

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

BERMAN DEVALERIO  
& PEASE LLP, BERMAN DEVALERIO  
PEASE & TABACCO P.C. and BURT &  
PUCILLO LLP, as general partners in  
BERMAN DEVALERIO PEASE TABACCO  
BURT & PUCILLO,

Plaintiffs,

v.

ERAN RUBINSTEIN and SUSAN M. BOLTZ  
RUBINSTEIN,

Defendants.

Civil Action No.: 07 Civ. 12127 (PBS)

**CORRECTED  
AMENDED COMPLAINT**

**INTRODUCTION**

1. This action is brought by Berman DeValerio Pease LLP, a Massachusetts limited partnership, Berman DeValerio Pease & Tabacco P.C., a California Professional Corporation and Burt & Pucillo LLP, a Florida limited partnership, each of which is a general partner of Berman DeValerio Pease Tabacco Burt & Pucillo, a general partnership engaged in the practice of law with offices in Boston (“BD”). Plaintiffs seeks damages against Eran Rubinstein and Susan M. Boltz Rubinstein (hereinafter referred to together as “the Rubinsteins”), two attorneys who became “of counsel” to BD pursuant to a written agreement dated March 26, 2007 (the “Agreement”). The Agreement provided, among other things, that the Rubinsteins would focus their efforts on marketing BD’s legal services to international institutional investors.

2. The Rubinsteins terminated their relationship with BD after five months to become associated with Coughlin Stoia Geller Rudman & Robbins LLP (“the Coughlin firm”), a

law firm with offices in New York and California that competes with BD. They subsequently became associated with another law firm, Chitwood Harley Harnes (the “Chitwood firm”), a firm with offices in Atlanta, Georgia and New York that also competes with BD.

3. Despite making a significant investment of time and money in their relationship with the Rubinsteins, BD has received none of the benefits of the Rubinsteins’ purported efforts on BD’s behalf. While accepting compensation and reimbursement of expenses, they were working for themselves or for others and failed to perform their obligations under the agreement.

### **PARTIES**

4. Plaintiff Berman, DeValerio & Pease LLP (BDP LLP) is a Massachusetts limited partnership with offices at One Liberty Square, Boston, MA. It is a general partner in Berman DeValerio Pease Tabacco Burt & Pucillo, a general partnership engaged in the practice of law with offices in Boston, Massachusetts, West Palm Beach, Florida and San Francisco, California.

5. Plaintiff Berman, DeValerio, Pease & Tabacco P.C. (BDP&T P.C.) is a California Professional Corporation with offices at 425 California Street, Suite 2100, San Francisco, CA. It is a general partner in Berman DeValerio Pease Tabacco Burt & Pucillo.

6. Plaintiff Burt & Pucillo LLP (B&P LLP) is a Florida limited partnership with offices at the Esperante Building, 222 Lakeview Avenue, Suite 900, West Palm Beach, FL. It is a general partner in Berman DeValerio Pease Tabacco Burt & Pucillo.

7. Berman DeValerio Pease Tabacco Burt & Pucillo (“BD”), is a general partnership engaged in the practice of law with offices at One Liberty Square in Boston, Massachusetts, West Palm Beach, Florida and San Francisco, California. BD specializes in the prosecution of securities fraud class actions on behalf of defrauded investors.

8. Defendant Eran Rubinstein is an individual residing at 3444 Wiltshire Road,

Furlong, Pennsylvania 18925. He is admitted to practice in the Commonwealth of Pennsylvania. He is married to Susan M. Boltz Rubinstein. He is currently of counsel to Chitwood Harley Harnes LLP (the “Chitwood firm”) a law firm with offices in Atlanta, Georgia and New York. Prior to his association with the Chitwood firm, he was associated with Coughlin Stoia Geller Rudman and Robbins LLP (“the Coughlin firm”), the successor firm to Lerach Coughlin Stoia Geller Rudman and Robbins LLP, (“Lerach Coughlin”). Prior to his association with BD, he was associated with Lerach Coughlin.

9. Defendant Susan M. Boltz Rubinstein is an individual residing at 3444 Wiltshire Road, Furlong, Pennsylvania 18925. She is admitted to practice law in the Commonwealth of Pennsylvania and New York. She is married to Eran Rubinstein. She is currently of counsel to the Chitwood firm. Prior to her association with the Chitwood firm, she was associated with the Coughlin firm. Prior to her association with BD, she was associated with Lerach Coughlin.

