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**ENDORSED
FILED**
Superior Court of California
County of San Francisco

SEP 30 2016

CLERK OF THE COURT
By: ROSIE NOGUERA
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 JON SOBERG,
13 Petitioner,
14 v.
15 ADEO RESSI aka ADEODATO GREGORY
RESSI DI CERVIA,
16 Respondent.

18 ADEO RESSI,
19 Cross-Petitioner,
20 v.
21 JON SOBERG,
22 Cross-Respondent.

CASE NO. CPF-16-515185

~~Proposed~~ ORDER GRANTING
SOBERG'S PETITION TO CONFIRM
ARBITRATION AWARD

Hearing Date: September 30, 2016
Time: 9:30 a.m.
Dept.: 302

1 On September 30, 2016, in Department 302 of the above-entitled Court, the Honorable
2 Harold E. Kahn presiding, Petitioner Jon Soberg's Petition For Order Confirming Arbitration
3 Award And Entering Judgment In Conformity Therewith in the above-captioned matter came on
4 for hearing. The Court, having considered the motion, the pleadings and papers filed in this action,
5 and any argument of counsel presented at the hearing on the motion, and for good cause appearing
6 therefore rules as follows:

7 Petitioner Jon Soberg's petition for an order confirming the arbitration award is granted.
8 Because there is no basis to vacate or correct the arbitration award, as indicated in the ruling on
9 respondent's petition, Mr. Soberg is entitled to have the award confirmed and judgment entered in
10 his favor.

11 The confirmed arbitration award, attached as Exhibit A, is incorporated by reference.

12 **IT IS SO ORDERED.**

13
14 Dated: September 30, 2016

15 By: HAROLD KAHN
16 Honorable Harold E. Kahn
17 Judge of the Superior Court
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EXHIBIT A

JAMS ARBITRATION

CASE No. 1100082762

Jon Soberg

Claimant

and

Adeo Pessi

Respondent

FINAL AWARD

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THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the parties' arbitration agreement in Section 26 of the "Expansive Ventures Management LLC Amended and Restated Operating Agreement" dated July 24, 2015 (the "LLC Agreement"), and with the Procedural and Scheduling Order of January 15, 2016, and having examined the submissions, proof and allegations presented, and having received and considered the oral testimony of witnesses, hereby renders this Final Award as follows:

I. INTRODUCTION AND PROCEDURAL STATEMENT

This arbitration arises out of a dispute between the two general partners of a venture capital firm known as Expansive Ventures ("EV"). Jon Soberg ("Soberg") and Adeo Pessi ("Pessi") started the firm and owned and managed it as 50/50 partners. EV was established in April 2014 and, by December of that year, had its first close. By the summer of 2015, at the time of the second close, the firm appeared to be doing very well since it had secured \$40 million in capital commitments from limited partners and also had four promising investments in portfolio companies.

Although the partners had had some minor disagreements up to this point, it was at the time of the second close in July 2015 that it became apparent that their relationship was seriously frayed. Soberg claims that Pessi was angling to push him

out of the firm and take over EV. Pessi denies this but, in fact, was involved in a series of covert activities designed to undermine Soberg and eventually squeeze him out of the firm.

In this arbitration, Soberg makes claims for breaches of both fiduciary duty and contract and argues that Pessi should be liable for damages and should be removed as manager and member of EV. Pessi asserts various affirmative defenses, asserts that Soberg has suffered no recoverable damage, and argues for dissolution of EV¹.

The parties' arbitration provision is found in Section 26 of the LLC Agreement (Ex. 106) and the proceeding is governed by the JAMS Comprehensive Arbitration Rules and Procedures, effective July 1, 2014. The merits of the case are to be decided pursuant to Delaware law and the FAA.

In February 2016, counsel for Pessi filed a Motion for an Order Compelling Claimant Soberg to authorize the advancement of defense costs to indemnify Pessi. For the reasons outlined in Prehearing Order No. 2, that Motion was granted.² A determination on the issue of whether Respondent Pessi is entitled to

¹ As discussed during closing arguments, there was not sufficient evidence to support Respondent's assertions of possible breaches of contract involving SpaceX, Kreditech, and ADF.

