held that Fredman was entitled to 85% of all fees that were generated by him through January 1, 2010 through March 31, 2010. It was also admitted that the sum of $3,485.00 on accounts that were not transferred over to Fredman as of March 31, 2010 was received by Plaintiff directly from Schwab. Based upon this evidence, as well as the Court's Order holding that Fredman was entitled to 85% of all his fees generated, he was/is also entitled to 85% of the $3,485.00, further reducing any amounts that could possibly be claimed converted.

**Page 46, line 24 [Dameron's Rule 30(b)(6) deposition]:**
Mr. Dameron admits that all he did was demand that Fredman bring back his furniture and equipment. He admits that he did not make any effort to go there and pick it up; that Fredman never told him he could not have the property; and that he sent the trespass notice to Fredman shortly after the April 20, 2010 letter. He further admitted that Fredman could not have delivered the property without violating the no trespass notice.

**Page 54, line 21 - Page 55, line 14 [Dameron's Rule 30(b)(6) deposition]:**
Mr. Dameron clearly testifies that Mr. Fredman was entitled to 85% of the fees collected from the clients of Fredman during the period of January 1, 2010 through March 31, 2010, and states that his whole claim was based on the fact that he believed that the Plaintiff EPS Advisors was entitled to the money first, but he candidly admitted that, even if he had received the money, he would have had to split it out according to the 85% - 15% division to which he had agreed.

**Page 81, lines 7-11 [Dameron's Rule 30(b)(6) deposition]:**
Mr. Dameron, in summing up his actions as managing partner of Plaintiff in January, admitted that he did not remit monies to Mr. Fredman as he was required to do in past quarters and, in particular, the quarter ended December 31, 2009. In fact, he candidly admitted that in January 2010 he had withheld monies to force Fredman into a modification of their relationship. He clearly says, when asked:

Q: Do you believe that you have the right if you owe me money, and we get into a dispute about some things, that you have the right to refuse to pay me unless I resolve that dispute?

A: Well, that's what I did.

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12. Lastly, it is submitted that the Court erred in failing to give any consideration to the actions of the Plaintiff (Mr. Dameron) throughout the course of their relationship in considering whether punitive damages should be awarded and determining the amounts thereof. The Plaintiff (Dameron) certainly did not have clean hands as there is ample evidence that Mr. Dameron did not live up to his promises under the agreements prior to January 2010. Fredman's phone service was disconnected and computer service was interrupted on several occasions due to Dameron not paying the bills as promised and that precluded and/or hindered Fredman from doing his job efficiently and effectively. Dameron also testified that Fredman paid things in the past which were Plaintiff's responsibility to keep things going and Plaintiff would have to reimburse him after the fact. Not only should the conduct of Fredman have been considered, but the relative conduct of Dameron and the manner of their business dealings with each other should have been weighed in determining the issues, particularly, the issue of punitive damages. When the history of the relationship of Fredman and Plaintiff (Dameron) is considered, "conscious indifference" of Fredman to the rights of Plaintiff simply does not exist to support an award of punitive damages to Plaintiff.

Based upon the above, it is respectfully submitted that the judgment of the Court is erroneous and that it should be amended, altered and/or modified to enter judgment for Defendants on all causes of action alleged including the conversion.

**AND I SO MOVE!**

Respectfully submitted,

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May 30, 2017
Walhalla, South Carolina

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| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF PICKENS ) | COURT OF COMMON PLEAS |
| EPS Advisors, LLC, )<br>)<br>Plaintiff, )<br>vs. )<br>)<br>Jan Fredman and Clemson-EPS )<br>Advisors, LLC, )<br>)<br>Defendants. )<br>_____ ) | **FREDMAN'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION**<br><br>Case #2013CP3900434 |

## CONVERSION OF MONEY

The Court found that $15,802.77 was the amount of money which Plaintiff was entitled from Fredman's billings for the quarter ended 03/31/2010 and that money was converted by Defendants in April 2010. The figure was obviously derived by taking 15% of the $105,352.50 that was paid to Fredman by Schwab rather than being sent to EPS Advisors. In determining this number, however, the Court erred in failing to consider Fredman's total billings for the quarter ended 03/31/2010 which totalled $108,837.50, not $105,352.20. The testimony was clear, from Dameron and Lockwood, that approximately twenty (20) of Fredman's accounts did not get transferred until after 04/01/2010 and that the fees earned on those accounts in the amount of $3,485.00 was sent by Schwab directly to EPS. **[Dameron: T., p.150, l.21 - p.152, l. 21; Lockwood: T., p.256, ll.14-22; Fredman: T., p.284, ll. 10-11]** Also, the evidence was unrefuted that those funds were also subject to the 85/15 split, meaning that Fredman was entitled to 85% of that money and EPS was entitled to 15%. Applying those percentages to the $3,485.00, it is a simple

calculation that EPS was paid $2,962.25 to which Fredman was entitled. **[Dameron: T., p.150, l.21-p.152, l.21; Lockwood: T., p.256, ll.20-22; Fredman: T., p. 284, ll.8-25; Pl. Exh. #5]** Stated another way, Fredman was entitled to 85% of $108,837.50 for a total of $92,511.87 and EPS was entitled to $16,325.63, not merely the $15,802.77. It is also clear, per the testimony and the Court's reasoning, that EPS received from Schwab $2,962.25 that belonged to Fredman so that amount reduced the amount of any money that Fredman could have even arguably converted to the sum of $13,363.38 ($16,325.63 less $2,962.25), not $15,802.77 as held by the Court.

The evidence further clearly showed, through Dameron's admission, that Fredman paid him and/or EPS $7,674.11 in April 2010 so that money was clearly not converted. **[Kern Opening Statement: T., p.9, ll.12-14; p.10, ll.7-8; Dameron 30(b)(6) Deposition: p. 37, l.18-p.39, l.10; T., p.106, ll.21-23; p. 107, ll.3-14; p.116, l.22-p.117, l. 13; p.125, ll.1-15; p.126, ll.6-15]** Giving Fredman credit for all monies to which he was entitled, without considering any monies owed to Fredman from the prior quarter ending 12/31/2009, the maximum that could arguably have been converted was $5,689.16. In that regard, the evidence clearly shows EPS owed to Fredman the sum of $6,345.00 for fees which it had not paid to him for the quarter ending 12/31/2009. Dameron clearly testified that the method of doing business under the contract from day one was that at the end of each quarter there would have to be some reconciliation of amounts that Fredman paid that EPS was supposed to pay and testified that the +5,000 designation of Plaintiff's Exhibit #3 meant that $5,000.00 of the check in the amount of $82,725.95 was "likely" a reimbursement for expenses paid by Fredman. **[Dameron 30(b)(6) Deposition: p.28, ll.15-25]** Fredman testified as to how the amount was calculated which he claimed was owed to him for the quarter ended

12/31/2009 and, Dameron, while not agreeing with the accuracy of the math, did agree with the accuracy of the calculation and/or method of calculation. **[Pl. Exh. 3; Dameron: T., p.145, l.17-p.146, l.25; p.168, ll.10-14; p.130, ll.2-14; p.148, l.24-p.149, l.17; p.150; Fredman: T., p.280, l.1-p.282, l.3]** Defendants' Exhibit #1, which was a record (billing summary) of EPS that was sent to Fredman in February 2010 by Lockwood, shows Fredman's total billings for the quarter ended 12/31/2009 to be $105,089.54. **[T., p.129, l.17-p.131, l.15; Fredman: T., p. 276, ll.19-20]** Both Fredman and Dameron testified that for that quarter the split was 80% to Fredman and 20% to EPS and that by applying the 80% to the total billings, Fredman was entitled to $84,071.63 for the quarter ended 12/31/2009. **[Dameron: T., p.166, l.18-p.170, l. 1; Fredman: T., p.273, ll.1-5; p.275, ll.1-14]** The EPS check issued to Fredman for the quarter ended 12/31/2009, however, was in the amount of $82,725.95 **[Pl. Exh. #3]** and Dameron's testimony confirmed that. Dameron further testified he could not remember exactly what the $5,000.00 was for but said it was most probably for things that Fredman had paid that EPS was supposed to have paid and that the $5,000.00 would have been owed to Fredman to reimburse him for those expenses. **[Dameron: T., p.71, ll.10-14; p.76, l.6-p.77, l.10]** Dameron also agreed that if $5,000.00 was for reimbursement of expenses, which he thought they were, then the portion of the check applicable to fees for the quarter ending 12/31/2009 was only $77,725.95 ($82,725.95 less $5,000.00). Deducting the $77,725.95 (fee portion of check) from the $84,071.63 that Fredman was actually due, EPS owed Fredman the sum of $6,345.68 ($84,071.63 less $77,725.95) for fees earned but not paid for the quarter ended 12/31/2009. Although Dameron did not testify to specific numbers, he did testify that the amount of $6,345.00 claimed by Fredman (correct computation = $6,345.63), would be accurate if the math was right since the method of

computation was correct. Based upon that evidence, the math speaks for itself and shows that, in fact, EPS ended up with $655.73 more than it was entitled to - that is - nothing was converted as Fredman overpaid to EPS the portion of any funds paid to him by Schwab that belonged to EPS. Summarized, EPS was entitled to $16,325.63 less $2,962.25 (85% of Fredman's billings paid to EPS by Schwab for the twenty plus [20+] accounts that were not transferred until after 03/01/2010) and $6,345.63 due Fredman for the quarter ended 12/31/2009 as per the computation. Therefore, when Fredman paid to Dameron the $7,674.11 in April 2010, EPS had received $656.36 more than it was entitled to. Again, Dameron candidly admitted that the method of computation was correct and, if the math was accurate, the "pot was right" and EPS was not entitled to any more. **[Dameron: T., p.150, l.5-p.152, l.21]** Accordingly, Fredman converted no monies whatsoever belonging to EPS. **[Def. Exh. #5; Fredman: T., p.277, l.1-p.285, l.7]**

## CONVERSION OF PERSONAL PROPERTY

The Court held that the value of the personal property converted was $8,046.31, but that figure is not supported by the evidence.

Dameron testified that the value of the property at the time of the conversion was approximately $2,500.00. **[T., p. 104, ll. 8-11]**

Lockwood did testify that when those items in issue were bought in mid 2008, $8,046.31 was put on the books of EPS **[Lockwood: T., p.200, l.17-p.201, l.16]** but she testified that figure consisted of a combination printer/copier/scanner which was leased at a value of $1,700.00 and the Court specifically held that those items were not an issue. Lockwood also testified to the cost of the furniture and computers, but she also admitted

that computers depreciate rapidly and she gave no value of the computers on the date of the alleged conversion in April 2010. **[Lockwood: T., p.200, l.1-p.201, l.16]** Page 4 of the Order says that the items converted "consisted of 2 nice chairs, 4 or 5 smaller chairs and a table," and specifically said there were some additional equipment referenced but these were subject to leases and repossessed and, therefore, did not appear to be an issue. Notwithstanding, the Court valued the "2 nice chairs, 4 or 5 smaller chairs and a table" at $8,046.31 apparently based on Lockwood's testimony that EPS' Quickbooks listed the purchase price of a combination printer, etc. to be $1,700.00, computers at $2,556.00 and the table and chairs at $3,800.00 **[Lockwood: T., p. 200, l.20-p.201, l.16]** but she never testified that they were in Fredman's possession after he moved into his Seneca office. Dameron testified that the computers were at the old Clemson office and that when Fredman moved he purchased new computers, so any computers in Fredman's possession and used by him were owned by Fredman, not EPS. **[Dameron: T., p.128, ll.10-13; p.136, l.10-p.137, l.12]** When that is considered, the only property that could even be considered converted was the furniture, which the Court found and which Lockwood testified was placed on the books at time of purchase some year and a half earlier at $3,800.00. **[Lockwood: T., pp.23-25]** Of course, Defendants' position is that no conversion of anything occurred as Fredman's only duty, once he was given a no trespass order and directions not to contact Dameron in any way, was to safe keep them, which he did. The items have not been used, destroyed or disposed of, have been very well protected, are stored and still available for EPS to pick them up if it wishes to have possession. Dameron testified that he made no effort to go to Fredman's premises to demand his goods or to try

and reclaim them in any way. **[Dameron: T., p.122, l.16-p.123, l.23; p.128, ll.10-25; .136, l.10-p.137, l.12]**

In summary, the evidence is clear that no conversion occurred but, even if a conversion did occur, it was only the table and chairs with a value when purchased, not as of date of conversion, of $3,800.00 not $8,046.31. It is respectfully submitted, therefore, that the Order must be changed, modified or amended to accord with the evidence.

Respectfully submitted,

Larry C. Brandt (S.C. Bar #856)
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***Attorney for Defendants***

October 13, 2017
Walhalla, South Carolina

65118

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
NOV 13 2017
SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2013CP3900434

EPS Advisors, LLC . . . . . **Respondent,**

v.

Jan Fredman and Clemson-EPS Advisors, LLC . . . . . **Appellants.**

**NOTICE OF APPEAL**

Jan Fredman and Clemson-EPS Advisors, LLC, appeal the Order [judgment] of the Honorable Perry H. Gravely, dated October 31, 2017. Appellants received written notice of entry of this Order [judgment] on November 2, 2017.

November 8, 2017

Larry C. Brandt (S.C. Bar #856)
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***Attorney for Appellants***

***Other Counsel of Record:***

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***Attorney for Respondent***

Sarah Meadows Gable
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Liberty, South Carolina 29657
***Attorney for Respondent***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

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SC Court of Appeals

Perry H. Gravely, Circuit Court Judge

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Case No. 2013CP3900434

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EPS Advisors, LLC . . . . . **Respondent,**

v.

Jan Fredman and Clemson-EPS Advisors, LLC . . . . . **Appellants.**

---

**PROOF OF SERVICE**
**(Notice of Appeal)**

---

I certify that I have served the ***NOTICE OF APPEAL*** upon ***EPS Advisors, LLC,*** by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorneys of record as follows:

Candy Kern-Fuller
***Upstate Law Group, LLC***
200 E. Main Street
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***Attorney for Respondent***

Sarah Meadows Gable
Attorney at Law
125 Chandler Drive
Liberty, South Carolina 29657
***Attorney for Respondent***

November 9th, 2017

Larry C. Brandt, P.A.
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By: Debra C. Miller
Debra C. Miller, Paralegal

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Larry C. Brandt
lcb.brandtlawfirm@att.net


COPY

November 8, 2017

The Honorable Harold P. Welborn, Jr.
Clerk of Court for Pickens County
P.O. Box 215
Pickens, South Carolina 29671

RECEIVED
NOV 13 2017
SC Court of Appeals

**Re: EPS Advisors, LLC vs. Jan Fredman and Clemson-EPS Advisors, LLC**
**Pickens County Case #2013CP3900434**

Dear Mr. Welborn:

On behalf of the Defendants in the above matter, enclosed for filing are the original and one (1) copy of a ***Notice of Appeal,*** together with the ***Proof of Service*** for same. I ask that you please file stamp the copy and return it to me in the envelope provided. In the event you have questions or need additional information, please let me know.

Sincerely,

**LARRY C. BRANDT, P.A.**

Larry C. Brandt
Attorney

LCB/dcm
Enclosures

cc: Candy Kern-Fuller
Sarah Meadows Gable
***Attorneys for Plaintiff, EPS Advisors, LLC***

Jenny Abbott Kitchings
Clerk, Court of Appeals

# LARRY C. BRANDT, P.A.

ATTORNEY AT LAW

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November 8, 2017


RECEIVED
NOV 13 2017
SC Court of Appeals


The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

**Re: EPS Advisors, LLC vs. Jan Fredman and Clemson-EPS Advisors, LLC**
**Pickens County Case #2013CP3900434**

Dear Mr. Kitchings:

On behalf of Jan Fredman and Clemson-EPS Advisors, LLC, Appellants (Defendants) in the above matter, enclosed for filing are the original and two (2) copies of a ***Notice of Appeal.*** Also, enclosed are the following:

(1) Proof of Service of the Notice of Appeal upon the Respondent (attached to the Notice of Appeal);
(2) A copy of the Order being challenged on appeal;
(3) The filing fee of $100.00.

I ask that you please file stamp the copies and return them to me in the envelope provided. In the event you have questions or need additional information, please let me know. Thank you for your help and cooperation.

Sincerely,

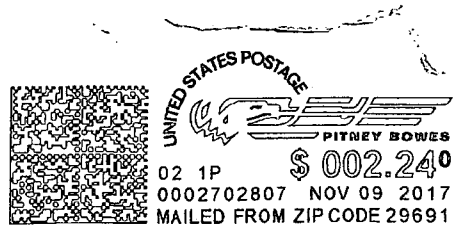
**LARRY C. BRANDT, P.A.**

Larry C. Brandt
Attorney

LCB/dcm
Enclosures

cc: Candy Kern-Fuller
Sarah Meadows Gable
***Attorneys for Plaintiff, EPS Advisors, LLC***

Harold P. Welborn, Jr.
Clerk of Court for Pickens County




*LARRY C. BRANDT, P.A.*
3691 Blue Ridge Boulevard
P.O. Box 738
Walhalla, SC 29691

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SC Court of Appeals

TO

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF COURT
SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211

57

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 18 2017
SC Court of Appeals

APPEAL FROM PICKENS COUNTY
In the Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

C.A. No.: 2013-DR-39-0434

EPS Advisors, LLC ..... Respondent/Cross-Appellant

v.

Jan Fredman and Clemson-EPS Advisors, LLC.....Appellant/Cross-Respondent

**NOTICE OF APPEAL**

EPS Advisors, LLC hereby appeals the Order of the Honorable Perry H. Gravely, dated May 29, 2017, which was later altered by the Order on Defendant's Motion for Reconsideration dated October 31, 2017, and received by the undersigned Respondent/Cross-Appellant on November 2, 2017.

Candy Kern-Fuller, Esq. (SC Bar No. 11392)
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(864) 855-3446 (facsimile)
Candy@UpstateLawGroup.com

**ATTORNEY FOR EPS ADVISORS, LLC**
**RESPONDENT/CROSS-APPELLANT**

December 4, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY
In the Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

C.A. No.: 2013-DR-39-0434

EPS Advisors, LLC ..... Respondent/Cross-Appellant

v.

Jan Fredman and Clemson-EPS Advisors, LLC.....Appellant/Cross-Respondent

**PROOF OF SERVICE**

I certify that pursuant to SCRAP 203(b)(1), I am serving a copy of the Notice of Appeal upon Appellant/Cross-Respondent by depositing a copy of it in an envelope via the United States First Class Mail on December 4, 2017 addressed to:

Larry C. Brandt, Esq.
PO Box 738
Walhalla SC 29691

Candy Kern-Fuller, Esq. (SC Bar No. 11392)
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December 4, 2017

**ATTORNEY FOR RESPONDENT/CROSS-APPELLANT, EPS ADVISORS, LLC**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM PICKENS COUNTY
In the Court of Common Pleas

RECEIVED
DEC 18 2017
SC Court of Appeals

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case 2017-002347

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EPS Advisors, LLC ..... Respondent/Cross-Appellant

v.

Jan Fredman and Clemson-EPS Advisors, LLC.....Appellant/Cross-Respondent

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**PROOF OF SERVICE**

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I certify that pursuant to SCRAP 203(d)(1)(B), the filed a copy of the Notice of Appeal upon lower court in Pickens County, South Carolina via e-filing on this 14th day of December, 2017.

Further, pursuant to SCRAP 203(d)(1)(B) the undersigned is filing a copy of the same plus all attachments required by said rule in an envelope via the United States First Class Certified Mail on December 14, 2017 addressed to:

The Honorable Jenny Abbott Kitchens
P.O. Box 11629
Columbia, SC 29211

With copies of the same served on the Attorney for Appellant/Cross-Respondent via the United States First Class Certified Mail on December 14, 2017 addressed to:

Larry C. Brandt, Esq.
PO Box 738
Walhalla SC 29691

Candy Kern-Fuller, Esq. (SC Bar No. 11392)
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December 14, 2017

**ATTORNEY FOR RESPONDENT/CROSS-APPELLANT, EPS ADVISORS, LLC**

UPSTATE LAW GROUP, LLC

Candy M. Kern-Fuller, Esq.
Managing Partner

Howard E. Sutter, III, Esq.
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SC Court of Appeals

December 14, 2017

The Honorable Jenny Abbott Kitchings
**South Carolina Court of Appeals**
P.O. Box 11629
Columbia, SC 29211

**Re:** EPS Advisors, LLC v. Jan Fredman and Clemson-EPS Advisors, LLC
Case Number: 2009-DR-04-1308
Appellate Case 2017-002347

Dear Ms. Kitchens:

Pursuant to SCRAP 203(d)(1)(B), please find attached the Notice of Appeal served on Larry Brandt, Esq. on December 4, 2017, pursuant to SCRAP 203(b)(1), and proofs of service for the Notice of Appeal served upon him on that date and the filings with this Court and the lower Court today. Please also find attached our check in the amount of $100.00 for our filing fee.

Mr. Brandt previously appealed this matter and, as such, I believe that his clients (Jan Fredman and Clemson-EPS Advisors, LLC) are the Appellant/Cross-Respondent in this matter and my client (EPS Advisors, LLC) is the Respondent/Cross-Appellant in this matter.

Due to the multiple appeals in this matter, pursuant to SCRAP 206, we would respectfully request that a briefing schedule be established once Mr. Brandt notifies us and the Court that he has received the transcript from the hearing on the Motion for Reconsideration. (The transcript from the original non-jury hearing has already been received by both parties.)

Please advise as to whether you require anything further in this matter.

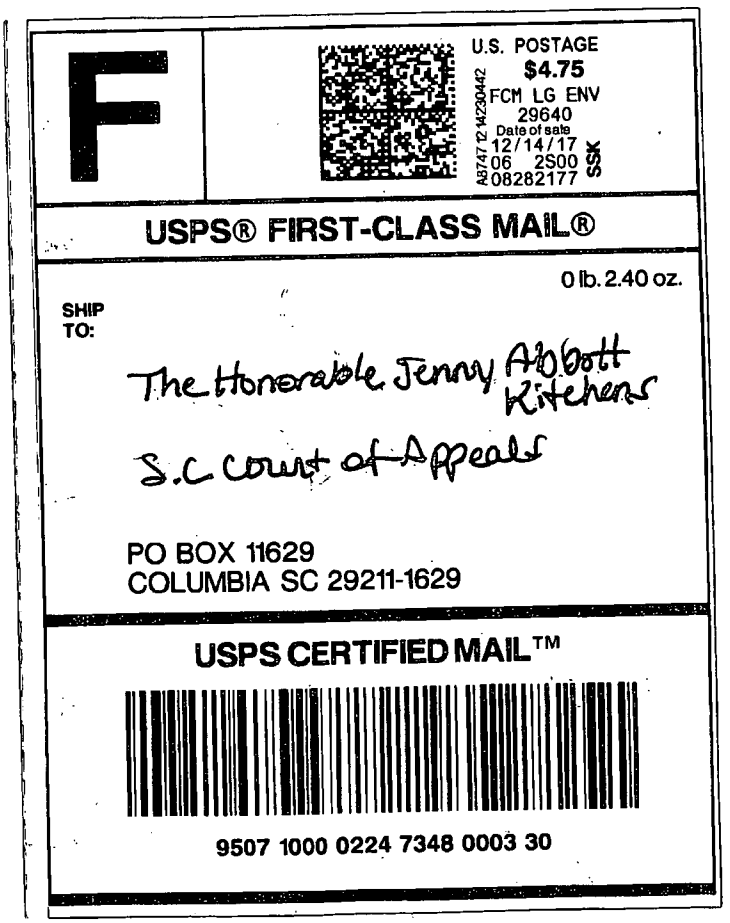
With kindest regards,

Candy M. Kern-Fuller, Esq.

cc: Mr. Larry Brandt, Esq.
clients

Upstate Law Group LLC
200 E. Main St
Easley SC 29640

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THE COURT: Good morning. Are we ready to proceed?

MS. KERN-FULLER: Yes, Your Honor.

THE COURT: All right.

MR. BRANDT: Yes, Your Honor.

THE COURT: Let's -- you know, I don't need a, quote, "opening statement" but I guess I would like a preliminary -- just kind of give me the highlights of what you intend to prove?

MS. KERN-FULLER: Yes, Your Honor. Your Honor, I represent EPS Advisors LLC. David Dameron is sitting in the first row and Susan Lockwood, who were the members of that LLC. Their company was a financial advising company.

They had a stockbroker side of their company that they did and then they had a registered investment advisor's side of the company that they did.

And I'm doing this because you're going to hear words like IAR, which is an investment advisor representative and RIA, which is registered investment advisor.

And when we talk about the RIA side,

that's the part of it that's pertinent to this case.

Mr. Dameron and Ms. Lockwood had this business. The business was based out of Anderson. As part of their business, they had contracted individuals who advised clients.

The clients came to them with an amount of money that they wanted to invest. And you're going to hear the term "assets under management." Because if I took a hundred thousand dollars to Ms. Lockwood to invest for me, then that is my assets, that's my total assets under management.

And the way that they earn fees for what they do is that they charge one percent of the asset under management. And that is billed in arrears at the end of every quarter. So the first quarter of the year, January through March 31st, they would earn a quarter of a percent of my asset under management and that would be billed in April.

So they would get a list in April of all the accounts that they had and all the assets they had under management. And they

would look at the tally they'd get from the company, which in this case was Charles Schwab. And they would look at what Schwab says and they would look at what they have and they would do reconciliation and make sure that Schwab told them accurately what the amounts were. Then Schwab would put money into a fee account for them for the clients that they had, for their assets under management.

From that fee account then EPS advisors would pay its individual agents, like Ms. Lockwood, like Mr. Dameron and like Jan Fredman.

What we intend to prove in this case is that when Jan Fredman came to EPS Advisors, he'd had a lot of problems in the industry. We've done Rule 32 designations, which I hope Your Honor got a copy of. But you're going to see that when he came to EPS Advisors, he was "damaged goods." They rehabilitated him. They set him up with this own shop down in Clemson. They bought him furniture; they bought him a computer; they gave him back office support, which in their

industry is critical, because customers are everything. When those customers call, they want a call back. Ms. Lockwood was part of that back office support.

And as part of that, the advisor, who is the contractor of EPS Advisors, doesn't get the whole amount of that quarter of a percent. They get a portion. And that portion is negotiated through EPS advisors and the advisor. The contracts that are signed by the clients, that are the clients who invest their money into the Schwab account, sign that contract with EPS advisors. The client agrees to pay EPS Advisors that one percent a year.

And in this case, they set Mr. Fredman up in his own shop, rehabilitated him after he had a sabbatical from the industry, because of some issues that will come out in trial, that are an exhibit to the Rule 32 designations. And basically they've given him the career he has now.

And in return, what did he do? Well, he started in the fall of 2009. He incorporated an LLC called Clemson-EPS

Advisors. He told Me. Dameron that it was going to be a collaboration between him and EPS Advisors. He put it in his name.

Then he started a process where, according to his testimony beginning somewhere in January of 2010, he started contacting Schwab to set up his own shop as Schwab. He conspired with Schwab. And there was a financial advantage to Schwab because now Schwab would get the percentage that EPS Advisors was getting for managing him instead EPS advisors.

So he sets up his own shop. He keeps all the furniture that they bought for him. He keeps the computer equipment that they bought for him. He even keeps the sign that they bought for him, because it's Clemson-EPS Advisors.

And come April -- somewhere in March he started transferring, with Schwab's collaboration, all of his clients from EPS Advisors over to Clemson-EPS Advisors.

And then come April 1st, according to his FINRA, he reports "now I'm with Clemson-EPS Advisors, is my own shop." And his

testimony matches that.

But what does he do? I told you they bill in arrears. The check comes in for a hundred and five thousand dollars and some change ($105,000-and-some-change) from Schwab to Clemson-EPS Advisors and he takes it all. He has no contracts with these individual clients for January through March 31st, 2010. That contract was between EPS Advisors and the client and he took all of the commissions.

And to this day he wrote one check for about seven thousand dollars ($7,000), that he determined EPS was owed.

You'll see in the testimony that there was no written contract between the parties, but that there were some oral contracts and they were in negotiations about what the ultimate result of that oral contract was. They had had a dispute at the last quarter of 2009 about what the amounts would be due. And in that case, Mr. Dameron held his commissions for a few days while they resolved the dispute, and then they came to terms and he paid him the amount he was

due. And that's what should have happened in this case, but it's not what happened.

He converted for his own use the whole hundred and five thousand dollars ($105,000). He converted all of the equipment and he decided to write a check for seven thousand and some change ($7,000-and-some-change).

So we have alleged in our case several causes of action:

First, we have alleged that there was conversion, and we're going to ask that the Court give us the highest value of the property at the time it was converted plus prejudgment interest.

We allege breach of contract because there was a working agreement between the parties and that agreement had been -- the written contracts were between the clients and EPS Advisors and that he breached the agreement for his own benefit, that he received the back office support that he was promised to get, and he didn't make the portion of the payment that had been agreed upon.

fine.

(BRIEF BREAK)

THE COURT: All right. Are we ready to go back on the record?

MS. KERN-FULLER: Yes, Your Honor.

THE COURT: All right. I'll be glad to hear from you, Ms. Kern.

MS. KERN-FULLER: Your Honor, I have just a few things that I want to address based on Mr. Brandt's opening argument.

What I heard from his opening argument was an argument basically about accounting and setup. And I wanted to move *in limine* -- and I'm passing up a copy of Mr. Brandt's Answer on behalf of the defendant. In this Answer, there is only denials. There are no affirmative defenses. There are no counterclaims. So I would move *in limine*, based on their Answer, to preclude any testimony based on accounting or setup or any of these things. They haven't been pled. All they've done is deny the allegations in the Complaint. And accounting and setup are affirmative defenses. And if they allege that my client owes them anything, they've

made no counterclaims. So -- (pause).

THE COURT: Well, I think that's more appropriate to -- I mean, if they introduce anything at that time, I think an objection at that point would be more appropriate since we're not dealing with a jury that you have to worry about, you know, him ringing a bell or whatever.

MS. KERN-FULLER: Okay.

THE COURT: So I think it would be more appropriate at that time to address those kind of issues.

MS. KERN-FULLER: The second motion we now have is if Mr. Brandt intends to call Mike Cruce.

I'm handing up another copy, Your Honor, (tendering). Mr. Cruce is a former business partner of Mr. Dameron's. What I have handed up is a copy of their dissolution agreement. It was effective September 24th, of 2009. All of the allegations in our complaint, Your Honor, arise from January of 2010 to March of 2010 when he started organizing a competing business and then he took all of the commissions for that first

Excerpt of Fredman's Depo. read into the record by Plaintiff



*Q. Okay. Did that affect your ability to transact business as ---*

*A. No, ma'am.*

*Q. All right. Is that a true and accurate copy of your FINRA broker check?*

*A. Yes, ma'am.*

*Q. If you go to the next to the last page that has the number fifteen on the bottom right-hand corner. They're front and back. Do you see the one that has a fifteen at the bottom?*

*A. Yes, ma'am.*

*Q. Okay. So it appears as if you were terminated from the UBS Financial Services, Inc. Do you recall that?*

*A. Yes. That's correct.*

*Q. And it listed the allegations for your termination, that it was alleged, you obtained a controlled substance by fraud.*

*A. That should be correct.*

*Q. Was that a prescription drug that you allegedly obtained by fraud?*

*A. Yes.*

*Q. Okay. And then down in the second paragraph it says Mr. Fredman was discharged*

Excerpt of Fredman's Depo. read into the record by Plaintiff



*after he admitted to forging the signature of a physician who was an authorized signatory on a UBS account on multiple prescription pages take from the physician without his permission. Do you see that?*

*A. Yes.*

*Q. Did you make that admission to UBS?*

*A. Yes.*

*Q. Okay. Are those the allegations that were surrounding the criminal charges that have been expunged?*

*A. Yes.*

*Q. Okay. So it wasn't simply that you were taking too many drugs. You actually committed a forgery to obtain prescription drugs; is that correct?*

*A. Yes.*

*Q. Now, coming forward, if you will, there are other reported incidents that have occurred under the course of your time as an investment advisor; is that correct?*

*A. Yes, ma'am.*

*Q. And those allegations also included while you were with UBS that you sold shares of the client's stock without consulting the*

*FINRA report and you've got numerous reports of cases/allegations by clients, 2004, 2008 and then ultimately these issues of forgery and fraud in 2008; right?*

*A. Yes, ma'am.*

*Q. And EPS Advisors took you in with this history?*

*A. Yes, ma'am.*

*Q. And would it be fair to say that they rehabilitated your career?*

*A. Yes, ma'am.*

*Q. And in doing so they set you up to have the business that you have today; didn't they?*

*A. Yes, ma'am.*

*Q. As a registered person with FINRA, is it your responsibility to make sure this is correct; right?*

*A. Yes.*

*Q. Okay. When did you form Clemson-EPS Advisors, LLC?*

*A. Fall of 2009.*

*Q. Why?*

*A. Best of my recollection was that me and Mr. Dameron -- I was going to start*

Excerpt of Fredman's Depo. read into the record by Plaintiff



*reconciliation on some stuff that's done with Schwab. So to get that done, I had to have an LLC formed for corporate management.*

*Q. Okay. So the original game plan was that whatever it is you were going to do with Schwab, you were going to do it as far as EPS Advisors with Mr. Dameron?*

*A. Mr. Dameron was involved, yes.*

*Q. Okay. And Mr. Dameron is one of the two principals of EPS Advisors LLC; right?*

*A. Yes.*

*Q. And that was the company with which you had contracted as a producer?*

*A. Yes.*

*Q. Okay. So when you formed Clemson-EPS Advisors, you did it with the knowledge of Mr. Dameron?*

*A. Are you asking if Mr. Dameron knew about it?*

*Q. Yes, sir, I am.*

*A. Yes.*

*Q. And you told Mr. Dameron that the intention was it would be a joint venture for you all to do with Schwab?*

*A. Yes.*

Excerpt of Fredman's Depo. read into the record by Plaintiff



*Clemson-EPS Advisors had a direct contract with Schwab?*

*A. Best of my recollection in the end of March 2010.*

*Q. Right before the end of the quarter of March of 2010; is that correct?*

*A. Yes, ma'am.*

*Q. And as a result of getting the contract with Schwab right before the end of the quarter of March of 2010 Clemson-EPS Advisors took all of the commissions that were earned by the plaintiff in this case, EPS Advisors, as its own for that first quarter of 2010; didn't it?*

*A. I paid Mr. Dameron the fifteen percent that we had agreed on.*

*Q. That wasn't my question. My question was did initially you take the full amount of the commissions?*

*A. Yes.*

*Q. Okay. And as a follow-up question to that, how did you pay him the fifteen percent?*

*A. To the best of my recollection I sent him a check. I can't remember exact*

Excerpt of Fredman's Depo. read into the record by Plaintiff



dollars and cents. Plus, he had owed me five thousand dollars from a previous paycheck and he got some of the commission from some of the clients that overlapped in the time period from a quarter. I think it was like thirty-five hundred, something like that. It should be about fifteen percent.

Q. Okay. So let's back up and let me understand. Why was it that you felt you could take all of the commissions and only tender fifteen percent?

A. Fifteen percent, the best I recall that was our agreement.

Q. What agreement?

A. We had an agreement, I'm going to pay him fifteen percent commissions out of my paycheck.

Q. Okay. Were you a contractor or were you an employee?

A. A contractor.

Q. Okay. Was that contract in writing?

A. Best of my recollection, no.

Q. Okay. Do you have a copy of any writing that in any way documented what the agreement was?

A. Yes. We do have -- we have a piece of paper that shows what we talked about doing.

Q. Okay. What is that piece of paper; can you describe it to me?

A. It's the -- Mr. Brandt probably has one of them.

Q. I understand. Mr. Brandt is not testifying. I'm asking you.

A. I didn't know how it worked there.

Q. Sure. Read Line 10.

A. Oh, the answer. I'm sorry, (reading): So just writes down, you know, do this, that, what Mr. Dameron was going to do for fifteen percent.

Q. Does it in any way ever say you're going to get the hundred percent and remit the fifteen percent to him?

A. Best of my recollection, no.

Q. The contracts that your clients have were they with Clemson-EPS Advisors or were they with EPS Advisors, LLC?

A. Which time frame are you talking about?

Q. First quarter of 2010?

Excerpt of Fredman's Depo. read into the record by Plaintiff



A. First quarter of 2010 we end up with EPS Advisors up to the end and around the first of April. That was the Clemson-EPS Advisors.

Q. January and February 2010?

A. EPS Advisors.

Q. And each of the clients were told that you were going on your own from EPS Advisors to start your own group, Clemson-EPS Advisors?

A. That's my recollection. Yes, ma'am.

Q. And that was contrary to the purposes that you had told Mr. Dameron you were setting the group up for back in the fall of 2009?

A. Yes, ma'am.

Q. When did you begin talking with Schwab about going out on your own?

A. Based on my recollection around the end of January or February.

Q. Was that a conversation you initiated or was it a conversation Schwab initiated?

A. Best of my recollection, I initiated it.

Excerpt of Fredman's Depo. read into the record by Plaintiff



Q. Okay. Now, would you agree with me that prior to the date that any limited power of attorney was signed to Clemson-EPS Advisors, that those were clients of EPS Advisors LLC; right?

A. No, that was my client.

Q. When they signed an authorization to open an account prior to March 2010 and they signed an agreement that their advising fees would be paid to the advisor, what advisor were they supposed to be paid to?

A. To me.

Q. It's your testimony that the Schwab paperwork will say that it is to be paid to Jan Fredman?

A. Was to be paid to EPS-Advisors and I would have -- we had to split the commission, me and David.

Q. So the contract that the client had was with EPS Advisors and then EPS Advisors had a contract with you? You were a subcontractor of EPS Advisors; is that correct?

A. Yes.

Q. Okay. But the things that are

Excerpt of Fredman's Depo. read into the record by Plaintiff



signed between the clients and the companies are between the clients and EPS Advisors prior to March of 2010; is that correct?

A. Yes.

Q. Okay. So there are advising fees that were to be paid by Schwab for January of 2010, February of 2010 and up and until the time the new limited power of attorney was signed by your company that you created was to be paid to EPS Advisors, LLC; right?

A. Right.

Q. But you took all of those for the accounts that you transferred over prior to the end of March of 2010; right?

A. Yes.

Q. Okay. Well, you decided to pay what you decided Mr. Dameron was owed, allegedly, by check; is that correct?

A. Yes, ma'am.

Q. Did you write the check to Mr. Dameron individually or did you write it to EPS Advisors LLC?

A. Best of my recollection, I think I wrote it to Mr. Dameron.

Q. Why did you write it to Mr. Dameron

*individually if your contract was with EPS Advisors LLC?*

*A. I cannot tell you. I'm not even sure if I wrote it David Dameron. I need to check my records, go back and check my bank.*

*Q. Are you sure you even wrote it at all?*

*A. Yes.*

*Q. Okay. And how would you have delivered this check to Mr. Dameron?*

*A. Best of my recollection, I put it in the mail, but I couldn't tell you. I would imagine I put it in the mail.*

*Q. Is there any reason you would have sent it anywhere other than to Anderson, South Carolina?*

*A. If that was the address on record, I would have sent it to Anderson.*

*Q. When is the last time you talked to David Dameron?*

*A. Best of my recollection, 2010.*

*Q. Did you talk to him after all of these accounts were transferred in March of 2010?*

*A. Best of my recollection, no.*

Excerpt of Fredman's Depo. read into the record by Plaintiff



A. Yes.

Q. And did he set that up himself with you in mind?

A. For me and Jack Taylor, yes.

Q. Did he provide you equipment?

A. Yes.

Q. Did he provide you furniture?

A. Yes.

Q. And did he provide you anything else other than the furniture, the lease, the equipment and the office?

A. He provided telephone, computer, secretary; according to what we had agreed on.

Q. Back office support?

A. Uh-huh.

Q. Is that a yes?

A. Yes. I'm sorry.

Q. Back office support is crucial to your industry; isn't it?

A. Yes.

Q. And all of those were things that you needed as an RIA to get up and operational?

A. Yes.

Excerpt of Jan Fredman's Depo. read into the record by Plaintiff & David Dameron -- Direct by Ms. Kern-Fuller



*currently grosses per year now?*

*A Around six hundred thousand.*

*Q. Of that, how much do you personally receive?*

*A. After secretary and stuff, probably about five hundred.*

MS. KERN-FULLER: Thank you, Mr. Dameron. I'm going to call you as a witness, so I don't know if they need to swear him or not.

THE COURT: All right. And you're going to now use him as a witness.

MS. KERN-FULLER: Yes, sir.

THE COURT: All right. If you would swear the witness.

DAVID CRAIG DAMERON, having been duly sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. KERN-FULLER:

Q. Mr. Dameron, can you tell the Court what relation you are to EPS Advisors, LLC?

A. I was the managing member.

Q. And what period of time were you the managing member for EPS Advisors, LLC?

A. We organized the business in 2008. From its inception until -- yeah, until I closed it.

Q. Do you recall when you closed the business?

A. 2010. No, 2011.

Q. Okay.

A. I think July 2011.

Q. And did you have any other partners in that business?

A. Yes.

Q. Who was your partner in that business?

A. Susan Lockwood.

Q. And that's the woman sitting over there at the table with me today?

A. Yes.

Q. And as the managing member of the LLC -- I'm sorry. I'll try to speak up. As the managing member of the LLC, was it your role to go out and find advisors to bring in to the company to "rain make"?

A. Yes.

Q. Was Jan Fredman one of those advisors that you brought in?

A. Yes.

Q. Now, you read the testimony in of Mr. Fredman in this case.

A. Yes.

Q. And you were intimately aware of the issues he'd had previously?

A. Yes.

Q. And despite those issues, you brought him into your business?

A. Correct.

Q. Why?

A. I felt like that that was in the past and6 going forward he could help in developing business.

Q. Did you think it was mutually beneficial to your business as well as to him?

A. I thought it would help the business. Of course, it would help him.

MR. BRANDT: If you could keep your voice up a little bit.