#### **STATEMENT OF FACTS**

10. For one year prior to their contacting BD, the Rubinsteins served as “of counsel” to Lerach Coughlin. In that capacity, they were responsible for international client outreach and development. On or about August 31, 2007 Lerach Coughlin changed its name to Coughlin Stoia. For purposes of this complaint, Lerach Coughlin and Coughlin Stoia are the same firm with the only material difference being the retirement of named partner, William Lerach. Both Lerach Coughlin and Coughlin Stoia will be referred to in this complaint as “the Coughlin firm.” The Rubinsteins’ agreement with the Coughlin firm expired in March 2007.

11. Upon the expiration of their agreement with the Coughlin firm, the Rubinsteins approached BD and offered to become associated with BD as “of counsel.” The Rubinsteins claimed that they had developed valuable contacts with international clients and that they had

“important clients in the Middle East and Europe ready to sign up for portfolio monitoring – they did not wish to sign with Lerach.” The Rubinsteins complained about the Coughlin firm’s heavy handed actions and claimed that international clients were reluctant to become associated with the Coughlin firm. The Rubinsteins claimed that they offered BD a unique opportunity and that they had a previously scheduled meeting for April 1, 2007 set to sign up two major clients in Israel for portfolio monitoring.

12. After a meeting with the Rubinsteins in New York and after lengthy meetings in Boston where the parties engaged in extensive discussions and negotiations, BD undertook to negotiate an “of counsel” agreement with the Rubinsteins. The Agreement was executed by all parties on March 26, 2007.

13. The Agreement created a one year “Of Counsel” relationship between BD and the Rubinsteins, terminable at BD’s option after 6 months. The Rubinsteins’ duties were to engage in “international outreach to communicate with and secure clients for the Berman DeValerio institutional investor portfolio monitoring program.” The Rubinsteins were to be paid \$25,000 per month in advance and BD agreed to reimburse the Rubinsteins for their out-of-pocket expenses. The Agreement provided that any clients obtained through the Rubinsteins’ efforts were to be clients of BD. The Agreement expressly provided that the Rubinsteins “will not . . . encourage such a client to terminate its relationship with BD or establish a relationship with any competitor firm.”

14. Pursuant to the Agreement, BD immediately provided the Rubinsteins with letterhead, business cards, cellular telephones, email accounts, marketing materials and the like. BD revised the firm website and added the Rubinsteins’ profiles, photographs and contact information. BD also arranged for an office in New York City which would serve as the base of operations for the Rubinsteins.

15. BD instructed its personnel to provide full support for the Rubinsteins in their marketing efforts. The Rubinsteins made numerous demands of BD personnel, marketing personnel, investigators, attorneys, finance employees, and assistants. The Rubinsteins demanded to be included in high level meetings with BD personnel so that they could learn the identity of service providers, client contacts and a broad range of confidential and sensitive information about BD's practice. BD offered its full support to the Rubinsteins, and shared this information with them believing that the Rubinsteins' efforts were intended to benefit BD's practice.

16. For six months, the Rubinsteins demanded and received \$25,000 monthly draws and received thousands of dollars in reimbursed expenses while they took trips and cultivated clients. BD paid the Rubinsteins \$25,000 per month for the months of April, May, June, July, August and September 2007 – a total of \$150,000.

17. BD paid over \$84,775 to the Rubinsteins to reimburse them for travel and related business expenses.

18. At the Rubinsteins' insistence, BD paid a previously outstanding bill to MeetChinaBiz for \$10,000 for services rendered to the Rubinsteins while they were of counsel to the Coughlin firm. Also, at the Rubinsteins' insistence, BD paid an additional \$5,000 to MeetChinaBiz to enable the Rubinsteins to continue their international business development activities.

19. At some point during their association with BD, the Rubinsteins, while claiming that they were continuing to work for BD and building relationships with prospective clients for BD, decided that they would no longer devote their efforts to helping to build BD's international practice. They entered into discussions with the Coughlin firm which competes with BD and with which the Rubinsteins had been previously associated. The Rubinsteins offered to return to the Coughlin firm and to bring with them those clients they had been cultivating during their

association with BD.

20. As early as mid-May 2007, the Rubinsteins began to breach their Agreement with BD. Instead, they were using BD's payments, expense reimbursements, resources and personnel to fund and support their own client development activities which they planned to keep for themselves or to deliver to the Coughlin firm or some other firm with whom they would subsequently affiliate.

21. On May 16, 2007, BD signed a securities monitoring and evaluation agreement with an international institutional investor client. The Rubinsteins served as the contact between BD and the client. On May 18, 2007, the BD partner responsible for oversight of BD's portfolio monitoring program attempted to implement the agreement with the client. Despite repeated requests to be put in contact with the client, the Rubinsteins refused that partner's requests. By late June 2007, the Rubinsteins were still preventing BD from directly contacting the client, leaving Plaintiffs unable to implement the monitoring agreement.

