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Business Litigation Session of Superior Court

**Docket: SUPERIOR COURT**

**CIVIL ACTION**

**NO. 12-1985 BLS2 Consolidated with NO. 13-1772 BLS2**

**Date: October 5, 2017**

**Parties: ELIZABETH BENINATI and JOSEPH MASOTTA, Plaintiffs, Vs. STEVEN BORGHI, et al. Defendants**

**Judge: Janet L. Sanders**

MEMORANDUM OF DECISION AND ORDER REGARDING PROPOSED FORM OF JUDGMENT

On June 30, 2017, this Court determined that defendants Harold Dixon and the Blast entities had violated G.L.c. 93A and were liable for double the amount of compensatory damages that this Court had already awarded to the plaintiff WOW New England on common law claims asserted against Dixon, Blast and defendants Linda and Steven Borghi. In that same decision, this Court agreed with Dixon that Steven Borghi, as a shareholder of WOW New England, should not be able to benefit from that 93A damages award, given his equal culpability in the events giving rise to liability. For that reason, I reduced the amount that WOW was to receive in damages over and above compensatory damages by that percentage of Steven Borghi's membership interest (37.93 percent). In the motion now before me, Dixon asks that I do the same with respect to the attorney's fees that he is required to pay as a result of the 93A violation. He also asks that I exclude from any fee award about \$170,000 in attorney's fees incurred before this litigation began. As this Court already stated following the hearing on these issues, this Court declines to reduce the fee award but does exclude the \$170,000.

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Unlike an award of damages, the amount of attorney's fees that are assessed in connection with a 93A finding does not turn on the defendant's culpability. Rather, the focus of the inquiry is on the reasonableness of the fee request. Any fees that are awarded are not part of the damages but rather a reimbursement of the costs already incurred by the prevailing party—here WOW New England. Thus, if this Court were to reduce the amount that Dixon was required to pay, that would also have the effect of penalizing WOW New England, which has been required to compensate the plaintiff Elizabeth Beninati for her attorney's fees in bring this derivative action out of the damages already awarded to it by this Court. Although it is true that Borghi as a shareholder in WOW would get some benefit from this, the benefit is quite different from the windfall he would receive from sharing in the 93A multiple of damages assessed against Dixon.

As to the \$170,000, this was described in the original fee petition as relating to "extensive settlement discussions" that predated the filing of this action. Following jury waived trial in this matter, this Court had made that part of the fee award to plaintiff when it allowed plaintiff's motion for attorney's fees and costs pursuant to G.L.c. 156 §57. See Memorandum of Decision and order dated December 12, 2014. At that juncture in the case, there was no finding under G.L.c. 93A, this Court having determined that neither Borghi nor Dixon was subject to that statute. The Appeals Court reversed as to Dixon, who is now in a position to contest any fee award made pursuant to 93A. His objection to the \$170,000 is therefore timely.

It is also well founded. This Court is aware of no authority that permits the award of fees incurred before the litigation began and that do not bear directly on its preparation, which

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these fees clearly did not. Accordingly, this amount is exempted from the fees that Dixon is required to pay WOW New England pursuant to G.L.c. 93A.

SO ORDERED.

Janet L. Sanders  
Justice of the Superior Court

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