² The Arbitrator issued two other prehearing orders: Order #3 allowed counsel for Soberg to file a Second Amended Statement of Claims pursuant to JAMS Rule 10; Order #4 denied

indemnification is based on the findings set forth here and included in this Final Award.

Arbitration hearings were held in the San Francisco office of JAMS on May 16-20 and May 27, and expert testimony for both sides was presented on June 2, 2016. Counsel submitted closing briefs on June 13 and gave closing arguments at the JAMS office on June 15, 2016. The following witnesses testified at the hearings: Jbn Soberg, Adeo Pessi, Jun Hong Heng³, Susan Boehnlein of Kranz & Associates, Sunwoo Hwang of Sxup (via Skype), and expert witnesses Jhn O'Conner, and Gregory Nachtwey.

Both parties offered documentary evidence at the hearings and that evidence was admitted. At the end of the last hearing day, both sides stated that they had no further evidence to offer.

II. FACTS

The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. To the extent that this recitation differs from any

Soberg's request for forensic IT access to Pessi's computers and cloud-based email accounts and to EV's cloud servers as overbroad and invasive.

³ Mr. Heng was represented during his testimony by Lucy Wang of Morgan Lewis.

party's position, that is the result of determinations as to credibility, determinations of relevance, burden of proof considerations, and the weighing of evidence, both oral and written.

Jon Soberg and Adeo Pessi both live in Palo Alto and had known each other for a six or seven years before they began discussing forming a venture capital firm. When the two met in late 2013 and began discussion of forming a new fund, Soberg was a junior partner at Blumberg Capital, his first venture capital job after obtaining a Wharton degree, and Pessi was running his global incubator firm called Founder's Institute ("FI"). They worked on the concept for a number of months, with Soberg and others donating their time to make preparations. Pessi was busy running FI but said he was willing to work approximately half time on the new venture and Soberg, who wanted to be an owner rather than an employee, was to spend all of his time on the new firm.

By April 2014, Soberg had left Blumberg Capital, and he and Pessi had established a firm they decided to call Expansive Ventures. Pursuant to their agreements, they were both general partners and 50/50 owners and managers. All decisions regarding the management of the business partnership required their

unanimous agreement.⁴ Their goal was to raise \$100 million and invest the money in start-up companies after doing careful due diligence.

The partners worked with counsel to formalize documents outlining their agreements regarding the new firm. They entered into the management Agreement in July 2015 (“LLC Agreement,” Ex. 106) and a Limited Partnership Agreement in December 2015 (Ex. 9).⁵ Prior to entering formal agreements, the company had its first close in December 2014 with approximately \$20 million in committed capital. Pessi had hoped for an earlier close, but Soberg pointed out that it takes longer to raise money than Pessi anticipated. Soberg expected it to take 12-18 months of hard work (Ex. 1).

Pessi had counted on FI for deal flow but Soberg also wanted to look for larger deals, and he traveled nationally as well as internationally in search of them (Ex. 5). While Pessi continued to spend a lot of his time with FI, Soberg focused on developing EV.

⁴ Expansive Ventures Management LLC, a Delaware LLC, is the General Partner of Expansive Ventures Fund I, L.P., a Cayman Islands exempted limited partnership, the entity that holds the investments of the limited partners.

⁵ At first, EV was formed with only preliminary documentation prepared by Wilson Sonsini and Soberg was the only member of the management entity. The July and December 2015 documents modified that to reflect the true intention of the parties to be 50/50 members and co-managers. At some point, EV moved its business from Wilson Sonsini to Cooley.

At the hearings of this case, Pessi took the view that the partners' first big disagreement was in late September. However, there were many disagreements before that time. Early on, it appeared that the two had different goals for the firm. Pessi wanted to continue spending a lot of his time on FI despite concerns of the EV limited partners (Ex. 5). Soberg put all of his time and energy in on EV and looked beyond the small deals that might be available through FI (Exs. 38 and 40). By 2015, Soberg sourced and the partners had agreed to invest in four portfolio companies: Honest Dollar, Super Home, Park Jockey, and SixUp.

As early as April 2015, the partners had disagreements over travel expenses. Soberg testified that he was a frugal traveler and that Pessi spent much more on luxury travel (Ex. 45). Also, in June, Soberg explained that he expected normal salaries to begin to be paid. This tension between the partners is partly explained by the fact that Pessi was paid for his work at FI while Soberg now relied on his work at EV to make a living and had not yet been paid a "livable salary" (Ex. 69).