22. On July 24, 2007, BD signed a securities monitoring and evaluation agreement with a second international institutional investor client. As with the first institutional investor client, the Rubinsteins failed to facilitate the implementation of the monitoring agreement. The Rubinsteins' refusal to communicate with the responsible partner rendered the monitoring agreement of no use or value to BD.

23. During the time the Rubinsteins were of counsel, BD partners repeatedly asked for details concerning the Rubinsteins' outreach efforts and the clients with whom the Rubinsteins were meeting. In response, the Rubinsteins were evasive, hostile and defensive. The Agreement provided that the Rubinsteins would interact most frequently with a designated partner at BD who would have day to day responsibilities for the operation of the firm's international outreach program. However, the Rubinsteins found excuses to avoid providing

information about their activities and ultimately provided very little meaningful information. Indeed, in breach of the Agreement, the Rubinsteins refused to report to BD's partner responsible for coordinating international outreach efforts. They ultimately refused to have any interaction with that partner.

24. An essential element of the Agreement between BD and the Rubinsteins was that the Rubinsteins communicate with BD regarding their client outreach and development efforts. In early July 2007, the Rubinsteins began refusing to communicate with BD partners concerning such efforts.

25. By mid-July 2007 the Rubinsteins were openly rejecting requests for information and the status of their efforts and were contriving excuses for refusing to cooperate. On July 12, 2007, Eran Rubinstein wrote an email complaining that a copy of his memorandum providing some information about the Rubinsteins' client development efforts was sent to other BD partners. On July 18, 2007 the Rubinsteins sent an email to a BD partner in which they announced that they would no longer communicate with the several BD partners who were charged with supporting the firm's international client development. Instead, the Rubinsteins declared that they would now only report to one BD partner who was not directly involved in the firm's international client development efforts.

26. The Rubinsteins' refusal to communicate with all but one of the partners of BD effectively cut off any chance of communication between BD and its existing and prospective clients. The Rubinsteins refused to enable BD to provide information to and receive information from its new clients. BD was also rendered unable to finalize the relationships which had been cultivated by the Rubinsteins on behalf of BD. The Rubinsteins postponed meetings and telephone conferences. Despite their commitment to do so, the Rubinsteins failed to assist BD in implementing its agreement with its clients.

27. Despite their unwarranted reluctance to communicate with BD and their interference with BD's efforts to serve its new clients, the Rubinsteins continued to claim that they were about to deliver several additional significant clients to BD and that BD should continue to work with them and continue to pay their monthly draws and expenses. Indeed, in a July 18, 2007 email to BD, the Rubinsteins claimed to be on the verge of signing on two new clients.

28. At the end of August 2007, the Rubinsteins contacted BD to demand that the \$25,000 monthly draw for September be deposited into their account. Within days of receiving their September draw payment, which was to compensate them for the upcoming month of work, the Rubinsteins notified BD that they were terminating the Agreement. BD learned that the Rubinsteins had returned to the Coughlin firm.

29. The Rubinsteins terminated their association with BD and went back to work for the Coughlin firm at a point where their client cultivation efforts had reached a certain degree of success. The Rubinsteins took with them all of the clients, contacts and relationships that they had developed while they were of counsel to BD.

30. Within one day of notifying BD that they were no longer associated as of counsel, BD received letters from the two clients that had been retained by BD through the Rubinsteins' efforts, notifying BD of the clients' decision to terminate their relationships with BD. The terminations of these clients' relationships with BD were encouraged and facilitated by the Rubinsteins. Indeed, the letters from the clients were identical in wording and were each received on the same day - just one day after the Rubinsteins notified BD of their departure.

31. The two clients who had signed portfolio monitoring agreements with BD, as well as three other clients who Defendants had claimed were on the verge of signing portfolio monitoring agreements with BD are now represented by the Chitwood firm.

**COUNT I**  
**BREACH OF CONTRACT**

32. Plaintiffs repeat the allegations contained in paragraphs 1 - 31 and, by this reference, incorporates them herein.

33. The Defendants signed the Agreement with Plaintiffs to establish the terms of their “of counsel” relationship and to receive compensation for their services. In reliance on the promises contained in that Agreement, Plaintiffs entrusted the Defendants with confidential and competitively sensitive information about its practice.

34. Plaintiffs have performed all of their obligations under the Agreement with Defendants.

35. Defendants failed to perform their obligations under the Agreement. Instead, Defendants used BD’s payments, expense reimbursements, resources and personnel to fund and support their own client development activities, and then took the clients, contacts and other information gained during their association with BD and put these resources to use for themselves and their current firm.

36. Defendants insisted that Plaintiffs pay a total of \$15,000 to MeetChinaBiz in reliance on Defendants’ claims that payment was necessary to enable Defendants to perform their agreement with BD.