WITNESS: I'm sorry. Yes. I felt like it would help the business, yes. Obviously, I thought clearly it would help him too.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Now, you've heard his testimony where he admitted he was damaged goods. Would that be a fair assessment of him at that time?

A. I think that's a strong word. So he was not registered at the time. Whether or not he could have gone somewhere else, I don't know. But I do know that he wasn't registered at the time.

Q. Now, were you the person in the business that basically struck up the initial agreement in the 50/50 split with him?

A. Yes.

Q. Can you tell me how that came about?

A. The agreement?

Q. Yes, sir. Or bringing him in as a partner.

A. Yeah. We had met and he had given me a description of his situation. I accepted that and brought him aboard. And in the on-boarding we'd agreed that he would get 50/50 and that for his half he'd bring clients in. He would service those clients.

And for our half we would provide what we call back office services and support service.

Q. And you heard Mr. Brandt's opening statement. Did that also include rent and a place and utilities and all of that?

A. Initially it didn't, but over time we opened the Clemson office, downtown Clemson.

Q. And was it still 50/50 when you opened the downtown Clemson?

A. At the very beginning, yes. But then we -- I think the word we used was migrated to an 80/20 split shortly after opening that office.

Q. And let me back up. Was this 50/50 agreement ever in writing?

A. No.

Q. Was the 80/20 migration ever in writing?

A. Not to my recollection.

Q. And when you migrated from the 50/50 to the 80/20, what was that as a result of?

A. Well, what had happened was while we had agreed on 50/50 and we were going to

provide the office, the back office services and the rest, and that EPS was going to pay that out of their fifty percent, that's not what we did. We let the power go off. I didn't make a rent check. There were several bills and different things that we didn't pay that Jan paid personally. And then I was having trouble at the time trying to keep all of that rolling like it should have been. And so we agreed that Jan would get eighty percent. He would pay those bills and cover it and that we would still provide the services we had described.

But we decided to change the money split so that Jan could be in charge of that money and make sure the bills were paid and the lights stayed on and so on.

Q. And the other services that you were providing, those were the staff services, back office support?

A. By that point, the 80/20 and then for that the 85/15 was more to do, what we called, a compliance review, things where we had to interact with or otherwise make sure regulatory items were in compliance.

Q. And that's crucial in your industry; right?

A. Yes.

Q. If you fail to comply with something, what happens to your license?

A. Well, it's depending on the violation, but it's important to make sure that you stay in compliance.

MS. KERN-FULLER: Please mark this.

COURT REPORTER: Plaintiff's Exhibit 2 for identification.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 2. Do you recognize that document?

MR. BRANDT: Has it been marked?

COURT REPORTER: Plaintiff's Exhibit 1 for identification.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 2. Do you recognize that document?

A. Yes.

Q. Whose handwriting is this in?

A. Mine.

Q. Can you tell me the date of this document?

A. October 5th, 2009.

Q. And can you read for me what this document says?

A. (Reading): *"Jan, this is eighty percent of eighty-nine thousand ($89.000). You billed just over that. I am calculating a precise settle-up sheet for June through September -- I'm sorry -- for June through September 30. Then we can settle up one direction or the other."*

Signed, *David.*

(Reading): *"P.S. Look again at your discounts. They were over $10,000?"*

Q. What are discounts?

A. We had a fee that we charged the client and if we had a particular stated fee but for some reason we decided to charge them a different amount, in this case a discount.

Q. And did that mean that Mr. Fredman had given some of his clients a break on the fee and that those discounts totaled over ten

thousand dollars for that quarter?

A. Don't know. It could be timing when accounts come in. Because like when they come in during the middle of a period, you would have to prorate it for the timing of when it came in. I don't recall the detail of the discount.

Q. Okay. So by the first quarter of -- actually, this is the third quarter in 2009, you all had migrated to this eighty percent arrangement; is that correct?

A. Yes. So it looks like for the June to September quarter, the third quarter we had agreed 80/20.

Q. So that would have been the second quarter of 2009; is that correct? June to September?

A. June through September, the third.

Q. Okay. I'm really bad with calendar years. So that would have been the third quarter?

A. Right.

Q. Okay. So at that point in time, do you recall if there was any other amounts that were owed to him after you settled this

up?

A. I don't recall but I know that Jan had paid certain expenses out of pocket. We had agreed to certain expenses and then we could settle up one direction or the other was to kind of put a sharper pencil to the math, if you will. This is what I paid him preliminary, you might say.

Q. Okay. And so coming forward to the fourth quarter in 2009, was there anything that happened ---

MS. KERN-FULLER: Your Honor, I would move to put into evidence Plaintiff's Exhibit 2.

THE COURT: Any objection?

MR. BRANDT: No.

THE COURT: All right. Exhibit 2 in without objection.

(SO ENTERED AS PLAINTIFF'S EXHIBIT 2)

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Coming forward to the fourth quarter of 2009, Mr. Dameron, was there anything that happened with Mr. Fredman during that quarter?

A. I'm not sure I understand your question.

Q. Did you have any disputes with Mr. Fredman over the amounts that he was to be paid in the fourth quarter of 2009?

A. So at the beginning, the billing would be the beginning of 2010. We had a similar, if not exact agreement, 80/20 or 85/15. And Jan would have paid expenses. And then we would have had to -- somebody would reconcile that, so we would take the eighty-five that Jan would get and then if I'd paid more expenses or if he had paid more expenses, one or the other would owe the other party money.

Q. Okay.

A. And if after the billing of the fourth quarter of 2009, we billed in January 2010 then I had that money. And then I guess when you say did anything happen, we were trying to -- you know, we reconciled that and I paid him.

COURT REPORTER: Plaintiff's Exhibit Number 3 for identification.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 3, which appears to be a check to Jan Fredman signed by David C. Dameron. Do you recognize that check?

A. I do.

Q. Can you tell me, down in the for column what your notation is about?

A. So the for notation reads "12/31/09 plus $5,000." And so that check is for an amount that I would owe Jan for the billings ending 12/31/09 plus five thousand dollars owed to him from the previous billings.

Q. And I believe you heard Mr. Brandt's opening statement where he said you had held Mr. Fredman's money hostage. Do you know what he's talking about?

A. Yeah. Jan and I were trying to come to an agreement and I kept this money and essentially wouldn't pay him the money until I got Jan to put together what you had put before -- no, it wasn't that much. I held the money and said 'we've got to get nailed down the 85/15 and what is going to be paid

for.' And then 'let's get this reconciled.' I just kind of held it there until it says here the 12th.

Q. And did you and Mr. Fredman meet?

A. Yes.

Q. And did you all come to some sort of understanding about what was going to happen?

A. I call it a general understanding. We put together what was kind of an outline, bullet points, if you will, on a page. EPS would do this for fifteen percent. And going forward Jan would have eighty-five. We'd have fifteen. And then we had on the bullet points who was supposed to do what. And then if for some reason one or the other of us paid more money than we should, we'd reconcile that.

Q. Okay.

MS. KERN-FULLER: Your Honor, I would move to put Exhibit 3 into evidence.

THE COURT: All right. Any objection?

MR. BRANDT: No objection.

THE COURT: All right. In without objection.

(SO ENTERED AS PLAINTIFF'S EXHIBIT 3)

(SO MARKED AS PLAINTIFF'S EXHIBIT 4)

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, let me show you what's been marked as Plaintiff's Exhibit 4. Do you recognize that document?

A. Yes.

Q. Now, on page one of Exhibit 4, it's just a typed sheet. Did you or Ms. Lockwood type that?

A. I did.

Q. And is there anything in here about you paying -- you being EPS Advisors, paying utilities for Mr. Fredman as part of the 85/15 thing?

A. I'm sorry. Utilities in Anderson?

Q. No. Utilities in Clemson, for the Clemson office?

A. No.

Q. And if you go over to page two, there appears to be some handwritten notes on page two, there's a seven and an eight. Did you write number seven and number eight?

A. No.

January 2010, were y'all settled up?

A. As of January 2010 when I wrote him a check?

Q. Yes, with the extra five thousand dollars?

A. You know, I think so because, you know, it says the amount of the billing plus five thousand dollars. There could have been loose ends hanging out, but I think that would have -- we'd have noted it somewhere or like that.

Q. Do you think there was seventy-five hundred dollars worth of loose ends hanging out?

A. I really don't know. I know that we had been back and forth and things were erratic. And if there were, he could produce it but -- (pause) -- maybe five thousand was a round number. I just don't know.

Q. Did he raise any other amounts that he alleged you owed him in January after y'all settled up?

A. After I gave him the check for the third quarter plus five thousand?

Q. Yes?

A. Did he then say 'hey, you owe me more money for something else'?

Q. Correct. That's my question?

A. I don't know. I don't remember one way or the other.

Q. Okay.

A. I mean, it's very possible there was stuff that was hanging out there, but this had dragged on and kind of to the middle of that month, so I don't recall.

MS. KERN-FULLER: Your Honor, I would move to put Exhibit 4 into evidence.

THE COURT: Any objection on 4?

MR. BRANDT: I don't object to that Exhibit if she wants to put it in.

THE COURT: All right. Exhibit 4 is in without objection.

(SO ENTERED AS PLAINTIFF'S EXHIBIT 4)

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Now, Mr. Dameron, going to a different topic. When investment clients came in -- say, I was going to go to Jack Taylor as my investment advisor. Tell me what that process looks like. I walk in the

door. 'I say I have a hundred thousand dollars. Mr. Taylor, invest it for me.' When Mr. Taylor was an agent under EPS, how would that work?

A. The customer would write a check from whatever source to Charles Schwab. Schwab serves as the custodian. We, through agreements with Schwab, would open the account for them or with them, because it, of course, takes their signature. So they would open an account at Schwab. Schwab holds the money and then Mr. Taylor would be the advisor to the customer.

Q. Okay. When you say we would open the account. Who's the "we"?

A. Collective it would be the client opens the account at Schwab with the assistance of Mr. Taylor.

Q. And who does the client execute a contract with?

A. The client executes two. They execute an investment advisor contract with, in our case here, EPS Advisors or actually Liberty Advisors d/b/a EPS advisors, would be the contract. And then they would also

authorize them to execute an agreement with Schwab. A power of attorney allowing EPS to act on their behalf. And then there's a large body of Schwab paperwork for a new account, authorizing the check writing and stuff like that.

Q. Paper ---

A. A full inch-thick stack, if you will.

Q. In that inch-thick stack, are there ever any direct agreements between the client and the contracted advisor?

A. In the on-boarding, there would be an agreement between a client and in this case Liberty EPS.

Q. Right.

A. As the advisor firm to the party.

Q. Right. But not between the client and Mr. Taylor?

A. Correct.

Q. How would Mr. Taylor get paid if he was my advisor?

A. Schwab, under all of these documents and authorizations, the client authorizes the quarterly billing.

MS. KERN-FULLER: Okay. I'll rephrase, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, at some point after you met with him in January, did you learn about any communications that Mr. Fredman had had with Schwab?

A. Yes.

Q. And what did you learn about those communications that occurred between Mr. Fredman and Schwab?

A. I learned in, I guess -- you said the first quarter. Technically it would have been April 1st or so, the day or so after the quarter -- that Schwab and Mr. Fredman had been in communication, with Mr. Fredman creating his relationship with Schwab.

Q. Mr. Dameron, I'm showing you a copy that you provided me with the calls you made to Mr. Chalk. Does that refresh your recollection about when those phone calls were made?

A. Yes.

Q. Can you tell me the first day that

correct?

MR. BRANDT: Yeah.

THE COURT: All right.

MR. BRANDT: What number is that?

THE COURT: Number 5.

(SO ENTERED AS PLAINTIFF'S EXHIBIT 5)

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 5. Do you recognize that document?

A. Yes.

Q. Can you tell me what that document is?

A. It's essentially a demand letter.

Q. What were you demanding?

A. Money and the equipment.

Q. What kind of money were you demanding?

A. I demanded the immediate return of all the money. Let's see, (reading): "I demand the immediate return of all of the money you have diverted. It belongs to EPS."

Q. And how much was that amount at that time?

A. Well, the billing for the quarter was one-o-five-three-fifty-two and fifty cents ($105,352.50).

MS. KERN-FULLER: (Tenders document to be marked as exhibit).

COURT REPORTER: Plaintiff's Exhibit 6 for identification.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 6. At some point did you learn that that hundred and five thousand three hundred fifty-two dollars and fifty cents ($105,352.50) was paid from Schwab to someone other than EPS Advisors?

A. Yes.

Q. Who was it paid to?

A. Clemson-EPS Advisors, LLC.

Q. And was it paid before or after your demand on April 20th of 2010 via Exhibit 5?

A. Before.

Q. So at the time you made the demand that is Exhibit 5, this had already been paid directly to Clemson-EPS Advisors?

A. Well, I took the billings for the period, multiplied by four. I annualized those and then took the multiplier, two times annual revenue and it came to eight hundred eighty.

Q. And was that something you were demanding from Mr. Fredman as part of the damages that he caused your business?

A. Yeah. When I wrote this letter, I said that was my demand. The additional eight hundred thousand is for the diminished value of my firm. I was claiming his money -- his client's money revenues for the losses ongoing.

Q. Okay. So you've got the hundred and five thousand three fifty-two fifty ($105,352.50) that he got a check from Schwab for that. And then in addition to that you were claiming eight hundred and eighty thousand ($880,000)?

A. Yes.

Q. And you mention the printer and scanner and furniture and desks and things like that. When did you buy those for Mr. Fredman?

A. The middle of 2009.

Q. And this would have been ---

A. That's an estimate.

Q. Okay.

A. When we opened the Clemson office.

Q. Were they new when you purchased them?

A. Not everything. The copier was on a lease. The furniture was -- I bought from a used furniture place. The computers, I can't remember. It seems like there was a mixture of a new piece and then some stuff that we had in Anderson.

Q. And how did you pay for those items?

A. You mean -- just firm revenue.

Q. You wrote them out of the firm's account?

A. Right. So the copier lease payments and then write a check for the furniture and things like that, yes.

Q. And so those would have been reflected in your QuickBooks ledger of how much that actually was?

A. I mean, if it was an individual transaction for that, then yes.

Q. Okay. Do you have an estimated value of what the furniture and the equipment would have been worth at the time it was converted?

A. You mean like at the end of March 2010?

Q. Yes, sir.

A. Okay. I don't remember for sure, because I don't remember -- the number I wanted to answer your question with was like twenty-five hundred ($2,500) dollars.

And I can't remember if that was because it was later and it was used stuff or if it was because I'd put pencil to paper at that time.

Q. Would the QuickBooks records be the best record of what those amounts actually were at the time they were purchased?

A. Likely. My caveat there was depending on if I bought just that by that transaction or other stuff too.

Q. Mr. Dameron, when you discovered this hundred and five thousand ($105,000) dollar check was written to Clemson-EPS Advisors, LLC, what other action did you

take, other than in the civil realm?

A. I went to Walhalla and wrote a Complaint at the courthouse there.

MS. KERN-FULLER: May I ask that this be marked.

COURT REPORTER: Plaintiff's Exhibit 7 for identification.

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Mr. Dameron, I'm showing you what's been marked as Plaintiff's Exhibit 7. Do you recognize that document?

A. Yes.

Q. Whose handwriting in the middle of the page is on that document?

A. Mine.

Q. And for most of the second page, whose handwriting is on that document?

A. Also mine.

Q. And on the third page at the top, whose handwriting is on that document?

A. Mine also.

Q. And what was the purpose of you giving this statement to the Oconee County Sheriff's Office?

A. Why did I go up there and give this?

Q. Yes, sir.

A. I was mad at Jan and I was going to -- you know, I sent the demand letter. I was going to file a suit. I wanted to make sure that I had made the complaints I needed to make too.

Q. And this was on the 28th of April, 2010?

A. Yes.

Q. So if I follow the time line correctly, Exhibit 6 he got the check. It was issued on April 9th.

You wrote your letter to him on April 20th.

And by April 28th, you still have not received anything back from Mr. Fredman?

A. Anything? Like you mean the office equipment and stuff?

Q. The equipment, money, anything?

A. I'm not sure when his check to me was. You know, somewhere in -- I'm going to call it in April.

Q. Is it possible it was after you made this police report?

A. I mean it's possible. I just don't remember the timing.

Q. Okay. And how much was his check back to you for?

A. Something like seven thousand dollars, seven thousand and something ($7,000-something).

Q. So you had demanded he return a hundred and five thousand ($105,000) and to pay you eight hundred and eighty ($880,000) thousand, which was the industry standard, and give you your furniture back and he sent you check for about seven thousand ($7,000)?

A. Yes.

Q. Did the Oconee County Sheriff's Office ever contact you further after you made this complaint?

A. No, not to my recollection.

Q. And did criminal charges ever arise out of this complaint?

A. Not to my knowledge.

MS. KERN-FULLER: Your Honor, I would move to put this into evidence as Plaintiff's Exhibit 7.

THE COURT: All right. Any

action, breach of contract with fraudulent intent. What was the breach of contract with fraudulent intent?

A. I'm not clear on the fraudulent intent.

Q. Okay. Are you aware ---

A. Because he represented -- I mean, item twenty-two, because he represented the defendant.

Q. Did Mr. Fredman ever tell you prior to your discovery these bills were paid to Clemson-EPS Advisors in April that he had incorporated a competing business?

A. Yes. I knew Clemson-EPS was an LLC that he had set up.

Q. Did you know that he intended to compete with you during the first quarter of 2010?

A. Him starting his own firm and going out was a possibility. That was part of the 85/15 discussions, in the 85/15 discussions that he and I had. He was interested in having client support and things that I kind of knew that weren't related to the clients. He was interested in having in his words EPS

help with that. And so I knew that he had Clemson-EPS, that Clemson-EPS could become a firm, a registered firm. But I didn't know it in March 2010.

Q. You didn't know that he had actually started ---

A. I didn't know he was registered; right.

Q. Okay. You didn't know he was registered.

A. Right.

Q. And at any time did he represent anything to you other than he was an agent of EPS Advisors?

A. As opposed to registered?

Q. As opposed to registered in his own firm?

A. No.

Q. At any point in time during that first quarter of 2010, did he tell you he was competing against you?

A. No.

Q. And even though you knew it was a possibility at some point in the future that he might open his own shop or go with another

company or whatever, did you have any knowledge he had actually done it in the first quarter of 2010?

A. No. At the time we did the billing I didn't know it was -- or, you know, it was executed. It was just something -- it was one of those things in the middle of all of that 85/15, 'how are we going to go forward?' It was part of those conversations.

Q. At any point in time did you, as part of your divorce action, subpoena copies of the limited powers of attorney that were executed?

A. Yes, I think so.

Q. Did you review those?

A. Yes, I think I did.

Q. Did you have any concerns about any of them?

A. Yes. At the time I was mad and I thought, 'okay, did he really get all of these things signed behind my back or did he sign them himself' and that was what I was mad about. I think it could have been, you know, was just kind of -- as I kind of mentioned before, that was kind of a fuzzy

Q. Well, the contracts, as I understood it, was between the client and you?

A. Right.

Q. And Schwab.

A. So the money went from Schwab to EPS Advisors, that hundred and three ($103,000), whatever the check was.

Q. Uh-huh?

A. Yes. That went to EPS Advisors. I'm sorry. Clemson-EPS.

Q. And did that breach your contracts with those clients?

A. That was my allegation.

Q. Okay. But you said you hadn't pursued the clients for it. Did the clients ever pay you as they were contracted to pay you under your agreement?

A. No, I didn't pursue that.

Q. But you didn't get paid from the clients directly either, did you?

A. No, not directly.

Q. Did you get paid indirectly?

A. I mean, yeah, that's part of what Jan tried to do when he gave me the check in April, right? Because we had talked about

85/15. And then some of the loose-end numbers. And so setting those aside for a minute because I don't have an accounting of all of that, you would take what was billed from the clients to the fee disbursement account, EPS would have that times eighty-five percent. And then whatever side monies there may have been required, things that I should have gotten back from him or he should have gotten back from me, we call that reconciliation. Then there's a net amount to EPS. So that part, according to the math that he did, is what he paid in April.

Q. And during that time of that first quarter of 2010, you had no knowledge that he was actually competing against you and setting up this new company?

A. I didn't know he was registered; correct.

Q. As far as the conspiracy, I think you already talked about Mr. Chalk and Schwab and what they would have had to do to help Mr. Fredman set this up.

A. Right.

Q. Was there anything you needed to add

MS. KERN-FULLER: Thank you, Your Honor.

(BRIEF BREAK)

(WITNESS TAKES STAND)

THE COURT: All Right. Cross-examination.

MR. BRANDT: I do need one sticker here.

COURT REPORTER: Defendant's Exhibit Number 1 for identification.

MR. BRANDT: All right, let me look at -- Number 2.

COURT REPORTER: Number 2.

MR. BRANDT: That's 2.

COURT REPORTER: Okay. Defendant's 2 for identification.

CROSS-EXAMINATION

BY MR. BRANDT:

Q. Mr. Dameron, I want to show you a document that's been marked Defendant's Number 2 for identification and ask you if you can identify that?

A. Yes.

Q. What is it? Is it something that you created?

A. Yes. I mean with help of counsel, yes.

Q. And did you send that document to my client?

A. Yes, I think we did.

MR. BRANDT: I would offer this into evidence as (Defendant's) Exhibit 2.

THE COURT: Any objection?

MS. KERN-FULLER: Without objection, Your Honor.

THE COURT: All right.

(SO ENTERED AS DEFENDANT'S EXHIBIT 2)

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Tell us what that is.

A. I remind Mr. Fredman that we terminated him as an independent contractor. And that he is not to return to the premises for any reason during or after business hours, nor is he to send any emissaries on his behalf.

Q. Okay. And that was -- did you send that along with that letter or was it after that?

A. With the letter?

Q. There was a letter that was introduced that you wrote to him.

A. Oh, the demand letter. Exhibit 5, I think it is?

Q. Yes. I think it's Plaintiff's Exhibit 5. Did that go along with that same letter or did that go later?

A. I'm not sure. It could have gone with it. We could have posted it on his door. I don't remember exactly the mechanics of that.

Q. So basically, even though you demanded that he bring back the property ---

A. Right.

Q. --- you told him he couldn't send anybody with it and he couldn't come bring it to you. Isn't that what that says?

A. Yes.

Q. Is that the paper -- when it went through you asked him to bring it back and then told him he couldn't bring it back. And then you're suing him for converting it?

A. Yes.

Q. Okay. Now, this letter here sets forth, it's a computation, I think, that you

used for the quarter ended March 31, that hundred and five three fifty-two fifty ($105,352.50); correct?

A. Yes, sir.

Q. According to your agreement, was Jan owed any of that money?

A. Yes, sir.

Q. Of that hundred and five?

A. Yes, sir.

Q. Was he entitled to his eighty-five percent?

A. Yes, sir, he was.

Q. Regardless of all these other complaints, he was still entitled to that?

A. Yes.

Q. And if the figures compute out to where he got his eighty-five percent and you ended up getting fifteen percent of that value, the books were square, weren't they?

A. Yes, sir.

Q. Now, at that time, y'all had some discussion about that. It's referenced in that letter where you told him -- when he offered you that check?

A. Right.

Q. And he wrote you that check, did he not?

A. He did.

Q. And did he make it payable to you or EPS Advisors?

A. I don't recall. One or the other, but I don't recall if it was me individually or if it was to the company.

Q. Well, whether he paid you -- made the check to you individually or EPS Advisors it was due to EPS Advisors?

A. Right. It was ---

Q. And you would have put it in EPS Advisors if the check was to you personally?

A. Yes, sir.

Q. Now, he claimed the five thousand dollars -- he give you a computation of how he was coming up with his reconciliations of monies owed?

A. Normally.

Q. Did he give it to you in that instance?

A. With the five thousand dollars?

Q. Yeah. It says "your attempt to quantify what is owed to me as fifteen

thousand eight-o-two ($15,802), or seven thousand six seventy-four eleven ($7,674.11) when you illegally diverted a hundred and five three fifty-two fifty ($105,352.50) is unfathomable."

My question to you is, did he give you his calculation of why he thought he only owed you seven thousand six seventy-four eleven ($7,674.11)?

A. Yes.

Q. Do you have that calculation or whatever he gave you coming down to that seven thousand dollar ($7,000) figure? Do you have a record of that?

A. No.

Q. But he gave you one in writing?

A. Yeah. What he did was -- if you took the one-o-five ($105,000), multiplied it by eighty-five percent or say it the other way around, fifteen percent, that would have been fifteen eight-o-two ($15,802) that I put here.

Q. Yes.

A. And then the difference would have been the line items that he was owed.

Q. Uh-huh.

A. And he paid things that I said I was going to pay. That is what he was talking about. And then the net of those two things would have been seventy-six seventy-four ($7,674.11).

Q. Okay. Do you remember what he was claiming that he had paid that you were supposed to pay?

A. Not specifically but they would have been on the list of things EPS had agreed in the 85/15 or 80/20 prior conversations that EPS had.

Q. All right.

A. He paid the power bill, you know, some things like that.

Q. But he was supposed to pay the power bill once he moved out, wasn't he, for his office?

A. Yes.

Q. Did he pay the power bill for the Anderson office?

A. No.

Q. Okay. The copy machine or not copy machine but the computers, were they leased

or were they purchased?

A. Purchased.

Q. Okay. And when they were purchased, did you pay for them or did Jan pay it?

A. I think in the very beginning, the computers that were in the office, I paid for, EPS.

And that was -- I want to recall a combination of a new one, something that we'd had in the Anderson office. And then when Jan moved, I think he bought the computers.

Q. He bought computers for his office?

A. Yeah. For the new office.

Q. And what did he do with the other ones, just had them down there?

A. I'm sorry.

Q. What did he do with the ones that you had provided for him?

A. I don't know if they were still in use or if he had just set them aside.

Q. And, again, you didn't ever call him up and say 'I want to send somebody to pick up my stuff' or 'I'm coming on a certain date' or 'can I come down there and get it?'

A. Correct.

Q. Your communications just broke down?

A. They stopped.

Q. I show you what's been marked as Plaintiff's Exhibit 1 for identification. Before you answer any questions let me borrow that, please? Plaintiff's counsel. You know what that is?

A. Can I have just a quick second to look at it?

Q. Yes, you may. Take whatever time you need.

A. (Upon review), this is a summary of -- it's called a billing summary and it's a summary of the accounts billed under the set we called Jan's accounts?

Q. Yes, sir.

A. That's the group that Jan introduced to the firm. And we segregated them in the system under who was the representative that introduced them. So this is a billing summary of those accounts and it's dated 12/31/08 to 12/31/09.

Q. So that would have been each quarter billing showing there for the entire 2009 year, would it not?

A. Yes.

Q. So what we have to do is to determine the splits, we would have to take the quarter, total it and then use the formula, like 80/20 for the fourth quarter of '09 and the 85/15 for that first quarter of 2010?

A. Yes.

Q. And that gives us what Jan's share would have been and he would be rightfully entitled to it and what your share would have been that you would have been rightfully entitled to or EPS?

A. Yes.

MR. BRANDT: I offer this into evidence as Defendant's Exhibit Number 1.

MS. KERN-FULLER: Your Honor, I'm going to object based on foundation. I don't believe there's been a proper foundation laid that he ran this report, produced this report, anything of that nature.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Well, on the face of it, what does that say?

A. You say, he. I ran it?

Q. No. Did it come from EPS Advisors?

A. It does.

Q. Who sent it?

A. Susan Lockwood sent it from EPS Advisors.

Q. To whom?

A. To Jan.

Q. And what date's on that that she sent it?

A. February 5th, 2010.

Q. And is that an official of EPS Advisors, one that y'all would had kept during the regular course of business?

A. It is.

MR. BRANDT: I'd offer it as evidence, Your Honor.

MS. KERN-FULLER: Your Honor, I'd have the same objection in that he didn't run it. He didn't prepare it.

THE COURT: All right. I'm going to let it in. I mean, I ---

MS. KERN-FULLER: Okay. Thank you, Your Honor.

THE COURT: You don't have any

back?

A. The copier, a couple of computers, a couple of chairs and I think a table.

Q. And the copier, was it being purchased or was it a lease?

A. I think it's leased.

Q. And who was making the lease payments on it?

A. Jan.

Q. He always made the lease payments on it?

A. I'm trying to think of the history of that copier. I don't know. I know that we had one in Anderson that we paid. And I'm pretty sure the one in Clemson we started off paying and then he took over from -- it could have been he got it from day one, I just don't remember.

Q. And even after y'all broke up your business relationship on March 31st, the copier stayed with Jan ---

A. Yes.

Q. --- and he would have paid the lease on it?

A. If they didn't take it back.

Q. So you didn't have a real ownership interest in the copier; did you?

A. It was leased. Yes, correct.

Q. And so it wasn't a lease/purchase. It was a lease and then you'd turn it in and get something else.

A. Right. We had an option at the end if you wanted it, but it was a lease.

Q. It was a lease.

A. Yes.

Q. So the copier was not -- really didn't belong to EPS and EPS didn't make the payments after Jan moved to Clemson?

A. Correct.

Q. And then what kind of chairs were they?

A. Similar to the jury box chairs. There's a couple, three or four that went around a little round table that we had in a conference area there. They did not have a swivel base, but they were similar to that.

Q. All right. And how many do you think Jan had?

A. Four? Could be four or six.

Q. Or two?

A. I think it was more than two. It could have been two, but I ---

Q. Yeah?

A. I'm not sure but we had a little table with a couple, four chairs around it.

Q. And the -- you say that table ---

A. Yes, sir.

Q. --- that went with the chairs?

A. Right.

Q. And then what else was there that you -- we've dealt with the copier, chairs, table, and what else was it?

A. The computers.

Q. The computers?

A. Right.

Q. And basically, did you go in at some point in time and disable those computers where Jan couldn't use them, change the password, whatever?

A. No.

Q. But Jan, I think, if I understood your testimony earlier that Jan bought his own computers once he moved to -- into his office where it is now or the location ---

A. He did. He had computers and he had

a network guy come in, kind of in the back of his office they had this where everything plugged in, the phones and computer and all of that. So when he moved, he bought a lot of that kind of equipment. And I think what I described is at that point I wasn't sure which of the actual boxes were plugged in or that he was using.

Q. And he didn't use your computers anymore?

A. Could very well be. I just don't know.

Q. And you talked about the protocol, this agreement. I think you referred to it as a compact among the big boys, I guess the Schwabs and the Jones and those people?

A. Right.

Q. And then they'd have RIAs, whatever, could agree to it too?

A. I think that's right. When the firms are signatories to the protocol agreements, then I believe that would capture the reps, yeah. I mean, they would come aboard agreeing to the house rules, you might call it. And the house rules would be part

of the protocol.

Q. And so that would have been -- y'all weren't part of the compact?

A. No, sir.

Q. I mean, y'all didn't have any agreements there?

A. Correct.

Q. And Jan didn't have a noncompete when he was there with you?

A. He did not.

Q. And, in fact, he had nothing to prevent him from cranking up a business on the side and working both ends of the fence, would he?

A. He was an independent contractor. I mean ---

Q. Yeah. He could have kept his clients with you and he could've picked up new clients and put them over here. He didn't have to even bring them in, did he?

A. He didn't have to.

Q. And he could have left at any time?

A. He could have.

Q. And, in fact, he had a right to do what he did is to leave, and take his

clients; didn't he?

A. He had a right to leave, yes, definitely.

Q. And his clients, that's kind of a personal services kind of deal where confidence and trust is most important to the client?

A. That's right.

Q. And Jan never took any of the clients, except the ones he brought in or came to him, he recruited, after he got ---

A. That's right. Correct

Q. So he didn't reach over in and get any of the other clients of your firm. He didn't raid them and take them off?

A. You mean like existing ones that were ---

Q. Yeah, when he got there?

A. Correct. He did not.

Q. Okay. But for the most part all you know is he didn't bring in any real new clients. He just kept what he had; wasn't it?

A. He brought in clients that were existing relationships.

Honor. That calls for speculation.

MR. BRANDT: Well, did he?

THE COURT: Well, I think he can answer that question. Overruled.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. In essence, when Jan and you got together, the only way y'all could do the deal was the way it was done with Schwab?

A. That's correct.

Q. Schwab couldn't send it directly in him?

A. That's correct.

Q. And so naturally if Schwab was going to send the money back to him, somebody had to divide out the money?

A. Correct.

Q. And it so happened that the only way you could do that is send it to you, not Jan?

A. That's right.

Q. And, again, Jan had every right to do what he did, except you feel just -- you were hurt that he did it without telling you?

A. Yeah, I was mad. And I've mentioned that kind of window in my world.

Q. I understand.

A. Yeah.

Q. And from the middle of about February to late March, you and Jan had trouble communicating; didn't you?

A. Yes.

Q. In fact, there were phone calls and text exchanged where Jan was wanting to talk with you, meet with you. And even appointments were made which you couldn't keep?

A. That's true.

Q. And so did you know what Jan - and Jan had requested to meet with you and you'd set a schedule several times and then for whatever reason, you didn't -- you couldn't keep it or couldn't make it; correct?

A. Yes. That's correct.

Q. And then Jan -- he had trouble. Y'all were just on the wrong -- you'd call, he'd call, sent text messages back and forth but you never could connect?

A. (No verbal response).

Q. And throughout the period of after Jan -- I think he came on with you somewhere

around October 2008?

A. That sounds right.

Q. Close to it?

A. Yes, sir.

Q. And then the problems with the back-end support bills being paid surfaced pretty soon after that; didn't it?

MS. KERN-FULLER: Your Honor, I'm going to ask, is Mr. Brandt testifying or is he going to ask questions.

MR. BRANDT: It's cross-examination.

THE COURT: Well, I mean, he did ask the question at the end of it.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. And the end of the -- when did the problems with the back-end bills not being timely paid manifest themselves?

MS. KERN-FULLER: Objection, Your Honor. That assumes facts not in evidence.

THE COURT: I think it's proper cross-examination.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. When did the problems with the back-end bills not being timely paid manifest themselves?

A. Bear with me. I'm just trying to do the time line. Jan came aboard in late 2008. Shortly thereafter, but not immediately thereafter we started the Clemson office. And I'm going to use the phrase "pretty soon after that." I couldn't tell you ten days or sixty days, it was definitely inside of that window, that we started having those problems, paying the rent, the power bills, things like that.

Q. And also computers, telephones?

A. Yes, sir. Because the power going out cuts all that off, they were voice over IP computer phones, that sort of things.

Q. Those kind of items are imperative for someone to do their job that Jan was contracted to do?

A. Yes. He had to have that to have access to client records and then, of course, the phones, you know.

Q. Up until, I guess the beginning of 2010, did you have any complaints about Jan's

work performance?

A. No.

Q. He had complied with that agreement in every way?

A. Could I ask you ---

Q. You can ask me to clarify.

A. --- for clarification?

Q. Yeah.

A. The question about complaints -- from customers?

Q. No. Did you have any complaints with work ethic or performance?

A. Oh, no. No.

Q. Did you have any complaints of customers about Jan?

A. I didn't.

Q. Now, even in that check of August -- I mean the December quarter check, that was the eighty-two thousand seven twenty-five ninety-five ($82,725.95).

MR. BRANDT: I forgot what number it is. I believe it's the Plaintiff's 3.

COURT REPORTER: Three.

MR. BRANDT: She's already put it in.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Plaintiff's Exhibit Number 3. Now, memo there says 12/13/09. And then it looks like plus five thousand. I think you've already explained what that means, but please explain it to me.

A. All right. So the memo line reads "12/31/09 plus $5,000." And what that would mean is that this is a payment towards what Jan is owed for the billing period ending 12/31/09, plus an additional five thousand dollars on top of the billing portion.

Q. Okay. Now, so that would mean that for the period ending 12/31/09, you were paying him money, that would be five thousand dollars less than the eighty-two?

A. Right. So I paid him eighty-two seven for the billings and add five more for reimbursements.

Q. Well, the check is not but for the eighty-two?

A. Right. So the billing would have been seventy-seven, seven twenty-five or something like that.

Q. And if those checks -- if you go back and figure out your billings for that quarter, do you know how much those billings would have been?

MS. KERN-FULLER: Your Honor, I'm going to object at this point. He's getting into accounting and setoff, which have not been pled.

THE COURT: All right. I'm going to let him go ahead and -- just so that we have it.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

A. So can you please give me the question again?

Q. Well, you were always - he was advancing money and y'all would always have to settle up, figure out ---

A. Right.

Q. And you were doing that?

A. Yes.

Q. Both ways?

A. Correct.

Q. And I'm saying that if by error that that check for that quarter was more, he

should have gotten more than seventy-seven and you feel like it was justified and offsetting it against whatever you claimed he owed you for that last quarter?

A. If we paid ---

Q. Well, it's all within the structure of the contract.

A. So the billing statements would indicate a certain amount owed.

Q. Yes.

A. And we come to that number based on our split. And then anything that he had paid that I owed him for or vice-versa we would net out and that's what we were trying to do here.

Q. Okay. And so at the end of March you needed to make that reconciliation?

A. Right.

Q. He was leaving?

A. Correct.

Q. And whatever was owed -- and that was within the four corners of that contract?

A. Right. The 85/15 split.

Q. Yeah. The 85/15. So have you made any calculations or do you have any

calculations to show what the total billings were for the quarter ending 12/31/09?

A. Yes. As a firm we would have had -- we would have put together the billing statements.

Q. Do we have an accounting of that now, today?

A. 12/31, yes, sir. That was the billing statement that I saw. I can't remember the exhibit number.

Q. The billing statement that's already been put in evidence?

A. Yes, sir.

Q. If you added that up then you could tell whether or not that check was in error or not?

A. Yes.

Q. Do you know -- have you gone back at any time and rechecked it, the accounting and that check to see if it was right?

A. No.

Q. Now, I think you said in your letter that's been put into evidence that -- and I asked you at deposition if, uh, you didn't agree with his calculation, but you don't

remember what issues you were taking with his claimed money for that five thousand dollars owed?

A. Right.

Q. And he gave you an accounting of how he arrived at it, but you don't even remember what it was for or how much it was ---

A. Right.

Q. --- except that he was claiming five at the time?

A. Yeah. Not the detail just that it was owed. That he had come up -- he had done it -- the numbers.

Q. Would you agree that if he was entitled to five thousand dollars or more from you that the books would have been balanced at that time?

A. If he was owed five thousand dollars as the number that it would come to that? Yeah.

Q. Now, I believe there were twenty clients that were not switched out until April?

A. Yes, I think that's right.

Q. And those were his clients that he

would have been entitled to the funds for?

A. Right.

Q. Were you ever -- did you ever collect any money based on those twenty accounts or so that drug over into April?

A. Likely. Yes, sir.

Q. Okay. And he said about thirty-six hundred dollars ($3,600) would have been -- you would have gotten from those accounts?

MS. KERN-FULLER: Objection. Your Honor, again, is Mr. Brandt going to testify or is he going to ask questions? I don't know where thirty-six hundred dollars came from?

THE COURT: Well, I mean, I think it was proper. Again, this is cross-examination.

MS. KERN-FULLER: All right.

CROSS-EXAMINATION

BY MR. BRANDT:

Q. So you would have gotten the thirty-six ---

A. So the question is thirty-six hundred?

Q. Yes. Would that be something that

you would think was somewhere in the neighborhood with those twenty clients that you would have received?

A. That's a familiar number, yes, sir.

Q. And then you would have had to split that out with Jan too to square the books as of March 31?

A. Right. 85/15 would have been ---

Q. Okay. So if he claimed those and he was claiming that, I think, when y'all had that discussion, then again the 85/15 balances it. There's nothing owed?

A. Correct.

Q. Even as to this day you're not entitled to any more out of that contract?

A. More than eighty-five?

Q. More than fifteen percent?

A. I'm sorry. Right.

Q. Yeah.

A. 85/15, 15 to EPS Advisors was our agreement, yes.

Q. Now, subsequently you have said that your business you wrote in that letter eight hundred and eighty thousand ($880,000)?

A. Right.

Q. But that's in the event that you're able to sell it. That's the sales price; isn't it?

A. It is.

Q. And that's your start-off to negotiate whatever it is. But you weren't selling this business, were you?

A. I was not.

Q. And what Jan did to you did not force this business out of business?

A. It did not.

Q. What Jan did, did not force you into personal bankruptcy did it?

A. It did not.

Q. In fact, you had other claims out there. Do you recall how much money you had on your creditors sheet?

A. I don't. But I did have other claims.

Q. You had at the time -- subsequently, you had a couple of lawsuits too that were pretty big numbers?

A. Yes.

Q. And I think one dealt with you and another company you had?

you out of business?

A. Yes.

Q. Not Jan?

A. Correct.

Q. And so you, I think over again what was it 2012 that you agreed with the South Carolina Securities People to relinquish your license?

A. They -- I served a suspension, yes.

Q. Six months I think they said and you had a right to reapply?

A. Right. So my license I had at that point let terminate. I served a suspension with the right to reapply in the future should I want to.

Q. But you haven't reapplied?

A. No, sir.

Q. And you paid a small fine, I think?

A. A thousand dollars.

Q. And Jan had nothing at all to do with that stuff, did he?

A. He did not.

Q. Obviously, Jan was a very productive producer; wasn't he?

A. He was.

A. No, sir.

Q. In fact, at one time you wanted to forget this lawsuit; didn't you?

A. Yes, sir.

MS. KERN-FULLER: Objection, Your Honor. Could we have a sidebar?

THE COURT: I mean, there's no jury here. Unless you need ---

MS. KERN-FULLER: I mean, Mr. Dameron's in bankruptcy and that's come out in the testimony. I don't know what the purpose of all this is because this is a partnership and a company. And if -- I don't know what the purpose is, other than to harass this witness and to try to cloud what the issues are.