At the time of the second close in July 2015, the general partners had their first major disagreements. The fund had made four promising investments and had reached the \$40 million dollar level in capital commitments from limited partners. That meant that EV was guaranteed \$1 million a year in management fees for the first 5 years and \$500,000 for the next five. Soberg had been traveling on

business and vacation since the end of June. Pessi was working on the close with Kranz & Associates, the firm that served as EV's compliance officer and handled back-office matters like accounting, taxes, paying bills, making payments for investments, reporting to the limited partners, and so forth.

The Kranz firm is experienced and works with many venture capital firms in Silicon Valley. Up to this point, Soberg had been the main contact with Kranz and had not had problems. Apparently, Kranz made some minor mistakes at the time of the close and Pessi "went ballistic and took over the process" (Ex. 407)⁶. While Pessi threatened to fire Kranz for making mistakes, Soberg pointed out the fact that they are "more than competent" and had been very helpful to EV in the past. Soberg was also concerned about the fact that Pessi was making unilateral management decisions without keeping him in the loop: "We need to talk badly when I get back. We need to run this fund as a partnership and that isn't happening now" (Ex. 99).

At this time, the partners had other disagreements. For example, Pessi wanted to spend more money on a customized IT system, something that would benefit FI as well as EV; wanted to include more portfolio companies from the FI network;

⁶ Pessi had warned Kranz against making any mistakes because "people in this close are captains of industry and billionaires" (Ex. 408).

wanted to make Jun Hung Heng ⁷ a 15% owner, with majority decision-making power; and wanted to save the remaining management funds even though year-end funds would be taxed as income whether saved or paid as a bonus. Soberg disagreed on these points but continued to work with Pessi in the hope that they could talk and work out some of these issues. But Pessi's real goal is shown in a note to his wife, Cindy, dated July 14, 2015: "I need to take more control of Expansive" (Ex.96).

Then, when Soberg was traveling on business in September and early October, Pessi took actions clearly designed to drive Soberg out of EV. The record shows that he and Mr. Heng secretly read all of Soberg's email, that Pessi tried to bring Mr. Heng in as a 15% managing partner so that the two of them could outvote Soberg, that Pessi changed the EV web page to show that Soberg had a new and limited role and that Heng had been promoted, that he locked Soberg out of the office while at the same time FI was charging rent to EV for the space, that he told the LP's that Soberg was dishonest, that he blocked salaries and access to the Silicon Valley Bank ("SVB") accounts (Ex. 215), that he spent fund money without

⁷ Jun Hung Heng had been working with EV and there had been discussions of making him an owner. There were also discussions of paying him a salary. Soberg actually preferred bringing on another candidate (Ex. 46). But Soberg and Pessi had never reached a final, written agreement on a role for Jun (Ex. 49) and there was no evidence of an oral agreement, either.

Soberg's agreement, that he used EV money to develop a trademark that was really for FI, and so forth. Understandably, Soberg objected to being locked out when he was still a 50% partner and while EV was still paying rent to FI for the space (Ex. 432).

In mid-September, Soberg introduced Heng to CSC and asked Heng to take the lead on this potential investment (Ex. 149). Heng told Fessi about his conversations with Soberg, claiming that Soberg asked him to misrepresent the origin of this investment. The significance of this claim was blown far out of proportion by Fessi and appeared to be simply a misunderstanding, not a lie. Soberg merely asked Heng to take the lead on this one. Nevertheless, Heng's statements gave rise to a flurry of exaggerated accusations. Fessi wrote: "You have lied to my face. You have asked Jun to lie. Own up to it and stop lying" (Ex. 172). Instead of discussing the situation with his partner, Fessi made accusations. Then, Fessi even requested counsel to add unusual "clauses about honesty" to the firm agreements (Exs. 189 and 174). In an email of October 30, he states that "lying is a cancer that kills the souls of the afflicted" (Ex. 282). The accusations about lying were not supported by the evidence and appeared to be just another step toward justifying the takeover of EV and removal of Soberg. In late September, Fessi imperiously stated that Soberg could not return to the office

until he apologized for the alleged lie: “You do not need to return to the office until (1) you own up to your behavior and (2) sincerely apologize” (Ex. 172).

