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Reply to:

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June 22, 2009

Atty. John Doe
00 October Drive
Milmouth, MA 00000

Re: New York Civil Theft/Conversion Memo

Dear Atty. Doe:

Per your request, I have prepared this memo addressing the availability in New York State of a civil theft-type statute and/or a common law conversion cause of action arising out of the defendant's wrongful refusal to transfer stock options belonging to your client.

I. Civil Theft-Type Statute

My review of New York statutes uncovered no civil theft-type remedy. Moreover, I located case law containing language which appears to confirm the non-existence of such a statutory remedy. **See Smith Barney, Harris Upham & Co., Inc. v. Luckie, 665 N.Y.S.2d 74, 75 (App. Div. 1 Dept. 1997)** (“[t]o the extent that respondents assert claims for civil theft, *the New York analogue of which is conversion or imposition of a statutory liability*, such claims are barred by New York's three-year limitations period ...”). For these reasons, I believe that there does not exist a statutory civil theft-type remedy in New York.

II. Common Law Conversion

New York recognizes common law conversion as a tort claim. Conversion claims in New York may be predicated upon a defendant's wrongful dominion over plaintiff's tangible *or intangible* personal property. **Thyroff v. Nationwide Mutual Ins. Co., 864 N.E.2d 1272, 1278 (N.Y. 2007)**.

To establish a cause of action in conversion, the plaintiff must show (i) legal ownership or an immediate superior right of possession to specific identifiable personal property, and (ii) the defendant exercised an unauthorized dominion over the property in question to the exclusion of the plaintiff's rights. **Korangy Publishing, Inc. v. Miceli, ___ N.E.2d ___, 2009 WL 586131, at *4 (N.Y. Sup. 2009)**; **Five Star Bank v. CNH Capital America, LLC, 865 N.Y.S.2d 190, 192 (App.**

Div. 4 Dept. 2008). In addition, where defendant's possession of the property is initially lawful, conversion occurs only when there is a refusal to return the property *after a demand*. **In the Matter of the Accounting by James R. Coyle, 864 N.Y.S.2d 765, 768 (N.Y. Surrogate's Ct. 2008); Hoffman v. Unterberg, 780 N.Y.S.2d 617, 619 (App. Div. 2nd Dept. 2004).**

Regarding compensatory damages, the proper measure of damages for conversion is the value of the property at the time and place of the taking. **Kranz v. Town of Tusten, 653 N.Y.S.2d 194, 195 (App. Div. 3rd Dept. 1997); Express Freight Systems, Inc. v. Walter, 632 N.Y.S.2d 733, 734 (App. Div. 4th Dept. 1995).**

Regarding punitive damages, a claimant may recover punitive damages for an act of conversion in New York "where the circumstances establish that the conversion was accomplished by malice or reckless or willful disregard of the plaintiff's right." **Ashare v. Mirkin, Barre, Saltzstein & Gordon, P.C., 435 N.Y.S.2d 48, 441 (N.Y. Supr. Ct. 1980).** Recent conversion cases cite the punitive damages standard set forth in **Ross v. Louise Wise Services, Inc., 868 N.E.2d 189, 196 (N.Y. 2007)**, wherein the New York Court of Appeals stated that "[p]unitive damages are permitted when the defendant's wrongdoing is not simply intentional but evinces a high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a criminal indifference to civil obligations."

Finally, regarding attorney's fees, New York does not recognize attorney's fees as an element of a punitive damages award, and thus a prevailing conversion claimant is not entitled to an award of attorney's fees absent an agreement between the parties, statutory authorization, or court rule. **Gatter v. Chase Manhattan Bank, 669 N.Y.S.2d 651, 654 (App. Div. 2nd Dept. 1998).**

Thank you for allowing me to complete this project.

Atty. Michael A Dibble