THE COURT: All right, hold on, let (the siren pass).

MR. BRANDT: My office received a letter when we were going try to get the 30(b)(6) motion. And out of the blue, his wife called my office and asked for my address and the person that answered gave it to.

THE COURT: I mean, this is not

admissible evidence. I don't want to get into -- I mean, this is nonjury, but, again, I want to move on. I mean, is this something this witness ---

MR. BRANDT: He wrote a letter trying to dismiss his attorney and he sent me a copy of it. That's why I know about it.

THE COURT: All right. I mean, I'm going to let it go into a little bit for what it's worth, but I realize this is also a claim by the company, as well.

MS. KERN-FULLER: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. And you wrote a letter to Ms. Kern telling her she was dismissed and to return everything to you?

A. I did, yes.

Q. Is that what you wanted to do?

A. Yes. At that point in time I thought that -- I wanted the case dropped. I had wanted it dropped for a long time before. I had told her to drop it a long time ago, along with the Schwab case. And I

thought this thing had gone away. And then it pops back up. And, therefore, I thought at the time I wrote the letter, the context of the letter was I thought she was pursuing it on my behalf without my involvement and permission. That's when I was mistaken. It was for the purposes of the trustee.

Q. Okay. And that is true today. It's for purposes of the trustee?

A. Yes, sir.

Q. All right.

MR. BRANDT: Okay. I want it marked anyway.

COURT REPORTER: Defendant's Exhibit 3 for identification.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. I want to hand you Exhibit 3 for identification and ask you if you can identify that document?

MS. KERN-FULLER: Your Honor, I'm going to object. This is a profit and loss statement and other items from QuickBooks from 2009. Again, there's no accounting pled, no setoff pled. This is internal

finances of the company from 2009. Our claims only deal with the first quarter of 2010.

THE COURT: Well, and, I mean, I can still -- I mean, obviously, this sounds relevant to what -- to all of the questions to 2009. I mean, again, I know there's been no offset or accounting pled so therefore I will not consider it for that purposes, but I think it is relevant to all the other information that's in there.

MS. KERN-FULLER: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. What is this?

A. Profit and loss statement of EPS Advisors for the calendar year 2009, January through December.

Q. And how is that record kept? Is it kept in-house with EPS or was it?

A. It's kept in-house and then I bring that data over to the CPA firm, then their bookkeeper kind of helps reconcile what I've put in, and then we produce it.

Q. Okay. And is that a record that you would keep in the ordinary course -- both produce and keep in the ordinary course of business with EPS?

A. It is.

MR. BRANDT: And for that in '09, I would offer that into evidence showing it's basically a the problem with money.

MS. KERN-FULLER: And, Your Honor, I would renew that objection.

THE COURT: All right. And I accept your objection but I believe for purposes, other than accounting again ---

MS. KERN-FULLER: Thank you, Your Honor.

THE COURT: So I'm going to -- Defendant's Exhibit 3 is in over the objection of plaintiff's counsel.

(SO ENTERED AS DEFENDANT'S EXHIBIT 3)

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Now, I know you were having some financial difficulties, Mr. Dameron, so I'm not trying to make you feel uncomfortable or whatever, but for that year your QuickBooks

that kind of authority; did he?

A. Jan, introduced his clients to the firm ---

Q. Yes, sir.

A. --- and he represented and covered them.

Q. Yes, sir.

A. Right.

Q. Yes, sir.

A. I'm not sure I understand ---

Q. Well, he couldn't just go out and buy a computer when he wanted one without talking to you without paying for it himself?

A. Oh, I see. No, he didn't have like authority to spend EPS's money.

Q. So the only relationship that y'all had was through this contract?

A. Right.

Q. You come here. You bring your client. You service them and we'll split the commissions?

A. Exactly.

Q. And we'll give each other some support?

A. Right.

Q. And, again, Jan had the right to leave and take all of his clients?

A. He did.

Q. I believe in December, in December do you recall what the total billings were in December off of that quarter?

MS. KERN-FULLER: And, Your Honor, I'm going to renew my objection about the accounting and the setoff.

THE COURT: All right. And, again, I think it could go to purposes of other than accounting and setoff, and I'll allow it for that purpose.

MS. KERN-FULLER: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Do you recall ---

A. Your time period is ---

Q. Well, the quarter ending 12/31/2009?

A. Right. So the quarter ending 12/31/2009 was the check that I paid to Jan of eighty-two thousand and change ($82,000-and-some-change). The accounting for the five thousand dollars, his portion seventy-

seven five hundred or whatever that was.

Q. And you owed him eighty percent of that? Eighty percent of whatever the total billings were?

A. No, I'm sorry. That was his -- the seventy-seven would have been his portion.

Q. And that was figured on how much billings?

A. Correct. So the billings, if you took seventy-seven divide by point 8 (.8) you'd come up with ninety-six or some number like that.

Q. But you did this accounting?

A. Right.

Q. And if those total billings for that quarter totaled a hundred -- the total was a hundred and five thousand eighty-nine dollars and fifty-four cents ($105,089.54), then he'd be short, wouldn't he?

A. If you took a hundred and five thousand dollars ---

Q. Yeah?

A. --- and multiplied it by the ---

Q. If the billings here ---

A. Right.

Q. --- add up to a hundred and five thousand eighty-nine dollars and fifty-four cents, you'd take eighty percent of that to determine how much you owed him?

A. That's right.

Q. If those -- and eighty percent of a hundred and five, would you agree with me would be approximately eighty-four thousand dollars?

A. I would.

Q. So then if you gave him eighty-two, but five thousand of that was something you owed him from the past, then he wouldn't have gotten but -- he was entitled to seventy-seven seven twenty-five ninety-five by your calculations?

A. Right.

Q. But if it turned out that it should have been eighty-four, then you would have been shorting him; wouldn't you?

A. Yes.

Q. And he'd have been entitled to that on the next round?

A. Yes.

Q. That would have come back within the

framework of that contract and claim that and you would have paid him back -- you'd have paid him?

A. Right.

Q. So you wouldn't doubt -- if those numbers worked out -- and I'm not holding you to the numbers ---

A. I understand.

Q. --- but if those numbers work out, do you have any problem with paying it within the framework of your contract that you owe it him to?

A. That what we would have owed and that's how we got to that. Right.

Q. Okay.

A. And then, of course, you know, like you said the offsets ---

Q. Yeah. I understand. I'm not holding you to these numbers.

A. I understand.

Q. Because you'd have to add them and add them. But those documents would speak for themselves ---

A. Correct.

Q. --- as far as the money?

A. Correct.

Q. And plus then applying the 80/20 and then the 85/15?

A. Yes, sir. That's right.

Q. I believe you stated in that Complaint, part of that Complaint, you've got tortuous interference with contract. But, again, you said he had a right to do what he did. Take his clients with him.

A. He didn't have a non-compete.

Q. Yes, sir. And you've pled fraud. What fraudulent representation was made? Fredman's representation that was fraud? What do you base it on?

A. Can I see that?

Q. Well, I think it says Fredman in the first paragraph up there. It says "Fredman represented to plaintiff that he was working for the benefit of plaintiff, using plaintiff's resources, clients and business records." And he did. And he was. But he had a right to go at any time; is that right?

A. Correct.

Q. Well, what representation then to you was fraud?

A. I don't recall. I'd have to look at it and spend time reviewing it.

Q. And, in fact, I think you stated on direct that back when y'all talked about it in October, when he was forming up his new corporation ---

A. Right.

Q. --- you didn't object to the name that he was forming his LLC under; did you?

A. No. No I knew it was Clemson-EPS Advisors.

Q. And you knew that he was going or had the potential, kind of was talking about maybe going out independently on his own sometime in the future?

A. That's one of the things he and I had talked about in that window, 'how are we going to structure this?'

Q. You wanted to try to hold the marriage together?

A. There you go.

Q. Correct. And if you couldn't, you knew he was going to go?

A. That's right.

Q. So my question is, what representa-

you found out that Mr. Fredman had gone out and registered his own company and taken all of the commissions for that quarter, did he ever tell you that he was doing anything, other than acting on EPS Advisors, LLC's behalf?

A. He didn't tell me he had registered that firm, no. We weren't in a lot of communication in that window. And I think my fraudulent misrepresentation is that he had started and registered EPS and he didn't tell me.

Q. And did you think that that confused some of the clients that took business away from EPS that he registered them under a similar name?

A. I thought -- yeah. I thought at the time that was a possibility. He could have gone out and said, you know, whatever it is that he could have said or done and used the name to his benefit on that.

Q. Did you think that he could get all of those clients to sign LPOAs in just that short period of time?

A. I remember feeling like 'boy, that's

Q. Where did those clients go that were his clients at UBS?

A. Where did the clients go that he had at the ---

Q. At UBS. Where did they go while he was on sabbatical?

A. I don't know. I mean, clients came into us from UBS. They could have come from other places, maybe an Ed Jones in town or something.

Q. But they couldn't have come from him while he was on sabbatical because he didn't have any clients; did he?

A. He wasn't registered, right. So the client money and accounts come from the old firm. Right. He wasn't registered at the time.

Q. Do you recall testifying in response to Mr. Brandt's question at your deposition about what happens when someone wants to be registered with two separate firms at the same time?

A. Yes.

Q. And it takes consent of both of the firms; right?

A. Yes. If you are to be registered with two separate firms at the same time, both firms would need to be aware of that.

Q. And you testified you didn't know that he had registered Clemson-EPS Advisors, so you couldn't have consented if you didn't know, could you?

A. No.

Q. Now, Mr. Brandt asked you about this -- these personal lawsuits that are going on that caused this personal bankruptcy.

A. Correct.

Q. Were any of those lawsuits pending in the first quarter of 2010?

A. No, I don't think they were. It was just the divorce.

Q. Would it be fair to say Billy Epps is your father's best friend?

A. He's one of them.

Q. And your father is Dr. Robert Dameron?

A. Yes.

Q. And Ms. Julie Collins, is it true that you took other loans from Julie Collins as a result of some of the money that was

no further questions.

THE COURT: Very briefly, Mr. Brandt.

RECROSS-EXAMINATION

BY MR. BRANDT:

Q. On the sabbatical she asked you about, you don't know where all of them came from but wherever they were, Jan was on this sabbatical from UBS?

A. Right.

Q. You don't know where they were or where they were went and who they were serviced by during that period of time?

A. I don't.

Q. But wherever they were, they came back to him?

A. They did, right.

Q. And you haven't heard of any complaints of any of them about ---

A. I did not.

Q. --- any firm, any of the big firms or anything about them going back to Jan and coming over to you?

A. No.

Q. And you knew about Clemson-EPS

interrupting the entire conference meeting we were having.

Q. And as a result of that, did Mr. Dameron terminate the relationship between EPS Advisors and Clemson-EPS Advisors?

A. No, ma'am.

Q. Why?

A. He and Jan had a meeting and then he came back and said that everything was going to be okay and that everything was straight.

Q. And was that the meeting that he paid him the check in January?

A. That's my assumption, yes, ma'am. I was not at that meeting.

Q. But did you have access to the financial stuff with the business?

A. No, ma'am.

Q. Have you had the opportunity as part of when the business split up and splitting up to look at the financial records?

A. Yes, ma'am.

Q. And in looking at the financial records, did you all talk about the money that David was going to pay to Jan in January?

A. No, ma'am.

Q. And with regard to looking at the financial records, how are your financial records kept?

A. Mr. Dameron would keep them on QuickBooks on his computer.

Q. Do you have access to that QuickBooks?

A. I have access to part of that QuickBooks, yes.

Q. And in doing so, have you had the opportunity to review entries for the costs for the furniture and the office equipment and things like that, that are claimed in this lawsuit?

A. Yes, ma'am.

Q. Can you tell me what you recall about the value of the items that are being claimed in this lawsuit?

A. Well, the combination printer, copier, scanner was somewhere around seventeen hundred ($1,700).

The furniture, encompassing the chairs and whatnot was about thirty-eight hundred ($3,800).

And then that would leave the computers of about twenty-five hundred ($2,500).

So close to eight thousand and change ($8,000-and-change).

Q. And did we detail what each of those categories were when we sent discovery to Mr. Brandt?

A. Yes, we did.

Q. Does the number eight thousand forty-six dollars and thirty cents ($8,046.30) ring a bell?

A. Yes, ma'am.

MR. BRANDT: What was that number?

MS. KERN-FULLER: Eight thousand forty-six dollars and thirty cents ($8,046.30).

DIRECT EXAMINATION CONTINUED

BY MS. KERN-FULLER:

Q. Now, let's talk a little bit about your experience in the investment advising industry. Tell me about how it works when you have to repaper for a client? Tell me what that is?

A. That basically is when you have to get the firm that you're currently going from

Q. And to your knowledge, was there any further investigation?

A. Not to my knowledge.

Q. Any action against Mr. Fredman for anything y'all reported?

A. I have no idea.

Q. You said the value of the items, and you gave the scanner, copier, printer. But you've heard testimony, I'm sure today, that that was a leased -- those were leased equipment and that Mr. Fredman had always paid the -- maybe the first couple of months there when they were in Clemson. But he's been paying and paid the lease out on it.

A. The number that I gave was from what EPS Advisors paid for Clemson-EPS before Mr. Fredman took over the payment of the leased copier.

Q. And, of course, that was -- you didn't have any part in demanding return to any of this stuff?

A. No, sir.

Q. And you haven't had any part in any of the meetings between Mr. Dameron and Mr. Fredman.

A. No, sir.

Q. So you can't really attest to what any of the agreements were, can you, first-hand knowledge?

A. No, sir.

Q. But you do know how the fees were being split?

A. Yes, sir.

Q. And do you acknowledge that for that first quarter of 2010 that the split was eighty-five percent to Mr. Fredman and fifteen percent to Mr. Dameron?

A. I need to step back. I did the bookkeeping part of it. I never did the calculations between who got which part. That was always between Mr. Dameron and Mr. Fredman.

Q. And you say that you think that he -- you're entitled to a hundred and five thousand dollars or EPS is entitled to a hundred and five thousand dollars ($105,000). But are you saying that because of what Mr. Fredman did that he forfeited his right to get those fees, his share?

A. I am not necessarily saying that he

MS. KERN-FULLER: Objection, Your Honor. That calls for speculation.

MR. BRANDT: Okay.

THE COURT: She can only answer of her direct knowledge.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

Q. This Exhibit Number -- this one, (tendering).

A. Yes, sir.

Q. That is a record that you assimilated a copy of it that you sent to Jan?

A. Yes, sir.

Q. And he requested that?

A. Yes, sir.

Q. And have you added up any of the numbers for the quarter?

A. No, sir.

Q. Have you gone back in your role as whatever it is in this case, have you gone back to your role and tried to determine whether or not all monies ended up where it was supposed to go per the agreement between Mr. Dameron and EPS Advisors and Fredman?

MS. KERN-FULLER: Your Honor, I'm going to object again. They have not made a claim for accounting or setoff.

THE COURT: Well, I mean, he can still ask the question. They're not taking about ---

MS. KERN-FULLER: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. BRANDT:

A. I was not part of that. I did not do that part of the bookwork.

Q. Okay. I think you said the handwriting on one document, you don't know whose it is.

A. (No verbal response).

Q. There is a second page there.

A. Yes, sir.

Q. You don't know whose handwriting that is?

A. I do not know whose handwriting that is.

Q. But you did not take part in negotiating or ---

A. No, sir.

that Jan brought with him and was accepted by EPS Advisors. But my question is what relevance does that have today?

A. Character.

Q. All right. We've heard Mr. Dameron also say that there is no compete agreement; correct?

A. Yes, sir.

Q. And you agree with that; you've never seen one?

A. Yes, sir.

Q. And there is no agreement for any period term like three years, five years or whatever; correct?

A. Yes, sir.

Q. And you heard him say that Jan could have left at any time and taken those clients with him, he brought with him?

A. Yes, sir.

Q. And you agree with that?

A. Yes, sir. But he can't steal the money.

Q. So then it comes down to whether or not what he did was considered stealing?

A. When you bill in arrears, we were

supposed to get paid for January, February and March, and beginning of the second quarter. So if he left during that time period we were still due at least a portion of, if not all, of the funds.

Q. He left March 31st. I believe he was there the full time period, was he not?

A. Yes. And so we would be entitled to some of that also, not him stealing it all?

Q. Fifteen percent is what you'd be entitled to?

A. If he had done it correctly, yes. But he's caused damage.

Q. There was about twenty -- the Complaint alleged that there was about twenty accounts that didn't get changed over until April. So since they didn't get changed until April, y'all got that money; didn't you?

A. Yes. I heard in testimony it was somewhere around thirty-five hundred dollars ($3,500).

Q. Well, that was a guess, thirty-five, thirty-six hundred.

A. So we took the hundred and five

recently, there was a list of certain people that were loaned money by EPS that are listed to be paid out first if this lawsuit came to fruition and if it were settled with some monies. That was a set number and it was set names, one, two three, four, five. I think there are five of them. And then after that, there was some split if there were extra funds after that between Mr. Dameron and I.

Q. And in the course and scope of this litigation, has Mr. Skinner, as the Trustee for Mr. Dameron's bankruptcy claimed that if there's any money left over it is the bankruptcy estates?

A. Yes.

Q. And are some of the creditors that are to be paid off in whatever order it is you're mentioning, some of the same creditors were the creditors of his bankruptcy?

A. Yes, ma'am.

MS. KERN-FULLER: Thank you, Your Honor. No further questions.

THE COURT: I've got a clarification. All right. Back to the check that Mr. Fredman -- I think there was -- a check was

written and Mr. Dameron has said that a check was received of seven thousand something ($7,000-something). And is there no record of it ever getting to EPS? Is that the testimony?

MR. BRANDT: That was paid directly in that last check of a hundred and five ($105,000).

THE COURT: Right. No, no. I'm talking about then there's seven thousand ---

MS. KERN-FULLER: The seven thousand.

THE COURT: --- from Fredman that he wrote either to Dameron or EPS. And there's no -- has anybody ever been able to find that as far as being deposited into EPS?

MS. KERN-FULLER: No. And her testimony was after looking at the finances that ---

THE COURT: Do you have anything to the contrary to show that check was cashed or ---

MR. BRANDT: Dameron's admission in the 30(b)(6) that he received the check ---

MS. KERN-FULLER: The 30(b)(6)

didn't come in because Mr. Brandt didn't want it to come in.

THE COURT: All right. I just wanted to get ---

MR. BRANDT: Well, he was the 30(b)(6) designee and he said I -- and he's the managing partner, ninety percent owner. And he said, "I got the check and I cashed it."

THE COURT: All right. I just wanted to make sure I was clear on that.

All right. Anything else from this witness?

MS. KERN-FULLER: Not from me, Your Honor.

THE COURT: You may step down Ms. Lockwood.

WITNESS: Thank you.

(WITNESS STEPS DOWN)

MR. BRANDT: And another thing, Mr. Fredman said he gave it to him.

MS. KERN-FULLER: Well, Mr. Fredman's testimony is in the record. He said he mailed it ---

THE COURT: My question's been

answered. All right. Anything further Ms. Kern-Fuller?

MS. KERN-FULLER: That is the plaintiff's case, Your Honor.

(OFF RECORD DISCUSSION)

THE COURT: All right. So nothing further from the plaintiff; is that correct?

MS. KERN-FULLER: Nothing further from the plaintiff, Your Honor.

THE COURT: All right. Anything from the defendant?

MR. BRANDT: Yes, sir.

THE COURT: All right.

MR. BRANDT: I move for a directed verdict on all counts as by facts and certainly there's no damage on file. They are claiming damages for conversion and basically they made a demand, then turned around told him not to talk to me and not to send anybody down there contacting me, come on the premise as an emissary. So they basically made it impossible for the stuff to be returned. They never asked -- Mr. Dameron never asked to be able to come there and do that. And so they were we're in a dilemma.

And I don't think he did conversion. He was voluntarily put in the possession of Mr. Fredman and he had it. They knew where it was all along. So I think conversion fails there.

The damages going forward. Mr. Dameron said it didn't cause the company to go out of business. It didn't cause them to go bankrupt. It had nothing to do with anything that he did and that, therefore, he was satisfied the books were balanced. So where is their damage? He could do what he did. So where is there any damage going forward on any kind of loss of income or damage to any corporate entities?

So for that, I think she's got to prove damages. It can't be speculation and conjecture. It can't be -- they've got to have some basis for it and there's just no damages that have been shown.

So my Motion would be that they haven't sustained fraud.

Mr. Dameron says that in fact they were trying to stretch a representation that they think was made to or confusion with the names

of EPS Advisors and Clemson-EPS Advisors to the people to get them to switch their accounts. But that would have been a complaint -- if it is a misrepresentation or fraudulent misrepresentation, you have to be -- it would have to be a representation to the plaintiff and he has to have a right to rely on it and he has to rely on it to his detriment. And when you boil this down there's no such evidence that he did that.

He knew he could leave at any time. They had a meeting. They knew that he was contemplating it. At some point in time it might happen. He didn't want it to happen. They tried to keep it together. He admits there was still problems with communication from February to March. The way it was done was not what pleased Mr. Dameron and he had his feelings hurt, he was mad, but there's just no basis for any of the claims.

Unfair trade practice certainly is not -- this is not -- breach of contract can't make the evidence. He did nothing that would be prohibited by law to be replicated. So that's got to go.

So I move for a directed verdict in favor of my client.

THE COURT: And I think that I -- I think that -- I don't feel I agree or disagree. I just think -- since this is a non-jury matter, I'm just going to keep it all alive until my final ruling.

MR. BRANDT: I got you.

THE COURT: That way ---

MR. BRANDT: Well, I needed to put it on the record.

THE COURT: No, I understand. I understand totally. And since we've been going for about an hour and a half, let's take a ten-minute break. How long are you -- how many witnesses do you think you have, just ---

MR. BRANDT: I'll call Mr. Fredman to address a few matters. I don't know how long she'll take. And I want to move the 30(b)(6) in showing inconsistency. The testimony today is different from the answers that was in there.

THE COURT: All right. Well, let's take a ten-minute break. And then

Q. And it's my understanding that in the quarter ended 12/31/2009, that y'all were splitting your fees eighty percent to you and twenty percent to him; correct?

A. That's correct.

Q. But then in January there was evidence put in of the talking points or bullet-points agreement, whatever it was, that you had -- now where is it? Oh, here it is.

MR. BRANDT: Candy, you didn't pick it up, did you?

MS. KERN-FULLER: I don't believe so.

MR. BRANDT: Y'all talked about it. It was up ---

THE COURT: The typed talking points?

MR. BRANDT: Excuse me.

THE COURT: The typed ---

MS. KERN-FULLER: Yes, he's ---

MR. BRANDT: Oh, you got it. Yeah. That's it.

THE COURT: In addition to your hearing problems you have some eyesight

problems too.

MR. BRANDT: I do.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Exhibit 4. Mr. Fredman, do you have that in front of you?

A. Exhibit 4, yeah.

Q. And does that spell out what y'all agreed to in January of 2010?

A. Yes.

Q. And it says the split is 85/15?

A. Yes.

COURT REPORTER: Mr. Fredman, could you speak up a bit, please, and speak into the microphone?

WITNESS: Oh, sure. Yes.

MR. BRANDT: You have to speak up loudly so everybody can hear you, including me.

WITNESS: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. All right. This -- well, I had it right there. I'm handing you Defendant's Exhibit Number 1. What is that?

A. Defendant's Exhibit 1.

Q. What is that?

A. That is the billing from 2009 that I billed.

Q. And were those the numbers, from your recollection, that the divisions, the divisions as you moved along were used to make the disbursement to you and to Mr. Dameron or to EPS?

A. Yes.

Q. If we go through it, does it list all your billings by quarter?

A. Yes.

Q. And if we go take that list -- and who -- did you ask for that?

A. I must have, (affirmative nod). Yes.

Q. Why do you think you asked for it?

A. To have -- we had some disagreement at the beginning of '10 and so I would imagine that I asked for it. I don't know why, but that's the only thing I can think of.

Q. Okay. But have you looked through that and have you added up the fees billed

for the quarter ended 12/31/2009?

A. Yes.

Q. And you added up the fees billed for quarter ending 3/31/2010?

A. That's not in here, the 3/31/2010.

Q. Yeah, 2010. Okay. But Mr. Dameron's letter says over here that it ---

A. Yeah.

Q. He sent you the letter when he was complaining ---

A. Yes.

Q. --- talking about the, uh, -- here it is, (tendering).

A. Okay.

Q. He sent you the letter. And over here it talks about the billings correct? Right here?

A. Uh-huh. Yes.

Q. And his number is one-o-five three fifty-two fifty ($105,352.50)?

A. Yes.

Q. And you took that. And I want to ask you ---

MR. BRANDT: I want this marked as an exhibit.

COURT REPORTER: Defendant's Exhibit Number 5 for identification.

MR. BRANDT: Exhibit 5 for identification.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. I show you Defendant's Exhibit 5 for identification. Can you tell me what that is?

A. That's the billing for the quarter ended 12/31/09 and the billing for the first quarter of 2010.

Q. And did you do that calculation?

A. Yes.

Q. And what is that trying to show?

A. Trying to show that I paid EPS or Mr. Dameron fifteen thousand eight hundred and two dollars ($15,802).

Q. That was taking credits for certain things; correct?

A. Yeah. Uh-huh.

Q. So that would have tried to reconcile -- would that have tried to reconcile the term of the contract from the time you started until the time you ended,

you think?

MS. KERN-FULLER: Your Honor, I'm going to object. Again, there's been no claim for setoff. There's been no claim for accounting and that's exactly what this is.

THE COURT: Well, and I guess -- I think I'm going to let it in and I think I need to take it whether it was claimed or not.

MS. KERN-FULLER: Thank you, Your Honor.

THE COURT: It would best go to damages, I guess.

MR. BRANDT: Well ---

THE COURT: I guess there's an issue. At what point do you go from attacking damages to setoff and accounting? I think it's all a big blob.

MS. KERN-FULLER: Well, when you're asking for certain credits ---

THE COURT: Again, I'll accept it for what its value is.

MS. KERN-FULLER: Thank you.

MR. BRANDT: May I address that just a minute, please?

THE COURT: Yes.

MR. BRANDT: The setoff and stuff would be if you're sitting back here and you didn't have a running contract, but you got the whole contract.

The issue here is what's owed under the contract, did the monies get split out. It's not really a setoff. It is a determination of basically what was owed at the end of that relationship. So within the framework, you have to look at the whole contract.

Now, the only two quarters that plays into this happens to be the last two, because everything was fine up until then. So when he claims what he was owed, per the contract, which was from '08 to 3/31/10, you've got to include the contract. So I don't think -- it's not a setoff situation. It's all within the same contract. Okay. Thank you.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. In this contract, did you do the numbers?

A. Do the numbers?

Q. Add them up for that quarter?

A. Yes.

Q. And what did it show for the total billing for the quarter ended in 12/31/2009?

A. One o five o four eight nine point five four ($105,489.54).

Q. And you said if you take these numbers here that'll add up to that?

A. Yes, sir.

Q. And you added it?

A. More than once.

Q. And did I add them in your presence too?

A. Yes.

Q. Did we come up with the same thing?

A. Yes.

Q. And then you agree that in the quarter ending 12/31/2009 that your portion was eighty percent?

A. Yes.

Q. That was the agreement; correct?

A. Yes.

Q. And if you take that, then what would have been your share?

A. My share should have been eighty-four thousand o seven one sixty three

($84,071.63).

Q. Now, he gave you a check for that quarter for -- sorry, just a minute. He gave you Plaintiff's Exhibit 3 that's in evidence. Is that the check that he gave you for that quarter?

A. Yes.

Q. And he has said that it was for whatever you were due that quarter plus five thousand dollars ($5,000)?

A. Yes.

Q. If you take the five thousand dollars off, because he owed you for something else, what would that mean that he paid you?

A. Seventy-seven, seven two five ninety-five ($77,725.95).

Q. Okay. If you take eighty percent of the number, he would have owed you how much?

A. Eighty-four thousand seventy-one dollars sixty-three cents ($84,071.63).

Q. And so then he paid seventy-seven seven twenty-five ninety-five ($77,725.95) for that quarter, according to his check. So how much would he have still owed you for

that?

A. Sixty-three forty-five sixteen ($6,345,16).

Q. Now, from time to time throughout the course of this contract, y'all would get together, do something one month and then get together and reconcile ---

A. Yeah.

Q. --- so that the money stayed even throughout the course of the contract; correct?

A. We had a sit-down and did our billing, went through it.

Q. Okay. Now, then we get down to the number here with 3/31/2010 and that hundred and five ($105,000) is his number; correct?

A. Yeah.

Q. So then if you break it out, give him yours -- you take yours and he gets his, then he would have been entitled, he claims, fifteen thousand eight o two ($15,802). Do you agree with that?

A. Yes.

Q. And when you gave him this letter when y'all were discussing it, I think you

claimed for some money that was a portion of the 3/31/2009 [sic] fees that was collected and sent directly to you?

A. From 12/31/2010.

Q. Yeah. No. Down here, part of the money was collected and there were like twenty people that didn't get moved over, he got the money for that?

A. Yeah.

Q. So you took credit for that in your letter; did you not?

A. Yes.

MS. KERN-FULLER: Your Honor, I'm going to object. I don't know how much leading ---

THE COURT: Leading and testifying too. I'm going to sustain.

MR. BRANDT: Okay.

THE COURT: You want me to put you under oath?

MR. BRANDT: Yes, sir.

MS. KERN-FULLER: Ooh, ooh, can I cross-examine him?

THE COURT: Yeah. Make sure you ask a question.

MR. BRANDT: Yes, sir.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. There's a number down there the six three four five ($6,345). What is that?

A. That is what he owed me from the previous quarter.

Q. There's a number of three thousand four eighty-five ($3,485). What is that?

A. That was the people that was not moved over that he collected the money from.

Q. And what is the seven thousand six seventy-four eleven ($7,674.11)?

A. That is the fifty-eight o two minus sixty-three forty-five, minus thirty-four eighty-five. It shows on the billing seven thousand six seventy-four ($7,674), which I wrote him a check for.

Q. Okay. And you wrote the check for the seven thousand ($7,000). And then this would then show the reconciliation at the end of the contract?

A. Yeah.

Q. And this is your computation?

A. Yeah.

Q. In all fairness though, I put it in the form, but that is your computation?

A. Yes.

MR. BRANDT: I would offer this into evidence as Defendant's Number 5.

THE COURT: And I note it's subject to your objection.

MS. KERN-FULLER: Thank you, Your Honor.

MR. BRANDT: Okay.

(SO ENTERED AS DEFENDANT'S EXHIBIT 5)

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. The items that they are claiming under conversion, some of those was a copier/scanner, that kind of stuff.

A. Yes, sir.

Q. Was that under a lease or a purchase?

A. The printer was. And I don't ever remember having a scanner, but we might have. But we had a printer, we leased the printer from somebody and David got it from Anderson or Easley somewhere.

Q. And did you pay for that lease

payments on the copier?

A. Yeah. From sometime in the fall, which would be before I moved over to my 10704 Clemson Boulevard. I paid the lease payment every month to whenever it ended.

Q. Do you know how much longer the lease was?

A. Couldn't tell you.

Q. Once you divided the house and you left and went out on your own on April 1st, did you continue to pay those lease payments?

A. Yes. If my memory serves me right I think they got it transferred over from David's name to our name, from EPS Advisors to Clemson-EPS Advisors. I continued to pay it.

Q. Is it paid out now?

A. It was paid off a long time ago.

Q. Did it go back or did you exercise the option to buy it?

A. No. We didn't do anything with it. We went somewhere else.

Q. Well, what did you do with the old machine.

A. They took it back.

Q. They took it back?

A. Yeah.

Q. That's what Mr. Dameron testified, that he thought there was an option to buy at the end, but you didn't buy it?

A. No.

Q. Now, he's listed the chairs. In all fairness, how many chairs were they?

A. I think I was wrong on the chairs. They had four chairs, might even be five chairs and a table. Then there were two nicer chairs, like high in the back. And that was it. A table, five chairs, four or five chairs and two chairs that was a little bit nicer.

Q. Anything else that would have belonged to EPS?

A. From what I recall right now, no.

Q. And those items, you got this notice, the trespass notice?

A. Uh-huh, (affirmative nod).

Q. Number 2?

A. Yeah.

Q. And you got his demand and his letter that you not contact him in any way?

The letter, Exhibit 5?

A. I thought he was going to come and pick up. That was my understanding.

Q. But this prevented you from doing something, delivering it?

A. Yeah.

MS. KERN-FULLER: Objection, Your Honor. Leading.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Did it prevent ---

A. I thought it did.

THE COURT: She had an objection. I sustain the objection.

DIRECT EXAMINATION CONTINUED

BY MR. BRANDT:

Q. Why didn't you take it back to him?

A. Because I had a trespass notice and me and David was not on speaking terms in them days.

Q. Are you willing to give it back to him now?

A. Yes.

Q. Where has it been?

A. Storage.

Q. And what kind of storage?

A. Downstairs in my building.

Q. Is it safe and secure from the elements?

A. Yes. No humidity.

Q. Still in the shape it was in when y'all split up?

A. Yes.

Q. During the -- after you had the meeting in January with Mr. Dameron and he described it as y'all were trying to keep the relationship together, was there continuing problems?

A. Yes. We still had problem with communication. I called him numerous times, trying to get together with him, especially towards March. And he missed a few times and then he'd schedule a meeting and cancel it, schedule a meeting and cancel it. We had a hard time communicating.

Q. And do you have an estimate of how many text and e-mails may have been sent back and forth trying to arrange this meeting?

A. Yeah. I called him about every other day. He had a phone. And I probably

Q. But you don't know who underlined that?

A. No.

Q. Okay. It says, "Return this money and the other property that belongs to EPS Advisors to my attorney, her contact information is below."

And if you would go to the fourth page of that? Do you see my name and law firm's address?

A. Yes.

Q. And that's my street address; right?

A. Uh-huh. Yes.

Q. Did you make any effort through counsel or otherwise to contact me after April 20th of 2010?

A. I don't recall.

Q. You don't recall?

A. No.

Q. Okay. You don't recall if you ever tried to give me any money? You don't recall if you tried to tell me that he could come and get the furniture. Is that correct?

A. Yes, I mean, the money part I had paid him.

Q. You paid him what you deemed was due.

A. Yeah.

Q. Right. I understand that. Did you contact me or ask your attorney to contact me to return the furniture?

A. I don't recall that.

Q. You weren't prevented in any way from contacting me; were you?

A. No.

Q. And Mr. Brandt has represented you since these charges in 2008; right?

A. I think so.

Q. So he was available to do it for you if you wanted him to; right?

A. Yes.

Q. Okay. Let's go back to your math sheet. Okay. So let's go down to these deductions. You assert, first of all, that EPS is only due the fifteen percent?

A. Yes.

Q. In the next to the last row. And then in the last row you take these deductions. You say less the amount as shown above, the sixty-three forty-five ($6,345).

A. Actually, I thought it was five thousand dollars because the paycheck before he wrote that he owed me five thousand dollars. And that on the -- the plus five thousand ($5,000), so I thought it was five thousand.

Q. Yeah.

A. Okay.

Q. It was actually five thousand dollars; right?

A. Yeah. He owed me five thousand. Plus five thousand.

Q. So you're saying at the time that he wrote this check on January 12th of 2010, after you all had that agreement, after he came to a consensus that is reflected in Exhibit 4, that he owed you another five thousand dollars?

A. Yeah. He owed me five thousand dollars for like things that I had paid for him.

Q. Well, let's talk about that. If I understood your testimony correctly when your counsel asked you, you agreed with Mr. Dameron's testimony about this migration of

fees; right?

A. Uh-huh, (affirmative nod).

Q. Is that a yes?

A. Yes.

Q. And my understanding is the fees, when you first on-boarded were 50/50 and they covered all your expenses and provide you a place?

A. Yes.

Q. And then you moved to eighty percent because you were paying the utilities and at that point ---

A. And secretaries and everything else.

Q. Okay. Your in-office support?

A. (Affirmative nod).

Q. Is that a yes?

A. Yes. I'm sorry.

Q. So if you're billing a hundred and five thousand dollars, and that's a quarter of percent of assets under management, and you go from fifty percent, which is fifty thousand dollars a quarter to eighty percent, which is ---

A. Yes.

Q. --- a little over eighty thousand

dollars a quarter?

A. Yes.

Q. And the understanding is at that point you're going to be covering all your utilities and have you have in your office; right?

A. Yes.

Q. So what did he owe you for?

A. I don't remember now but David agreed, said the same things I said. It was stuff that we had going on.

Q. He said he thought it was stuff you had going on?

A. I say the same thing.

Q. You think it. You're not sure?

A. No, I'm not sure. But it was -- he wrote down five thousand dollars. I no longer have it.

Q. Where did he write it down?

A. (No verbal response).

Q. On the check. And what the check says is "12/31/09 plus $5,000."

A. Yes. He owed me five thousand dollars more.

Q. Where does that or any other

this property; right?

A. Right.

Q. And you've had an attorney since you answered this Complaint; right?

A. Right.

Q. When's the first time you offered to return the furniture?

A. I actually thought David was going to come and pick it up.

Q. That wasn't my question?

A. Then I don't know.

Q. When was the first time you offered to return the furniture?

A. I don't remember if I ever did.

Q. Let's go to Exhibit 4. What are you alleging that EPS promised in Exhibit 4 that it didn't do in the first quarter of 2010?

A. Well, they never had the SEC examiner come in, as far as I remember.

Q. Until after you left?

A. Yes. But, even historically it should start right away.

Q. But there should be an SEC ---

A. They never had a compliance meeting.

Q. You met with Mr. Dameron; right?

real strict on this. I'll allow y'all to provide -- if y'all want to provide any additional legal authority, I will limit you to three pages. Anything beyond three pages I will shred and not review so you're wasting your time.

I want y'all to e-mail it to me Friday at noon. Next Friday y'all can both do it at the same time.

MR. BRANDT: I thought you were talking about tomorrow.

THE COURT: No, next Friday at noon. So that -- I don't want a response -- I don't want y'all to go back and forth like 'he said this,' -- so if both of you sending the e-mail to me around noon next Friday, then I get both of them about the same time.

MR. BRANDT: All right. And just for the record, I renew my Motion for directed.

THE COURT: Okay. Yes, definitely.

MR. BRANDT: And basically I've covered the reasons.

THE COURT: Right.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | COURT OF COMMON PLEAS |
| COUNTY OF PICKENS | ) | |
| | | |
| EPS Advisors, | ) | |
| | ) | |
| Plaintiff, | ) | |
| v. | ) | Case No. 13-CP-39-0434 |
| | ) | |
| Jan Fredman, | ) | |
| | ) | |
| Defendant. | ) | |

# TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 13th, 2017, before The Honorable Perry H. Gravely in Courtroom 1 of the Pickens County Courthouse, 214 East Main Street, Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

Candy Kern-Fuller, Esq.
...Appearing for Plaintiff

Larry Brandt, Esq.
... Appearing for Defendant

Deborah Garrison
*Circuit Court Reporter – 13th Judicial Circuit*
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

THE COURT: Okay, we meet again. This is EPS Advisors versus Jan Fredman.

All right, I will be glad to hear from you.

MR. BRANDT: Your Honor, basically this is a factual argument. I have a full copy of the transcript of the trial.

THE COURT: Okay.

MR. BRANDT: And I have what I think -- in this short version, pages that will address the issue.

THE COURT: Okay, let me have that one.

MR. BRANDT: (Tenders), so -- if you need to review anything, you may do so there. And I think Candy has got a copy of the full transcript, and I gave her the shorter version today.

THE COURT: And the court reporter, Ms. Garrison, had also provided it to me electronically.

MR. BRANDT: Okay. Out of about three hundred pages, it's about eighty-six.

I also have a memorandum, basically my argument today, and a previous memo pretty

much setting forth why I believe that your Order is not supported by the evidence. The only reasonable construction could be that no conversion occurred.

First I want to address the conversion of money. In that regard, my memo addresses this. The Court found that $15,802.77 was the amount of money that Mr. Fredman converted. Those were for billings for the quarter ending 3/31/2010, and that it was converted by the defendants, my clients, in April 2010.

Obviously the figure I think, if you follow your Order, was derived by taking fifteen percent (15%) of $105,352.50 that was paid to Fredman by Schwab rather than being sent to EPA Advisors for clients that he had switched over.

However, the Court failed to consider the testimony ---

THE COURT: I will go on the record to say that I think that the Court considered every single thing in every part of that Order; but, with that said, you may proceed.

MR. BRANDT: Well, Your Honor, the

evidence is that the billings -- whatever his billings were for his clients that quarter, that Jan Fredman was entitled to eighty-five percent (85%) of it.

There was about twenty clients of his that didn't get switched over and was in the 3/31 fees that went to the plaintiff, EPS. Dameron agreed, everybody agreed that those -- that that money that went over there to them, that Mr. Fredman was entitled to eighty-five percent of those monies. Your Order doesn't give him credit for any of that.

Also fifteen percent of that would have been EPS' money, that amounted to about $525 of that, so even the $15,802.77 was in error by about $500. But when you go back down and you consider the monies that were paid, the values and everything, it still washes out and EPS got all the monies to which they were entitled. There ain't no doubt ---

THE COURT: Did they get the check that supposed to have gone to them? That was my finding was based on.

MR. BRANDT: Well, what is was is that

there is testimony in there that ---

THE COURT: It was all over the board.

MR. BRANDT: It was a past-through kind of situation to EPS Advisors. Then they split it out. There's no doubt that everybody agreed that the split for that quarter was 85/15.

Well, if you take that money that went to EPS off of Jan's clients, Jan Fredman's clients, then he is entitled to credit for his portion of that because they had that money.