Ressi’s attempt to take over the EV bank accounts without Soberg’s knowledge or permission is further evidence of his aggressive and covert efforts to take over the firm. On September 30, Ressi had asked SVB to make him “sole administrator” and the bank had responded by saying they were making sure Soberg “cannot approve any wires or Bill Pay transactions” (Ex. 197).

But Ressi had concerns that, if SVB got wind of disputes within the partnership, the bank would freeze the EV accounts and end the loan. He wrote to Soberg about his conversations with Lorie at the bank: “I denied that there are any problems” (Ex. 218). In response to a question about whether he agreed, Soberg responded, “I don’t think I can answer your question about whether there is an issue with the partnership until you restore the partnership” (Ex. 218).

Then, on October 2, Ressi wrote to one of the LP’s, Antonio Kanahuati, that they planned to make Heng a partner and “move Jon Soberg into a new role” (Ex. 211). Further, he wrote to Ernest Lee with the same message (Ex. 213). There was conflicting testimony about whether this information also was sent to the other LP’s.

In November 2015, there were inquiries from the limited partners regarding the lack of updates on the investments and concern was expressed that the EV website had not been working properly for months (Ex. 292). Later, Pessi arranged to have visitors to the EV website sent to the FI site instead.

While Soberg testified about many similar actions that are covered in detail in the arbitration testimony and in Claimant's briefs, three will be detailed here as examples. First, Pessi claimed that Soberg was dishonest and even might not be able to be trusted with the firm's money. He contacted counsel to request that some "honesty" language be included in their agreements (Ex. 174). Also, later he contacted SVB with his concerns enough times so that the accounts were finally frozen. However, there was no evidence presented at the hearings to support claims of Soberg's dishonesty and certainly none to show that Soberg had taken or would take money that was not his. Pessi claims to have been in a panic over mishandling of accounts but actually introduced no substantive evidence that panic was warranted. His assertions of Soberg's wrongdoing were based on speculation and appeared to be exaggerated and unsupported by the evidence. Pessi's true motive in making these claims is set forth in a September 26th note to Yoichiro Taku ("Taku"), an attorney at Wilson Sonsini, formerly counsel to EV: "I am thinking to offer Jon the nice way or the hard way to leave the firm when he

returns on October 5th from one of his many frivolous trips.” He was secretly plotting to expel Soberg from the firm, asserting: “Expansive Ventures will be a much better run organization without the presence of Jon Soberg, and we will have an opportunity to really change the world. . . .” (Ex. 186).

Second, beginning in the summer of 2015, Pessi had soured the relationship with Kranz to such an extent that Kranz eventually withdrew from the account. Susan Boehnlein, a CPA and the CFO of Kranz, had worked well with Soberg but testified that she was unable to work with Adeo Pessi. She said that, beginning in August, Pessi wanted a weekly cash analysis and became “very fixated on the expenses,” insisting that nothing go out without his signature (Tr. 525-529). By October, she wrote that Pessi was accusing Soberg of stealing but that she did not believe it (Tr. 531; Ex. 402). She was not sure she could work with Pessi because he was difficult and often raised his voice, used vulgar language, and had “no qualms bashing those he does not like. . . .” (Tr. 537-8; Ex. 403). She went on to testify about how Pessi asked for a list of outstanding payables and then drained the EV accounts in October without Soberg’s approval (Tr. 545-6; Exs. 405 and 410). Finally, she wrote to her boss, Mr. Kranz: “Mike, the ironic thing is that he has done what he accused Jon of trying to do. . . . drain the accounts the way he wants” (Tr. 551-2). Further, she wrote to CEO Deborah Kranz to say she wanted to

stop working with Pessi: “I really don’t feel comfortable working with someone who is not trustworthy” and was concerned about Pessi’s “pattern of escalating behavior” that had been going on since July (Tr. 552; Ex. 403). CEO Deborah Kranz wrote on November 13, 2015, that the firm had withdrawn from the EV account “due to the non-professional language and treatment of our staff by Adeo” (Ex. 292).