37. By ceasing their communication with BD’s partners, refusing to assist in implementing the monitoring agreements with BD’s clients and soliciting association with and, in fact, going to work for a competitor while still both associated with Plaintiffs and demanding payment of their monthly draws and by soliciting, encouraging and facilitating Plaintiffs’ clients to terminate their relationship with Plaintiffs and become clients of a competitor, the Defendants

have each breached their obligations to Plaintiffs under the Agreement.

38. As a result of this conduct, Plaintiffs have suffered damages and harm for which the Defendants are liable.

## **COUNT II**

### **PROCURING BREACH OF CONTRACT**

39. Plaintiffs repeat the allegations contained in paragraphs 1 - 38 and, by this reference, incorporates them herein.

40. Plaintiffs have an attorney-client relationship with their clients.

41. Plaintiffs have entered into Monitoring Agreements with certain of their clients.

42. Defendants knew of such relationships. Indeed, Defendants assisted in establishing the relationship between Plaintiffs and certain of its clients and in getting certain clients to enter into monitoring agreements with Plaintiffs.

43. By their conduct as set forth above, the Defendants have solicited, encouraged and induced Plaintiffs' clients to terminate their relationship with Plaintiff and to terminate the monitoring agreements with Plaintiffs, causing Plaintiff damages and harm for which the Defendants are liable.

## **COUNT III**

### **INTERFERENCE WITH ADVANTAGEOUS BUSINESS RELATIONS**

44. Plaintiffs repeat the allegations contained in paragraphs 1 - 43 and, by this reference incorporates them herein.

45. Plaintiffs have developed business relationships with their clients wherein the firm provides securities portfolio monitoring services and litigation advice to its clients.

46. Defendants had detailed knowledge of such relationships. Such detailed knowledge was entrusted to them by Plaintiffs on the condition that Defendants would not

disclose it to any third party; that they would not use it except in furtherance of Plaintiffs' business interests and that they would certainly not use it to compete with Plaintiff.

47. By their conduct as set forth above, the Defendants have intentionally and unjustifiably interfered with Plaintiffs' business and advantageous relationships, causing Plaintiffs damages and harm for which the Defendants are liable.

**COUNT IV**  
**BREACH OF FIDUCIARY DUTY**

48. Plaintiffs repeat the allegations contained in paragraphs 1- 47 and, by this reference incorporates them herein.

49. By entering into the Agreement with Plaintiffs and becoming associated with Plaintiffs as "of counsel", the Defendants owed a fiduciary duty to Plaintiffs.

50. By their conduct as set forth above, and by demanding compensation and reimbursement of expenses to fund and support client development activities and then taking the clients, contacts and other information gained by virtue of such compensation and reimbursement and using those resources to work for their current law firm, Defendants have breached their fiduciary duties to Plaintiffs causing them damages and harm for which the Defendants are liable.

**COUNT V**  
**MONEY HAD AND RECEIVED**

51. Plaintiff repeats the allegations contained in paragraphs 1 - 50 and, by this reference incorporates them herein.

52. Defendants obtained over \$234,775 from Plaintiffs over a six-month period.

53. Defendants obtained these payments from Plaintiffs by claiming to be engaged in activities designed to secure international clients for Plaintiffs and to provide a valuable benefit

to the Plaintiffs.

54. Defendants failed to perform their obligations to Plaintiffs and instead diverted the benefits of their efforts to themselves and to other law firms.

55. Defendants have been unjustly enriched at Plaintiffs' expense. Defendants should not in justice retain these funds and in equity and good conscience these funds should be returned to Plaintiffs.

### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

1. Enter judgment for Plaintiffs on all Counts of its Complaint;
2. Order the Defendants to provide an accounting of all earnings wrongfully gained by their breach of their agreement with Plaintiffs and by breach of their fiduciary duties to Plaintiffs;
3. Order the Defendants to repay the sum of \$234,775 which Plaintiffs paid to Defendants between April 1, 2007 and September 9, 2007;
4. Award Plaintiffs damages as determined at trial, plus interest and costs as provided by law, and
5. Grant Plaintiffs such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a jury trial on all issues so triable.

**BDP LLP, a Massachusetts limited partnership,  
BDP&T P.C., a California professional  
corporation, and B&P LLP, a Florida limited  
partnership, general partners of Berman  
DeValerio Pease Tabacco Burt & Pucillo,**

By their attorneys:

*/s/ Edward J. Barshak*

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Dated: March 20, 2008

## CERTIFICATE OF SERVICE

I, Edward J. Barshak, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 20, 2008.

/s/ Edward J. Barshak  
Edward J. Barshak