Once you do that, it amounted to $2,962.25. So at that stage, the only thing that he could have converted, that did not belong to him, was $13,363.38 and not the fifteen.

Go on down -- of course, even in opening statement, counsel conceded -- everybody agreed. Dameron -- Jan said he paid him, Dameron said that he cashed the check. He got it. He couldn't remember when in April that he got it but he got it in April, and he says that. I've pointed that out by reference.

That was the $7,000 check that was -- that we were talking about. He had paid $7,600-something dollars, I think, that was in my calculation here that I have. So he had -- he gave them that money in April, within that timeframe.

He got his check on the 9th.

There was a letter written on April 20th, which is a plaintiff's exhibit, where he had demanded money. And it shows that Jan offered him -- at least the letter goes so far as to say 'yeah, he offered that $7,600 dollars.' 'But did it come with it?' He didn't know. Let's say April, that's what Dameron testified to.

So even if there was a technical conversion, and I submit that there wasn't, but even if there was a technical conversion of that it was only for a short period of time, just a matter of days. He would certainly be entitled to that $7,600-some-odd credit because he didn't keep it. He gave it to him.

You've got to go back and talk about what he did there in relation to prior dealings of

the parties. Remember on December 31, '09, Dameron had a problem with Fredman. In order to force him to come to some kind of resolution about some things, he withheld Jan's portion of the check for twelve days. He admitted that.

He says throughout that Jan paid bills that belonged -- that Jan paid bills that he was not supposed to pay, that EPS was supposed to pay. That at the end of each quarter they'd have a reconciliation, get it together. In that instance, the reconciliation of some things they'd talk about it and he didn't give him a check for twelve days. He didn't complain about that, obviously. It was a matter of doing business.

So I would submit to you that the matter of the 9th -- whether it was the 9th, the 20th, eleven days or whatever, that is insignificant. A technical conversion maybe, but he gave him the money and they -- it would have cut off the interest at least. You might have -- and you cut off the amount and you computed the interest on the whole

fifteen from the time that you said the conversion occurred -- on the 20th, I believe you said -- or sometime. You computed interest on that all the way through the date of trial. Well, that number -- I mean, that was cash money that he gave to him, EPS got it.

Now, the other part of that was that -- and that's a referenced portion of the transcript. Is that EPS gave Jan, in February, a list of his billings for the quarter ending 12/31/09. He said -- they all said that the split then was 80/20.

I took Mr. Dameron through the computation, and Jan later testified to it, -- I took him through -- Dameron had not seen the math, had not done the math, but he agreed that the method of calculation of what Jan would have been owed at the end of December, was correct and that it was accurate. If you took those total billings shown on the records of EPS and you applied eighty percent, Jan was entitled to $84,000-some-odd dollars. The check ---

THE COURT: These are all matters that

you presented at trial, in your brief and everything.

MR. BRANDT: (Affirmative nod), all of this is in my brief.

THE COURT: Well, it was at the trial too.

MR. BRANDT: Excuse me?

THE COURT: I said that this was all information that you argued at the trial. All the information was provided at the trial. I just want to remind you of that. Tell me anything new or ---

MR. BRANDT: Sir?

THE COURT: I said that these were all issues before me at the trial.

MR. BRANDT: Yes, sir.

THE COURT: All that you argued and the ones that you put in your brief.

MR. BRANDT: Well, ---

THE COURT: I obviously rejected them then and ---

MR. BRANDT: Certainly. But if you rule that that is not -- that he is not entitled to that last credit, then I certainly think that I need to know why.

And I need your Order to specifically say that he is not entitled to it for 'this reason.' Or that you don't believe it or whatever. Or your Order needs to be narrowed down and at least address the $7,600 check that he got, he admits.

And the other part of it -- take a look at that and say, 'wait a minute.' Then tell me if he is not entitled to that why he is not entitled to it.

Obviously I'm trying to protect my record here ---

THE COURT: I understand.

MR. BRANDT: --- with all that.

THE COURT: I understand.

MR. BRANDT: I've gone through the calculation there about how you could figure what was owed to Jan for prior quarters. He always claimed that. He still does.

Well, then it's laid out in my written memorandum and I won't bother you with it any further, but that's where that goes.

The conversion of personal property, you found that there was $8,046.31 converted. That figure, when I asked Dameron the value

at the time of conversion, he testified approximately $2,500.

Now, you got to that $8,000-some dollar figure through the testimony of Ms. Lockwood. Her testimony didn't give the value of the property on the date of conversion. It gave it when it was put on the books, when it was put on the books in the middle of 2008. I've address that here in this, too.

THE COURT: Okay.

MR. BRANDT: She said that there was a computer, printer -- a combination printer/copier/scanner -- leased at a value of $1,700.

Well, your own Order says that didn't count. All you said that he converted was furniture, chairs and tables.

So you go down, she also said that there were computers -- I believe that it was about $2,500 but that was never proved that he had that. In fact, Dameron testified that when he moved from Clemson to his office that he bought new computers and used them as the computers.

Then you go down to -- so that leaves you

with furniture. Lockwood's testimony said that the furniture portion of that number was $3,800. Transcript Pages 23 to 25.

So if you only found that he converted the furniture, the only value that is in there that is the value of the furniture is $3,800, not the $8,000.

Again, you compound the one number that I submit is incorrect, you applied interest on it all the way through it -- and you couldn't do that, because he didn't take it. The only thing that he could have possibly converted.

Of course we taken the position that no conversion occurred under the circumstances.

You did address my claim that -- our claim that the no trespass letter, the don't-talk-to-me letter, would have excused his compliance with returning it. The fact that he, I guess, was that he didn't come to try to collect it -- it was never refused, he just never went to get it. Jan never took it to him but Jan stored it, all the testimony was that it was stored. I say that the duty that he had was to keep it safe, keep it in good shape and not let it lay waste. Jan did

that. That's the testimony.

I don't think that the conversion lies because he was prevented, basically, from returning it. He said, 'you don't come and don't even send an emissary', that's what that letter said.

Well, at least the numbers need to be adjusted in some form or fashion, or I request an explanation of why I'm not entitled to the adjustments and things that we've claimed.

THE COURT: Okay, I will look at that portion.

MR. BRANDT: Punitive damages, I think that I addressed that in the memo, briefly; in the memo that I had submitted before, after the trial. So I reincorporate those punitive damages, but I just don't think that it was egregious for punitive damages under these circumstances. Even if a small conversion occurred it was not as egregious as the damages that you awarded. That needs to be adjusted.

I also raised the issue, of course, -- you really have two things here, you've got

money and you've got property. You put them both together where there's error on both sides of it to determine punitive damages. Again, I don't think that they are warranted.

But you did that and I think it would certainly be better to go down the road if -- for those damages or punitives be split in some way, because otherwise I think the punitive damages relates to the value of the stuff that he did, and that reflects basically on the whole issue of punitive damages, whether they should have been ordered and whether or not what amount.

I don't mean to beleaguer anything. I've got it all before you. I've given you a copy of the transcript to -- the pages that I said are pertinent.

The only other comment that I would have is that this Motion is made under 59 as an alternate Motion for a new trial also. You've got quite a lot of latitude there that you can even agree to take more testimony or ask for additional information to verify ---

THE COURT: I can tell you that I am going to deny that portion.

MR. BRANDT: Well, often said. The thing is that the importance of Rule 59 and the process under that shows that it is of paramount importance for us to view the evidence and try to make any Order comport with that evidence in the interest of justice for the parties. Rather than the essence, let's try to resolve this thing correctly at the lowest level possible. That says -- and that's why they allow you to go out and say, 'hey, wait a minute, 'take a look', 'throw the flag and I want you to replay the camera.'

THE COURT: Well, ---

MR. BRANDT: That's where we are, Judge. That's my argument. I think that the Order should be certainly reversed in its entirety, but certainly it should be reversed to some degree because clearly, clearly he didn't convert the amount of money that you say he converted.

THE COURT: Okay.

MS. KERN-FULLER: May it please the Court, Your Honor?

THE COURT: Yes.

MS. KERN-FULLER: Having been at the Eagles-Panthers game last night when one red flag was thrown, and it was upheld, there is not a replay.

In fact what has happened in this case and what has happened in the brief -- I just got Mr. Brandt's brief prior to the hearing while we were sitting here. It's not been filed yet. So if Your Honor would like for me to file any writing in response, I will be happy to.

But in his brief, he argues this 30(b)(6) deposition. He tries to put into evidence now, at the Motion for reconsideration, 30(b)(6) deposition testimony that at the trial of the case I tried to put in and he objected to.

There is not a single exhibit from the plaintiffs or the defendants of that 30(b)(6) deposition of Mr. Dameron.

A party cannot use a Motion to reconsider to present an issue he could have raised prior to judgment but did not. That's Anderson Memorial *Hospital v. Hagen*, 313 South Carolina 497 at Page 498, which is a

Court of Appeals Opinion from 1994.

Likewise, we have a little discrepancy in what we remember the Court ordered with what is in the transcript, and if I could briefly go through this.

THE COURT: Yes.

MS. KERN-FULLER: Your Honor, what the Court said with regard to this trespass letter was that Fredman was fully aware that the property belonged to the plaintiff and he made no arrangement or attempt at having the items returned or available to plaintiff. And if Your Honor will recall, the letter specifically said to Mr. Fredman, 'I don't want to talk to you anymore, deal with my attorney.' Me. He provided in the letter my name, my address, my phone number, my fax number.

Mr. Fredman's testimony about returning the items of furniture was clearly that he made no attempt. His testimony was that he presumed that he was on trespass notice from EPS. He didn't do anything that the written words in the letter said, which was to 'contact my attorney and give this back.'

The Court could have said that it found that Mr. Fredman converted the whole $105,000 dollars. He never -- it was his numbers. He now wants to make them $106,000-and-some-change. They were his numbers. He was the one that did the math. Mr. Dameron did the math in that letter. No one mentioned $106,000 dollars until this Motion for reconsideration.

The Court found that conversion would have occurred at the time that such return of items was demanded by David Dameron as president of EPS Advisors by letter dated April 20th, 2010. At that point the clock started ticking. He didn't return the furniture, he didn't return the computers, he didn't return the money. He had no entitlement, as the Court found, to ever get that check or those monies directly from Schwab.

What happened in January of 2010 when he and Mr. Dameron sat down and Mr. Dameron was holding funds that under their agreement he would have, that there were setoffs and there were things back and forth that they had to

agree on. Mr. Fredman's testimony was that at that time they resolved it, that they came to a compromise and they resolved it. As of that point in January of 2010, their issues were resolved up to that point. That was the testimony.

Now they want to come back and say 'no, no, no, now wait a minute, he owes me more money from 2009 that you've got to take off this judgment.' Quite frankly, that wasn't what the testimony was and, therefore, it shouldn't be considered.

Likewise, the testimony that Mr. Dameron testified, alleged that the furniture was worth $2,500, at Page 104 of that transcript it says, "Dameron said I don't remember. I would have to put pencil to paper to that. I'm thinking in my head that it would be about $2,500 but I would have to put pencil to paper for that." That is what his testimony was.

When -- the testimony about the amount of that was owed, the testimony by Mr. Fredman himself at Page 277, he is testifying about the $15,000-and-some-change, never about the

$16,000 that they are now raising in the Motion for reconsideration.

Interestingly, they talk about the $7,000 check and that EPS received the check. Well, did they physically get the check in the mail? Yes. Was there any testimony in the record that that check was cashed? No.

Your Honor threatened to put Mr. Brandt under oath at one point, and I asked if I could cross-examine him. But the only statement was when the Court asked Mr. Brandt was whether they had ever had any evidence that that check was cashed. Mr. Brandt said, at Pages 262 and 263 of the transcript, "The only evidence that the check was cashed was the 30(b)(6) deposition testimony."

Mr. Brandt tried to argue it, but Mr. Brandt's argument about the 30(b)(6) testimony, he wouldn't let me put into evidence; which was his choice, it was a strategic decision of his, because if he had put it in I would have gotten to put some in. But he didn't want to do that. So he can't have a Mulligan now. He can't throw that red penalty flag and try to get something that

was never ruled on on something that was never even put into evidence to begin with.

I would remind the Court that in their Answer that they made no counterclaims, they made no affirmative defenses.

Most telling and most crucial to the defect in their argument, at trial they never made a Rule 15 Motion to conform the pleadings to the evidence.

So they never amended their Complaint -- sorry, their Answer. In their Answer when Mr. Brandt argues clean hands -- in part twelve of his Motion, he never argued that. That's an affirmative defense.

They never argued setoff.

They never argued accounting.

Your Honor, I repeatedly objected to that and Your Honor noted the objections and said 'this is a bench trial.' You were taking the information subject to those objections.

So we've got 30(b)(6) testimony that never came into evidence; the check that they can't prove was ever cashed -- except for 30(b)(6) testimony, which didn't come into evidence.

The testimony about how they were squared up is at Page 76 of the trial transcript. I can give you the cites where I repeatedly noted my objections about anything where they were trying to argue setoff.

As far as Fredman, Fredman presented no evidence. When I asked him about it, at Page 309 of the trial transcript, he said that it was back at his office. I said, 'You don't have that with you today?' 'No, it's back at my office.' This was his trial, this was his opportunity to put in that evidence if he had it, and he didn't.

They talk about the fact that the pot was right, that the money was supposed to be firmed up. The testimony from Pages 157 to 160 of the trial transcript, there's no testimony of that sort. The only testimony is that they were squared up as of January 2010.

The only other testimony was that Mr. Fredman himself admitted that he didn't have a right to get that $105,000 check. He got it. I argued the *Futch v. Towing* argument that because of his disloyalty that he was

not entitled even to the amount that he would have gotten under the fifteen percent. The Court rejected that argument, but that could have happened. He could have been entitled to zero and he still would have had to return the furniture, the computers, all of those things.

At that point when he moved to Clemson, the testimony was that the computers were two years old. I've got computers in my office that are five years old. They work just great. But he kept them. He didn't give them back. Then after Mr. Dameron's letter in April of 2010, he still didn't give them back. He didn't give back anything. All he did was send the check.

As far as the letter, at Page 288 of the trial transcript Fredman admitted getting the letter, telling him to contact me. The letter was put into evidence as Exhibit 5 of plaintiff's exhibits.

As far as item number seven of the Motion for reconsideration, where it talks about the value of the furniture, Ms. Lockwood put in the value of the furniture. She put pencil

to paper, she gave exact amounts. Mr. Fredman put in nothing about the value. The only testimony was Mr. Dameron saying, 'I'd have to put pencil to paper. If I had to think about it right now, it might be $2,500 but I'd have to put pencil to paper.' We put Ms. Lockwood up on the stand and she put pencil to paper to it and there was no evidence to the contrary.

When it comes to the punitive damages, again that's apparently where we start quoting the 30(b)(6) deposition, starting in Paragraph 11 of the Motion for reconsideration. The 30(b)(6) that was never put into evidence.

At Paragraph 8 obviously the Court's punitive calculation is single digit, it's well within the due process standards. It's well within the Court's discretion based on what the Court heard. The Court saw the witnesses, the Court heard the testimony and it's well within the Court's discretion and it's well within the due process standards.

Lastly, the issue that supposedly we should separate the furniture and the money,

they were both converted at the same time. They were both converted at the moment, and case law supports it, that Mr. Dameron demanded it and they failed to return it. That was the point of conversion for both, both at the same time.

Certainly to separate those items is well within the Court's discretion but I don't see any purpose in doing that other than just to muddy up the issues a little bit.

Your Honor, for all of these reasons I believe that this Motion for reconsideration should be denied.

THE COURT: Thank you.

MR. BRANDT: Briefly, Your Honor. First of all, Dameron not only testified to it in the 30(b)(6), which was placed in evidence.

He not only testified that he received the check and cashed it in the 30(b)(6), he testified to it at trial. It's in his trial testimony. So it's not just in one spot.

The -- she said that I never argued setoff. It's not a pure setoff. Setoff is extrinsic, that if they had owed something outside of the deal before us, it would have

been a setoff. But setoff doesn't have to pled either.

This was -- everything that I argued was well within the framework of the deal between Fredman and Dameron. What was owed, they had a contract running here and when we get to the end, there's got to a balance, to balance it up, who has got what money, who owes what, and that was done.

The burden of proof as you know is always on the defendant (sic), not only to prove the wrong but the amounts of money to which they are entitled. You can't use speculation and conjecture.

They would absolutely -- the only number that was advanced by the plaintiff was the value of things that Jan had, that he didn't return, was by Mr. Dameron and he said $2,500. He just said, 'I will have to put pen to paper for that, think about it.' He never came back to the stand later and put pen to paper. They had the burden of proving that as of the date of the conversion, the date of the alleged conversion.

Again, Lockwood gave numbers that was set

up on the books in mid 2008 when Jan first joined them. She said -- they claimed that there were computers in there but the computers disappeared. There is nothing in there that said that Jan had anything but his computer down there at Clemson.

Any calculation of damages by the Court -- I agree that you can move things around, call it a question of fact, interpretation, whatever. But those damages still have to be supported by the evidence. The Court can't just reach up and pull a number out of thin air.

That's what I'm saying. If you review the evidence, what is a reasonable conclusion, what is a reasonable construction of that evidence? That's what the court is saddled with, otherwise it's an abuse of discretion. You can't just reach and get it.

So I think certainly the numbers in there are wrong. I don't want to beat a dead horse to death, I've said everything that I can say. I've said it several different ways.

THE COURT: As usual.

MR. BRANDT: Yes. But I think that this

is an important situation. If you're rejecting the evidence, certain portions of the evidence, I'm asking you to do that so that I can know where I need to go and what I need to do.

It would appear to me -- and everybody has, you know, plaintiffs and defendants, have their different construction of the facts and the evidence and what it says. You don't have to take my word for what the testimony was, or what her word for it is. You have the record before you now. You can go back through there and see exactly what was said and draw your own conclusion. Then say, 'Mr. Brandt, you say this. I disagree because you have evidence over here that says this.'

THE COURT: I'm aware of what I can do in my Orders.

MR. BRANDT: I understand. But, anyway, I ---

THE COURT: Mr. Brandt, I don't mean to cut you off. Let me look at some of the issues that you've raised in light of the transcript and I'll let y'all know.

MR. BRANDT: Okay.

MS. KERN-FULLER: Your Honor, do you want me to do anything in writing?

THE COURT: You don't -- no, that's fine. Good to see y'all again.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA )
) CERTIFICATE
COUNTY OF GREENVILLE )

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on October 13, 2017, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

_____

Deborah Garrison

Greenville, South Carolina
November 27, 2017

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | |
| COUNTY OF PICKENS | ) | THIRTEENTH JUDICIAL CIRCUIT |
| | ) | |
| EPS Advisors, LLC, | ) | C.A. No. 2013-CP-39-434 |
| | ) | |
| Plaintiff, | ) | **SCRCP 32 DEPOSITION DESIGNATIONS OF JAN STURE FREDMAN** |
| | ) | |
| v. | ) | |
| | ) | |
| Jan Fredman and Clemson-EPS Advisors, LLC, | ) | |
| | ) | |
| Defendants. | ) | |

Pursuant to SCRCP 32 of the South Carolina Rules of Civil Procedure, Plaintiff designates the following deposition excerpts of Jan Sture Fredman and Exhibits thereto to be read into the record during their case in chief.

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November 2, 2016



p.4, lns.14-17

p.7, lns.9-21

p.9, lns.1-7

p.11, lns.1-12, lns.16-18

p.12, lns.2-10; lns.17-19 and Exhibit 1

p.13, ln.3 - p.14, ln.25

p.15, lns.4-23

p.16, ln.17 – p.17, ln.7

p.17, lns.13-25

p.18, ln.1 - p.19, ln.2

p.20, lns.9-15

p.21, lns.2-9; lns.12-14; ln.20 - p.22, ln.2

p.22, ln.8 – p.23, ln.18

p.24, lns.4-8; lns.15-16

p.25, lns.12-23

p.26, lns.3-4; ln. 19 – p.27, ln.1

p.27, lns.10-16

p.36, lns.15-25

p.37, lns.1-10; ln.16 – p.38, ln.10

p.39, lns.3-7; lns.15-22

p.40, lns.13-17; lns. 21-25

p.41, ln.11 – p.42, ln.3

p.42, lns.6-8; lns.12-21

p.43, ln.16 – p.44, ln.13

p.44, ln.25 – p.45, ln.8; part of ln.17-21

p.46, part of ln.5-ln.10 and Exhibit 2

p.46, lns.15-part of ln.24

p.47, part of ln.9-ln.25

p.48, lns.1-11

p.48, ln.24 – p.49, ln.4

Δ's additions

p. 20, lns. 16-21
p. 21, lns. 15-19
p. 23, lns 19 – p. 24 ln. 3
p. 24, lns. 9-14
p. 24, ln. 23 – p. 25, ln. 11

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS CASE NO. 2013-CP-39-434

EPS Advisors, LLC,

Plaintiff,

vs.

Jan Fredman and Clemson
EPS Advisors, LLC,

Defendants.

---

DEPOSITION OF JAN STURE FREDMAN

---

DATE TAKEN: April 27, 2016

TIME BEGAN: 9:56 a.m.

TIME ENDED: 11:26 a.m.

LOCATION: Upstate Law Group, LLC
200 East Main Street
Easley, South Carolina

REPORTED BY: Traci L. Barr, RPR

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ALSO ATTENDING: Ray Bandigas, Susan Lockwood

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EXHIBITS (Attached)

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Exhibit 2 (Document).....46

(It is hereby stipulated and agreed by and among counsel for the respective parties that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure; and that the deponent does not waive reading and signing of this deposition.)

- - -

JAN STURE FREDMAN, after having been first duly sworn, was examined and testified as follows:

- - -

EXAMINATION

BY MS. KERN-FULLER:

Q. Mr. Fredman, would you state your full name for the record, please, sir?

A. Jan Sture, spelled S-T-U-R-E, Fredman.

Q. And have you ever had your deposition taken before, Mr. Fredman?

A. I think I have once, the best of my recollection.

Q. Was it in a State Court matter in South Carolina?

A. I have no recollection. I don't -- really, I can't remember.

Q. Also, even though I am sure this is not the case, for the purposes of the record, are you under the influence of any drugs or alcohol or anything that would affect your ability to give truthful testimony today?
A. No, ma'am.
Q. Thank you. I didn't think so. I just wanted to make it clear for the record.
All right. Mr. Fredman, where do you reside?
A. 410 Woodridge Drive, Seneca, South Carolina.
Q. How long have you resided there?
A. 2000.
Q. Where did you reside prior to that?
A. Bentbrook Lane in Clemson. I think it was 518. That's my recollection, 518 Bentbrook Lane.
Q. And when did you reside there?
A. Probably 1994 through 2000.
Q. Are you an American citizen?
A. No.
Q. When did you get alien green card status?
A. Best of my recollection is around 1983.
Q. And has that been renewed?
A. Yes. Just renewed it. Just renewed it.
Q. It was just renewed; is that what you said?
A. Last year.

All right. What kind of work do you do for a living, Mr. Fredman?
A. Investments.
Q. What kind of investments?
A. Stocks, bonds, mutual funds mainly.
Q. And how long have you done that kind of work?
A. Since 1984.
Q. So you did that work after coming to America?
A. Yes, ma'am.
Q. What is your date of birth?
A. 11/25/57.
Q. And do you have an American Social Security number?
A. Yes, ma'am.
Q. Okay. I'm going to ask you to give it to me.
MS. KERN-FULLER: I'm going to ask you to put all but the last four in the record, please.
THE DEPONENT: 437-37-XXXX.

EXAMINATION RESUMED

BY MS. KERN-FULLER:
Q. Since coming to America, have you had any problems with the law?
A. No. I had an incident in 2008, but it got expunged.
Q. Tell me about the incident in 2008.

Q. I understand. And please understand the purpose of my question. I'm not asking you to recall what the charges were. I'm asking you to recall what the facts were surrounding the charges. Because I know you're not a legal person, so you may not know exactly what they charged you with. But if you recall what the allegations were, that's what I'm asking.

A. As far as I recall, it was allegation taking too many drugs, too many pain pills and -- I don't recall what actually the facts was. Taking too many pills; I know that.

Q. Were you importing those pills from another country?

A. No, ma'am.

Q. What were the pills that you were allegedly taking too many of?

A. Lortab.

Q. Any others?

A. No, ma'am.

Q. Okay. Now, as a result of those charges, I understand -- I'm not going to ask you any conversations that you had or anything like that, but Mr. Brandt represented you in that matter; is that correct?

A. Yes.
Q. And was your licensing as an investment advisor affected by those charges?
A. The best of my recollection, no.
Q. You don't know if that was included on a copy of your report to FINRA?
A. It was reported to FINRA.
Q. Okay. Did that affect your ability to transact business as --
A. No, ma'am.
Q. Okay. Let me show you a copy of what I have as your BrokerCheck.

(Exhibit Number 1 marked for identification.)

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. All right. Is that a true and accurate copy of your FINRA BrokerCheck?
A. Yes, ma'am.
Q. All right. Now, if you would go to the -- there should be one that has a number on it.
A. Uh-huh.
Q. If you would swap, please, with Mr. Brandt. If you would use the one that's numbered. They're the same. It's just for purposes of the

deposition.

A. Okay.

Q. If you go to the next to the last page that has a number 15 on the bottom right-hand corner. They're front and back. Do you see the one that has a 15 at the bottom?

A. Yes, ma'am.

Q. Okay. So it appears as if you were terminated from a UBS Financial Services, Inc. Do you recall that?

A. Yes. That's correct.

Q. And it listed the allegations for your termination that it was alleged you obtained a controlled substance by fraud.

A. That should be correct.

Q. Was that a prescription drug that you allegedly obtained by fraud?

A. Yes.

Q. Okay. And then down in the second paragraph it says, Mr. Fredman was discharged after he admitted to forging the signature of a physician, who is an authorized signatory on a UBS account, on multiple prescription pages taken from the physician without his permission.

Do you see that?
A. Yes.
Q. Did you make that admission to UBS?
A. Yes.
Q. Okay. Are those the allegations that were surrounding the criminal charges that have been expunged?
A. Yes.
Q. Okay. So it wasn't simply that you were taking too many drugs; you actually committed a forgery to obtain prescription drugs; is that correct?
A. Yes.
Q. Now, coming forward, if you would, there were other reporting incidents that have occurred over the course of your time as an investment advisor; is that correct?
A. Yes, ma'am.
Q. And those allegations also included while you were with UBS that you sold shares of the client stock without consulting the client; is that correct?
A. Yes.
Q. Did that occur?
A. No. I was cleared from that charge --

Q. Okay. So --
A. -- as far as my recollection goes. Yeah, I was cleared from it.
Q. So it's your testimony today that did not occur?
A. The charge occurred.
Q. The charge did occur?
A. Yes.
Q. But you were cleared by FINRA of it?
A. For -- yes.
Q. Coming forward to page 8 of the report, there was also an allegation from 2006 that you failed to allocate stock holding between two accounts and that you engaged in unauthorized transactions and disbursements from 2004 to 2006.
Do you recall that allegation?
A. Yes, ma'am.
Q. Did that occur?
A. Explain occur. Did the charge occur?
Q. No, sir. Did that happen? Did you do that?
A. I did -- yes, we did it according to Edward Jones lawyers.
Q. So you did make those allocations. It's your testimony that you did it under legal advice?

A. Yes.
Q. But you-all ended up settling this case; is that correct?
A. That's correct.
Q. So going backwards from there, as a result of the incident where you did settle the case, did you also pay any fines to FINRA?
A. To the best of my recollection, no.
Q. Okay. If this report indicated that you did pay fines, would you have any reason to doubt the accuracy of the report?
A. If they stated that I paid, it was paid by the firm, not me.
Q. Okay. Did you have to reimburse the firm for it?
A. No.
Q. Now, let me just back up and ask you this. What are the current licenses that you hold?
A. The best of my recollection, 63, 65, 66.
Q. Are you a broker-dealer?
A. Money manager.
Q. You're a money manager?
A. Uh-huh.
Q. Are you an RIA?
A. Yes.

Q. Are you an IAR? Are you a stockbroker?
A. Are you asking Series 7 license?
Q. Yes.
A. No. I let it expire.
Q. When did it expire?
A. Best of my recollection, '09, '10. 2009, 2010, something like that.
Q. About the time you separated off Clemson EPS Advisors?
A. No. It was -- let me state that I don't remember. I think it expired before then. Not sure.
Q. All right. Now, your FINRA broker-dealer check lists that you were with Edward Jones from October 1984 through August 2004; is that correct?
A. That's correct.
Q. And you were with UBS Financial Services, Inc. from August 2004 until July 2008; is that correct?
A. That's correct.
Q. And it lists a sabbatical from July of 2008 until November of 2008?
A. Yes, that's correct.
Q. Was that a criminally-enforced sabbatical?

A. No, ma'am.
Q. Was that the time of the criminal charges when they were pending?
A. Yes, it was.
Q. Okay. And you went to work for EPS Advisors immediately after that in December of 2008?
A. Yes, ma'am.
Q. Now, would it be fair to say that when you went to work for EPS Advisors that you were damaged goods?
A. Strong word, but you probably could say that.
Q. Would that be a fair assessment?
A. Yes.
Q. At this point I'm looking at your FINRA report, and you've got numerous reports of cases, allegations by clients, 2004, 2008, and then ultimately these issues of forgery and fraud in 2008, right?
A. Yes, ma'am.
Q. And EPS Advisors took you in with this history?
A. Yes, ma'am.
Q. And would it be fair to say that they rehabilitated your career?
A. Yes, ma'am.
Q. And in doing so, they set you up to have the

business that you have today, didn't they?
A. Yes, ma'am.
Q. And so on this employment history, it shows EPS Advisors from 2008 to January 2010, and then it also shows an entry from December 2009 through March of 2010, and one shows Anderson and one shows Clemson.
Can you explain that difference to me? It's on page 4.
A. Restate the question.
Q. Sure. I'm looking at the employment history, and it shows your sabbatical till November 2008, and then it shows EPS Advisors December 2008 to January 2010 and EPS Advisors in Anderson from December 2009 to March of 2010. Can you explain what the difference is?
A. In -- okay. 2010 to present, that is me working independent.
Q. I'm not talking about the company you formed called Clemson EPS Advisors, LLC. I'm talking about the next two entries, EPS Advisors, that showed December 2009 to March 2010 in Anderson, South Carolina, and December 2008 to January 2010 in Clemson, South Carolina.
A. It's overlap in here. That's what confusing me

because two dates are overlapping. I don't know -- I would say from 12/2008 to 3/2010 it was EPS Advisors. I don't know what the difference here is.

Q. But as a registered person with FINRA, it is your responsibility to make sure this is correct, right?

A. Never looked at the dates before.

Q. As a registered person with FINRA, it is your responsibility to make sure this is correct, right?

A. Yes.

Q. Okay. When did you form Clemson EPS Advisors, LLC?

A. Fall of 2009.

Q. Why?

A. Best of my recollection was that me and Mr. Dameron -- I was going to start reconciliation of some stuff that's done with Schwab, and so to get that done, I had to have an LLC formed for corporate name with Schwab.

Q. Okay. Did you complete any paperwork through Schwab in fall of 2009?

A. Best of my recollection, I can go back and look at my files and notes to see if I did. I can't

recall.
Q. Okay. So the original game plan was that whatever it was you were going to do with Schwab, you were going to do it as part of EPS Advisors with Mr. Dameron?
A. Mr. Dameron was involved, yes.
Q. Okay. And Mr. Dameron is one of the two principals of EPS Advisors, LLC, right?
A. Yes.
Q. And that's the plaintiff in this lawsuit today?
A. Yes.
Q. And that was the company with which you were contracted as a producer?
A. Yes.
Q. Okay. So when you formed Clemson EPS Advisors, you did it with the knowledge of Mr. Dameron?
A. Are you asking if Mr. Dameron knew about it?
Q. Yes, sir, I am.
A. Yes.
Q. And you told Mr. Dameron that the intention was it would be a joint venture for you-all to do with Schwab?
A. Yes.
Q. And that's why the name was Clemson EPS Advisors? You absorbed his company's name,

right?
A. Yes.
Q. And did you do business with Schwab with EPS Advisors, or did you take Schwab's business for your own?
A. Did I do business with Schwab -- restate the first question.
Q. Sure. My question was -- you said that when you formed EPS Advisors in the fall of 2009, the goal that you told Mr. Dameron was that it would be this venture with EPS Advisors; hence, the name Clemson EPS Advisors?
A. Yes.
Q. And my question was, is that what happened, or did you just take Schwab's business and the name Clemson EPS Advisors and take it for your own?
A. For spring of 2010 or maybe December 2009, he used Clemson EPS Advisors.
Q. With Schwab?
A. With Dameron also.
Q. Did Clemson EPS Advisors have a direct contract with Schwab in December 2009?
A. No.
Q. When was the first time that Clemson EPS

Advisors had a direct contract with Schwab?
A. Best of my recollection, in the end of March of 2010.
Q. Right before the end of the quarter of March of 2010; is that correct?
A. Yes, ma'am.
Q. And as a result of getting the contract with Schwab right before the end of the quarter of March of 2010, Clemson EPS Advisors took all of the commissions that were earned by the plaintiff in this case, EPS Advisors, as its own for that first quarter of 2010, didn't it?
A. I paid Mr. Dameron the 15 percent that we had agreed on.
Q. That wasn't my question. My question was, did initially you take the full amount of the commissions?
A. Yes.
Q. Okay. And as a follow-up question to that, how did you pay him the 15 percent?
A. To the best of my recollection, I sent him a check, and I can't remember exact dollars and cents. Plus, he had owed me $5,000 from previous paycheck, and he got some of the commission from some of the clients that

overlapped in time from the quarter. I think it was like $3,500, something like that. It should be about 15 percent.

Q. Okay. So let's back up and let me understand. Why was it that you felt you could take all of the commissions and only tender 15 percent?

A. 15 percent, the best I recall, that was in our agreement.

Q. What agreement?

A. We had an agreement I'm going to pay him 15 percent commission out of my paycheck.

Q. Okay. Were you a contractor or were you an employee?

A. Contractor.

Q. Okay. Was that contract in writing?

A. Best of my recollection, no.

Q. Okay. Are you aware of FINRA rules that require those contracts to be in writing?

A. Well, no.

Q. You're not aware of any FINRA rule that requires that to be in writing?

A. As far as I know, no.

Q. Okay. Do you have a copy of any writings that in any way document what that agreement was?

A. Yes. We do have -- we have a piece of paper

that shows what we talked about doing.
Q. Okay. What is that piece of paper? Can you describe it to me?
A. It's the -- Mr. Brandt probably has one of them.
Q. I understand. Mr. Brandt is not testifying. I'm asking you.
A. I didn't know how it worked there.
Q. Sure.
A. So it just writes down, you know, do this, that Mr. Dameron was going to do for 15 percent.
Q. Does it in any way ever say you're going to get the 100 percent and remit the 15 percent to him?
A. The best of my recollection, no.
Q. The contracts that your clients have, were they with Clemson EPS Advisors or were they with EPS Advisors, LLC?
A. Which time frame are you talking about?
Q. First quarter of 2010.
A. First quarter of 2010, the end of -- with EPS Advisors, up to the end and around the first of April that was with Clemson EPS Advisors.
Q. I'm not talking about March and April. I'm talking about January. I'm talking about

February?

MR. BRANDT: What month was that?

MS. KERN-FULLER: January and February 2010.

THE DEPONENT: EPS Advisors.

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. Okay. So the contracts that your clients had were with EPS Advisors, and at some point you changed those contracts from EPS Advisors to Clemson EPS Advisors?

A. Yes, ma'am.

Q. Okay. And what did you tell your clients as you were changing them from EPS Advisors to Clemson EPS Advisors?

A. Best of my recollection -- this is seven, eight years ago, six years ago. The best of my recollection was that I was going to go on my own.

Q. And each of the clients were told that you were going on your own from EPS Advisors to start your own group, Clemson EPS Advisors?

A. That's my recollection, yes, ma'am.

Q. And that was contrary to the purposes that you had told Mr. Dameron you were setting the group up for back in the fall of 2009?

A. Yes, ma'am.
Q. Okay. Now, did you have each of your clients actually sign each of these documents to change them over to EPS Advisors?
A. Best of my recollection, yes, ma'am.
Q. Is it your testimony today that they personally signed these documents and you did not sign their name to them?
A. Did not. Yes.
Q. When did you begin talking with Schwab about going out on your own?
A. Best of my recollection, around end of January or February.
Q. Was that a conversation you initiated or was it a conversation Schwab initiated?
A. Best of my recollection, I initiated it.
Q. Who did you contact at Schwab?
A. Kevin Chalk.
Q. How do you spell his last name?
A. I think it's C-H-A-L-K.
Q. Kevin Chalk?
A. Yeah.
Q. And what did you tell him when you contacted him the first time?
A. Best of my recollection, I really don't know

these like my husband did.
A. Christmas day.
Q. Do you know the last four of her Social?
A. No, ma'am.
Q. Okay. And that phone number, the 723-1840, has always been in her name?
A. It's my name, but it's under her account at Verizon now. She has bundled, whatever you call it.
Q. And prior to that, it was with AT&T at some point, and it was under her name as well?
A. That I couldn't say.
Q. Okay. Is it possible it was under your name?
A. Possible.
Q. Okay. Now, you would agree with me that prior to the date that any limited power of attorney was signed to Clemson EPS Advisors that those were clients of EPS Advisors, LLC, right?
A. No. That was my client.
Q. When they signed an authorization to open an account prior to March of 2010 and they signed an agreement that their advising fees would be paid to the advisor, what advisor were they supposed to be paid to?
A. To me.

Q. It's your testimony that the Schwab paperwork will say it was to be paid to Jan Fredman?
A. Was to be paid to EPS Advisors, and I would have -- we had to split the commission, me and David.
Q. So the contract that the client had was with EPS Advisors, and then EPS Advisors had a contract with you; you were a subcontractor of EPS Advisors; is that correct?
A. Yes.
Q. Okay. And that's this contract that you say there might be some writings indicating what the duties were and maybe what the amounts were that isn't signed somewhere; is that correct?
A. Yes.
Q. Okay. But the things that are signed between the clients and the companies are between the clients and EPS Advisors prior to March of 2010; is that correct?
A. Yes.
Q. Okay. So their advising fees that were to be paid by Schwab for January of 2010, February of 2010, and up and until the time the new limited power of attorney was signed for your company that you created was to be paid to EPS

Advisors, LLC, right?
A. Right.
Q. But you took all of those for the accounts that you transferred over prior to the end of March of 2010, right?
A. Yes.
Q. Okay. And you decided to pay what you decided Mr. Dameron was owed allegedly by check; is that correct?
A. Yes, ma'am.
Q. Was that check ever negotiated?
A. Explain negotiated.
Q. Was it cashed?
A. The best of my recollection, it was, but --
Q. Who did you have an account with back in March of 2010?
A. Best of my recollection, here again, I think my business account was with First Citizens Bank, but I'll be glad to check that.
Q. Okay. And you said your business account. Was that under Clemson EPS Advisors, LLC?
A. The best of my -- I can't tell you how it was listed on the account because I can't remember which bank it was even with in them days.
Q. Okay. Were you the only signatory on the

account?
A. As far as I know, yes.
Q. Did you write the check to Mr. Dameron individually, or did you write it to EPS Advisors, LLC?
A. Best of my recollection, I think I wrote it to David Dameron.
Q. Individually?
A. Yes.
Q. Why did you write it to Mr. Dameron individually if your contract --
A. I --
Q. Let me fully ask my question, please, before you answer.
Why did you write it to Mr. Dameron individually if your contract was with EPS Advisors, LLC?
A. I cannot tell you. I'm not even sure if I wrote it to David Dameron. I need to check my records, go back and check the bank.
Q. Are you sure you even wrote it at all?
A. Yes.
Q. Are you sure it ever got cashed?
A. As I said, my best recollection is that it got cashed because balanced the checkbook, but I

don't know that --

Q. Do you balance the checkbook manually, or do you keep it in QuickBooks?

A. Manually.

Q. So you have check registers somewhere, manual check registers?

A. Explain registers.

Q. Like handwritten ledgers where you keep a checkbook balance.

A. Yes.

Q. Do you have those for 2010?

A. I'm going to go back and check that.

Q. Okay. And how would you have delivered this check to Mr. Dameron?

A. Best of my recollection, I put it in the mail, but I couldn't tell you. I would imagine I put it in the mail.

Q. Did you mail it to him at what address?

A. I have no idea what address. I would have sent it in 2010, and I can't recall it.

Q. Is there any reason you would have sent it anywhere other than to Anderson, South Carolina?

A. If that was the address on record, I would have sent it to Anderson.

Q. On what record?
A. Whatever address I had for him.
Q. Okay. Do you know where Mr. Dameron lives right now?
A. Mike Cruce said he lived in Simpsonville, I think it was. Simpsonville, yeah.
Q. Who is Mike Cruce?
A. David's ex partner.
Q. When was the last time you talked to Mr. Cruce?
A. Two, three weeks ago.
Q. When is the last time you talked to David Dameron?
A. Best of my recollection, 2010.
Q. Did you talk to him after all of these accounts were transferred in March of 2010?
A. Best of my recollection, no.
Q. Do you know how he discovered the accounts were transferred?
A. I would think that when he went in to do the billing that the accounts had been moved.
Q. And that would have been quite a shock, wouldn't it?
A. Yes.
Q. Now, you had had an office at some point in Clemson proffer before moving your office to

Seneca; is that correct?
A. Yes, ma'am. David arranged an office in Clemson for me and Jack Taylor.
Q. Who is Jack Taylor?
A. He was a broker in that office also.
Q. And when you said David arranged the office, David set up the office?
A. David did the lease agreements with the owner.
Q. Who was the owner; do you know?
A. Yes, because I used to own the building across the street. Donita Wagner.
Q. When did David do the lease agreements with the owner?
A. Best of my recollection, I do not know. Sometime in '09 I would think it was.
Q. Okay. So going back to your FINRA report, that would have after your sabbatical and after you joined EPS Advisors in December of 2008?
A. Yes.
Q. And did he set that office up with you in mind?
A. For me and Jack Taylor, yes.
Q. As part of your rehabilitation into the industry?
MR. BRANDT: Object to the form.
EXAMINATION RESUMED

BY MS. KERN-FULLER:
Q. You can answer.
A. No, not for rehabilitation. To have my business back in Clemson.
Q. Okay. We talked earlier, and I think you agreed with me that at that point you were damaged goods and he took you in?
A. Strong words, but --
Q. But words you agreed with?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. Okay. And so do you recall when in 2009 he executed those lease agreements?
A. No, ma'am.
Q. Did he provide you equipment?
A. Yes.
Q. Did he provide you furniture?
A. Yes.
Q. And did he provide you anything else other than the furniture, the lease, the equipment, and the office?
A. He provided telephone, computer, secretary, according to what we had agreed on.
Q. Back office support?