Third, the testimony of Sunwoo Hwang of SxUp reinforced the view of Pessi as underhanded. Hwang testified that Soberg, who had up to this point served on the SxUp board, brought “tremendous value add” (Tr. 604). Working behind Soberg’s back while draining the accounts, Pessi sent another \$400,000 to SxUp. Hwang stated that he did not want further EV investment and returned the money (Tr. 606). In an email dated October 8, 2015, Pessi was informed that Sunwoo would not accept the \$400,000 on behalf of SxUp “until the situation at Expansive is resolved” (Ex. 259). Pessi also tried to replace Soberg on the SxUp board but Hwang did not allow him to do so, writing: “Jon Soberg will be attending the board meeting tomorrow because he is a board member. . .” (Tr. 610; Ex. 259). Then Pessi unilaterally withdrew EV’s representation on the board.

Soberg had been traveling on business and then, on October 3 and 4, attended a family wedding in New Mexico. Pessi wrote to him, told him to enjoy the wedding, and assured him that they would talk about their issues on his return. On October 2, 2015, right before their meeting that was set for October 5, he wrote: “Have some fun. Enjoy the wedding. We have a meeting next week. Let’s discuss everything then. . .” (Ex. 215).

However, these messages were simply a way of trying to lull Soberg into a calm while carrying out a plan to “starve him out nicely” and squeeze him out of EV just a few days later (Ex. 203). As he wrote to former EV attorney at Wilson Sonsini, Mr. Taku, the day before the meeting with Soberg: “Let’s start tough and he will negotiate.”

Meanwhile, apparently unaware of the fact that Pessi had been plotting with Mr. Taku, Soberg set a confidential meeting for October 5 with Mr. Taku to discuss the best way to handle his issues with Pessi. Upon his arrival at the law firm, Soberg was not allowed to meet with Mr. Taku. Instead, he was shocked to be ushered into a room for a surprise meeting with Pessi and Heng. This was an ambush, not a meeting. Rather than discussing their problems and potential

solutions, Pessi read his “script” to Soberg (Ex. 222).⁸ The script blamed all of the EV problems on Soberg, stated that Pessi would approve no more capital calls and investments, and represented that there was not even enough money left in the accounts to close out 2015. He added that EV would be viewed as a “failure in the eyes of some of the most important entrepreneurs, investors and billionaires worldwide.” The script is a shocking display of bullying tactics and a significant indicator of Pessi’s motives and failure to treat his partner with fairness and dignity. Pessi’s testimony at the hearings regarding the script was less than credible.

In order to induce Soberg to step down and sign a separation agreement that had been drafted by Mr. Taku, Pessi offered him a small payment along with a promise to list him as a firm founder and give him a positive reference to continue working with venture capital (Ex. 223). Pessi added: “Over 80% of limited partners are either my friends or my business acquaintances. Most of them have never met you nor spoken to you. In the last couple of weeks, I have spoken to them, and they support my vision for the fund.” He went on, “Do you want to be part of the

⁸ Pessi failed to produce the document to his attorney in discovery and it did not come to light until the Wilson Sonsini document production, just a few days before Pessi’s deposition. Counsel for Claimant complained about Pessi’s failure to fulfill his duties in discovery. There was no indication, however, that Pessi’s attorney was anything other than professional during discovery and thereafter.

highly visible failure that will impact your career, or take a founding credit in something that may go on to be relevant?"

Ressi treated his 50% partner with extraordinary disdain and used hardball tactics. Despite the fact that their issues had been brewing since the summer, there was no evidence that he ever sat down with Soberg in an attempt to work out their differences. There also was no reason that Ressi could not agree with Soberg that they should complete the fund and then move on. It appears that they would have been fully invested in another 6-9 months. Instead, he decided to work toward unfairly removing Soberg from EV and depriving him of his 50% management control as well as his share of fees and carry.

Ressi now claims that EV became a deadlocked entity that could not move forward with business and therefore should undergo dissolution. But it was Ressi who refused to discuss appropriate solutions short of forcing out his partner and Ressi who caused the deadlock based on his unfounded and unproven suspicions.

Notably, after the October 5 meeting, even though the terms of the script gave Soberg until October 15 to make a decision, Ressi harassed Soberg with emails and calls urging him to hurry up and decide to leave or the offer would be reduced or withdrawn. Ressi wrote the next day, on October 6th at 9:16 AM that at "every hour on the hour until noon PST today starting at 10:00 AM PST, we will revise the

Soberg Transition Agreement to you, until it becomes no offer with a wind down scenario at noon PST” (Ex. 239). Then, at 11:43 AM that same morning, Pessi wrote, “I assume you want to dissolve the fund based on your lack of responses. In 20 minutes, all deals are off the table” (Ex. 238). At 3:10 PM that day, Pessi wrote to Soberg and even copied Soberg’s wife: “You have violated multiple conditions under which we offered you the initial Soberg Transition Agreement from the fund.” He went on to claim that Soberg was in breach of contract and, if he failed to remedy the breaches, the LP’s would be informed (Ex. 242).

Earlier that day, when Soberg had asserted his need to be on calls with EV, Pessi wrote:

“You do not need to be on calls. You have until noon. Then, the wind down begins. No exceptions. Stop these stupid games. I am not going to play them anymore, and you will be sued personally by Jun, myself and others as soon as today” (Ex. 226).

In response to these heavy-handed bullying tactics, Soberg sought counsel and decided to file for arbitration on November 20, 2015.

III. DETERMINATIONSON THECLAIMS

1. Pessi Breached His Fiduciary Duties to Soberg

Under Delaware law, LLC members like Pessi and Soberg owe fiduciary duties of care and loyalty pursuant to Section 18-1104 of the Delaware Limited Liability Company Act. *OMS Investment Holdings, LLC v. Castle*, C.A. No. 9468-VCP (Del. Ch. June 23, 2015). As shown above, Pessi breached his fiduciary duties when he changed the office locks, deprived Soberg of access to firm assets, prevented Soberg from accessing the SVB accounts, told the LP's and other business associates that Soberg had a reduced role in the firm, blocked salaries, drained fund money from the accounts without input from Soberg, refused to conduct company business, and so on. Pessi's script threatened Soberg with the failure of the firm and damage to his reputation among other things. But Pessi not only made threats; he also took direct action to damage EV and Soberg.⁹ Through these and other actions, Pessi attempted to unfairly squeeze Soberg out of EV and take over the fund.

Soberg was entitled to a high degree of loyalty from Pessi. Pessi schemed to squeeze out Soberg and deprive him of his interest in the

⁹ Pessi's actions went beyond the mere threats discussed in *Paige Capital Management, LLC v. Lerner Capital Fund, LLC*, C.A. No. 5502-CS (Del. Ch. Aug. 8, 2011).

EV fund he had worked so hard to build. Fessi breached his fiduciary duties to EV and Soberg.

2. Fessi Breached the Expansive LLC Agreement

Section 9(b) of the LLC Agreement (Ex.106) requires General Partners Soberg and Fessi to make management decisions unanimously. They are 50/50 partners and the Agreement does not specify a way break a tie if there is one. Each of the acts described above, such as draining the accounts and locking Soberg out of the office, were taken unilaterally by Fessi and are breaches of contract. Fessi failed to confer with Soberg about many management decisions in order to further his own interests at the expense of Soberg and EV.

Fessi breached the LLC Agreement and also, by these acts, breached the implied covenant of good faith and fair dealing under Delaware law.¹⁰

3. Fessi shall be Removed from EV for Cause and become a Former Member

¹⁰ 6 Del. C. section 18-1101 (c) states that “the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.”

Fessi has offered the exculpation clause in the contract (section 24) as a defense. However, that clause does not apply to “conduct, actions, or inactions determined by a court. . . (or arbitrator) not to have been undertaken in good faith on behalf of the Company,” as here.

Pursuant to Section 12(b) of the LLC Agreement, Pessi is to be removed as manager and member for cause:

“A Member or Manager. . .shall be automatically removed upon the occurrence of a Cause event. “Cause” means. . .a finding of civil liability in damages. . .by reason of any act or practice involving fraud or breach of trust.”

Following his removal, Pessi shall be a “Former Member” and his interest or capital account balance may be repurchased by the Company pursuant to Section 12 of the LLC Agreement (Ex. 106).¹¹

Pessi is liable for a breach of trust and a breach of his fiduciary duties by his actions set forth above, including cutting off salaries and health benefits, misappropriating funds and draining the EV account, and preventing Soberg’s access to EV offices and computer systems.