A. Uh-huh.
Q. Is that a yes?
A. Yes. Sorry.
Q. Back office support is crucial to your industry, isn't it?
A. Yes.
Q. And all of those were things that you needed as an RIA to get up and operational?
A. Yes.
Q. And if you still had clients in December of 2008, you would have needed those things to be able to work those clients, right?
A. Yes.
Q. So without all of those things that EPS Advisors' managing member, Mr. Dameron, provided you, you would not have been able to work the clientele you already had; is that correct?
A. In the agreement we had, he would provide. I could have bought it myself, but in the agreement he said he would provide, so that's the reason it worked out that way.
Q. My question is a little bit different than that. Not that you could buy it yourself, but at the time Mr. Dameron set you up, Mr.

Dameron, who is the managing member of EPS Advisors, LLC, without those things in place, you could not have worked the clientele if you had any that you had already had?

A. Yes.

Q. And so you continued to work that clientele for a period of a year?

A. Yes.

Q. And then unbeknownst to Mr. Dameron and EPS Advisors, LLC, registered your own firm with a similar name with the SEC as an RIA firm?

MR. BRANDT: Object to the form.

You can answer.

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. Is that correct?

A. That's not correct. He knew that I formed Clemson EPS Advisors.

Q. With the thought that it was going to be a joint venture with EPS Advisors, LLC, right?

A. Yes.

Q. But unbeknownst to him and EPS Advisors, LLC, you went rogue?

MR. BRANDT: Object to the form.

THE DEPONENT: Rephrase that.

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. Do you know what going rogue means?

A. No.

Q. Okay. It's an American term. You went out on your own, right?

A. Yes.

Q. And you took all of EPS Advisors, LLC's clients in Clemson that had been their clients, right?

A. Yes.

(Exhibit Number 2 marked for identification.)

EXAMINATION RESUMED

BY MS. KERN-FULLER:

Q. Mr. Fredman, I'm going to show you what's been marked as Exhibit 2. If you will take a look at that. I will represent to you that this is a document that we obtained from Schwab directly, which appears to be a list of accounts that were de-linked from the EPS Advisors, LLC's listing.

Do you recognize the names of some of those individuals that were de-linked?

A. Yes. Where is the de-linked date? Is that the date?

Q. There is a date on the right here, and I don't purport to understand this, but --
A. That date?
Q. I don't know if that's the date that it's de-linked. All I know is it's de-linked. There is a column that says, de-linked.
A. Where do you see the column? Oh, yeah. But they don't have a date on there.
Q. No, sir. But if you look at type for me right here in that column and if you look at the name of account, and if you review that for me and tell me if you recognize any of those names.
A. I recognize the names.
Q. Okay. Do you recognize those as names that you would have transferred or gotten new LPOA's signed for Clemson EPS Advisors, LLC and transferred those people from EPS Advisors, LLC to your individual RIA company?
A. Yes.
Q. Now, the ones that were transferred prior to the end of the first quarter of 2010, EPS Advisors would have received the commission for their advising services for the first months of 2010 but for that transfer; is that correct?
A. For the first quarter.

Q. Yes, but for the transfer.
Let me rephrase the question.
Did you receive the commissions for advising for the first quarter of the folks that got transferred before the end of the first quarter?
A. Yes.
Q. And those were individuals that, prior to the signing of the new LPOA, had contracts with EPS Advisors, LLC, the plaintiff in this lawsuit?
A. Yes.
Q. Are you required to maintain a business license in Seneca currently where you have your business located?
A. Best of my recollection, since I'm outside city limits, I don't know how that works. I couldn't tell you that. My assistant had done that.
Q. Who is your assistant now?
A. Melissa Towe.
Q. How long has she been your assistant?
A. Three years approximately, four years. Three years.
Q. What is the amount that your company currently grosses per year now?

A. Around 600,000.
Q. Of that, how much do you personally receive?
A. After secretary and stuff paid, probably about 500.
MS. KERN-FULLER: Give me just a brief moment and let me consult with Ms. Lockwood, and I may have further questions for you.
(Recess taken.)
EXAMINATION RESUMED
BY MS. KERN-FULLER:
Q. I just have, I think, one further question. I had asked you about your FINRA report, which is Exhibit 1.
Have you had any sanctions from the Securities and Exchange Commission?
A. As far as I know, no, ma'am.
Q. You would agree that the Securities and Exchange Commission is a separate entity from FINRA?
A. Yes. They audited me sometime.
Q. But it's your testimony that you have not been sanctioned by them?
A. Yes.
MS. KERN-FULLER: Thank you. I have no further questions.

CERTIFICATE

I, the undersigned, Traci L. Barr, RPR, Notary Public in and for the State of South Carolina, do hereby certify that the deposition of JAN STURE FREDMAN was taken on the 27th day of April, 2016, that the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath; that all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 9th day of May, 2016.

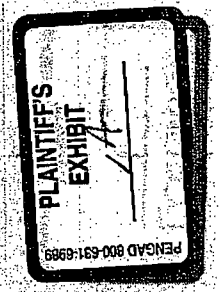
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Traci L. Barr, RPR

Notary Public for South Carolina

My Commission Expires: 5/24/19

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# BrokerCheck Report

## JAN STURE FREDMAN

CRD#

Report #51264-83199, data current as of Wednesday, April 27, 2016.

| Section Title | Page(s) |
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## JAN S. FREDMAN

CRD#

This broker is not currently registered.

# Report Summary for this Broker

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

## Broker Qualifications

**This broker is not currently registered.**

**This broker has passed:**

- 0 Principal/Supervisory Exams
- 1 General Industry/Product Exam
- 2 State Securities Law Exams

## Registration History

**This broker was previously registered with the following securities firm(s):**

**UBS FINANCIAL SERVICES INC.**
CRD#
GREENVILLE, SC
08/2004 - 08/2008

**EDWARD JONES**
CRD#
ST. LOUIS, MO
02/1985 - 09/2004

## Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? **Yes**

**The following types of disclosures have been reported:**

| Type | Count |
|---|---|
| Customer Dispute | 4 |
| Termination | 1 |

## Investment Adviser Representative Information

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative, visit the SEC's Investment Adviser Public Disclosure website at:

http://www.adviserinfo.sec.gov

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## Broker Qualifications

### Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered.



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# Broker Qualifications

## Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

**This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 2 state securities law exams.**

### Principal/Supervisory Exams

| Exam | Category | Date |
|---|---|---|
| No information reported. | | |

### General Industry/Product Exams

| Exam | Category | Date |
|---|---|---|
| General Securities Representative Examination | Series 7 | 02/16/1985 |

### State Securities Law Exams

| Exam | Category | Date |
|---|---|---|
| Uniform Securities Agent State Law Examination | Series 63 | 04/15/1985 |
| Uniform Combined State Law Examination | Series 66 | 12/15/2004 |

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.



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# Registration and Employment History

## Registration History

The broker previously was registered with the following firms:

| Registration Dates | Firm Name | CRD# | Branch Location |
|---|---|---|---|
| 08/2004 - 08/2008 | UBS FINANCIAL SERVICES INC. | | GREENVILLE, SC |
| 02/1985 - 09/2004 | EDWARD JONES | | ST. LOUIS, MO |

## Employment History

This section provides up to 10 years of an individual broker's employment history as reported by the individual broker on the most recently filed Form U4.

**Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.**

| Employment Dates | Employer Name | Employer Location |
|---|---|---|
| 03/2010 - Present | CLEMSON EPS ADVISORS, LLC | SENECA, SC |
| 12/2009 - 03/2010 | EPS ADVISORS | ANDERSON, SC |
| 12/2008 - 01/2010 | EPS ADVISORS | CLEMSON, SC |
| 07/2008 - 11/2008 | SABBATICAL | CLEMSON, SC |
| 08/2004 - 07/2008 | UBS FINANCIAL SERVICES INC. | GREENVILLE, SC |

## Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

SKANSEN
REAL ESTATE
OWNER
NON-SECURITIES RELATED REAL ESTATE COMPANY

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## Disclosure Events

**What you should know about reported disclosure events:**

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

2. **Certain thresholds must be met before an event is reported to CRD, for example:**
   - A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
   - A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least $5,000.

3. **Disclosure events in BrokerCheck reports come from different sources:**
   - As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.

4. **There are different statuses and dispositions for disclosure events:**
   - A disclosure event may have a status of *pending*, *on appeal*, or *final*.
     - A "pending" event involves allegations that have not been proven or formally adjudicated.
     - An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
     - A "final" event has been concluded and its resolution is not subject to change.
   - A final event generally has a disposition of *adjudicated*, *settled* or *otherwise resolved*.
     - An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
     - A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
     - A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

**For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.**

| | Pending | Final | On Appeal |
|---|---|---|---|
| Customer Dispute | 0 | 4 | N/A |

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| | | | |
|---|---|---|---|
| Termination | N/A | 1 | N/A |



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## Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

### Customer Dispute - Settled

This type of disclosure event involves a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit containing allegations of sale practice violations against the broker that resulted in a monetary settlement to the customer.

**Disclosure 1 of 2**

| | |
|---|---|
| **Reporting Source:** | Firm |
| **Employing firm when activities occurred which led to the complaint:** | UBS FINANCIAL SERVICES INC. |
| **Allegations:** | CLAIMANT ALLEGES THAT RESPONDENTS FAILED TO ALLOCATE CERTAIN STOCK HOLDINGS BETWEEN TWO ACCOUNTS IN ACCORDANCE WITH A JUDGMENT OF POSSESSION AND THAT THE RESPONDENTS ENGAGED IN UNAUTHORIZED TRANSACTIONS AND DISBURSEMENTS DURING THE PERIOD FROM JANUARY 2004 TO 2006. SUBSEQUENTLY, ON FEBRUARY 21, 2007, THE PANEL ENTERED AN ORDER GRANTING THE CLAIMANTS' MOTION TO AMEND THE STATEMENT OF CLAIM BY ADDING A CLAIM FOR AIDING AND ABETTING CONVERSION OF FUNDS BY A TRUSTEE. |
| **Product Type:** | Equity - OTC |
| **Alleged Damages:** | $300,000.00 |

### Customer Complaint Information

| | |
|---|---|
| **Date Complaint Received:** | |
| **Complaint Pending?** | No |
| **Status:** | Arbitration/Reparation |
| **Status Date:** | 10/16/2006 |
| **Settlement Amount:** | |



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| | |
|---|---|
| **Individual Contribution Amount:** | |

## Arbitration Information

| | |
|---|---|
| **Arbitration/Reparation Claim filed with and Docket/Case No.:** | NASD, CASE# 06-04477 |
| **Date Notice/Process Served:** | 09/25/2006 |
| **Arbitration Pending?** | No |
| **Disposition:** | Settled |
| **Disposition Date:** | 07/31/2008 |
| **Monetary Compensation Amount:** | $145,000.00 |
| **Individual Contribution Amount:** | $0.00 |
| **Firm Statement** | IN ORDER TO AVOID THE COSTS AND UNCERTAINTIES OF ARBITRATION, UBS AGREED TO PAY CLAIMANT $145,000.00 IN FINAL SETTLEMENT OF ANY AND ALL CLAIMS ASSERTED BY CLAIMANT IN THE PROCEEDING. THE FINANCIAL ADVISOR WAS NOT ASKED TO CONTRIBUTE TO THE SETTLEMENT AND DENIES ANY WRONGDOING WHATSOEVER. TOTAL SETTLEMENT WAS $220,000 INCLUDING CONTRIBUTIONS FROM EDWARD JONES. |
| **Reporting Source:** | Broker |
| **Employing firm when activities occurred which led to the complaint:** | UBS FINANCIAL SERVICES INC. |
| **Allegations:** | CLAIMANT ALLEGES THAT RESPONDENTS FAILED TO ALLOCATE CERTAIN STOCK HOLDINGS BETWEEN TWO ACCOUNTS IN ACCORDANCE WITH A JUDGMENT OF POSSESSION AND THAT THE RESPONDENTS ENGAGED IN UNAUTHORIZED TRANSACTIONS AND DISBURSEMENTS DURING THE PERIOD FROM JANUARY 2004 TO 2006. SUBSEQUENTLY, ON FEBRUARY 21, 2007, THE PANEL ENTERED AN ORDER GRANTING THE CLAIMANTS' MOTION TO AMEND THE STATEMENT OF CLAIM BY ADDING A CLAIM FOR AIDING AND ABETTING CONVERSION OF FUNDS BY A TRUSTEE. |
| **Product Type:** | Equity-OTC |
| **Alleged Damages:** | $300,000.00 |



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| | |
|---|---|
| Is this an oral complaint? | |
| Is this a written complaint? | |
| Is this an arbitration/CFTC reparation or civil litigation? | No |

## Customer Complaint Information

| | |
|---|---|
| Date Complaint Received: | |
| Complaint Pending? | No |
| Status: | Settled |
| Status Date: | 07/31/2008 |
| Settlement Amount: | $145,000.00 |
| Individual Contribution Amount: | $0.00 |

## Arbitration Information

| | |
|---|---|
| Arbitration/CFTC reparation claim filed with (FINRA, AAA, CFTC, etc.): | NASD |
| Docket/Case #: | 06-04477 |
| Date Notice/Process Served: | 09/25/2006 |
| Arbitration Pending? | No |
| Disposition: | Settled |
| Disposition Date: | 07/31/2008 |
| Monetary Compensation Amount: | $145,000.00 |
| Individual Contribution Amount: | $0.00 |
| Broker Statement | IN ORDER TO AVOID THE COSTS AND UNCETAINTIES OF ARBITRATION, UBS AGREED TO PAY CLAIMANT $145,000.00 IN FINAL SETTLEMENT OF ANY AND ALL CLAIMS ASSERTED BY CLAIMANT IN THE PROCEEDING. THE FINANCIAL ADVISOR WAS NOT ASKED TO CONTRIBUTE TO THE SETTLEMENT AND DENIES ANY WRONGDOING WHATSOEVER. TOTAL SETTLEMENT WAS $220,000.00 INCLUDING CONTRIBUTIONS FROM EDWARD JONES. |

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**Disclosure 2 of 2**

| | |
|---|---|
| **Reporting Source:** | Broker |
| **Employing firm when activities occurred which led to the complaint:** | EDWARD JONES |
| **Allegations:** | ON 7/21/95 THE CLIENT PAID $37,000 FOR A FIELDCREST CANNON SUBORDINATED DEBENTURE WITH A FACE VALUE OF $45,000. THE CLIENT STATES IN SEPTEMBER 1997 WHEN FIELDCREST WAS ACQUIRED BY CANNON, FREDMAN ADVISED HIM THAT THE ACQUIRING COMPANY WOULD LIKELY CALL THE BOND AS IT DOES NOT LIKE DEBT. THE CLIENT STATES THAT THIS ADVICE WAS WITHOUT FOUNDATION AND HE RELIED ON IT TO HIS DETRIMENT. THE CLIENT STATES THE COMPANY IS NOW IN BANKRUPTCY AND HIS BOND IS WORTHLESS.<br><br>ARBITRATION CASE DESCRIPTION: ALLEGATIONS OF NEGLIGENCE BY NOT ADVISING CLAIMANT OF THE FINANCIAL SITUATION OR CORPORATE ACTIVITY OF A COMPANY WHOSE STOCK WAS PURCHASED BY COLONIAL AT THE SUGGESTION OF IR. |
| **Product Type:** | Debt - Corporate |
| **Alleged Damages:** | $5,000.00 |

## Customer Complaint Information

| | |
|---|---|
| **Date Complaint Received:** | 04/18/2001 |
| **Complaint Pending?** | No |
| **Status:** | Arbitration/Reparation Denied |
| **Status Date:** | 07/17/2001 |
| **Settlement Amount:** | |
| **Individual Contribution Amount:** | |

## Arbitration Information

| | |
|---|---|
| **Arbitration/Reparation Claim filed with and Docket/Case No.:** | NASD, CASE NO: 01-03754 |
| **Date Notice/Process Served:** | 07/17/2001 |
| **Arbitration Pending?** | No |

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| | |
|---|---|
| **Disposition:** | Settled |
| **Disposition Date:** | 10/21/2002 |
| **Monetary Compensation Amount:** | $6,000.00 |
| **Individual Contribution Amount:** | $0.00 |
| **Broker Statement** | FREDMAN STATES THE CLIENT DID PURCHASE THE BOND IN 1995 ON HIS RECOMMENDATION. IN DECEMBER 1997, THE PILLOWTEX BUYOUT OF FIELDCREST WAS COMPLETE AND PILLOWTEX CONTINUED INTEREST PAYMENTS ON THE FIELDCREST BONDS UNTIL MARCH 2001. THE VALUE OF THE BOND WAS ALWAYS REFLECTED ON THE MONTHLY CUSTOMER STATEMENTS. CLAIM DENIED.<br><br>ARBITRATION RESOLUTION DESCRIPTION: SETTLED FOR $6,000.00 |

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This type of disclosure event involves (1) a consumer-initiated, investment-related arbitration or civil suit containing allegations of sales practice violations against the individual broker that was dismissed, withdrawn, or denied; or (2) a consumer-initiated, investment-related written complaint containing allegations that the broker engaged in sales practice violations resulting in compensatory damages of at least $5,000, forgery, theft, or misappropriation or conversion of funds or securities, which was closed without action, withdrawn, or denied.

**Disclosure 1 of 2**

| | |
|---|---|
| **Reporting Source:** | Firm |
| **Employing firm when activities occurred which led to the complaint:** | UBS FINANCIAL SERVICES INC. |
| **Allegations:** | CLIENT ALLEGES THAT THE FA SOLD TWO HUNDRED SHARES OF COOPER INDUSTRIES WITHOUT CONSULTING THE CLIENT. DAMAGES ESTIMATED TO BE IN EXCESS OF $5,000. |
| **Product Type:** | Equity-Listed (Common & Preferred Stock) |
| **Alleged Damages:** | $5,000.00 |
| **Alleged Damages Amount Explanation (if amount not exact):** | DAMAGES ESTIMATED TO BE IN EXCESS OF $5,000. |
| **Is this an oral complaint?** | No |
| **Is this a written complaint?** | Yes |
| **Is this an arbitration/CFTC reparation or civil litigation?** | No |

## Customer Complaint Information

| | |
|---|---|
| **Date Complaint Received:** | 04/25/2008 |
| **Complaint Pending?** | No |
| **Status:** | Closed/No Action |
| **Status Date:** | 08/12/2008 |
| **Settlement Amount:** | |
| **Individual Contribution Amount:** | |
| **Reporting Source:** | Broker |

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| | |
|---|---|
| **Employing firm when activities occurred which led to the complaint:** | UBS FINANCIAL SERVICES INC. |
| **Allegations:** | CLIENT ALLEGES THAT THE FA SOLD TWO HUNDRED SHARES OF COOPER INDUSTRIES WITHOUT CONSULTING THE CLIENT. DAMAGES ESTIMATED TO BE IN EXCESS OF $5,000. |
| **Product Type:** | Equity Listed (Common & Preferred Stock) |
| **Alleged Damages:** | $5,000.00 |

## Customer Complaint Information

| | |
|---|---|
| **Date Complaint Received:** | 04/25/2008 |
| **Complaint Pending?** | Yes |
| **Settlement Amount:** | |
| **Individual Contribution Amount:** | |

**Disclosure 2 of 2**

| | |
|---|---|
| **Reporting Source:** | Broker |
| **Employing firm when activities occurred which led to the complaint:** | EDWARD JONES |
| **Allegations:** | CLIENT INDICATES THEY HAVE BEEN INVESTING WITH EDWARD JONES SINCE 1994 AND THE CURRENT VALUE OF THEIR ACCOUNTS IS OVER $100,000 LESS THAN WHEN THEY STARTED WITH EJ. CLIENT STATES THEY HAVE HAD GOOD GAINS IN FUNDS THAT EJ RECOMMENDED, HOWEVER, WE FAILED WHEN NOT ADVISING WHEN TO CASH IN THOSE GAINS. CLIENT STATES IT WAS NOT UNTIL JULY 2002 WHEN A RECOMMENDATION TO SELL WAS MADE. CLIENT BELIEVES THEIR INVESTMENTS WERE MANAGED POORLY, DUE TO STATED LOSSES IN COMPLAINT LETTER. FILING REQUIRED. |
| **Product Type:** | Other |
| **Alleged Damages:** | $100,000.00 |

## Customer Complaint Information

| | |
|---|---|
| **Date Complaint Received:** | 10/31/2002 |
| **Complaint Pending?** | No |



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| | |
|---|---|
| **Status:** | Denied |
| **Status Date:** | 12/18/2002 |
| **Settlement Amount:** | |
| **Individual Contribution Amount:** | |
| **Broker Statement** | THE IR STATED HE BUILT A DIVERSIFIED PORTFOLIO FOR THE CLIENTS IN 1994 THAT WAS FAIRLY CONSERVATIVE. THE IR STATED THE CLIENT WANTED TO BE MORE AGGRESSIVE IN 1999 AFTER HE HAD 20% GAINS, BUT THE CLIENT WANTED MORE LIKE 80% RETURNS LIKE HIS SON-IN-LAW IN JANUS FUNDS. THE IR STATED HE RESEARCHED COMPARABLE FUNDS AND UNIT TRUSTS AND MADE THE CHANGES PER THE CLIENTS' INSTRUCTIONS. THE IR STATED HE ALSO RECOMMENDED SOME JONES RECOMMENDED STOCKS FOR THE PORTFOLIO. THE IR STATED HE MET WITH THE CLIENTS MONTHLY BY PHONE, LETTER, AND IN-PERSON. THE IR STATED HE WARNED THE CLIENTS ABOUT THE AGGRESSIVENESS OF THEIR PORTFOLIO WHEN THE MARKET STARTED DECLINING AND HE RECOMMENDED A MORE CONSERVATIVE APPROACH, BUT THE CLIENTS STATED THEY COULD HANDLE THE VOLATILITY AND WERE IN FOR THE LONG HAUL. THE IR STATED THE CLIENTS COULD NO LONGER TAKE THE VOLATILITY IN JULY 2002 AND OPTED FOR A MORE CONSERVATIVE PORTFOLIO. CLAIM DENIED. |



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## Employment Separation After Allegations

This type of disclosure event involves a situation where the broker voluntarily resigned, was discharged, or was permitted to resign after being accused of (1) violating investment-related statutes, regulations, rules or industry standards of conduct; (2) fraud or the wrongful taking of property; or (3) failure to supervise in connection with investment-related statutes, regulations, rules, or industry standards of conduct.

**Disclosure 1 of 1**

**Reporting Source:** Firm

**Employer Name:** UBS FINANCIAL SERVICES INC.

**Termination Type:** Discharged

**Termination Date:** 07/28/2008

**Allegations:** PRIOR TO MR. FREDMAN'S TERMINATION BY THE FIRM FOR THE REASON SET FORTH IN SECTION 3, IT WAS ALLEGED THAT MR. FREDMAN OBTAINED A CONTROLLED SUBSTANCE BY FRAUD.

**Product Type:** No Product

**Other Product Types:**

**Reporting Source:** Broker

**Employer Name:** UBS FINANCIAL SERVICES, INC.

**Termination Type:** Discharged

**Termination Date:** 07/28/2008

**Allegations:** MR. FREDMAN WAS DISCHARGED AFTER HE ADMITTED TO FORGING THE SIGNATURE OF A PHYSICIAN, WHO IS AN AUTHORIZED SIGNATORY ON A UBS ACCOUNT, ON MULTIPLE PRESCRIPTION PAGES TAKEN FROM THE PHYSICIAN WITHOUT HIS PERMISSION.

**Product Type:** No Product

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End of Report

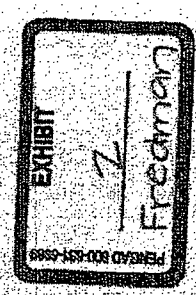
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184 Alerts

171 Urgent, 1 Action Required, 157 Unread




| Select All | | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ☐ | | Custodial Account - Minor Reaching Age of Termination | Account Change | Viewed | | | 06/15/2010 | 0823-8765 | 19894337 |
| | ☐ | | Notice of Change in Account Level Tax Withholding Election | Account Change | Viewed | | | 06/16/2010 | 0823-8765 | 19897544 |
| | ☐ | | Client Account Linked | Account Change | Viewed | | | 06/19/2010 | 0856-7664 | 19931346 |
| | ☐ | | Notice of De-Linked Account | Account Change | New | | | 04/01/2010 | 0805-0030 | 18957864 |
| | ☐ | | Notice of De-Linked Account | Account Change | Viewed | | | 05/20/2010 | 0805-0030 | 19665620 |
| | ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945342 |
| | ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945382 |
| | ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945320 |
| | ☐ | | Notice of De-Linked | Account Change | Viewed | | | 03/31/2010 | 0805-0030 | 18945405 |

| Select All | | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945377 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945387 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945291 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945282 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945339 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945290 |
| | | | Notice of Restricted Account | Account Change Viewed | | | | 07/07/2010 | 0849-5031 | 20078294 |
| | | | Address/Email Address/Registration Change | Account Change New | | | | 06/03/2010 | 0856-7664 | 19795477 |
| | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 | 18945375 |

| | | | | | |
|---|---|---|---|---|---|
| Address/Email Address/Registration Change | Account Change Viewed | | | 04/27/2010 | 0849-5031 19325574 |
| Address/Email Address/Registration Change | Account Change Viewed | | | 07/20/2010 | 0849-5031 20180908 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945401 |
| Notice of De-Linked Account | Account Change Viewed | | | 04/21/2010 | 0805-0030 19194419 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945314 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945356 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945393 |
| Notice of De-Linked Account | Account Change New | | | 04/06/2010 | 0805-0030 18997986 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945319 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945293 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945383 |
| Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945316 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945299 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945280 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 04/02/2010 | 0805-0030 | 18970586 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945331 |

| Select All | Subject Type | Status | Account Name | Account | Date | Master Account | Alert ID |
|---|---|---|---|---|---|---|---|
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945392 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945310 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945312 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945326 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945363 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945321 |
| ☐ | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945340 |

| Select All | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID |
|---|---|---|---|---|---|---|---|---|
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945350 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945353 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945366 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945402 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945359 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 04/01/2010 0805-0030 | 18957866 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 04/21/2010 0805-0030 | 19194420 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945361 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945336 |
| ☐ | | Notice of De-Linked Account | Account Change | Viewed | | | 05/11/2010 0849-5031 | 19567193 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 0805-0030 | 18945284 |

| | | | | | | |
|---|---|---|---|---|---|---|
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945398 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945369 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945357 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945288 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945278 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945373 |
| ☐ | Notice of De-Linked Account | Account Change New | | 04/01/2010 | 0805-0030 | 18957863 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945344 |
| ☐ | Notice of De-Linked Account | Account Change New | | 04/14/2010 | 0805-0030 | 19077336 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945292 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945348 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 | 0805-0030 | 18945404 |
| ☐ | Notice of De- | Account Change New | | 03/31/2010 | 0805-0030 | 18945285 |

| Select All | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID |
|---|---|---|---|---|---|---|---|---|
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945365 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945379 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945385 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945287 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945294 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945362 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945295 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 04/01/2010 0805-0030 | 18957861 |
| ☐ | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 0805-0030 | 18945343 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945315 |
| | Notice of De-Linked Account | Account Change | Viewed | | 04/30/2010 | 0805-0030 | 19425948 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945352 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945360 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945371 |
| | Notice of De-Linked Account | Account Change | New | | 04/01/2010 | 0805-0030 | 18957869 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945370 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945384 |
| | Notice of De-Linked Account | Account Change | Viewed | | 04/07/2010 | 0805-0030 | 19010917 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945399 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945325 |

| Select All | | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945349 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 04/09/2010 | 0805-0030 | 19036087 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945386 | |
| | ☐ | | Notice of De-Linked Account | Account Change Viewed | | | 05/11/2010 | 0849-5031 | 19567194 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945283 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 04/07/2010 | 0805-0030 | 19010918 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 04/08/2010 | 0805-0030 | 19025460 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945303 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945338 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 04/01/2010 | 0805-0030 | 18957862 | |
| | ☐ | | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945330 | |
| | ☐ | | Notice of De- | Account Change New | | | 03/31/2010 | 0805-0030 | 18945277 | |

| | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|
| | | Linked Account | | | | | | | |
| | | Notice of De-Linked Account | Account Change | Viewed | | | 05/12/2010 | 0849-5031 | 19595630 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945358 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945374 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945306 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945317 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945381 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945332 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945313 |
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945354 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Notice of Restricted Account | Account Change | Viewed | | 05/05/2010 | 0856-7664 | 19501034 |
| | Address/Email Address/Registration Change | Account Change | New | | 05/08/2010 | 0856-7664 | 19551553 |
| | Address/Email Address/Registration Change | Account Change | Viewed | | 07/20/2010 | 0849-5031 | 20180909 |
| | Address/Email Address/Registration Change | Account Change | New | | 05/08/2010 | 0856-7664 | 19551554 |
| | Notice of De-Linked Account | Account Change | Viewed | | 03/31/2010 | 0805-0030 | 18945279 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945300 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945330 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945345 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945347 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945364 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945389 |
| | Notice of De-Linked | Account Change | New | | 03/31/2010 | 0805-0030 | 18945334 |

| | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|
| ☐ | | Account Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945397 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945298 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945323 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945305 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945337 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945281 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945307 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945309 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945329 |
| ☐ | | Notice of De-Linked Account | Account Change | New | | | 04/02/2010 | 0805-0030 | 18970588 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Notice of De-Linked Account | Account Change | New | | 04/02/2010 | 0805-0030 | 18970587 |
| | Notice of De-Linked Account | Account Change | New | | 04/01/2010 | 0805-0030 | 18957868 |
| | Notice of De-Linked Account | Account Change | Viewed | | 05/19/2010 | 0849-5031 | 19657017 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945328 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945308 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945376 |
| | Notice of De-Linked Account | Account Change | New | | 03/31/2010 | 0805-0030 | 18945390 |
| | Notice of De-Linked Account | Account Change | New | | 04/06/2010 | 0805-0030 | 18997985 |

304

| Select All | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID | |
|---|---|---|---|---|---|---|---|---|---|
| | | Notice of De-Linked Account | Account Change | New | | | 03/31/2010 | 0805-0030 | 18945324 |
| | | Notice of De-Linked Account | Account Change | New | | | 04/01/2010 | 0805-0030 | 18957865 |

| | | | | | | |
|---|---|---|---|---|---|---|
| ☐ | Notice of De-Linked Account | Account Change Viewed | | | 05/14/2010 | 0849-5031 19615700 |
| ☐ | Notice of De-Linked Account | Account Change Viewed | | | 05/14/2010 | 0849-5031 19615701 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 04/02/2010 | 0805-0030 18970585 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945297 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945391 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945322 |
| ☐ | Notice of De-Linked Account | Account Change Viewed | | | 05/04/2010 | 0805-0030 19454018 |
| ☐ | Address/Email Address/Registration Change | Account Change New | | | 05/13/2010 | 0823-8765 19603118 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 04/01/2010 | 0805-0030 18957870 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945368 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945388 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 18945327 |

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|---|---|---|---|---|---|---|---|
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945346 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945333 |
| ☐ | Notice of De-Linked Account | Account Change New | | | 03/31/2010 | 0805-0030 | 18945304 |

| Select All | | Subject | Type | Status | Account Name | Account | Date | Master Account | Alert ID |
|---|---|---|---|---|---|---|---|---|---|
| ☐ | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945333 |
| ☐ | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945304 |
| ☐ | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945318 |
| ☐ | | | Address/Email Address/Registration Change | Account Change Viewed | | | | 07/31/2010 | 0849-5031 20283736 |
| ☐ | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945289 |
| ☐ | | | Address/Email Address/Registration Change | Account Change Viewed | | | | 07/31/2010 | 0849-5031 20283737 |
| ☐ | | | Notice of De-Linked Account | Account Change New | | | | 03/31/2010 | 0805-0030 18945351 |

| | | | | |
|---|---|---|---|---|
| ☐ | Address/Email Address/Registration Change | Account Change Viewed | | 05/14/2010 0849-5031 19614015 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945395 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945378 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945296 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945341 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945311 |
| ☐ | Notice of De-Linked Account | Account Change New | | 03/31/2010 0805-0030 18945302 |
| ☐ | Notice of De-Linked Account | Account Change Viewed | | 04/27/2010 0823-8765 19194940 |
| ☐ | Notice of De-Linked Account | Account Change New | | 04/14/2010 0805-0030 19077337 |
| ☐ | Notice of De-Linked Account | Account Change Viewed | | 08/12/2010 0805-0030 20388574 |

89 89
.8 .7
71,200

10/5/09

Jan,

This is 80% of $89,000 ← you billed just over that.

I am calculating a precise settling sheet

for June → Sept 30.

Then we can settle up on direction of the other.

David

PS- look again at your discounts, they were over $10,000?

PLAINTIFF'S EXHIBIT 9
PENGAD 800-631-6989

DAVID C. DAMERON
SUSAN G. LOCKWOOD
716 E. GREENVILLE ST.
ANDERSON, SC 29621

MB03 NO HOLD

charles SCHWAB

102

3-5/310
150

01/12/2010
Date

Pay to the Order of Jan Fredman $ 82,725.95

eighty two thousand seven hundred twenty five 95/100 Dollars

Charles Schwab
PNC BANK, N.A. Philadelphia, PA

Schwab One

For 12/31/09 for $5000.00

David C Dameron

20102

Method Control

PLAINTIFF'S EXHIBIT 3

PENGAD 800-631-6989

| Item Amount | Item Serial | Item R/T | Item Type | Item Account | Item Sequence |
|---|---|---|---|---|---|
| $82,725.95 | 0 | 3100005 | Transit Item | 7041342794 | 7800889837 |

The 15% holdback provides:

1) **SEC compliance**. I'll show you my reviews to date- I think you'll be surprised the reviews we do but don't involve you in. ALSO, and IMPORTANTLY, we will have an ex-SEC examiner come in at least once per year to give the whole company a regulatory examination just like the SEC would do it. The stuff he says we need to fix, we'll fix it.
2) **Broker/Dealer compliance**. I would still work with the B/D compliance person on whatever you need for FINRA licensing. The above SEC inspection would include BOTH the SEC stuff AND the FINRA stuff.
3) **Retirement Plan Compliance**- if you have clients that have a retirement plan account with you, we will help you keep that in Department of Labor compliance both for the plans and for the participants.
4) **Daily portfolio center download** and reconciliation. You would run reports, update Morningstar and the rest from Clemson. Our job is to make sure the data gets into portfolio center and is accurate.
5) **Billing processing**...we send to you and your Reps a pro-forma billing report, in a timely manner you check it off, then we bill. Money comes directly from your accounts to a special account at Schwab for you and then to your SunTrust/Clemson account.
6) **We keep the computers and servers up and running**. They are tied in here to Anderson, with this IP address and several other things. They COULD be moved, but so far this has not been a problem and moving them is not something I think makes sense. The 15% would cover the cost of our offsite back-up; disaster recovery stuff and the other things tied into the server. Here's the deal, a lot of these are SEC requirements and I don't think you want to get bogged down in it.
7) **What else** we may decide makes sense.



The 15% holdback provides:

1) SEC compliance. I'll show you my reviews to date- I think you'll be surprised the reviews we do but don't involve you in. ALSO, and IMPORTANTLY, we will have an ex-SEC examiner come in at least once per year to give the whole company a regulatory examination just like the SEC would do it. The stuff he says we need to fix, we'll fix it.
2) Broker/Dealer compliance. I would still work with Spire (the b/d) on whatever you need for FINRA licensing. The above SEC inspection would include BOTH the SEC stuff AND the FINRA stuff.
3) Daily portfolio center download and reconciliation. You would run reports, update Morningstar and the rest from Clemson. Our job is to make sure the data gets into portfolio center and is accurate. (you will also be able to run this from your office so that you know that the data is always updated)
4) Billing processing...we send to you and your Reps a pro-forma billing report, you check it off, then we bill. Money comes directly from your accounts to a special account at Schwab for you and then to your EPSA/Clemson account.
5) (Optional) We keep the computers and servers up and running. They are tied in here to Anderson, with this IP address and several other things. They COULD be moved, but so far this has not been a problem and moving them is not something I think makes sense. The 15% would cover the cost of our offsite back-up, disaster recovery stuff and the other things tied into the server. Here's the deal, a lot of these are SEC requirements and I don't think you want to get bogged down in it.
6) What else we may decide makes sense.

7) Annuities - get credit quarterly for
8) graduated scale

- reimbursement for claim
- NO for account
- Annuity



# EPS ADVISORS, LLC.

## Investment Advisors

April 20, 2010

Mr. Jan S. Fredman
"Clemson-EPS Advisors"
10708 Clemson Blvd.
Seneca, SC 29678

**Via Overnight Delivery**

Dear Mr. Fredman,

While typing this to you I got today's mail and received your check and erroneous calculations you sent to me. As I stated in my conversation to you last week, all monies for billings prior to March 31, 2010, are solely the property of EPS Advisors, LLC and only EPS' money. **I expect a return of the money and EPS Advisors' other property as described below by noon, Friday, April 23, 2010.**

**Return this money and the other property that belongs to EPS Advisors to my attorney, her contact information is below.**

Any split that would have occurred between you and EPS Advisors will be considered a down-payment on the total money you owe to EPS as a result of the actions you have taken.

It has been a week since you promised to return the payment you wrongfully diverted from my company's first quarter's billings for 2010. You have now had the unauthorized use of our funds for 20 days since your transfer of the accounts from EPS Advisors, LLC and my termination fax to you. Your calculations with the check you sent to EPS Advisors are erroneous. This money too, will be considered part of your down-payment.

Your calculations represent you billed approximately $105,352.50 from EPS' client accounts for the first quarter of 2010. Since the billing is in arrears and covers the January, February and March period, you need to understand that ALL of the money belongs solely to EPS Advisors under EPS' contract with the client. Again, I demand the immediate return of ALL of the money you have diverted, it belongs to EPS Advisors. After you return all the money, you and I, only through counsel, can negotiate what allocation of that money might be actually owed to you, if any, which can be applied toward the amount you owe EPS Advisors.

I further expect a completed and accurate record of the accounts from which the money was billed, the amounts, and when the accounts were billed. The Schwab management fee billing report has this information.

Without a return of all the money, and this information substantiating the billing sources, I will be forced to contact each client DIRECTLY, explain to them that YOUR new firm (inappropriately) billed them for MY company's fees and present to these clients an invoice for EPS Advisors' services for the quarter.

716 East Greenville Street • Anderson, SC 29621
(864) 226-1942 • FAX (864) 226-6197 • TOLL FREE (888) 278-1776
www.epsadvisors.com



PLAINTIFF'S EXHIBIT 5
PENGAD 800-631-6989

You can understand that since you named your Registered Investment Adviser "Clemson-EPS Advisors" and the d/b/a name of my firm is "EPS Advisers" that the clients may be confused by that similarity and require a detailed explanation of the course of events regarding their money and how it went to the wrong firm.

I consider your tactic of co-opting my Registered Adviser firm's name to fraudulently mislead clients as to your firm's true identity. It is not only fraudulent and damaging to the reputation of my business, but also an unfair trade practice under South Carolina law.

In addition to the money you misappropriated from EPS Advisors to your new firm, you must return to me EPS Advisors, LLC's furniture and equipment. Additionally, you must compensate EPS Advisors, LLC for the amount you have diminished my firm and its decreased ongoing revenue through your tortious actions.

To the furniture and equipment, I demand that you return all of the equipment under title or paid for by EPS Advisors, LLC. This includes but is not limited to:

1) The computer, keyboard, mouse and monitors for both you and Ellen. (up front) You are aware that I paid Phil for these, though you bought your own server box that is in the storage room.

2) The copier. The lease is under EPS Advisors, and I have paid the vast majority of the lease costs associated with that machine. The machine (and its lease) is the property of EPS Advisors and I will not sublet it to you.

3) Furniture. This includes but is not limited to the conference room table and chairs; the desk chairs bought by EPS Advisors (I think from Staples) and the two wing-back chairs that were in the Clemson office reception area.

4) Any and all other property of EPS Advisors, INCLUDING but not limited to the client files. The files are property of EPS Advisors and are protected under the S.C. Trade Secrets' law. Therefore, I expect you will not make a copy of them or attempt in any way to surreptitious copy them in violation of South Carolina law.

Succinctly, the money you owe me is considerable. I am VERY frustrated and disappointed in you and your exiting my company as you have while embezzling EPS' billings for the last quarter. Your attempt to quantify what is owed to me as $15,802 or $7,674.11 when you have illegally diverted $105,352.50 of EPS Advisors' income, is unfathomable.