4. Pessi Is Not Entitled to Indemnity for Legal Fees and Costs

The LLC Agreement provides that indemnity *“shall not extend to conduct or inaction not undertaken in good faith on behalf of the Company. . . .”*

¹¹ After issuance of this Award, counsel for Respondent filed a timely Motion for Correction pursuant to JAMS Rule 24(j). Counsel for Claimant filed a timely response. Because the amount of Respondent’s capital account originally included in the Award may be a computational error, that amount is deleted from the award and the parties are instructed to follow the contractual procedure for determining the correct figure.

In view of the findings set forth in this Final Award, Pessi must return money that was advanced for his legal fees and costs to EV totalling \$140,712.40.¹²

5. Soberg Shall Manage EV Going Forward

Soberg has been managing the Fund since October 2015 and shall continue to do so, operating in the best interests of the LP's as is his duty. Soberg has agreed to forgo management fees for this work but will be entitled to the carry on the remaining investments in the Fund pursuant to the terms of the contract. Further, the approximately \$5.5 million that was just paid to EV from the Honest Dollar investment is in the SVB and is to be distributed to the LP's pursuant to the process set forth in the contracts.

6. Pessi is Liable for Damage to Soberg's Reputation

Pessi has done great damage Soberg's reputation, including demeaning him in communications to the LP's and portfolio companies and demoting him on the EV website. But Pessi's greatest damage to Soberg's reputation was causing the failure of the EV fund. Pessi's deliberate actions--refusing to make any further capital calls,

¹² Counsel submitted figures for amounts advanced for Pessi's fees and costs and are in agreement that this amount is \$140,712.40.

refusing to make additional investments in new deals, and emptying the accounts—were aimed at shutting down EV.

In his script, Pessi discussed the reputational damage he had caused, stating that “Expansive Ventures will be a failure in the eyes of some of the most important entrepreneurs, investors and billionaires worldwide. We will be a failure no matter how well the portfolio does.” Pessi continues threatening that, if Soberg would not sign the unfavorable terms set forth in the separation agreement presented on October 5, 2015, he would be “part of the highly visible failure that will impact [his] career.” But these were not only threats; by this time, the damage already had been done. While it would have been possible for Pessi to agree to wrap up this fund and avoid this damage, he refused to do so.

The law allows “broad discretion” in determining the amount of such damages. *Grossman v. Goemans*, 631 F. Supp. 972 (D.D.C. 1986). Expert Mr. O’Connor estimated the amount at \$5,000,000 to \$10,000,000, or \$1,000,000 per year for 5-10 years. While that amount may be excessive, the amount of \$1,000,000 is reasonable under these circumstances.

IV. DAMAGES

Soberg has claimed four kinds of damages: lost income from management fees, lost carried interest opportunity, damage to reputation, and punitive damages.

1. Lost Income from Management Fees

This claim is granted. Fessi is to pay Soberg \$2,500,000 in fees. Soberg's claim for \$3,000,000 in fees is reduced to reflect the uncertainties of the EV budget for salaries and expenses.

2. Lost Carried Interest

This claim is denied as speculative. However, Fessi is to be removed as a General Partner and Soberg is entitled to the entire carry going forward.

3. Reputational Damage

This claim is granted. Fessi is to pay Soberg \$1,000,000 in reputational damages.

4. Punitive Damages

This claim is denied. No punitive damages are awarded.

V. AWARD

For the reasons set forth above, the Arbitrator's Final Award is as follows:

1. Pessi is to pay Soberg \$2,500,000 to compensate him for the loss of management fees.
2. Soberg's claim for lost carried interest is denied as speculative.
3. Pessi is to be removed as a General Partner of EV. EV is to repay his capital account balance.
4. The entire carry going forward is awarded to Soberg.
5. Pessi is to pay Soberg \$1,000,000 for damages to Soberg's reputation.

6. Pessi is not entitled to indemnification for legal fees and expenses and is ordered to reimburse EV for the fees and costs advanced in the amount of \$140,712.40.

7. No punitive damages are awarded.

This Final Award is in full and complete settlement and satisfaction of any and all claims submitted in this arbitration and any other claim not specifically addressed herein is deemed denied.

Dated: July 7, 2016

A handwritten signature in cursive script that reads "Zela G. Caiborne".

Zela G. Caiborne, Arbitrator