Since late 2008, I have spent a significant amount of my time, money and put at great risk my personal and professional reputation to help put you (and your family) back on your feet. In doing so, I have forgone personal income, lessened the time to assist my Anderson office, and caused financial strain for the business in order to help the Clemson office of EPS Advisors get started. I did this with the stated expectation of a long-term mutually beneficial business relationship.

I also negotiated in good faith with you, time and time again - including in January - in an effort to come to a clear, acceptable and enforceable long-term agreement with you. In fact, I thought in January we had the framework for that agreement decided upon. YOU have broken that agreement and spurned my good faith by your illegal actions.

I estimate that the annualized fees generated from my Clemson area clients at this point are approximately $440,000, or $110,000 per quarter. Both the fourth quarter 2009 and the first quarter 2010 billings support this estimate.

In the marketplace for Registered Investment Advisers, revenues are generally bought and sold at about 2 times revenue. In this case, $440,000 x 2 = $880,000. Kevin Chalk can help you with this math, but I think that you will find the "2 times annual revenue" measurement to be a solid measurement for a quick calculation in our industry.

Accordingly, in addition to the additional approximately $105,352.50 you have diverted from EPS Advisors' first quarter's billings, you owe to me an additional $880,000 for the diminished value of my firm and the loss of ongoing revenues from my clients.

Now, as you ponder your own position, I remind you of a few things you may want to consider:

1) You were out of this industry when you came to me,
2) A significant reason for this was because of your criminal charges and legal cloud you were under at that time,
3) Another was your lengthy lawsuit record by clients against you and the past firms you represented,
4) Yet another reason was the information reflected on your Form U-5 added by UBS. In short, the information that they reported, and which still remains, does not provide comfort to Wall Street's compliance officers in their evaluation of you as a Rep for the firm.
5) To overcome this compliance concern, I took SIGNIFICANT professional and firm level reputational risk on you to help you back into the business. Recall that:
   a) I had to work directly with FINRA with significant effort to have your FINRA record accurately reflect your expungement after you completed your PTI. A process I remind you that you did not complete until you had been with my firm, in your more precarious state, for over nine months.
   b) I had to work directly with FINRA to answer FINRA's inquiry as to EPS Advisors' association of your ongoing arbitration with UBS. (for reminder, that was/is FINRA Dispute Resolution Arbitration Number 09-05768)
   c) I continue to work with Brooks Brown, in the FINRA regional office in Atlanta, regarding FINRA's latest and still open inquiry to you and your activities that allegedly require FINRA registration. (No. 20090193762)
   d) I worked directly with Ms. Pamela Kirkland, Director of Registrations for the Securities Division of the South Carolina Attorney General's Office to have you be allowed to become registered in SC and conduct any securities business of any sort in this state.

   In summary of this section, I have "gone to bat" for you at Federal and State regulatory agencies - putting myself and my company on the line - to help you get back your livelihood. I guess I should have seen the writing on the wall that they were right about you and I was wrong.

   I have reached out to and spoken personally with both Ms. Kirkland and Mr. Brown to make them aware of your termination from EPS Advisors and that I would also be filing the required Form U-5 by April 29, 2010.

6) Moving from my personal contribution to your career's rehabilitation, I below describe certain items you may want to consider as they relate to the illegal actions you took against EPS Advisors.

   a) Keep in mind that your termination from EPS Advisors was on March 31, 2010. Any and all activity you took to assist clients in moving from EPS prior to the time of your termination is a breach of trust to EPS and constitutes employee disloyalty against EPS

Advisors, LLC. This entitles EPS Advisors, LLC to civil remedies, precludes any claim you may have had for earnings during your period of disloyalty to the firm, and further exposes you to treble and punitive damages.

b) Further the money you billed EPS' clients was not YOUR money. It was money that belonged to the CLIENTS, and was DUE AND PAYABLE only to EPS Advisors. It strikes me that your taking money not due you, from accounts under contract with another firm, and without permission from that firm is - at a minimum - unusual. I am by no means an expert on criminal statutes, but I stand ready to turn the matter over to Solicitor Chrissy Adams' for assessment.

7) Now, in addition to the issues you have with me, and EPS , you also should consider the potential problems you have created with both clients and vendors, such as Schwab. Both will undoubtedly become involved in a protracted and messy disassociation action should these matters not be expeditiously resolved.

In addition to the information I will be required to disclose on Form U-5, for me to fully investigate the details of your past activities and the harm those have caused, the process of gathering information may very well spill over to Schwab and clients.

While involving Schwab and clients would be unfortunate for all of us, I will tell you that I will take all measures necessary to determine the details of the course of events, what you represented to whom, when, what those parties knew at the time, as well as your role in the diminishment of my firm.

In conclusion, I repeat to you the extreme level of my frustration, my *distrust* of you and your repeated "word" to me. I emphasize that from this point forward, I am done dealing directly with you.

Do not call, email, text, come by, or otherwise make any contact or attempt to contact me. Any effort to do so, I will consider harassment and I will deal with accordingly.

From this point forward, make all contact to my attorney:

Ms. Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 E. Main Street
Easley, SC 29640
(864) 295-9168
(864) 295-9170 (fax)
Candy@UpstateLawGroup.com

Sincerely,

David C. Dameron
President
EPS Advisors, LLC

CC: Candy Kern-Fuller, Esq. via facsimile

Payee:
CLEMSON - EPS ADVISORS LLC

From:
CLEMSON - EPS ADVISORS LLC
PO BOX 1865

04/09-IC091244-001052-S-001052 *
CLEMSON - EPS ADVISORS LLC
PO BOX 1865
CLEMSON SC 29633-1865

001052

Check No:
5729012

Issue Date:
04/09/2010
Gross Amount: 105,352.50

Federal Tax: 0.00

State Tax: 0.00

Check Amount: $105,352.50

Purpose:
MANAGEMENT FEES NETCSH

Account:

Memo:

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT 6

# VOLUNTARY STATEMENT

DATE 04.28.2010 PLACE 300 S. CHURCH STREET TIME STARTED 16:15 P.M.

I, the undersigned, DAVID CRAIG DAMERON, am 45 years of age, my date and place of birth being the 25TH day of SEPTEMBER 1964, at OCEANSIDE, CA.

I now live at 8 NORTH OCCUPIED FARMS SIMPSONVILLE, SC 29681

Before answering any questions or making statements, A HAGEMAN

a person who identified himself as a DEPUTY SHERIFF

PLAINTIFF'S EXHIBIT 7

PENGAD 800-631-6989

duly warned and advised me, and I know and understand that I have the following rights: That I have a right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in court or courts of law for the offense or offenses concerning which the following statement is hereinafter made, that I have the right to council with a lawyer of my choice before or at anytime during any questioning or statements I make: that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me: that I can stop answering any questions or making any statements at anytime that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or make any more statements, whether or not I have already answered some questions or made statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons whomsoever. DCD

The undersigned makes this statement on behalf of EBS Investments LLC ("EBS") as the managing member. EBS is registered with the United States Securities Exchange Commission ("SEC") as a Registered Investment Adviser ("RIA") to provide investment advice to the public for a fee. From about 12/08 to 3/31/2010, Jan Stuart Fredman ("Fredman") was registered with EBS as an Investment Adviser Representative ("IAR") authorized to represent EBS with the public. EBS provides its advisee services to clients under terms of an Investment Advisory Agreement contract between the client and EBS. Fredman as an IAR of EBS was the individual authorized to provide investment advice to certain clients of EBS introduced to the firm by Fredman. In accordance with the terms of the Advisory contract between EBS and the client, EBS accrues its advisory fee payable to EBS while the contract is in effect and bills the fees payable (accrued) on a quarterly basis in advance. This means that EBS would "process" payments by checking from client accounts (under written authorization by the client) as soon as administratively practicable after March 31, 2010 for fees payable to EBS accrued over Jan, Feb & March (1 or 2 months prior) DCD

I certify I have received a copy of this statement David C. Dameron

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 1745 P .M. on the 28TH day of APRIL, 2010.

Notary Public for S.C.

My Commission Expires

WITNESS: A. Hageman DCDD

WITNESS:

David C. Dameron

Signature of person giving voluntary statement

# VOLUNTARY STATEMENT

## USED FOR ADDITIONAL PAGES ONLY

PAGE # 2 of 3

Unknown to Dameron/EPS, Fredman, while still a Representative of EPS, secured registration of a new SEC registered RIA with the name of "Clemson-EPS Advisors LLC." ("C-EPS") Both firms suggest to clients that the clients hold their brokerage accounts and assets with the Schwab Institutional Division of Charles Schwab, Inc. ("Schwab") Clients designate an RIA firm at Schwab through signing Schwab's "Limited Power of Attorney" Form ("LPOA") naming that RIA firm. A new form, with new signature, is required to CHANGE RIA firms as well. Between approximately March 20 and March 30, 2010, Fredman presented to Schwab approximately 140 LPOAs to Schwab, allegedly bearing client signatures, authorizing Schwab to move their accounts from EPS to C-EPS. Schwab executed these on 3/30, with EPS being first notified on 3/5. It is unknown to the undersigned if these (over) 140 forms were actually signed by the clients. The undersigned did receive a client call from a client confused by a change in his RIA at Schwab and stating clearly. This client was CLEARLY not in understanding of the RIA change and requested a liquidation of his account.

After March 31, EPS was not able to process the billings accrued by EPS and payable to EPS. About April 3 and for an unknown period after, these monies due EPS WERE processed and paid from client accounts BY FREDMAN and, by FREDMANS instruction, paid from the client accounts to an account at Schwab in the name of Clemson-EPS Advisors. This amount was over $105,000. Based on the events above Dameron terminated Fredman on 3/31. in part

After 3/31, Dameron met with Fredman and demanded return of EPS $105,000, the money diverted to Clemson-EPS Advisors due to EPS. Dameron later made that demand again, in writing, at Fredmans the return

I certify I have received a copy of this statement _____

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 1745 P .M. on the 28TH day of April, 20 10.

Notary Public for S.C.

My Commission Expires

WITNESS: A. Hagerman 0040

WITNESS: _____

Signature of person giving voluntary statement

# VOLUNTARY STATEMENT

## USED FOR ADDITIONAL PAGES ONLY



ld of other property of EDS in Fredman's possession. These demands remain unmet, and Fredman has not returned either the $105,000 or the other items. (including SEC REQUIRED client files) ded

ded ded ded

I certify I have received a copy of this statement. David C. Dameron

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 1745 P .M. on the 08TH day of APRIL, 2010.

Notary Public for S.C.

My Commission Expires

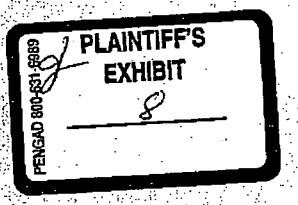
WITNESS: A. Hagerman D 0040

WITNESS:

David C. Dameron

Signature of person giving voluntary statement




HENRY MCMASTER
SECURITIES COMMISSIONER

May 3, 2010

Mr. David Dameron
EPS Advisors
716 East Greenville St.
Anderson, SC 29621

Dear Mr. Dameron:

Pursuant to the South Carolina Uniform Securities Act of 2005, please produce for examination the following records:

1. A listing of any and all former EPS Advisors clients who have become clients of another investment adviser since March 1, 2010 to include the name and address of the former client, the date the client moved his relationship from EPS Advisors, the account value at the time of the transfer, and the name and address of the firm to which the individual moved his/her adviser relationship;

2. Copies of any and all complaints received by EPS Advisors from any client identified in item 1 above for the period January 1, 2010 to present;

3. Documentation of any and all conversations you have had with each client related to the closing of his/her relationship with EPS Advisors; and

4. A copy of each specimen contract used by EPS Advisors with any of the clients identified in item 1 above, except that only one copy of each contract variation need be provided.

The above requested information may be provided in either hard or soft copy and should be provided to this Office no later than 5:00 p.m., Tuesday, May 11, 2010. Please refer your written response to my attention. If you have any questions, I may be reached by phone at (803) 734-3300.

Sincerely yours,

Sandra Matthews

Sandra Matthews
Auditor

cc: Susan Lockwood

# FAX TRANSMITTAL

EPS Advisors, LLC, 716 E. Greenville St., Anderson, SC 29662

864-226-1942 phone; 864-226-6197 fax

To: Jan

Attention: _____

Fax # _____

Re: _____

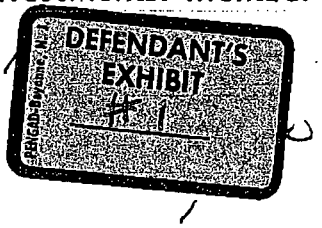
Date: 2/5/10 (asked in the beginning of week

# Pages 20

From: Susan Lockwood

Message: Jan, I think this answers your fee questions. Thanks.

Securities Offered through Spire Investments. Member SPIC



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 01/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 11 | 594.92 | Yes |
| | Client Total | | | | | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 18 | 240.27 | Yes |
| | | ERISA 0.5% Arrears | 12/31/2008 | 03/31/2009 | 934 | 20,660.26 | Yes |
| | | ERISA 0.5% Arrears | 03/31/2009 | 06/30/2009 | 1,382 | | Yes |
| | | ERISA 0.5% Arrears | 06/30/2009 | 09/30/2009 | 1,472 | | Yes |
| | | ERISA 0.5% Arrears | 09/30/2009 | 12/31/2009 | 1,507 | | Yes |
| | Client Total | | | | 5,295 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 54 | 731.51 | Yes |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 85 | 69,417.47 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 269 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 272 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 320 | | Yes |
| | Client Total | | | | 946 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 555.86 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 84 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 111 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 89 | | Yes |
| | Client Total | | | | 284 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 45,942.78 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 270 | | Yes |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 01/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 473 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 445 | | Yes |
| | Client Total | | | | 1,188 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | | ERISA 1% Arrears | 10/01/2009 | 12/28/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 162.61 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 16 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 29 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 28 | | Yes |
| | Client Total | | | | 73 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| ✓ x | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 175 | 10,933.18 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 750 | | Yes |
| | Client Total | | | | 925 | | |
| ✓ x | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 92 | 2,356.46 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 131 | | Yes |
| | Client Total | | | | 223 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 540 | 201,469.60 | Yes |
| ✓ y | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 16 | 9,821.46 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 60 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 61 | | No |
| | Client Total | | | | 137 | | |

76

4,241.50



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 0.5% Arrears | 12/31/2008 | 03/31/2009 | 0 | 28,811.52 | No |
| | | ERISA 0.5% Arrears | 03/31/2009 | 06/30/2009 | 1,156 | | Yes |
| | | ERISA 0.5% Arrears | 06/30/2009 | 09/30/2009 | 1,400 | | Yes |
| | | ERISA 0.5% Arrears | 09/30/2009 | 12/31/2009 | 1,693 | | Yes |
| | Client Total | | | | 4,249 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 17 | 3,783.56 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 42 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 47 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 43 | | Yes |
| | Client Total | | | | 149 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.96 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 528.97 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1 | | Yes |
| | Client Total | | | | 3 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 3 | 248.15 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 11 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 11 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 13 | | Yes |
| | Client Total | | | | 37 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 39 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 60 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 75 | | No |
| | Client Total | | | | 174 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 558 | 3,849.97 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 685 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 773 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 800 | | Yes |
| | Client Total | | | | 2,816 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,412 | 37,992.33 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,634 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,838 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,821 | | Yes |
| | Client Total | | | | 6,705 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 15 | 21.00 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 18 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 21 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 22 | | No |
| | Client Total | | | | 76 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 22 | 0.52 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 65 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 72 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 73 | | No |
| | Client Total | | | | 232 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 62,499.82 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 9 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 484 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,000 | | Yes |
| | Client Total | | | | 1,493 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 11 | 987.45 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 75 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 94 | | Yes |
| | Client Total | | | | 180 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 158,974.05 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,404.45 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 2,889 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,750 | | Yes |
| | Client Total | | | | 7,043.45 | | |
| | | ERISA 1% Arrears | 03/06/2009 | 03/31/2009 | 13 | 33.33 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 27 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 39 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 27 | | No |
| | Client Total | | | | 106 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 14 | 2,755.60 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 18 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 19 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 19 | | Yes |
| | Client Total | | | | 70 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 923 | 58,264.24 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,028 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,105 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 500 | | Yes |
| | Client Total | | | | 3,556 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 90,391.90 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 982 | | Yes |
| | Client Total | | | | 982 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 107.32 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 16 | | Yes |
| | Client Total | | | | 16 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 15,176.62 | No |

9,357.94



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,200 | | Yes |
| | Client Total | | | | 2,200 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 3,363.59 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 78 | | Yes |
| | Client Total | | | | 78 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 3 | 114.70 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 8 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 9 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 9 | | Yes |
| | Client Total | | | | 29 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 221 | 6,984.88 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 316 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 368 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 377 | | Yes |
| | Client Total | | | | 1,282 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 695 | 9,072.26 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 931 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 974 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,028 | | Yes |
| | Client Total | | | | 3,628 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 11 | 423.46 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 14 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 17 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 14 | | Yes |
| | Client Total | | | | 56 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 257 | 382.07 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1 | | Yes |
| | Client Total | | | | 260 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 32 | 2,324.84 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 6 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 6 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 6 | | Yes |
| | Client Total | | | | 50 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 68 | 1,119.24 | Yes |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 398 | 84,234.62 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 897 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,079 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,201 | | Yes |
| | Client Total | | | | 3,575 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 180 | 20,412.19 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 618 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 620 | | Yes |
| | Client Total | | | | 1,418 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 47 | 3,590.11 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 93 | | Yes |
| | Client Total | | | | 140 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 71 | 5,622.00 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 148 | | Yes |
| | Client Total | | | | 219 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 295 | 34,936.66 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 586 | | Yes |
| | Client Total | | | | 881 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 385 | 9,056.48 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 815 | | Yes |
| | Client Total | | | | 1,200 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 236 | 47,375.60 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 392 | | Yes |
| | Client Total | | | | 628 | | |

7536
(21635.40)

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 147 | 47,799.89 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 570 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 625 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 648 | | Yes |
| | Client Total | | | | 1,990 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 587 | 182.25 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 596 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 539 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 515 | | Yes |
| | Client Total | | | | 2,237 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 15 | 14,484.85 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,292 | | Yes |
| | Client Total | | | | 1,307 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,454 | 35,944.96 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,618 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,862 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,855 | | Yes |
| | Client Total | | | | 6,789 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 25 | 21.80 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 29 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 32 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 33 | | No |
| | Client Total | | | | 119 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 65 | 2,012.19 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 79 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 89 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 93 | | Yes |
| | Client Total | | | | 326 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 285 | 3,290.30 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 310 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 336 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 352 | | Yes |
| | Client Total | | | | 1,283 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 70,675.14 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 457 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,050 | | Yes |
| | Client Total | | | | 1,507 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 1,522.56 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 77 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 85 | | Yes |
| | Client Total | | | | 162 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 7 | 1,157.99 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 10 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 13 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 14 | | Yes |
| | Client Total | | | | 44 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,511 | 13,178.08 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,926 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 2,162 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,179 | | Yes |
| | Client Total | | | | 7,778 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 157.00 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 5 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 5 | | Yes |
| | Client Total | | | | 10 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 379 | 8,649.58 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 393 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 422 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 423 | | Yes |
| | Client Total | | | | 1,617 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 3 | 1,605.10 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 4 | | Yes |
| | Client Total | | | | 7 | | |

8,509



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 106 | 1,868.67 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 168 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 204 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 207 | | Yes |
| | Client Total | | | | 685 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1 | 767.16 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1 | 767.16 | Yes |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 3 | 558.38 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 90 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 128 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 134 | | Yes |
| | Client Total | | | | 355 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 13 | 1,561.88 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 111 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 125 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 130 | | Yes |
| | Client Total | | | | 379 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 5 | 981.93 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 48 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 55 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 56 | | Yes |
| | Client Total | | | | 164 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,355 | 22,976.16 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,612 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,765 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,880 | | Yes |
| | Client Total | | | | 6,612 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 16,419.13 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 70 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 100 | | Yes |
| | Client Total | | | | 173 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 34 | 13,584.81 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 100 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 127 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 125 | | Yes |
| | Client Total | | | | 386 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 96 | 13,979.00 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 409 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 494 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 475 | | Yes |
| | Client Total | | | | 1,474 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 32 | 539.40 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 38 | | Yes |
| | Client Total | | | | 70 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 99 | 16,376.50 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 181 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 168 | | Yes |
| | Client Total | | | | 448 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 7 | 973.71 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 20 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 24 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 21 | | Yes |
| | Client Total | | | | 72 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 4 | 299.43 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 13 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 14 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 11 | | Yes |
| | Client Total | | | | 42 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,753 | 169,226.63 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3,000 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,500 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,500 | | Yes |
| | Client Total | | | | 8,753 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,500 | 160,492.86 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3,000 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,500 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,500 | | Yes |
| | Client Total | | | | 10,500 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 2,025 | 46,834.09 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 2,256 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 2,657 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,717 | | Yes |
| | Client Total | | | | 9,695 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 146 | 95,617.08 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 258 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 604 | | Yes |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 850 | | Yes |
| | Client Total | | | | 1,358 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 330 | 26,998.02 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 374 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 418 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 438 | | Yes |
| | Client Total | | | | 1,560 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 102 | 7,728.25 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 405 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 442 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 459 | | Yes |
| | Client Total | | | | 1,408 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 41 | 25,300.89 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 285 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 298 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 297 | | Yes |
| | Client Total | | | | 921 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 278 | 174,919.35 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3,220 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 3,426 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 3,446 | | Yes |
| | Client Total | | | | 10,365 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,304 | 231,674.81 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3,258 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 3,599 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 3,633 | | Yes |
| | Client Total | | | | 11,794 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 593.69 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1 | | Yes |
| | Client Total | | | | 3 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 4 | 844.99 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 15 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 13 | | Yes |
| | Client Total | | | | 32 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 6 | 7.05 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 25 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 23 | | Yes |
| | Client Total | | | | 54 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 111 | 59.04 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 191 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 220 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 232 | | Yes |
| | Client Total | | | | 754 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 102 | 8,982.00 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 166 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 182 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 178 | | Yes |
| | Client Total | | | | 628 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 433 | 35,807.92 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 674 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 727 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 748 | | Yes |
| | Client Total | | | | 2,582 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 577 | 80,536.52 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 946 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,049 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,143 | | Yes |
| | Client Total | | | | 3,715 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 591 | 8,943.38 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 639 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 686 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 715.54 | | Yes |
| | Client Total | | | | 2,631.54 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 153 | 4,675.25 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 178 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 196 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 203 | | Yes |
| | Client Total | | | | 730 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 6,130 | 173,069.62 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 8,105 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 8,926 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 8,883 | | Yes |
| | Client Total | | | | 32,044 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 2,752 | 106,827.93 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 2,965 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 3,251 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 3,290 | | Yes |
| | Client Total | | | | 12,258 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 85 | 12,592.26 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 123 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 115 | | Yes |
| | Client Total | | | | 323 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 390 | 6,441.12 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 591 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 683 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 720 | | Yes |
| | Client Total | | | | 2,384 | | |

~~2200~~ 1,400



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,850 | 69,833.87 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 2,501 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 2,779 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,806 | | Yes |
| | Client Total | | | | 9,936 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 4 | 3.73 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 4 | | Yes |
| | Client Total | | | | 8 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 0.35 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 5 | | Yes |
| | Client Total | | | | 5 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 358 | 9,654.93 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 181 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 280 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 267 | | Yes |
| | Client Total | | | | 1,106 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 30 | 1,219.14 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 87 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 90 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 88 | | Yes |
| | Client Total | | | | 295 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 965.02 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 58 | | Yes |
| | Client Total | | | | 58 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 504 | 304.47 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,474 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,658 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,704 | | Yes |
| | Client Total | | | | 5,340 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 9 | 504.14 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 17 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 37 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 298 | | Yes |
| | Client Total | | | | 361 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 65 | 17,833.93 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 105 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 114 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 360 | | Yes |
| | Client Total | | | | 644 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 61 | 1,832.06 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 73 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 93 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 85 | | Yes |
| | Client Total | | | | 312 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 01/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 276 | 15,264.78 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 698 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 950 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 998 | | Yes |
| | Client Total | | | | 2,922 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 73 | 4,434.29 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 172 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 187 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 194 | | Yes |
| | Client Total | | | | 626 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 2,740 | 28,735.75 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3,156 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 3,457 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,765 | | Yes |
| | Client Total | | | | 12,118 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 23 | 17,814.77 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 71 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 85 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 81 | | Yes |
| | Client Total | | | | 260 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 44 | 27,679.04 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 99 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 111 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 111 | | Yes |
| | Client Total | | | | 367 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 263 | 31,355.79 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 663 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 667 | | Yes |
| | Client Total | | | | 1,595 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 33 | 8,896.63 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 67 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 74 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 78 | | Yes |
| | Client Total | | | | 252 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 290,438.05 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,150 | | Yes |
| | Client Total | | | | 2,150 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 51 | 4,799.43 | Yes |

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## Billing Summary
From 12/31/2008 to 12/31/2009

Set Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 139 | | Yes |
| | Client Total | | | | 190 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 2 | 3,767.74 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 152 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 185 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 180 | | Yes |
| | Client Total | | | | 519 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 965.56 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 41 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 60 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 55 | | Yes |
| | Client Total | | | | 156 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,185 | 116,632.93 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,374 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,545 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,505 | | Yes |
| | Client Total | | | | 5,609 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 8 | 147.13 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 9 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 9 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 9 | | Yes |
| | Client Total | | | | 35 | | |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

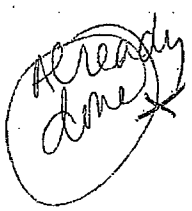
| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 78 | 2,117.48 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 104 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 132 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 146 | | Yes |
| | Client Total | | | | 460 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 10 | 369.16 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 12 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 14 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 14 | | Yes |
| | Client Total | | | | 50 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 75 | 21,069.56 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 104 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 112 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 110 | | Yes |
| | Client Total | | | | 401 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 7 | 779.38 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 77 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 80 | | Yes |
| | Client Total | | | | 164 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 9 | 128.75 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 99 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 85 | | Yes |
| | Client Total | | | | 193 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 8 | 1,614.69 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 111 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 100 | | Yes |
| | Client Total | | | | 219 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 357,463.56 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 7,891 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 10,693 | | Yes |



## Billing Summary
From 12/31/2008 to 12/31/2009

Sec Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,195 | | Yes |
| | Client Total | | | | 29,779 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 463 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 577 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 616 | | Yes |
| | Client Total | | | | 1,656 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | | ERISA 1% Arrears | 10/01/2009 | 12/28/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | | ERISA 1% Arrears | 10/01/2009 | 12/28/2009 | 0 | | No |
| | Client Total | | | | 0 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Sec Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | | ERISA 1% Arrears | 10/01/2009 | 12/28/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 425 | 37,809.36 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,093 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,142 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,165 | | Yes |
| | Client Total | | | | 3,825 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 49 | 12,335.71 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 156 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 179 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 185 | | Yes |
| | Client Total | | | | 569 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 6,101.75 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 346 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 619 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 587 | | Yes |
| | Client Total | | | | 1,552 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 184 | 8,415.90 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 41 | 31,773.55 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 91 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 85 | | Yes |
| | Client Total | | | | 217 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 14 | 1,530.78 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 5 | 89.37 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 9 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 9 | | Yes |
| | Client Total | | | | 23 | | |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 275 | 718.80 | Yes |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 57 | 249.93 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 127 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 127 | | Yes |
| | Client Total | | | | 311 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 671 | 19,476.62 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 945 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,042 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,055 | | Yes |
| | Client Total | | | | 3,717 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1,478 | 21,793.31 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,634 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,814 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 1,851 | | Yes |
| | Client Total | | | | 6,777 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 13 | 1,688.31 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 36 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 40 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 37 | | Yes |
| | Client Total | | | | 126 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 1 | 9.19 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 1 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 213 | 6,328.68 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 370 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 429 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 292 | | Yes |
| | Client Total | | | | 1,304 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 106 | 12,568.11 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 222 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 242 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 251 | | Yes |
| | Client Total | | | | 821 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 63.12 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 158 | 11,837.52 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 339 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 367 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 376 | | Yes |
| | Client Total | | | | 1,240 | | |

4668



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 2 | 906.35 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 4 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 4 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 4 | | Yes |
| | Client Total | | | | 14 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 73 | 10,106.74 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 285 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 251 | | Yes |
| | Client Total | | | | 609 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 1,273.25 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 46 | | Yes |
| | Client Total | | | | 46 | | |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 171 | 15,502.93 | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 597 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 576 | | Yes |
| | Client Total | | | | 1,344 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | 165.97 | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 57 | | Yes |
| | Client Total | | | | 57 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 383 | 8,313.06 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 558 | | Yes |

## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 601 | 1546 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 613 | | Yes |
| | Client Total | | | | 2,159 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 0 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 0 | | No |
| | Client Total | | | | 0 | | |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 28 | 4,562.57 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 117 | | Yes |
| | Client Total | | | | 145 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 10 | 21,166.44 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 107 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 119 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 124 | 236 | Yes |
| | Client Total | | | | 360 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 13 | 5,550.39 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 240 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 271 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 216 | 524 | Yes |
| | Client Total | | | | 740 | | |



## Billing Summary
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Spec | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 16 | 4,053.81 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 161 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 179 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 183 | 357 | Yes |
| | Client Total | | | | 540 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 0 | 0.00 | No |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 3 | 7 | No |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 4 | | No |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 4 | | No |
| | Client Total | | | | 11 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 3 | 537.47 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 28 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 31 | 62 | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 32 | | Yes |
| | Client Total | | | | 94 | | |
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 436 | 307,255.28 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 1,050 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 1,000 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 2,500 | | Yes |
| | Client Total | | | | 4,986 | | |

**Billing Summary**
From 12/31/2008 to 12/31/2009

Set: Jan's Accounts (Jan's Accounts)

| Portfolio Description | Portfolio Account Number | Billing Step | From | To | Amount | 02/05/2010 Money Balances | Paid |
|---|---|---|---|---|---|---|---|
| | | ERISA 1% Arrears | 12/31/2008 | 03/31/2009 | 319 | 6,218.98 | Yes |
| | | ERISA 1% Arrears | 03/31/2009 | 06/30/2009 | 412 | | Yes |
| | | ERISA 1% Arrears | 06/30/2009 | 09/30/2009 | 473 | | Yes |
| | | ERISA 1% Arrears | 09/30/2009 | 12/31/2009 | 490 | | Yes |
| | Client Total | | | | 1,694 | | |
| | Total | | | | 315,866.99 | | |
| | Total Paid | | | | 314,976.99 | | |
| | Total Outstanding | | | | 890 | | |

4909

*The information in this report is based upon information provided by sources deemed reliable, but is not guaranteed.*

15802.87

15502.80

103 32

**Re: TRESPASS NOTICE FROM EPS ADVISORS, LLC**

Dear Jan:

As we have informed you effective IMMEDIATELY today, we have terminated our relationship with you as an independent contractor of EPS Advisors, LLC. In accordance with South Carolina law we are also placing you on trespass notice to our offices located at _____

_____.

We are also advising you that any privileges you may possess to any of our accounts as well as any personal property of the firm, such as checks, equipment or account cards, must be returned immediately. Please do not contact our staff about any matters.

**YOU ARE NOT TO RETURN TO OUR PREMISES FOR ANY REASON, DURING OR AFTER BUSINESS HOURS NOR ARE YOU TO SEND ANY EMISSARIES ON YOUR BEHALF.** You are not permitted access to our building for any reason and we have installed new security devices to secure our building.

There should be no reason you should need access to our office. I will also remind you that the clients you dealt with are clients of EPS Advisors, LLC. I will further remind you that South Carolina has strong Trade Secrets laws to protect the integrity of the trade secrets of a business (including their customer lists).

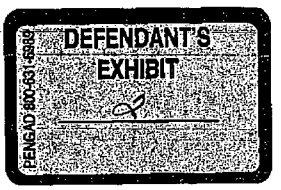
If you attempt to contact EPS Advisors, LLC's clients, we will assume you have misused our customer lists and will view that as an attempt to tortiously interfere with our contractual relationship with those clients.

**Please be advised that if you violate these laws, that I stand ready to take all actions and seek all remedies available to me under South Carolina law.**

I am sorry our business and personal relationships have had to end in this fashion.

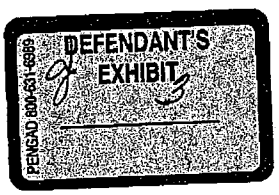
Sincerely,

David C. Dameron, Member
EPS Advisors, LLC



# EPS Advisors, llc
## Profit & Loss
### January through December 2009

| | Jan - Dec 09 |
|---|---|
| Ordinary Income/Expense | |
| Income | |
| Facilities Sharing- King & Co. | 4,400.00 |
| Fees In From Schwab | 354,313.77 |
| Rebates | 100.00 |
| Reimbursed Expenses - Income | 920.60 |
| Service Revenue | 7,355.00 |
| Vendor Refunds | 100.00 |
| Total Income | 367,189.37 |
| Gross Profit | 367,189.37 |
| Expense | |
| Advertising Expense | 250.00 |
| Bank Service Charges | 4,374.26 |
| Business License & Fees | 573.54 |
| Cable | 617.45 |
| Car/Truck Expense | |
| Auto Repairs & Maintenance | 29.00 |
| Gas | 470.35 |
| Car/Truck Expense - Other | 6.14 |
| Total Car/Truck Expense | 505.49 |
| Cleaning/Janitorial | |
| Anderson | 1,480.00 |
| Clemson | 2,145.00 |
| Total Cleaning/Janitorial | 3,625.00 |
| Dues and Subscriptions | 0.00 |
| Expense Reimbursement | |
| DCD | 700.00 |
| ERISA Plan Svcs | 4,101.58 |
| JSF | 7,503.74 |
| LJT | 1,056.20 |
| Expense Reimbursement - Other | -727.74 |
| Total Expense Reimbursement | 12,633.78 |
| Insurance | |
| Medical Insurance | 10,864.82 |
| Insurance - Other | 327.00 |
| Total Insurance | 11,191.82 |
| Loan | |
| Interest | 2,435.71 |
| Repayment | 4,450.67 |
| Loan - Other | 4,390.00 |
| Total Loan | 11,276.38 |
| Marketing | 51.20 |
| Meals and Entertainment | 216.20 |
| Miscellaneous | 550.00 |
| Office | |
| Copier | 1,644.88 |
| Lawn | 1,003.00 |
| Total Office | 2,647.88 |
| Office Supplies | 1,818.34 |
| Payroll Expenses | |
| Anderson | 21,740.18 |
| Clemson | 14,510.00 |
| JSF | 171,153.66 |
| LJT | 47,435.39 |
| RH | 30,500.00 |
| SGL | 35,300.00 |
| Total Payroll Expenses | 320,639.23 |



# EPS Advisors, llc
## Profit & Loss
### January through December 2009

| | Jan - Dec 09 |
|---|---|
| Petty Cash | 288.00 |
| Pinnacle Bank | 5,744.67 |
| Postage and Delivery | 1,751.37 |
| Pricing Service | 430.86 |
| Printing and Reproduction | 2,925.21 |
| Professional Development | 777.80 |
| Professional Fees | |
| Accounting Fees | 1,012.75 |
| Other | 230.00 |
| Professional Fees - Other | 160.00 |
| Total Professional Fees | 1,402.75 |
| Rent | |
| Anderson | 25,300.00 |
| Clemson | 21,250.00 |
| Total Rent | 46,550.00 |
| Start Up | |
| Anderson | 77.48 |
| Clemson | 3,502.30 |
| Total Start Up | 3,579.78 |
| Tax | 357.35 |
| Technology | |
| Anderson | 12,604.79 |
| Copier | 1,027.30 |
| Technology - Other | 107.66 |
| Total Technology | 13,739.75 |
| Telephone and Fax | |
| Clemson Phones | 1,432.92 |
| Telephone and Fax - Other | 14,451.44 |
| Total Telephone and Fax | 15,884.36 |
| Travel | 14,679.49 |
| Utilities | |
| Electric | 2,812.04 |
| Water | 434.92 |
| Total Utilities | 3,246.96 |
| Total Expense | 482,328.92 |
| Net Ordinary Income | -115,139.55 |
| Other Income/Expense | |
| Other Income | |
| Interest Income | -164.06 |
| Other Income | |
| Capital In | 15,167.00 |
| Other Income - Other | -750.00 |
| Total Other Income | 14,417.00 |
| Total Other Income | 14,252.94 |
| Other Expense | |
| Capital Out | 15,384.20 |
| Interest Expense | 2,484.15 |
| Other Expense | 1,368.28 |
| Total Other Expense | 19,236.63 |
| Net Other Income | -4,983.69 |
| Net Income | **-120,123.24** |

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
CASE. NO. 2013-CP-39-434

EPS Advisors, LLC,

Plaintiff,

vs.

Jan S. Fredman and Clemson-EPS Advisors, LLC,

Defendants.

---

30(b)(6) DEPOSITION OF DAVID C. DAMERON

---

Pursuant to Notice of Deposition and/or agreements in the above entitled case, the Deposition of David C. Dameron was taken at the Skinner Law Firm, 300 North Main Street, Greenville, South Carolina, on Thursday, July 21st, 2016, commencing at 10:25 a.m.

ORIGINAL

KAREN BELANGER
CERTIFIED VERBATIM REPORTER, CVR-M

FOOTHILLS COURT REPORTING
864-991-2570



APPEARANCES:

CANDY M. KERN-FULLER, Esquire
Upstate Law Group, LLC
200 East Main Street
Easley, South Carlina 29640
candy@upstatelawgroup.com

.....On behalf of the Plaintiff

LARRY C. BRANDT, Esquire
Larry C. Brandt, P.A.
3691 Blue Ridge Boulevard
Post Office Box 738
Walhalla, South Carolina 29691
lcb@brandtlawfirm@att.net

..... On behalf of the Defendant

ALSO ATTENDING: Susan G. Lockwood

STIPULATIONS:

The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER:

Examination and reading of the deposition are reserved by the witness and by the parties.

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| Reexamination by Ms. Kern-Fuller..... | 85 |
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| Certificate ..... | 87 |


DEFENDANT'S EXHIBITS


| | |
|---|---|
| Exhibit No. 1 - 10/5/09 Handwritten Note of Witness ..... | 22 |
| Exhibit No. 2 - Provision on 15 Percent Holdback ..... | 24 |
| Exhibit No. 3 - Provision on 15 Percent Holdback with Notes ..... | 25 |
| Exhibit No. 4 - Copy of 10/5/09 Check ..... | 27 |
| Exhibit No. 5 - Copy of 1/12/10 Check ..... | 27 |
| Exhibit No. 6 - 4/20/10 Letter of EPS ..... | 31 |

The witness was duly sworn to tell the truth, the whole truth, and nothing but the truth concerning the matter herein;

DAVID C. DAMERON,

being duly sworn, testified as follows:

EXAMINATION BY MR. BRANDT:

Q. Mr. Dameron, my name is Larry Brandt. I think I introduced myself when we came in the door out there. And I represent Jan Fredman in this matter. Have you ever given a deposition before in any capacity?

A. I have, yes.

Q. Well, I need to go over some rules. You are a 30(b)(6) designee to answer questions on behalf of the corporation. Not necessarily on your personal self, but on behalf of the corporation on matters that we gave you notice that we would be talking about. As we go through that though, this is not a marathon. So if you need to take a break at any time, you tell me and we will break.

A. Sure.

Q. We want you to be comfortable. We're only seeking to find out what the facts are to the events of the cause, one way or the other, whatever happens. So any answer that you may give to any question is

good, if it's truthful, and that's all we're looking for. An I don't know, I don't recall -- they're not wrong answers if that's true. Depositions are used a number of ways. But like in this instance what you say on behalf of the corporation on these matters, the corporation is the Plaintiff and they're bound at least with that answer. The court reporter is taking down everything verbatim, my question and your answer. If I ask a question and you do not understand it, please stop me and ask me to clarify it. And we will try to get together with a discourse between me and you to clarify that question. Your attorney and no one else can help. I've got to be the one to clarify my question. And if not, then if you don't ask for clarification, I'll assume that I asked a good question and you answered what I was intending to ask. So it's important to do that. If you answer a question that's yes or no, an answer is appreciated as yes or no rather than a shake of the head or an uh-huh or huh-uh, because they can be confused on the record and then we get it backwards.

A. Got it.

Q. And then, of course as I've said, if we take a

break though and you need a break, you can't talk about what you've been asked or what you may be asked when we come back on the record. From time to time I'm sure that the attorney for the corporation might have an objection. And if she makes an objection, starts to make an objection, please just be quiet and let her put on the record what she wishes to say. I think you still get to answer that question, but we have reasons from a legal standpoint that we can fuss about later as to whether or not that question and answer is good and bad, whatever. Are there any other questions that you'd like to ask me about the rules of the deposition before we go forward?

A. No.

Q. Mr. Dameron, state your name in full.

A. David Craig Dameron.

Q. And how old are you, sir?

A. Fifty-one.

Q. Where do you presently reside?

A. 8 North Orchard Farms Avenue, Simpsonville.

Q. And are you presently employed?

A. I am.

Q. What do you presently do?

A. I'm a salesperson for the Lazy Boy store.

Q. Are you engaged in the securities market or industry in any way, at the present time?
A. No.
Q. Are you the one that basically struck the agreement on behalf of the corporation with Jan Freeman to come to work with EPS?
A. Yes.
Q. Could you tell me how that came about?
A. We were introduced to each other by a mutual relationship. We met a couple of times, and then I agreed to have him join us.
Q. In what capacity did he join your firm?
A. Investment advisor representative.
Q. And as an investment advisor rep, what kind of services was he to perform?
A. He was to bring clients to the firm, provide investment services to those clients and keep them with the firm.
Q. Did he disclose to you that he had a number of clients that would follow him to your firm at the time?
A. Yes.
Q. Did you discuss the monetary value of what the investments are? The people's investment accounts, I guess you'd call it.

MS. KERN-FULLER:

Objection, outside the scope of the 30(b)(6) notice.

MR. BRANDT:

It was circumstances surrounding the agreement with Jan Fredman.

MS. KERN-FULLER:

Which is which item?

MR. BRANDT:

Agreements between the Defendant and EPS, division and split of fees, et cetera. I think I'm entitled to go in the background of that, but I recognize your objection.

MS. KERN-FULLER:

Which is which item?

MR. BRANDT:

It would be encompassed in any and all agreements between Fredman and EPS Advisors.

MS. KERN-FULLER:

So are you asking specifically about the agreement or are you asking about the background --

MR. BRANDT:

How the agreement came to be -- what consisted, why he agreed, why the agreement was and how they structured it.

MS. KERN-FULLER:

So you're not asking about the agreement itself?

MR. BRANDT:

I'm going to, yes. I'm going to get into that. And if you object to that portion, that's fine. Put it on the record.

MS. KERN-FULLER:

I'm going to object to that portion.

MR. BRANDT:

Okay, fine.

EXAMINATION RESUMED BY MR. BRANDT:

Q. When you all had the agreement and you all had the agreement and you entered it, what was the agreement?

A. That he would come aboard. That he would be bringing or trying to bring clients. Clients meaning clients and their assets. And then he would interact with and handle those clients.

Q. And did he do that?

A. Yes.

Q. Tell me how he was to be paid for his services.

A. We charge the clients a fee, and then he would get a portion of that fee as his money.

Q. And what was that originally?

A. Originally 50/50.

Q. Did that ever change?
A. Yes.
Q. When did it change? Do you recall?
A. January 2010.
Q. And what did it change to?
A. Eighty-five percent to Jan, 15 percent to EPS.
Q. And I understand it's been a while and the dates might escape you. Do you think there was any other modifications between the original agreement about compensation and what you say started January 10 compensation split?
A. Yeah, I do.
Q. If you'd tell me about those modifications of the agreement.
A. Sure, the best I can. My best recollection, and you've made the point it's been a while, but we started out 50/50. And then a little ways in, Jan agreed to start paying certain bills or taking over month-to-month certain expenses. And that's when we kind of began the migration, you might call it, from 50/50 to the 85/15 of January of 2010. So during some period from start towards -- and I would call it the middle of 2009 or something like in that range.
Q. You mentioned progression, and you got to January

2010.

A. Right.

Q. So I suppose the split of 85/15 would have been January, February and March of 2010. That would have been the division for that quarter?

A. For that quarter. So the first quarter of 2010, yes.

Q. And back before that, again I understand it's been a while, but somewhere around 2009 you began to migrate toward what you ended up with?

A. Correct.

Q. And if you don't remember the times when it changed though, do you remember the adjustment of the percentages or the progression of the percentages?

A. I don't remember any particular percentages between 50/50 and 85/15, for example 60/40 and so on. Okay? What I recall is that we moved from 50/50. Jan was going to be paying certain other expenses, and we were moving therefore to 85/15.

Q. Now originally was Jan to pay office overhead or expenses?

A. Originally, no.

Q. So the whole 50 percent would have been his?

A. Correct.

Q. And your 50 percent, were you to pay his

administrative support --

A. Right.

Q. -- and office overhead?

A. Yes.

Q. And did you have difficulty paying those expenses?

A. Yes.

Q. Jan has testified, I think, if I'm not mistaken -- he may have just told me -- but, anyway, says that there was a period of six months where four out of the six months the phone bills weren't paid and were cut off.

MS. KERN-FULLER:

Objection, outside the scope.

EXAMINATION RESUMED BY MR. BRANDT:

Q. You can answer.

A. I don't know four or six. I know that we -- I know that at least once the phone bill -- the phones were cut off because the power went off. And they're voice-over IP type phones. He had trouble technically with phones on or off. I don't know if I attribute that to the --

Q. And were there any other bills that you did not pay, that you were supposed to pay in accordance with your agreement?

MS. KERN-FULLER:

Same objection.

WITNESS ANSWERS:

A. Let me think. I know the power was one of them. He paid the rent, I think, one time. I don't have the details. I know that we were moving from the 50/50 to the 85/15, because he started kind of picking up expenses.

EXAMINATION RESUMED BY MR. BRANDT:

Q. I did ask here about testifying as to the dates of all payments to Fredman, amounts of those payments and the basis upon which the payments were calculated during the period of October 1, 2008 and March 31, 2010. You've given me with specificity the January, February, and March of 2010 and told me how it started. I guess that would have been October of 2008?

A. Right.

Q. And you say there's a migration, but basically do you have any information or are you prepared to testify today as to each payment that he received, each quarter that you all split the money?

A. Do I know the amounts he got each quarter?

Q. Yes, as we sit here today.

A. No, I don't remember those.

Q. Were there any records of the corporation which

show us that, that's still in existence?

A. Yes.

Q. Where would they be?

A. I saw a 2009 tax return.

Q. Of the corporation?

A. Yes.

Q. Recently?

A. Yes.

Q. Who would have that in their possession?

A. The company.

MS. KERN-FULLER:

That's being put on a CD ROM for you later.

MR. BRANDT:

Excuse me?

MS. KERN-FULLER:

That's being put by Mr. Skinner's assistant, assembled for you, as we speak.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Were there any disagreements about division of funds during that period of time, other than when those things were calculated that she's going to bring me and show me what was split out?

A. I'm not sure I understand.

Q. Well, evidently whatever your agreement was, the funds according to your agreement were split out in

different proportions. Started at 50/50 with you paying bills --

A. Right.

Q. -- and it gradually moved over to 85/15 with Jan paying some bills.

A. Correct.

Q. And my question is, prior to the quarter ending March 31, 2010 were there any disagreements concerning the split of those funds?

A. The 85/15?

Q. No, any percentage. You don't remember the percentages, per se?

A. Oh, we had agreed on 8/15.

Q. I understand that.

A. Yeah.

Q. Does EPS Advisors -- now not you personally, but is EPS Advisors still in business?

A. No, it's not.

Q. And when did it cease business?

A. 2012.

Q. And is it still current with the Secretary of State?

A. Yes, I think the registration is still in place. The corporate registration at the Secretary of State's office, yes.

Q. Are you the managing member?
A. Yes.
Q. Do you still consider yourself a managing member of that --
A. Yes.
Q. -- LLC, I guess, corporation?
A. Right. So I guess in that way, you'd call it inactive but it's still registered with the State.
Q. And are you still empowered to make decisions concerning the corporation?
A. I don't think so. I think that's Mr. Skinner now.
Q. Now I want to go through a little bit, and ask you number 1 on this list about the relationship of EPS. And when I say EPS --
A. That's fine.
Q. -- EPS Advisors.
A. Sure.
Q. And ERISA Plan Services.
A. All right.
Q. Would you please explain that relationship?
A. Yes. ERISA Plan Services is a business owned by a different person, and I was registered and worked for that business. His name is Mike Cruce, C-R-U-C-E. And originally Mike and I made the decision to create EPS Advisors and use ERISA Plan Services

for some of the organizational needs of EPS and then have EPS stand on its own. So its not a predecessor firm, but it was from a regulatory registered standpoint our registered advisory firm from which EPS developed.

Q. When you entered into the agreement with Fredman, any of those agreements, were those agreements entered into on behalf of EPS Advisors or ERISA Plan Services? Who were the parties to the agreements, I guess is what I'm asking.

A. Who are the parties to the agreements?

Q. We've got Jan, of course.

A. Right, and then we've got -- bear with me. I'm thinking through the time line. At the end, I'm comfortable that EPS Advisors was the investment advisory firm. In the beginning, I'm not sure. We had originally had our customers with ERISA Plan Services. When I say we, I meant Susan and I. We organized -- when we were organizing EPS Advisors, we originally had our clients' registration with ERISA Plan Services. I'm just not sure what date we moved the company's clients from ERISA Plan Services to EPS Advisors.

Q. You keep mentioning Susan. Is she a shareholder or an officer?

A. She was.
Q. What was her position with EPS?
A. Susan was a member of the LLC.
Q. Was she a member of ERISA, too?
A. She was not.
Q. The relationship, when you talk about ERISA Plan Services, was that just basically a corporation, an LLC connection, or were you a member of ERISA Plan Services too?
A. I was not a member of ERISA Plan Services. Mike Cruce was originally a member of EPS Advisors. So he was the common owner.
Q. Okay, he's the common owner in both?
A. Yes.
Q. But you've never owned any part of ERISA Plan or EPS Advisors never owned any part of ERISA Plan Services?
A. Correct.
Q. I noticed going through some of the stuff that it said, I believe, EPS Advisors d/b/a Liberty Advisors. What's the relationship there?
A. So Liberty Advisors, LLC is the corporate entity. That's the registered business. That's the firm that was registered with the SEC as an investment advisor. So that's the corporate entity. EPS

Advisors is the d/b/a name of Liberty Advisors, LLC.

Q. Liberty Advisors was the one that was registered with the securities?

A. Yes.

Q. Was EPS ever registered?

A. EPS, no. That's the d/b/a name of Liberty.

Q. So even though you have EPS Advisors, LLC, the true party with the securities was Liberty Advisors?

A. Yes.

Q. And when was Liberty Advisors formed and when did you marry the two?

A. Good question. Let me think. The conversation that we just had about the time line, ERISA Plan Services was the original registered entity. That's Mike Cruce's company. We began our business away from ERISA in 2008. So it would have been during 2008 that I organized Liberty Advisors, LLC, and then began the registration process of that business with the SEC. What month I don't recall.

Q. Did you and Jan ever have any of these agreements reduced to writing, a formal agreement?

A. No. We had in January of 2010. Jan and I met, and I call it an outline. We had a -- kind of a letter, if you will, that I put together, that for

lack of a better description was bullet points of what would come to be. It's the framework of an agreement over written, you know --

Q. Yes. And in that, other than just notes, was it formally signed by both parties? Do you recall?

A. I recall Jan had initialed it. He'd kind of made a mark on it that looked like what would represent initials. I don't recall if I signed it or not.

Q. The ERISA Plan Services, when did you all separate the two companies?

A. That was the time line item I was having trouble recalling the day.

Q. Did you all have a formal agreement splitting those companies?

A. Yes. Yes, the -- there's a requirement that you notify clients and there's some regulatory steps you have to go through to make sure that everybody's clear on what mechanically, if you will, between the businesses happened.

Q. And were all the clients that you know of, that Jan brought into the firm, notified of that?

A. I know that all the clients that we had at the time were notified. I'm positive of that. What I don't recall is if they were only clients that Susan and I had had and Jan came after that, or some of Jan's

clients preceded that division and therefore would have been included. Can I modify my answer for a moment --

Q. Sure, you can.

A. -- as we talked about it? In -- I believe, it's my best recollection, that the clients that we sent the letters to were only my clients and Susan's clients. There was a letter that went out from our firms that was signed by David and Susan. And that lends me to believe that only clients of David and Susan were involved in that transaction and not Jan's.

Q. Can you tell me what the letter says?

A. Yeah, generally it would say -- it said something like, "Dear Clients, over the last period of time," maybe it was six months, maybe it was a year. But, "Over the last period of time, you've done business with us and the securities registered business was ERISA Plan Services. We're happy that the regulatory approval has come for EPS Advisors and ERISA Plan Services is shifting your client accounts from its registered business to EPS as the registered business. We have to let you know. If you have any objections or want further information, let us know. Absent that," I think 30

days, "the transition will be complete. We call it a negative consent letter.

Q. So if you don't raise your hand and complain, you get moved over?

A. That's right.

Q. Going back through the relationship, you and Jan and the agreements. And I thought I had another copy of that, but I want to show that to you.

MR. BRANDT:

I want to ask him about that. That has to do with the split.

MS. KERN-FULLER:

Under 30(j)(8), I'd like a break to discuss this with him.

MR. BRANDT:

Excuse me?

MS. KERN-FULLER:

Under Rule 30(j)(8), I would like to take a break to discuss this with him.

MR. BRANDT:

That's fine.

(OFF THE RECORD)

EXHIBIT NO. 1 MARKED FOR IDENTIFICATION (10/5/09 HANDWRITTEN NOTE OF WITNESS)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I'm going to show you Exhibit Number 1, Mr. Dameron, and ask you if you recognize the writing on that document.
A. Yes.
Q. And does it have a date on there?
A. It does.
Q. What's that date?
A. October 5th, 2009.
Q. And does that pertain to your agreement with Jan Fredman?
A. Yes.
Q. And you've signed it? Your name is there, David?
A. Yes, that's me.
Q. Explain that document to me. What was intended when you wrote it?
A. It appears that with this, I had sent Jan money. There's math at the top of the page. It's 71,200. And so what it appears to be is that I had sent Jan 80 percent of $89,000. Eighty nine thousand would approximate the billings for the period June 2009 to September 2009 billed shortly after early October, collected and then sent to him.
Q. Was that money that rightfully belonged to him, that you sent to him?
A. Yes.

Q. In accordance with the agreement in effect at that time?

A. Yes.

Q. It appears there's different writing at the top. Do you know where that came from, or do you know whose writing that is?

A. I don't.

EXHIBIT NO. 2 MARKED FOR IDENTIFICATION (PROVISION ON 15 PERCENT HOLDBACK)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I'll show you Exhibit Number 2. Do you recognize that?

A. Yes.

Q. What is it?

A. It's a document that I typed that describes when Jan and I are at a 85/15 split; what the firm will do for Jan, if you will, for the 15 percent.

Q. So that's of, in the case of you and Jan, acknowledging the 85/15 split and what you would do for your 15 percent?

A. Right. I don't know if that was draft back and forth, or just what. But generally, yeah, that's the list of things the company would do for his side.

Q. There's no date on there. Do you have any idea

when you might have typed that?

A. Well, the January 2010 was an 85/15 agreement.

Q. Yes, sir.

A. So this would probably be proximate to that time.

Q. And this other one, Exhibit 2, was basically dated 10/5/09. That note there would apply to the quarter ended in September; would it not?

A. Correct, of 2009.

Q. Yes. So you would have had it by the 10th and you would have made the calculation by then and sent money on?

A. Right.

EXHIBIT NO. 3 MARKED FOR IDENTIFICATION (PROVISION ON 15 PERCENT HOLDBACK WITH HANDWRITTEN NOTES)

EXAMINATION RESUMED BY MR. BRANDT:

Q. This is the same document that was Number 2, it appears, but there's some other notes written thereon. And I'm just going to ask you, do you recognize the handwriting on that? Not the typed stuff, but the handwriting?

MS. KERN-FULLER:

And I'm going to say if you need to discuss that document before you answer questions about it, that you have the opportunity to do that.

WITNESS:

Okay, thank you. (Reviewing document). There's two different -- there's the 7 and 8 items.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Yes. My question is --

A. Seven and eight looks like --

Q. -- who put that on there?

A. -- Susan's handwriting.

Q. Well, I can ask, if she doesn't object.

MR. BRANDT:

If you object to me asking Susan. I just want to know who wrote it on there.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Do you have knowledge of what it was referring to, the handwritten notes or the handwritten additions?

A. I would be -- let me think. Not directly.

Q. I think you stated earlier there were no written agreements where both of you formed a written agreement where anyone signed, where you all entered into and signed concerning any of his relationship with the company.

MS. KERN-FULLER:

Object, assumes facts, does not accurately restate testimony.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Well, are there written contracts that are formally

signed by both of the parties that reference the agreements of Jan and EPS?

A. No.

Q. And are there any agreements then, that was a non-compete agreement with Jan?

A. No.

EXHIBIT NO. 4 MARKED FOR IDENTIFICATION (COPY OF 10/5/09 CHECK)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I'll show you Exhibit 4, and you may want to read that in conjunction with Exhibit Number 1.

A. Okay.

Q. This Exhibit 4, is this the check that's referenced in Exhibit 1 that you wrote to Jan?

A. Yes.

Q. That would be the 71,000 check?

A. It would be.

EXHIBIT NO. 5 MARKED FOR IDENTIFICATION (COPY OF 1/12/10 CHECK)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I have an Exhibit Number 5.

MS. KERN-FULLER:

And again, Mr. Dameron, if you'd like to discuss this before you answer questions about it, you're able to do that according to 30(j)(8).

WITNESS:

Okay, thank you. (Reviewing document).

EXAMINATION RESUMED BY MR. BRANDT:

Q. Do you need to talk to her?

A. (Negative gesture. No verbal response.)

Q. Can you tell me what that is?

A. It's a check from the company to Jan Fredman.

Q. What's the date on the check?

A. The check is dated January 12th, 2010.

Q. What was the purpose of that check?

A. The check was in payment for fees in the fourth quarter of 2009. The notation at the bottom says 12/31/09 plus 5,000.

Q. What does that mean?

A. It looks like it was a payment for the fees plus 5,000. And that five likely was a reimbursement of out-of-pockets by Jan.

Q. Could it have been the fact that the quarter before the check was $5,000 short?

MS. KERN-FULLER:

Objection, calls for speculation.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Do you know?

A. I don't know. It was 12/30. It was the billing of 12/30/09 plus 5,000 for some reason.

Q. But you wrote that?
A. I did, yes, sir.
Q. But you can't tell me today what the 5,000 was for?
A. I don't recall.
Q. Okay, fair enough. Can you tell me why the check was written on the joint account of David C. Dameron and Susan G. Lockwood rather than EPS Advisors?
A. I think it has to do with Schwab. I don't know. I'm a little fuzzy on the details, but I remember there being an odd requirement at Schwab the way that we had the check printed, if you will.
Q. When you say check printed, what check?
A. Well, the check is on an account from Charles Schwab Bank. And I remember there being a quirky requirement by Schwab that the signors be the names up there, not the business. I don't know if it was a security reason for them clearing checks or something, but this is what we call our fee disbursement account at Schwab.
Q. Why was it a Schwab checking account as opposed to the way you'd been doing it, them sending you money and then you writing an EPS Advisors check for it?
A. Well, mechanically we have two accounts, checking accounts, if you will. We had what we call a fee

disbursement account at Schwab, where the fees would collectively come from the customers' accounts into that fee disbursement account. And then I could either take monies directly from that account, which is what we did here, or I could deposit from this account into the Grand South local checking account.

Q. And then write the check out?

A. And then write the check.

Q. So even this other check where you wrote on 10/5/09, EPS Advisors check, that's the way that you would have transferred the money from the Schwab account --

A. Right.

Q. -- over here?

A. So the 10/5/09 check is drawn on Grand South. It would have come through here.

Q. Yes, but you think the process would have been where EPS Advisors would have written a check out of Schwab, deposited into EPS, and then wrote the check out to Jan out of EPS in October. And here, instead of doing that, you merely wrote it straight out of the Schwab account?

A. Yes.

(DISCUSSION OFF THE RECORD)

MR. BRANDT:

I want to have this letter marked. I have certain portions of this letter on the original document and it's highlighted, just to direct your attention to the portions I want to talk about.

MS. KERN-FULLER:

And again this is a four-page letter. And, Mr. Dameron, if you'd like to discuss it before you answer questions about it, under Rule 30(j)(8) you can do that.

EXHIBIT NO. 6 MARKED FOR IDENTIFICATION (4/20/10 LETTER OF EPS)

EXAMINATION RESUMED BY MR. BRANDT:

Q. Let me ask you this. Prior to today, have you met with attorneys or gone over testimony or been prepared for this deposition?

MS. KERN-FULLER:

Objection, outside the scope of the 30(b)(6) deposition notice.

MR. BRANDT:

It is on ancillary matters that I say that I'm entitled to go into. He's saying he doesn't remember. You're wanting to go back and talk about documents and all. I want to know how much time you spent with him basically preparing him for this

deposition.

MS. KERN-FULLER:

Same objection.

MR. BRANDT:

Objection is stated and it's noted.

WITNESS:

Go forward?

EXAMINATION RESUMED BY MR. BRANDT:

Q. Go forward the best you can.

A. The time from when you and I met, I came in and we met, that's the time. That's the entirety.

Q. You're talking about when you walked in the door?

A. Yes, sir, when I came here this morning.

Q. The first time I introduced myself, and you went back. And that's the only time you've met and gone over anything --

A. Yes, sir.

Q. -- or prepared for this deposition?

A. It is.

Q. And have you reviewed any documents in regard to preparation for this deposition prior to this morning?

A. Prior to this morning? There was, yeah. Bear with me a minute. I had gone back and tried to find things and look, you know, like overall just trying

to see what I had and what I remembered, and that kind of thing.

Q. Were you successful on finding any documents to help you?

A. What did I find? Not really. Much of what -- I think I found an email, some emails between me and Candy from way back.

Q. You and?

A. Ms. Kern-Fuller. I didn't really like just to say sit down and prep and go through, you know.

Q. But no one on behalf of your legal team or anyone else ever met with you to prep you for this deposition until this morning?

A. Correct.

Q. Would you agree with me that you came in at least somewhere around 9:45?

A. Yes, sir.

Q. And we started this deposition somewhere around 10:20?

A. Yes, sir.

Q. She would have that on the record.

A. Yeah, that sounds about right.

Q. That's about right?

A. (Affirmative gesture. No verbal response.)

Q. So other than that, you've not spent any real time

other than trying to look for documents that might have reflected or helped you, your memory?

A. Right, exactly.

Q. Do you have any documents belonging to the corporation at your house?

A. I don't.

Q. These records of the corporation, would they be stored somewhere?

A. Most of them are gone. The business is closed. There's a five-year record retention. So my look, that you asked me about, I was just trying to remember years, you know, time -- the time line and periods of what year it was.

Q. In this letter, basically I think the complaint is you were entitled to receive the entire 105,352.50. You might read that letter, if you wish.

A. If you don't mind, just a minute.

Q. Yes, this is the original that I marked.

A. Oh, okay.

MS. KERN-FULLER:

And again since Mr. Brandt is asking you questions, if you need to discuss that letter, Mr. Dameron, you can.

WITNESS:

Sure.

MR. BRANDT:

And I'm going to take exception to that. You were supposed to have him prepared when he came here.

MS. KERN-FULLER:

Under Rule 30(j)(8) the rules state that the documents are supposed to be provided two days before. Otherwise we can take a break to discuss the document before the deponent is required to answer questions about it.

MR. BRANDT:

Yes, ma'am.

MS. KERN-FULLER:

I need a copy of the letter.

MR. BRANDT:

Here you go.

MS. KERN-FULLER:

Thank you.

WITNESS:

All right, I'm sorry, but tell me again your question.

EXAMINATION RESUMED BY MR. BRANDT:

Q. My question is basically is it true that your letter, your position when you wrote that letter, was that EPS Advisors was entitled to receive the whole 105,000? I think you stated in paragraph,

right here, 105,352.50.

A. Right.

Q. Correct?

A. Correct.

Q. And out of that, other than the fact that you were upset about the fact of what he had done by moving the accounts, he would have been entitled to 85 percent of that amount?

A. Right.

MS. KERN-FULLER:

Objection, calls for a legal conclusion.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Well, would he have been entitled to 85 percent of that pursuant to the agreements with the corporation?

MS. KERN-FULLER:

Same objection.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Go ahead and answer the best you can.

A. Okay, the best I can answer, 105,352.50 is the amount billed from the accounts. Assuming that money to be penny accurate of what should have been billed, then 85 percent of that number is what he and I had agreed to being a split.

Q. So according to the agreement, if the money had

come into the corporation instead of to Jan directly, he would have been entitled to 85 percent of that number?

A. Yes.

Q. And you would have written him a check out to pay that 85 percent?

A. Right.

MS. KERN-FULLER:

Same objection.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Over on page 2, if you go down to the paragraph that's got the highlight on it which starts with "succinctly," you say, "Succinctly the money you owe me is considerable." Did he owe you money? Are you talking about personally or as the corporation?

A. The corporation.

Q. And your statement there, "Your attempt to quantify what is owed to me as 15,802 or 7,674.11," had you already had a conversation with Jan about the division? This is an April 20, 2010 letter. Had you already had a conversation with him about that?

A. Yes.

Q. And did he offer to pay you the 15 or the 7?

A. The 7?

Q. Well, you've got 15,802 or 7,674.11. Why the or?
A. Can I use a calculator?
Q. Surely may.
A. (Using calculator). So, okay, rephrase the question, please.
Q. I'm wondering about the 15,000 and the 7,000, why the difference in those numbers?
A. Oh, okay. If you take 105,000, and I'm rounding numbers now. Okay? I take 105,000 and multiply it by 85 percent, that's the amount that we had talked about Jan would have. Okay? Then that would remain -- that would leave 15,800 out of the billing amount total. And Jan, if I recall, wrote EPS a check for 7,600. So Jan had -- my recollection is Jan had received the 105,000, had calculated 15,802 as what EPS would have received of the 105, it's 15 percent. Then subtracted certain expenses that I called prepaids before, something that he had paid prior. And the difference, the approximately $8,000 difference is what Jan described that he had already paid and was repaying himself out of the 15. So if we took --
Q. And he actually wrote a check to EPS Advisors for one of those amounts?
A. He wrote a check to EPS Advisors, and my

recollection is that it was in this -- the number of 7,600, generally.

Q. Yes, I understand that. Whatever that number. We find out the calculation's different, no problem.

A. Exactly right. So my recollection is that it was -- he wrote a $7,600 check here and not 15.

Q. Did you cash that check?

A. Yes.

Q. The 7,674?

A. Yes.

Q. So if we're not talking about these other complaints and damages which you were alleging what might accrue from what he did, if no other money is paid and he didn't have any offsets then as far as the agreement's concerned, he would owe you the difference between the 7,674.11 and the 15,802?

MS. KERN-FULLER:

Objection, calls for a legal conclusion.

MR. BRANDT:

Well, he's speaking for the corporation, managing partner, and he's the one that's got to allege what was owed.

MS. KERN-FULLER:

And that assumes that --

EXAMINATION RESUMED BY MR. BRANDT:

Q. She's got the objection on the record. She says it's a legal conclusion as to what you owe. I'm talking about strictly within the parameters of your agreement with Jan, the 85/15 split.
A. Right, the 85/15 --
Q. If he was not entitled to any credits or pay back for any expenses, what would he owe you out of that 105 as we sit here today if there were not credits due?
A. Oh, on the 85/15 split, what would be due EPS would be the 15. The 15,000. I can't see the number, but --
Q. Would it be the 15,000 less the 76?
A. It would, because that's the check he wrote back.
Q. Did he disclose to you the makeup or how he calculated what he was claiming as credits or monies rather than the 15, how he got back to the 7?
A. Yes.
Q. Do you have any recollection of what he said that he had spent that was collected or how he did it?
A. He gave with the check a sheet of some sort, handwritten or typed. I don't remember. I think handwritten, that spelled out things that he claims were due him. Therefore, the difference between

the 15,000 and the 7,600.

Q. Do you still have that calculation?

A. I don't.

Q. But he gave you a copy of it?

A. With the check.

Q. At the time, do you recall whether you agreed that he would have been entitled to those credits or did you dispute the credits?

A. I disputed it.

Q. I noticed that you also had entities registered with the Secretary of State of 1792 Securities, LLC.

A. Yes.

Q. Was it ever in partnership or anything with EPS?

A. It was under common ownership, ultimately me being that common entity.

Q. Was it the same period of time that Liberty Advisors was involved with --

A. Yes.

Q. -- EPS? How about Buttonwood Advisors, LLC?

MS. KERN-FULLER:

Objection, outside the scope.

EXAMINATION RESUMED BY MR. BRANDT:

Q. What's the relationship?

MS. KERN-FULLER:

Same objection, after the institution of this lawsuit.

MR. BRANDT:

Excuse me?

MS. KERN-FULLER:

It's after the institution of this lawsuit. He can give it to you, though.

MR. BRANDT:

That's fine, if he just tells me that. Are you saying 1792 Securities came into being after this lawsuit?

MS. KERN-FULLER:

No, that was Buttonwood. I was objecting regarding Buttonwood.

EXAMINATION RESUMED BY MR. BRANDT:

Q. All right, Buttonwood came into existence after you and Jan had severed ties?

A. Correct.

Q. How about Spire Securities, LLC? Did that come into existence after you and Jan had split up?

A. Spire?

Q. I've got Spire Securities. Spire Investment Partners.

A. I was -- I never owned --

Q. Any of those?

A. -- any interest in Spire.
Q. So basically there is no relationship between EPS Advisors and Spires Securities or Spire Investment Partners, LLC?
A. The extent of the relationship would be that at one point David, me, and Susan were registered representatives. Securities brokers, if you will, registered with Spire, and at the same time registered with, you know, EPS, Liberty.
Q. When you say Spire, is Spire on the level with Schwab or are they on the level with EPS Advisors?
A. More like an EPS. So they were the brokerage firm.
Q. Do you remember whether you were affiliated in any way with Spire Securities, Spire Investment Partners during the period which you and Jan were in business, doing business dealings together?
A. I'm thinking through the time line. I was registered with Spire Securities. And I --
Q. When you say you, individually?
A. Individually, right. Individually. So you have to be registered with a securities broker dealer to do securities transactions for a commission. That's a separate structure from EPS, where we're doing business for a fee. And being duly registered, I was duly -- individually duly registered at some

point. I don't recall if that was at the time Jan was affiliated with EPS or not.

Q. I want to show you your Complaint. Have you reviewed your Complaint? When I say your, EPS Advisors' Complaint in preparation of this deposition today.

A. Yes.

Q. When is the last time you read that?

A. I would say about a month ago, three weeks ago, somewhere.

Q. I want to hand you a copy of the Complaint.

A. All right.

MS. KERN-FULLER:

And again if you need to discuss that before you answer any questions, you can take a break to do that.

WITNESS:

Certainly. (Reviewing document).

EXAMINATION RESUMED BY MR. BRANDT:

Q. You claim that Jan has converted certain office equipment including the computer desk, desk used by Fredman. Did Jan ever tell you you could come pick it up, if you wished?

A. I don't know. I mean --

Q. Well, at the time you all split up in 2010, Jan had

already moved into his office location near Clemson where he is now. Do you know where he's located now?

A. He had moved to a building he owned, and there's an office in the downstairs. Is that the same place, where he is?

Q. Same building. He's upstairs now --

A. Okay, same building.

Q. -- but the same building. But he moved there before you all had the divorce, correct?

A. Correct.

Q. And so this equipment was there when --

A. That's right.

Q. -- it split up?

A. Yes.

Q. And has he ever kept you from going and reclaiming your equipment, computer and desk?

A. Yeah, I mean, it was a locked office, you know.

Q. Did you ever request to be able to remove it? If you want to read this letter, you can.

A. Yeah, I would still --

Q. If you want to go back and reference that letter, here's the exhibit. You feel free to review any documents you need to before you answer any questions.

A. All right. So I'm looking at Exhibit 6. I glanced over looking at that, because I had sent him in this long letter what I think he did and what I wanted him to do. So I had told him in this letter to return all the equipment of EPS. That's what I was -- that's what I thought.

Q. Would it be fair to say he didn't tell you you couldn't have it? He just didn't bring it back? Do you want it back?

MS. KERN-FULLER:

Objection, compound question.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Do you want it back? Do you still want it back?

A. Do I still want it back?

Q. Yes.

A. I don't have any use for it in 2016. I mean --

Q. My question to you is, did you ever pick up the phone and call Jan and say I want to come and get my stuff at a certain time? When will you make it available to me?

A. Right. I'll be there on a certain time on a certain day and you better have it all available? I don't recall a conversation like that. I just remember the back and forth of my stuff's up there.

Q. Were there any other people that Jan advised? In

particular the ones that he took with them, that he got them to sign and moved over?

A. Right.

Q. Were all those clients that he brought to the firm?

A. They were.

Q. Did anyone else in the firm ever give them advice on investing, to your knowledge?

A. No.

Q. You did not?

A. Correct. (Reviewing document). I don't -- I can't have it back. It's not mine.

Q. What?

A. I can't have back the furniture. It belongs to the trustee.

Q. Okay, we'll deliver it to the trustee, if that's what he wants. I know that going through your claim, I'd put in there to talk to you about him. And certainly I suppose you went in and talked to Ms. Kern and gave her facts, and then she put it in the legalese and asserted the cause of action. Is that a fair statement?

MS. KERN-FULLER:

Objection, calls for attorney/client privileged communication and attorney work product. I'm going to instruct the client not to answer.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Did you draft the Complaint?

A. I did not.

Q. You've got tortuous interference with contract. Do you know what that is?

A. Tortuous inference with contract, yes. He -- my claim is that he interfered with a contractual relationship between the client and the firm, as a person that's not either the client or the firm.

Q. What, in your opinion, prevents him from doing what he did?

A. The contract between the firm and the customer is that the customer will pay the firm the billing in arrears, and then the agreement between the firm and Jan is that we would pay him the 85.

Q. But there was no non-compete?

A. Correct.

Q. Nothing to prevent him from cranking up the corporation and moving them over; is there?

A. In terms of a non-compete agreement?

Q. In terms of anything. I understand how we got the lawyers making --

A. Right.

Q. -- legal arguments and stuff. And I'm not holding you. In your mind, is there any industry standard

that said to your knowledge, a custom, whatever, that would have kept Jan, if he had left, from soliciting those clients?

MS. KERN-FULLER:

Objection, calls for a legal conclusion.

EXAMINATION RESUMED BY MR. BRANDT:

Q. She's made her objection. As best you understand it.

A. That's kind of the process now, right? She objects and then I answer it?

Q. Yes, and then we take it up with the judge. And she may win, but --

A. Okay, so in the end, could he take his clients with him after he left?

Q. Yes.

A. Yes.

Q. So he could have left and gone back, and done exactly what he did?

MS. KERN-FULLER:

Same objection.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Same objection, but go ahead.

A. He could have left and taken the clients.

Q. Yes, okay. Fraud. How do you think that you were defrauded?

A. What page are we on now?
Q. Six.
A. (Reviewing document). All right, so at item 43 the EPS Complaint describes that Fredman's representation was false. I'm just reading it. "In that he incorporated a competing business and transferred Plaintiff's personal property," that being the office stuff, "clients and business records to his firm, Clemson-EPS Advisors." So that's -- if I'm understanding your question correctly, 43 spells out the specificity of the fraud statement.
Q. Have you got any other reasons for alleging that, other than what's in the face of the Complaint?
A. I'm not sure I understand.
Q. Well, if you read that Complaint and you read that cause of action, is there anything else that you're complaining about that pertains to that cause of action other than what's stated there?
A. I'd have to look over this whole -- bear with me a quick second.
Q. Oh, yes, take your time.
A. (Reviewing document). That appears to be the entirety of the fraud claim.
Q. Conspiracy. I see that you've alleged that the

Defendants and Charles Schwab and Company combined for the purpose of Defendant's own financial gain and economic loss to Plaintiff. What facts or evidence do you know, to your knowledge, would show that Jan and Charles Schwab conspired together?

A. It's the only way he could execute it, is with their cooperation. In terms of documents, evidence as you described, there are -- oh, what's it called? There are Limited Power-of-Attorney forms that are Schwab's form that they provide to Jan, Jan then has completed and signed by client. And that Limited Power-of-Attorney form that's a Schwab form, on client's signature authorizes the advisor relationship to move from EPS Advisors to Clemson-EPS, Jan's firm.

Q. Do you have any knowledge, offer any kind of proof how Jan came by those forms? Are they available? Would they have been available to anybody working for you? Called them and said I need some Limited Power-of-Attorney forms? Would they send them to them?

MS. KERN-FULLER:

Objection, calls for speculation.

WITNESS ANSWERS:

A. The form has to come from Schwab to whoever has the

form.

EXAMINATION RESUMED BY MR. BRANDT:

Q. But even if you sign them up originally, when you got the client, Jan would have had to have a form to get those people to sign to get them in the Schwab system; would he not?

MS. KERN-FULLER:

Same objection. You can answer.

WITNESS ANSWERS:

A. Sure. So he would have to -- we collectively, EPS and/or Jan, would have had to get the customer to sign the LPOA to bring them into EPS Advisors. And then further, the customer would have to sign a new form moving from EPS Advisors to Clemson-EPS.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Yes, but what I'm saying is Schwab would not have necessarily had knowledge of what Jan was wanting to do with the form when he requested it; would they, necessarily?

A. No, I -- yeah, I think so. They --

Q. What if he wanted to sign up a new customer?

A. Well, the title part of the form describes the move from EPS moved to Clemson-EPS. So --

Q. Would it have been a blank form that came from Schwab and he would have filled it in, or would

Schwab have filled it in?

A. The "move to" line of the form he would fill in, with the name of his business.

Q. Jan would have?

A. Jan would have, yes.

Q. So I guess what I'm driving at, is with Schwab he could have said I need some Power-of-Attorney forms or transfer forms or something, and Schwab would not have necessarily known what he was going to do with it except sign up a client.

A. With EPS or with Clemson-EPS?

Q. Well, let's assume he's with EPS Advisors and he gets a new customer, a new client.

A. Right.

Q. He's got to get that new client to sign one of these forms.

A. Right.

Q. Schwab would have sent him a form with blanks. They would have sent it to Jan, and then Jan would have filled that out and put --

A. Oh, I see what you're asking.

Q. -- EPS Advisors in it; would he not?

MS. KERN-FULLER:

Objection, assumes facts not in evidence. You can answer.

WITNESS ANSWERS:

A. Jan would -- if Jan were with EPS Advisors, he would get the form from us, EPS Advisors. Someone at EPS, usually myself, would have provided that to Jan. So Schwab to the company, the company to the advisor, would be kind of the -- is that your question?

EXAMINATION RESUMED BY MR. BRANDT:

Q. Who do you think within the firm or within Schwab would have been the individual that would have been talking to Jan and conspiring with him?

A. Kevin Chalk.

Q. So it would have been Chalk?

A. Yes, sir.

Q. Have you had any conversations with Chalk about it?

A. Wow, probably April or so 2010. Maybe later in that same time frame.

Q. Did Mr. Chalk tell you that he was aware of what Jan was doing at the time that he did it?

A. Yes.

Q. Number 5, item number 5 on the notice, to explain EPS Advisor's claim that it is entitled 100 percent of the fees collected from the clients of Fredman during the period of January 1, 2010 through March 31, 2010. And we've talked about the money would

siphon through and you would get it first. So you would have split that out. So any other claim to 100 percent, for you to be able to have gotten it and kept it, you would have had to prevail on one of these causes of action in the Complaint. Is that your knowledge, or do you have knowledge to that?

A. EPS's claim is that it was entitled to the money first.

Q. Yes, and that's based on the money first. And then you would have had to split it out instead of letting Jan getting and splitting it, in reverse order.

A. Right.

MR. BRANDT:

You'll get to your hearing at 2:00

(DISCUSSION OFF THE RECORD)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I just want to show you this. I don't want to put it in. It's got some client stuff, and I don't want to spread it in the record. But I want to ask a little bit about this form, just how it is. That is a Charles Schwab institutional form for a particular individual's account; is it not?

A. Yeah, it looks like their account statement.

Q. And of course this has up here ERISA Plan Services, Inc. It doesn't mention EPS Advisors; does it?
A. Correct.
Q. What I'm getting at is what would you have had to done to get this account out of ERISA Plan Services, Inc. over into EPS Advisors, Inc.?
A. Okay, recall my description of originally registered accounts were under ERISA Plan Services, and then EPS Advisors became -- Liberty d/b/a EPS Advisors became the registered firm, and we sent client notice that said we are moving customers, you, your account, from ERISA Plan Services to Liberty, EPS. So sometime along the way, meaning along this time line with Jan, we organized and registered Liberty EPS Advisors. They became the registered firm for the customer.
Q. For Schwab?
A. All at Schwab. Both ERISA Plan Services and EPS, and then later Clemson-EPS.
Q. Then once that was done, where ERISA Plan Services is listed on this sheet, would that have had Liberty on it or EPS?
A. Right, so it would --
Q. It would have Liberty?
A. -- change the -- the heading at the top reads "Your

Independent Investment Manager," and then it names the business underneath. So upon changing the advisor manager, Schwab would change that information.

Q. And they would have put Liberty on that one, once the --

A. Liberty or the d/b/a name, EPS, or whatever, yeah. I think they put EPS Advisors.

Q. And you said you all did that on existing accounts, was sort of a negative letter.

A. Right.

Q. Saying if you don't, we're going to transfer you?

A. Right. It's called a negative consent clause in the Advisory Agreement, and then a letter making them aware of it unless they objected.

Q. So in your agreement with each customer, there's a clause that says we can do it that way?

A. Correct.

Q. I mean roughly we can do it that way?

A. Sure, right.

Q. So you didn't have to go out and get everybody you were transferring over to sign a new agreement. You could just do it under that given Schwab, hey, we're transferring it over?

A. Correct.

Q. And you would have had to show them, I guess, that ERISA Plan Services consented?
A. Right.
Q. So as long as these two, EPS and ERISA Plan was in agreement and consented with Schwab, they would have changed the way it was drafted?
A. Correct. So we didn't -- you wouldn't have to re-paper the account's relationship. Schwab would honor the move. Can we pause for a moment?
Q. Yes, you may. If you need to straighten out an answer, just tell me. I'm just trying to figure out how to read this stuff.
A. Yeah. (Reviewing document).
Q. Do you need to talk to her?
A. No. All right, I'm ready.
Q. I'm just trying to understand how --
A. Sure.
Q. -- the trail went.
A. What I wanted to do was clarify an answer that I'd previously given --
Q. You may do so.
A. -- regarding time line. I had described that the transfer of accounts from ERISA Plan Services to Liberty EPS was a group of accounts that I believed to be only accounts represented by Susan Lockwood

and myself. And the modification of that answer is there appear to be client accounts that also were under Jan's relationship with the client.

Q. And what? Excuse me. That last part?

A. Under Jan's advisory relationship with the client. In other words, he had introduced clients to the company before we moved from ERISA Plan Services to EPS Advisors.

Q. He had brought the clients to the company prior to division of ERISA and EPS?

A. Correct.

Q. And I do not dispute that, but I was wondering how you got Jan's clients out of ERISA Plan Services over to EPS Advisors.

A. Same process.

Q. Okay, that was still the clause in the agreement, that you could move them? And you did it with that negative --

A. The negative consent letter.

Q. If you don't object, we're going to do it?

A. Correct.

Q. So then it would have been changed over to Liberty or EPS Advisors?

A. Well, EPS Advisors is the doing business name of Liberty. So Liberty.

Q. But how would Schwab have carried it? As Liberty or EPS?

A. They would have -- they put EPS Advisors on all of the customer oriented statements and paperwork.

Q. Even though EPS wasn't licensed or registered properly?

A. Well, no.

MS. KERN-FULLER:

Objection; it assumes facts.

EXAMINATION RESUMED BY MR. BRANDT:

Q. Well, what I'm trying to clarify, I understood you said that you did it that way, EPS Advisors d/b/a as Liberty --

A. Right.

Q. -- because Liberty was the registered entity and not EPS Advisors.

A. Right. So on an item like that -- and I would have to see the letter that went out. But normally in a situation like that when we're describing the registered firm, we would say something like Liberty/EPS Advisors or some reference back to the registered entity. And the same thing with like agreements between the firm and Schwab. So then EPS being kind of the brand name, if you will, that's what customers would have on their printed

pieces.

Q. Got you.

A. So you look at like a Met Life. They've got about 15 corporate names, but everything's Met Life.

Q. I got you. Who is Leonard J. Taylor?

A. He was one of the other advisors in the firm.

Q. Is he still active in securities?

A. I think so.

Q. Does he go by the name of Jack?

A. Yes.

Q. Former preacher?

A. Yes.

(DISCUSSION OFF THE RECORD)

EXAMINATION RESUMED BY MR. BRANDT:

Q. I understood in an answer to your question that, to your knowledge, no one other than Jan ever had any correspondence or communication with any of the clients that he brought to the firm except him. Did I misunderstand you or is that correct?

A. I think it may be a little broader than -- Jan was the client representative. He had the main relationship with the client. He brought them in. And so early when he started, Susan assisted with paperwork. So she would have had client contact if they called in. He may not have answered the

phone.

Q. But as far as the advisor advising them and doing any kind of compliance requirements, Jan would have taken care of that?

A. Yes.

Q. And he would have been the only one that would have dealt with those?

A. That's right.

MR. BRANDT:

I don't have any further questions.

EXAMINATION BY MS. KERN-FULLER:

Q. I have a few follow-ups. Mr. Dameron, if you'd go back to the letter with the blue sticker on it that has gone missing.

MR. BRANDT:

Six, I believe.

(DISCUSSION OFF THE RECORD)

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. Mr. Dameron, if you'd turn over to page 2.

A. (Reviewing document.)

Q. Mr. Brandt asked you about fraud. And if you would refer to paragraph two of that letter.

MR. BRANDT:

On page 2?

MS. KERN-FULLER:

Yes, sir.

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. If you'd read paragraph 2 of that letter and tell me if that amends any of the answers that you gave to Mr. Brandt about your belief about any fraud that Mr. Fredman may have committed in regards to EPS Advisors.

A. (Reviewing document). Okay, now I've read the paragraph. Now if you would, please, repeat the question.

Q. Sure.

MS. KERN-FULLER:

Larry, did you put the Complaint in, as part of an exhibit?

MR. BRANDT:

I did not.

MS. KERN-FULLER:

You referred him to the Complaint when you asked him that question.

MR. BRANDT:

I can give him a copy of it, if you want me to. Here's a copy. But since it's of record, the Complaint, I didn't want to put it in.

MS. KERN-FULLER:

That was fine. You had asked him about that.

MR. BRANDT:

Yes.

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. Mr. Brandt had asked you in his question about the fraud, as it was described in EPS Advisor's Complaint.

A. Right.

Q. And I'm going to back up and just ask one question. Did you have an opportunity to review that complaint before it was filed?

A. I did.

Q. Did you have an opportunity as the officer and representative of the company to make sure that Complaint was true and accurate before it was filed?

A. I did.

Q. And was it true and accurate before it was filed?

A. It was.

Q. Have you had an opportunity to review the filed copy of that Complaint?

A. Yes.

Q. And is it a true and accurate version of the facts as you believe they were at the time that it was filed?

A. I didn't review it with like that intensity.

Q. So you have reviewed the fraud claim with Mr. Brandt today?
A. I did.
Q. And does paragraph 2 of the letter that is marked as Exhibit 6 amend anything to the allegations that were specifically pled in the Complaint?
A. Does it amend it?
Q. Does it add anything to the allegations that were specifically pled in the Complaint?
A. Oh, yeah, in here I say using the name was confusing. So let me be more specific. Exhibit 56 letter, page 2, paragraph 2 that starts, "I consider your tactic." I'm describing in this letter that using the name Clemson-EPS is misleading to the customer.
Q. And why did you feel that that fraudulently misled his clients as to his firm's true identity?
A. They could all think it's EPS.
Q. And that was your firm; wasn't it?
A. Yes, EPS Advisors was my firm and his firm was Clemson-EPS Advisors.
Q. And do you recall when Clemson-EPS Advisors was formed?
A. Yes. Okay, it would have been middle of -- middle to late 2009, somewhere in that range.

Q. And what was the intent between you and Mr. Fredman at the time that Clemson-EPS Advisors was formed?
A. To me it was two parts. He had -- I understood he was just organizing an entity, like taking his business out of sole proprietor kind of status and organizing it as an LLC. So he wanted the corporate veil type of function of that. And he was also, at that point, moving from our Clemson downtown office to his across the bridge in Seneca address where he is now. And so he wanted to kind of have signage and branding and stuff there.
Q. And Mr. Brandt asked you about the office equipment that he already had in the office.
A. Right.
Q. Who purchased that office equipment?
A. EPS Advisors.
Q. Is the value of that office equipment as it was valued in March of 2010, when you demanded it back per your letter in Exhibit 6, the same value that it would have today six and a half years later?
A. No.
Q. What familiarity do you have with computer equipment?
A. Moderate to -- I won't say expert, but I don't know what that gradation is. Scale of 1 to 10, 10 is an

expert. Six and a half. Just trying to frame it for you.

Q. Do you have a family member that runs a computer business?

A. Oh, I do, my brother-in-law.

Q. And is it fair to say that computer equipment devalues fairly quickly?

A. That's fair, yes.

Q. And at the time that you demanded this equipment back pursuant to your letter that is Exhibit 6, on the last page of this letter you instructed Mr. Fredman, "From this point forward, make all contact to my attorney." Do you see that?

A. (Reviewing document.)

Q. At the bottom of your letter, above your signature.

A. Oh, yes, I do.

Q. And would you have had any reason to have telephone communication with him after telling him call my lawyer?

A. No.

Q. Would it have been appropriate for you to have ongoing communication with him after telling him to only contact your lawyer?

A. Would it have been appropriate? No.

Q. Let's go back to page 2 of this letter.

A. Okay.
Q. Mr. Brandt asked you some very detailed questions about what Mr. Fredman would have been owed under the agreement that you all memorialized, which I believe you called bullet points, in January of 2010. Do you recall that testimony?
A. I do.
Q. Let's talk about those bullet points. That was something that was written down?
A. Yes.
Q. That was something that was initialed or written on, by Mr. Fredman?
A. Yes, Jan and I had gone, since the middle of '09, moved -- I'm sorry. Right, from the middle of 2009 until that January 2010 we had been -- I used the word "migrating", I think, from the 50/50 split to an 85 percent Jan, 15 percent EPS Advisors. And we had billed the fourth quarter of 2009 billings. I had those. Jan and I met. And basically I said, okay, we've got to come to an agreement here. So we put together that page that I called the bullet points. I can't remember its form exactly.

MR. BRANDT:

It's an exhibit; isn't it?

WITNESS:

No, I don't think we ever introduced it.

MR. BRANDT:

I don't mean to interrupt. Go ahead.

WITNESS CONTINUES:

A. But out there, somewhere, there's a page -- a one-pager, if I remember correctly, that details the 85/15 split and certain things that the firm would do. And then he and I -- you know, I'm sitting there. He's across the desk. And I said, okay, we've got to come to terms here and then I can pay you for what we're going to be doing, you know, the billings and then what we do forward. And so he took that and he did initial it. I don't recall if I'd signed it, but I remember him kind of making a -- I called it a hieroglyphic kind of thing. There's sort of a mark on it, that would be his initials.

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. Did you all have a meeting of the minds about what those terms were?

A. We did.

Q. Was there any disclarity or unclarity about what that agreement was, when you walked out of that room?

A. I think we had put the major points within the four

corners of that page.
Q. And was that four corners of the page anything that you've seen today so far?
A. No. You mean the literal page itself?
Q. The literal page itself.
A. Okay, no, we haven't presented that.
Q. And what was the purpose of him putting his hieroglyphics on it?
A. The initial was he wanted to tell me okay to this, and so that I could say okay to this too. And then I would pay him for the fourth quarter 2009 monies that I had already collected and was sitting there. And then going forward, we wouldn't have miscommunication. We could take that page, get it to the attorneys. They could make it a more -- you know, the signed contract agreements and we go forward under that, those provisions.
Q. So when he put his hieroglyphics on it, did that seal the deal?
A. To me, I'm like, okay, we're here, yeah.
Q. The check that Mr. Brandt asked you about for $82,725.95, was that issued to him after you sealed the deal with him?
A. Yes.
Q. Did Mr. Fredman ever have a direct contract for

advisory fees between him and any one of those clients that he allegedly brought to EPS Advisors?

A. Prior to March 2010?

Q. Yes.

A. He did not.

Q. Who were the contracts between for the advisory fees that generated this check for $82,725.95?

A. Liberty Advisors d/b/a EPS Advisors.

Q. And when those limited powers of attorney were executed changing those accounts to Clemson-EPS Advisors, who were they changed from?

A. Liberty EPS to Clemson-EPS.

(INTERRUPTION; OFF THE RECORD)

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. How was EPS Advisors compensated through these commissions? Did they bill ahead of time for the coming quarter or did they bill in arrears?

A. Okay, the contract between the client and EPS Liberty Advisors was a percentage of assets billed quarterly in arrears. So this check dated January 12th, 2010 would have been for the fourth quarter 2009. September -- no, October, November, and December. Closed out 12/31/09, processed, and then paid thereafter.

Q. Who processed it?

A. Mechanically it would have been Susan Lockwood and/or I.

Q. And who did you get paid from?

A. So the money flows from the client accounts to what I call the Schwab fee disbursement account. And then if the client accounts pay to the fee account -- in this case, we paid directly from the fee disbursement account. And then another check, we moved it from the fee disbursement account at Schwab to the corporate checking account at Grand South and then paid that out.

Q. And in this particular case with regard to the January 12th of 2010 check, you had a dispute with Mr. Fredman and you held the amount that you were going to pay him until you resolved your dispute; is that correct?

MR. BRANDT:

Wait a minute. State that again.

EXAMINATION RESUMED BY MS. KERN-FULLER:

Q. If I understood your testimony correctly, you sat down with him in January and had a meeting and came to a meeting of the minds on these bullet points; is that correct?

A. Yes. Your question was?

Q. And after that meeting of the minds, and only after

that meeting of the minds, did you issue this check on January 12th of 2010; is that correct?

A. That's my recollection, yeah.

Q. And EPS Advisors would have received those funds somewhere first business day after the first of January of 2010?

A. Yeah, you know, the holiday's January 1st.

Q. Right.

A. So mechanically we would have been processing on the 2nd or 3rd of January. They would be good funds about the 3rd or 4th. Or within the first couple of three business days, let's say. So then I had those fees. And then Jan said, in so many words, okay, I need the money. And I said, well, I need an agreement and let's get this done.

Q. So you held his fees pending the resolution of the dispute with him and the agreement?

A. I did.

Q. So had you had a dispute with him over the first quarter of 2010 fees, the process would have been EPS Advisors could have held the fees pending the resolution of the dispute with Mr. Fredman over what he was really owed out of those fees; is that correct?

A. Like I did in January.

Q. Yes.
A. Yes.
Q. And I know that you're not an attorney. And Mr. Brandt kept asking you the question of was Mr. Fredman entitled to this whole 85 percent. Are you familiar with a legal theory about whether someone is entitled to all of the compensation they're due if they're disloyal to an entity that they have an agency with?
A. I think it throws it into question. How the question gets answered, the details of that, I don't know.
Q. Because you're not a lawyer; are you?
A. Correct.
Q. And you hired a lawyer to represent your company to litigate those matters. Right?
A. Yes.
Q. And is that one of the issues that you've alleged in this case, that he acted disloyally towards EPS Advisors?
A. In my Complaint, EPS's Complaint?
Q. Yes.
A. Yeah, I believe so. I'd have to reference back to it.
Q. So he converted EPS's property by taking their

equipment; is that correct?

A. So the first cause of action is conversion, including the office equipment, yes.

Q. And he breached his contract with you?

A. Correct, he -- and then he diverted client broker fees at page 14, 16.

Q. And you allege he breached his contract with fraudulent intent; is that correct?

A. Yes, third cause.

Q. You allege he committed tortuous interference with the contract between you and your client relationships?

A. Right, that's the fifth cause.

Q. That he misrepresented with the client, which was the fourth cause of action?

A. Okay, negligent misrepresentation. That's the fourth cause, correct.

Q. And the sixth clause, that he committed fraud?

A. Correct.

Q. And then conspired with Schwab. You named Kevin Chalk. Now specifically why did you name Kevin Chalk? Specifically.

A. Kevin Chalk is the point of contact at Schwab that recruited and interacted with Schwab institutional's advisor relationship firms. So in

a phrase, he was the Schwab rep that you might say covered us in the area. Area meaning geography.

Q. Did you have any other evidence that he was the client rep that help set Fredman up in his new business relationship with Schwab?

A. Yes.

Q. And did you have other evidence that he was trying to set up other representatives that had been under EPS Advisors in their own shop?

A. Yes.

Q. Mr. Brandt asked you about whether there was anything wrong with taking Mr. Fredman's clients with him after he left. And you answered the question no, not after he left. Why did you emphasize after he left?

A. There are industry protocols. In some -- many firms have signed onto an industry protocol. And that protocol generally describes what a representative can and can't do while at one firm when transferring to another. And the genesis of it is, is when a Merrill Lynch broker is leaving and he's going to UBS or something like that, all these people are moving and changing firms. And they're all trying to get clients to go with them. And then at the end of the day, UBS is suing

Merrill Lynch 28 times and Merrill Lynch is -- and vice-versa. And the industry just kind of came along and said that's a waste of time. Let's all agree to certain protocols. So we weren't a signor to the protocol. It's literally called The Protocol. But that did, at the time, generally memorialize the steps. And so those firms had agreed that if reps adhere to a certain process, they wouldn't sue each other or -- and then if the rep agreed as well, the firms wouldn't sue the reps. It's sort of a how-you-leave template.

Q. And did Mr. Fredman adhere to that?

A. Well, the protocol allows you to -- there's certain steps and I'd have to review it. But the protocols allow you to take certain actions while at the firm you're leaving. And I hedged my answer because when you've left, you're free then to do whatever you want. So in the context of the question.

Q. And is it a true statement that an advisor cannot be registered with two different firms at one time?

A. No, you can be registered with two different firms at one time. You just have to have the other firm's permission. Both firms have to be in recognition of that. In South Carolina, it's extremely complicated because of the state level

reg. But, for example, I was registered with Spire Securities as a broker and I was registered with Liberty, EPS as an investment advisor representative. Technically those are two firms, two registrations. Technically that's a dual registration.

Q. But both firms consented?

A. Right.

Q. In the case of Mr. Fredman, EPS Advisors did not consent to him setting up his own firm and registering it, because you didn't know; did you?

A. Correct.

Q. The forms that Mr. Brandt asked you about, the LPOA forms, I think you all were dancing two different square dances around those forms.

A. Okay.

Q. Is it my understanding that those forms come from Schwab, when you ask for them, pre-filled out? That you're going to transfer these accounts from this old entity to this new entity?

A. Those two entities being EPS and Clemson-EPS?

Q. Yes.

A. Okay, if I had a form, it would be easy.

Q. I'll show you one.

A. Okay, let's look at one. There's a certain amount

of it that's pre-populated and a certain amount that's written in, and I'm just trying to figure out -- trying to recall what's, you know --

Q. And I know that Mr. Brandt showed you an IRA account that reflected ERISA Plan Services. That account ended in the third quarter of 2009. Is there any reason to believe that ERISA Plan Services continued after 2009?

A. I don't remember the time and date we transferred from ERISA Plan Services to EPS. However, when we left ERISA Plan Services, we left entirely. So if it was October of 2009 or if it was some other time frame not on the statement when it came over, they all came. It was a full exit from ERISA Plan Services.

Q. And would Mr. Fredman's FINRA registrations reflect that?

A. They should.

Q. And so if his FINRA registrations reflect that he went from ERISA Plan Services over to EPS, would that be a good indicia of when he ended a relationship with ERISA Plan Services?

A. Yes.

Q. Is it Mr. Fredman's responsibility as the registered individual to make sure that his

registrations with FINRA are correct?

A. He holds responsibility, yes.

Q. And he can be disciplined, if they're incorrect; can't he?

A. Certainly can.

MS. KERN-FULLER:

I have no other questions.

REEXAMINATION BY MR. BRANDT:

Q. You talked about this bullet-points document. Is it a document other than that exhibit in front of you? Which number is it on there? Exhibit 2.

A. Yes, sir, it is.

Q. It's another document?

A. It is.

Q. And do you have a copy of it?

A. I don't.

Q. Did you ever take it to a lawyer to have a formal agreement drafted?

A. I believe I'd copied it to Ms. Kern-Fuller.

Q. But it was never drafted, executed?

A. Correct.

Q. Is it your position that if you have a dispute with one of the -- lack of a better word, I guess, advisors that was registered with you, sitting here operating, that you can refuse to pay him money you

owe him until that dispute is resolved?

MS. KERN-FULLER:

Objection, calls for a legal conclusion.

EXAMINATION RESUMED BY MR. BRANDT:

Q. I know you're not a lawyer.

A. Right.

Q. Do you believe that you have the right, if you owe me money and we get in a dispute about some things, that you have the right to refuse to pay me unless I resolve that dispute?

A. Well, that's what I did. I mean --

Q. Negligent misrepresentation. I understood you to say that you think that he negligently misrepresented the company or the deal to the client. He didn't make a representation to you; did he? He never uttered words to you that were false?

A. I'm not sure I understand.

Q. Well, I understood you to say that negligent misrepresentation was that he represented to the clients he transferred over to get them to sign the transfer forms or whatever they were.

A. Right.

Q. That the representations were made to the clients and you think that he, through his negligent

representation, was then able to get them to sign those forms. Is that what you said? I thought the representation was Clemson-EPS Advisors. And when he presented that to clients to get them to sign, to move over --

A. Yeah, I think --

Q. -- that that was the misrepresentation.

A. Yeah, where I was pointed was that Clemson-EPS Advisors and EPS Advisors are so similarly named that that could be confusing to the --

Q. That it would confuse the clients and possibly got some of them to sign over who would not have signed over otherwise?

A. That they were sufficiently similar in name so as to be confusing to the client.

Q. But you knew about him setting that up, and it wasn't confusing to you?

A. I knew that he had -- yes, I knew he'd set up Clemson-EPS Advisors, LLC.

Q. And you didn't voice an objection to him doing that?

A. No.

Q. What evidence do you have about Chalk? You said you had evidence that Chalk did this for others, whatever you accused him of doing, conspiring --

A. Right.
Q. -- to move accounts over to new people or new firms. That you had evidence that he did that for others, other than Jan.
A. Jack Taylor left the firm, too.
Q. That's what I wanted to know, who it was.
A. Yeah, I called Kevin and said okay, you know, really? And who else? And then that's when he and I had that conversation, Kevin and I.
Q. Other than Jack Taylor, do you have any evidence --
A. Of Schwab's? No.
Q. -- that Chalk did that?
A. Correct.
Q. So when you get there with Jack Taylor, that was just through the fact that Taylor left and you had a conversation with Chalk?
A. Right.
Q. And Taylor did a similar thing that Jan did?
A. No, Jack told me he was leaving. I had a lunch with Jack and told him that, you know, I wanted to make sure that he and I were still on the same page together. And he said, well, this is where I need to tell you I'm leaving.
Q. Did he take his clients with him?
A. He did.

Q. Had he already had them signed and stuff over?
A. I don't know what he had done at that point.
Q. So you don't have any idea whether he got some signed over before he told you that, or everything was after?
A. You mean Jack?
Q. Yes.
A. I just don't recall. At the point in time of our conversation, I don't recall either way.
Q. I was trying to establish had he already moved some over, or did he tell you and then move them while he was still sitting in the chair at your office.
A. Well, we had actually -- it was lunch at Chick-Fil-A. I happen to remember that. I just don't remember where he was in the process, yeah.
Q. Have you brought any action against Jack Taylor?
A. No.
Q. Even though you haven't brought a legal action, have you made any claim to him through a letter or whatever contact with him that he owes you money --
A. No.
Q. -- after what he did or didn't do? And I understand we don't really know what he really did or didn't do.

MR. BRANDT:

Okay, I don't have any more.

REEXAMINATION BY MS. KERN-FULLER:

Q. Just one brief follow-up. When Jack left, did he take all of EPS Advisor's commissions for the quarter before as his own?

A. No.

Q. Thank you. I have no further questions.

REEXAMINATION BY MR. BRANDT:

Q. Well, did you split out? Once you got his money, did you split it out in accordance with your agreement to Jack?

A. Yes.

Q. Even after he had left? You got the money the last quarter he was there. And then even though he had left, you paid him for his share according to your agreement with him?

A. I think so. I don't remember. We didn't have any controversy. So it would have come in, and it would have gone to him. I don't recall. I really don't.

Q. One other thing is you all are tied in with computers of Schwab; aren't you?

A. Yeah, we had a log-on.

Q. So like January 31, you can go in and --

MS. KERN-FULLER:

He's not designated for that answer. He is not the corporate representative designated for that answer.

MR. BRANDT:

Okay, we'll subpoena him and take him as a personal witness.

MS. KERN-FULLER:

That's fine. You can do that. The answer's not going to change. You can do it, though.

MR. BRANDT:

I understand it's not going to change.

(There being no further questions, this deposition concluded at 10:36 a.m.)

CERTIFICATE

I, the undersigned, Karen A. Belanger, CVR, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken on the aforementioned date;

That the within deponent was sworn to tell the truth, and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 4th day of August, 2016.

Karen A. Belanger, CVR
Notary Public for South Carolina
My Commission Expires: 4/18/2013

Dave Lin
Mesa Blvd.

89 89
.8 .7
71,800

10/5/09

Jan,

This is 80% of $89,000 – you billed just over that.
I am calculating a precise settling sheet
for June → Sept 30.
Then we can settle up on direction or the other.

David.

P.S. – look again at your discounts, they were over $10,000?



The 15% holdback provides:

1) **SEC compliance**, I'll show you my reviews to date- I think you'll be surprised the reviews we do but don't involve you in. ALSO, and IMPORTANTLY, we will have an ex-SEC examiner come in at least once per year to give the whole company a regulatory examination just like the SEC would do it. The stuff he says we need to fix, we'll fix it.
2) **Broker/Dealer compliance**. I would still work with the B/D compliance person on whatever you need for FINRA licensing. The above SEC inspection would include BOTH the SEC stuff AND the FINRA stuff.
3) **Retirement Plan Compliance**- if you have clients that have a retirement plan account with you, we will help you keep that in Department of Labor compliance both for the plans and for the participants.
4) **Daily portfolio center download** and reconciliation. You would run reports, update Morningstar and the rest from Clemson. Our job is to make sure the data gets into portfolio center and is accurate.
5) **Billing processing**...we send to you and your Reps a pro-forma billing report, in a timely manner you check it off, then we bill. Money comes directly from your accounts to a special account at Schwab for you and then to your SunTrust/Clemson account.
6) **We keep the computers and servers up and running**. They are tied in here to Anderson, with this IP address and several other things. They COULD be moved, but so far this has not been a problem and moving them is not something I think makes sense. The 15% would cover the cost of our offsite back-up; disaster recovery stuff and the other things tied into the server. Here's the deal, a lot of these are SEC requirements and I don't think you want to get bogged down in it.
7) **What else** we may decide makes sense.



The 15% holdback provides:

1) **SEC compliance**, I'll show you my reviews to date- I think you'll be surprised the reviews we do but don't involve you in. ALSO, and IMPORTANTLY, we will have an ex-SEC examiner come in at least once per year to give the whole company a regulatory examination just like the SEC would do it. The stuff he says we need to fix, we'll fix it.
2) **Broker/Dealer compliance**. I would still work with Spire (the b/d) on whatever you need for FINRA licensing. The above SEC inspection would include BOTH the SEC stuff AND the FINRA stuff.
3) **Daily portfolio center download** and reconciliation. You would run reports, update Morningstar and the rest from Clemson. Our job is to make sure the data gets into portfolio center and is accurate. (you will also be able to run this from your office so that you know that the data is always updated)
4) **Billing processing**...we send to you and your Reps a pro-forma billing report, you check it off, then we bill. Money comes directly from your accounts to a special account at Schwab for you and then to your EPSA/Clemson account.
5) **(Optional) We keep the computers and servers up and running**. They are tied in here to Anderson, with this IP address and several other things. They COULD be moved, but so far this has not been a problem and moving them is not something I think makes sense. The 15% would cover the cost of our offsite back-up; disaster recovery stuff and the other things tied into the server. Here's the deal, a lot of these are SEC requirements and I don't think you want to get bogged down in it.
6) What else we may decide makes sense.

7) Annuities - get credit quarterly for
8) graduated scale

- reimbursement for client
- no for account
- Annuity



EPS ADVISORS, LLC
PH. 864-226-1942
716 E. GREENVILLE STREET
ANDERSON, SC 29621

1621
67-795/532

DATE 10/5/09

PAY TO THE ORDER OF Jan Fredman $ 71,200.00

Seventy one thousand two hundred 00/100 DOLLARS

Security Features Details on Back.

GrandSouth BANK
Anderson, SC 29622
#8620-5435

FOR 0309 (1st Run)

Lisa M Lockwood MP

M 10/5/09



DAVID C. DAMERON
SUSAN G. LOCKWOOD
716 E. GREENVILLE ST.
ANDERSON, SC 29621

MUB03 NO HOLD

charles SCHWAB

102

3-5/310
150

01/12/2010
Date

Pay to the Order of Jan Fredman $ 82,725.95

eighty two thousand seven hundred twenty five 95/100 Dollars

Security Features Details on Back.

Charles Schwab
PNC BANK, N.A. Philadelphia, PA

Schwab One

For 12/31/09 ~~+~~ $5000.00

David C. Dameron

Hartland Cards

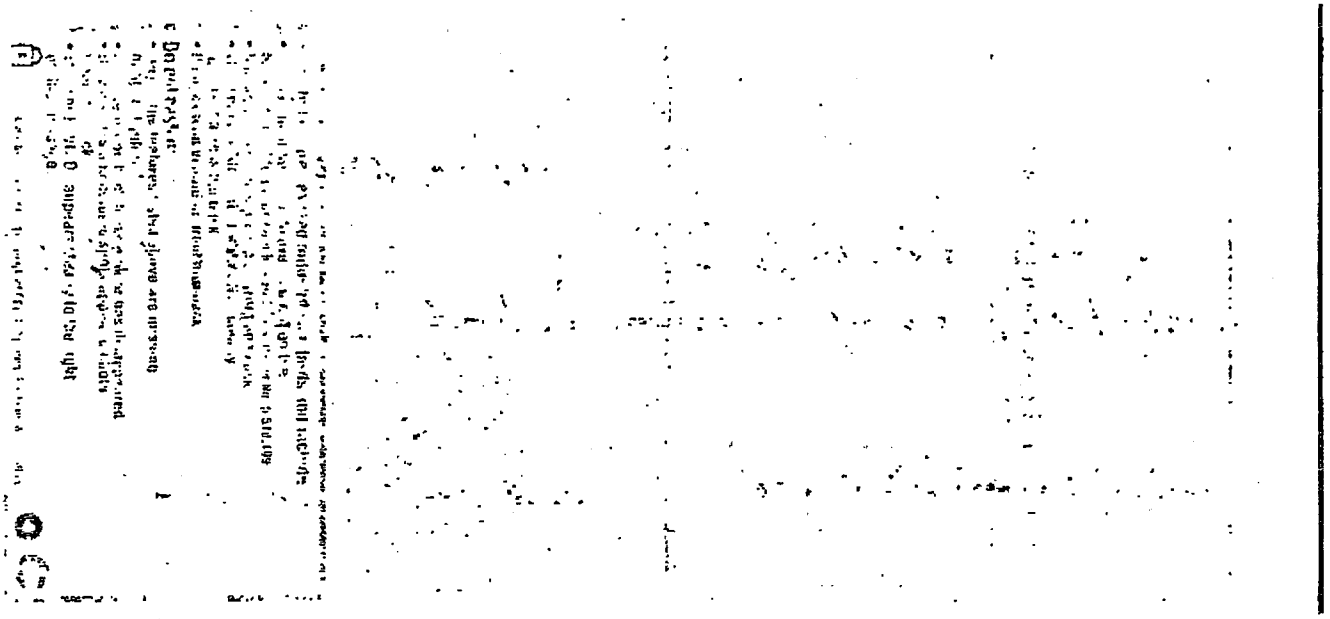


EXHIBIT
5
Dameron

| Item Amount | Item Serial | Item R/T | Item Type | Item Account | Item Sequence |
|---|---|---|---|---|---|
| $82,725.95 | 0 | 3100005 | Transit Item | 7041342794 | 7800889637 |

# EPS ADVISORS, LLC.

## Investment Advisors

April 20, 2010

Mr. Jan S. Fredman
"Clemson-EPS Advisors"
10708 Clemson Blvd.
Seneca, SC 29678

**Via Overnight Delivery**

Dear Mr. Fredman,

While typing this to you I got today's mail and received your check and erroneous calculations you sent to me. As I stated in my conversation to you last week, all monies for billings prior to March 31, 2010, are solely the property of EPS Advisors, LLC and only EPS' money. **I expect a return of the money and EPS Advisors' other property as described below by noon, Friday, April 23, 2010.**

**Return this money and the other property that belongs to EPS Advisors to my attorney, her contact information is below.**

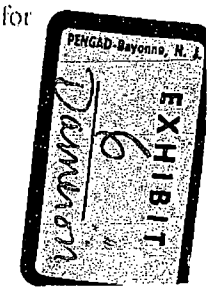
Any split that would have occurred between you and EPS Advisors will be considered a down-payment on the total money you owe to EPS as a result of the actions you have taken.

It has been a week since you promised to return the payment you wrongfully diverted from my company's first quarter's billings for 2010. You have now had the unauthorized use of our funds for 20 days since your transfer of the accounts from EPS Advisors, LLC and my termination fax to you. Your calculations with the check you sent to EPS Advisors are erroneous. This money too, will be considered part of your down-payment.

Your calculations represent you billed approximately $105,352.50 from EPS' client accounts for the first quarter of 2010. Since the billing is in arrears and covers the January, February and March period, you need to understand that ALL of the money belongs solely to EPS Advisors under EPS' contract with the client. Again, I demand the immediate return of ALL of the money you have diverted, it belongs to EPS Advisors. After you return all the money, you and I, only through counsel, can negotiate what allocation of that money might be actually owed to you, if any, which can be applied toward the amount you owe EPS Advisors.

I further expect a complete and accurate record of the accounts from which the money was billed, the amounts, and when the accounts were billed. The Schwab management fee billing report has this information.

Without a return of all the money, and this information substantiating the billing sources, I will be forced to contact each client DIRECTLY, explain to them that YOUR new firm (inappropriately) billed them for MY company's fees and present to these clients an invoice for EPS Advisors' services for the quarter.




716 East Greenville Street • Anderson, SC 29621
(864) 226-1942 • FAX (864) 226-6197 • TOLL FREE (888) 278-1776
www.epsadvisors.com

You can understand that since you named your Registered Investment Adviser "Clemson-EPS Advisors" and the d/b/a name of my firm is "EPS Advisers" that the clients may be confused by that similarity and require a detailed explanation of the course of events regarding their money and how it went to the wrong firm.

I consider your tactic of co-opting my Registered Adviser firm's name to fraudulently mislead clients as to your firm's true identity. It is not only fraudulent and damaging to the reputation of my business, but also an unfair trade practice under South Carolina law.

In addition to the money you misappropriated from EPS Advisors to your new firm, you must return to me EPS Advisors, LLC's furniture and equipment. Additionally, you must compensate EPS Advisors, LLC for the amount you have diminished my firm and its decreased ongoing revenue through your tortious actions.

To the furniture and equipment, I demand that you return all of the equipment under title or paid for by EPS Advisors, LLC. This includes but is not limited to:

1) The computer, keyboard, mouse and monitors for both you and Ellen. (up front) You are aware that I paid Phil for these, though you bought your own server box that is in the storage room.

2) The copier. The lease is under EPS Advisors, and I have paid the vast majority of the lease costs associated with that machine. The machine (and its lease) is the property of EPS Advisors and I will not sublet it to you.

3) Furniture. This includes but is not limited to the conference room table and chairs; the desk chairs bought by EPS Advisors (I think from Staples) and the two wing-back chairs that were in the Clemson office reception area.

4) Any and all other property of EPS Advisors, INCLUDING but not limited to the client files. The files are property of EPS Advisors and are protected under the S.C. Trade Secrets' law. Therefore, I expect you will not make a copy of them or attempt in any way to surreptitious copy them in violation of South Carolina law.

Succinctly, the money you owe me is considerable. I am VERY frustrated and disappointed in you and your exiting my company as you have while embezzling EPS' billings for the last quarter. Your attempt to quantify what is owed to me as $15,802 or $7,674.11 when you have illegally diverted $105,352.50 of EPS Advisors' income, is unfathomable.

Since late 2008, I have spent a significant amount of my time, money and put at great risk my personal and professional reputation to help put you (and your family) back on your feet. In doing so, I have forgone personal income, lessened the time to assist my Anderson office, and caused financial strain for the business in order to help the Clemson office of EPS Advisors get started. I did this with the stated expectation of a long-term mutually beneficial business relationship.

I also negotiated in good faith with you, time and time again - including in January - in an effort to come to a clear, acceptable and enforceable long-term agreement with you. In fact, I thought in January we had the framework for that agreement decided upon. YOU have broken that agreement and spurned my good faith by your illegal actions.

I estimate that the annualized fees generated from my Clemson area clients at this point are approximately $440,000, or $110,000 per quarter. Both the fourth quarter 2009 and the first quarter 2010 billings support this estimate.

In the marketplace for Registered Investment Advisers, revenues are generally bought and sold at about 2 times revenue. In this case, $440,000 x 2 = $880,000. Kevin Chalk can help you with this math, but I think that you will find the "2 times annual revenue" measurement to be a solid measurement for a quick calculation in our industry.

Accordingly, in addition to the additional approximately $105,352.50 you have diverted from EPS Advisors' first quarter's billings, you owe to me an additional $880,000 for the diminished value of my firm and the loss of ongoing revenues from my clients.

Now, as you ponder your own position, I remind you of a few things you may want to consider:

1) You were out of this industry when you came to me,
2) A significant reason for this was because of your criminal charges and legal cloud you were under at that time,
3) Another was your lengthy lawsuit record by clients against you and the past firms you represented,
4) Yet another reason was the information reflected on your Form U-5 added by UBS. In short, the information that they reported, and which still remains, does not provide comfort to Wall Street's compliance officers in their evaluation of you as a Rep for the firm.
5) To overcome this compliance concern, I took SIGNIFICANT professional and firm level reputational risk on you to help you back into the business. Recall that:
    a) I had to work directly with FINRA with significant effort to have your FINRA record accurately reflect your expungement after you completed your PTI. A process I remind you that you did not complete until you had been with my firm, in your more precarious state, for over nine months.
    b) I had to work directly with FINRA to answer FINRA's inquiry as to EPS Advisors' association of your ongoing arbitration with UBS. (for reminder, that was/is FINRA Dispute Resolution Arbitration Number 09-05768)
    c) I continue to work with Brooks Brown, in the FINRA regional office in Atlanta, regarding FINRA's latest and still open inquiry to you and your activities that allegedly require FINRA registration. (No. 20090193762)
    d) I worked directly with Ms. Pamela Kirkland, Director of Registrations for the Securities Division of the South Carolina Attorney General's Office to have you be allowed to become registered in SC and conduct any securities business of any sort in this state.

In summary of this section, I have "gone to bat" for you at Federal and State regulatory agencies - putting myself and my company on the line - to help you get back your livelihood. I guess I should have seen the writing on the wall that they were right about you and I was wrong.

I have reached out to and spoken personally with both Ms. Kirkland and Mr. Brown to make them aware of your termination from EPS Advisors and that I would also be filing the required Form U-5 by April 29, 2010.

6) Moving from my personal contribution to your career's rehabilitation, I below describe certain items you may want to consider as they relate to the illegal actions you took against EPS Advisors.

    a) Keep in mind that your termination from EPS Advisors was on March 31, 2010. Any and all activity you took to assist clients in moving from EPS prior to the time of your termination is a breach of trust to EPS and constitutes employee disloyalty against EPS

Advisors, LLC. This entitles EPS Advisors, LLC to civil remedies, precludes any claim you may have had for earnings during your period of disloyalty to the firm, and further exposes you to treble and punitive damages.

b) Further the money you billed EPS' clients was not YOUR money. It was money that belonged to the CLIENTS, and was DUE AND PAYABLE only to EPS Advisors. It strikes me that your taking money not due you, from accounts under contract with another firm, and without permission from that firm is - at a minimum - unusual. I am by no means an expert on criminal statutes, but I stand ready to turn the matter over to Solicitor Chrissy Adams' for assessment.

7) Now, in addition to the issues you have with me, and EPS , you also should consider the potential problems you have created with both clients and vendors, such as Schwab. Both will undoubtedly become involved in a protracted and messy disassociation action should these matters not be expeditiously resolved.

In addition to the information I will be required to disclose on Form U-5, for me to fully investigate the details of your past activities and the harm those have caused, the process of gathering information may very well spill over to Schwab and clients.

While involving Schwab and clients would be unfortunate for all of us, I will tell you that I will take all measures necessary to determine the details of the course of events, what you represented to whom, when, what those parties knew at the time, as well as your role in the diminishment of my firm.

In conclusion, I repeat to you the extreme level of my frustration, my *distrust* of you and your repeated "word" to me. I emphasize that from this point forward, I am done dealing directly with you.

Do not call, email, text, come by, or otherwise make any contact or attempt to contact me. Any effort to do so, I will consider harassment and I will deal with accordingly.

From this point forward, make all contact to my attorney:

Ms. Candy Kern-Fuller, Esq.
Upstate Law Group, LLC
200 E. Main Street
Easley, SC 29640
(864) 295-9168
(864) 295-9170 (fax)
Candy@UpstateLawGroup.com

Sincerely,

David C. Dameron

David C. Dameron
President
EPS Advisors, LLC

CC: Candy Kern-Fuller, Esq. via facsimile

| | | |
|---|---|---|
| | **EPS Advisors, LLC<br>vs.<br>Jan Fredman and Clemson-EPS Advisors, LLC<br>Case #2013-CP-39-434** | |
| | | |
| | **QUARTER:<br>09/30/2009 - 12/31/2009** | |
| 12/31/2009 | $105,089.54<br>x .80<br>$ 84,071.63 | Total Billings for Qtr.<br>Portion due Fredman<br>Fredman's due share |
| | | |
| | $ 82,725.95<br>- 5,000.00<br>$ 77,725.95 | Dameron paid Fredman but $5,000.00 was owed previously per Dameron's 30(b)(6) testimony<br>Portion of check for 12/31/2009 paid to Fredman |
| | | |
| | $ 84,071.63<br>(77,725.95)<br>$ 6,345.68 | Due Fredman for Qtr<br>Less the portion paid to Fredman for Qtr<br>Amount EPS still owed Fredman for Qtr ending 12/31/2009 |
| | | |
| | **QUARTER:<br>01/01/2010 - 03/31/2010** | |
| 03/31/2010 | $105,352.50<br><br>$ 15,802.00 (15%) | Total billings for Qtr ended 03/31/2010 per Dameron's letter to Fredman dated 04/20/2010 and per accounting of fees billed/furnished to Fredman on 02/05/2010 by EPS to Fredman<br><br>Portion of fees due to EPS, remainder of $179,442.50 due to Fredman per 85% - 15% split agreement |
| 03/31/2010 | $ 15,802.00<br>(6,345.00)<br>(3,485.00)<br>(7,674.11)<br>$ (1,702.11) | EPS due (15% of billings of $105,352.50)<br>**Less:** Due Fredman 12/31/2009 as shown above<br>Portion of 3/31/2009 fees collected by EPS<br>Fredman paid EPS by check<br>EPS was overpaid |



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

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Case No. 2017-002347

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EPS Advisors, LLC . . . . . Respondent/Appellant,

vs.

Jan Fredman and Clemson-EPS Advisors, LLC . . . Appellants/Respondents.

---

**CERTIFICATE OF COUNSEL**

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The undersigned, attorney for Appellant, hereby certifies that the ***Record on Appeal*** contains all material proposed to be included by any of the parties and not any other material.

RECEIVED
JUN 18 2018
SC Court of Appeals

Larry C. Brandt, P.A.
P.O. Box 738
3691 Blue Ridge Boulevard
Walhalla, SC 29691
864/638-5406

BY: Larry C. Brandt
Larry C. Brandt
Attorney for Appellant

May 25, 2018