

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HASSAN KHRIESAT,)	
)	
Plaintiff,)	
)	Judge Joan B. Gottschall
v.)	
)	Case No. 11 C 4286
ALEXANDER YONIS and)	
SASO POPOSKI,)	
)	
Defendants.)	

ORDER ON DEFAULT JUDGMENT

The plaintiff, Hassan Khriesat, filed a complaint against the defendants, Alexander Yonis and Saso Poposki, alleging that the defendants had accepted approximately \$82,853.00 toward the \$189,000.00 purchase price for a limousine bus, but refused to transfer title to the bus to Khriesat as promised. In addition, Khriesat alleged that the defendants forged his signature on a credit application with WestAmerica Bank in order to fraudulently open a merchant credit account, diverted funds from that account for their own use, and retained revenues from renting the bus instead of applying those proceeds toward the purchase price of the bus as the parties had agreed. In his four-count complaint, Khriesat alleged a violation of the Illinois Consumer Fraud Act, breach of contract, fraud, and breach of fiduciary duty. In terms of money damages, he sought judgment against the defendants in the amount of \$82,853.00; punitive damages of at least ten percent of the defendants' net worth; pre- and post-judgment interest on the judgment amount, as well as pre- and post-judgment interest on the loans Khriesat was obliged to pay; and reasonable attorney's fees and costs.

The case proceeded for some time, and the matter was referred to the magistrate judge so that the judge could hold a settlement conference and supervise discovery. The defendants repeatedly failed to appear or to comply with the court's orders, and the magistrate judge sanctioned them accordingly. The sanction fine was never paid, and when the referral was returned to this court, the defendants' counsel sought to withdraw from the case. This court granted the motion, expecting to set a new trial date within thirty days. Instead, the defendants resumed failing to appear, and this court entered a default judgment on August 7, 2012. On September 7, 2012, Khriesat and counsel appeared to prove up Khriesat's damages. Again, the defendants failed to appear. But Khriesat requested damages that, in this court's view, were neither contemplated by the complaint nor supported by adequate caselaw. The court required Khriesat to file a supplemental memorandum of points and authorities along with an affidavit of legal fees. The court now has this document in its possession.

The court notes that when the case was originally set for trial, the parties had filed a pretrial order in which Khriesat expanded the monetary relief he was seeking. It is to this document Khriesat pointed in attempting to prove up his damages. In the pretrial order, Khriesat stated that he was seeking:

- 1) \$89,755.75 in consequential damages from breach of contract, comprising
 - \$57,853.00 as the purchase price for the bus,
 - \$7,500.00 in insurance payments for the bus,
 - \$17,500.00 in revenues generated from bus customers, and
 - \$6,902.75 in prejudgment interest
- 2) \$554,488.00 in damages for breach of fiduciary duty, comprising:
 - \$73,097.60 as a forfeiture of "all compensation" the defendants were paid while they were in breach of their duty to Khriesat,
 - \$189,000.00 as the total value of the bus, and
 - \$292,390.40 in Khriesat's lost revenue from October 2010 until the present (calculated as multiplying by four the "all compensation" figure)

- 3) \$480,000.00 in damages for fraud, comprising:
 - \$80,000.00 in deposits to bank accounts from credit card and other revenues, and
 - \$400,000.00 in punitive damages
- 4) \$480,000.00 in damages for violating the Consumer Fraud Act, comprising:
 - \$80,000.00 in deposits to bank accounts from credit card and other revenues, and
 - \$400,000.00 in punitive damages

Khriesat also mentioned that he would be seeking unspecified attorney's fees.

At the prove up hearing, Khriesat verified his complaint under oath. Khriesat further testified that he calculated he lost at least \$100,000.00 per year in gross revenue as a result of the defendants' acts. He had personal knowledge as to these damages because he had actually operated the bus from May or June 2010 to October 2010, during which time he generated approximately \$62,000.00 in income. He argued that he was entitled to consequential damages because he was unable to obtain a personal credit card (and therefore purchase another bus) due to the defendants' destruction of his credit score. He also testified as to the existence of fraudulent credit applications with Redwood Merchant Services and with the American Express Company.

The court stated that it agreed Khriesat was entitled to two years of compensatory damages, as well as the amount paid toward the purchase price of the bus. The court expressed concerns, however, as to whether Khriesat should be awarded (1) the total purchase price of the bus (\$189,000.00), (2) the money in the merchant accounts fraudulently opened up under Khriesat's name (\$80,000.00), and (3) Khriesat's future lost earnings. The court also required counsel to file a statement of his reasonable attorney's fees and costs.

In the points and authorities memorandum, Khriesat has reformulated his damage request yet again. He now asks for \$82,165.00 in actual damages relating to payment

toward the purchase price of the bus (he fails to mention prejudgment interest); punitive damages of five times that amount; \$72,165.00 for breach of fiduciary duty based on the entire amounts deposited by the defendants in the two merchant accounts, including \$50,000.00 in the American Express merchant account and \$22,175.00 that had been deposited in the Redwood Merchant account in June 2010; \$282,853.00 in lost profits, which appears to not only to include the \$200,000.00 per year in lost profits, but also to double-count the amount tendered toward the purchase price of the bus; and the \$189,000.00 full price of the bus. For good measure, he has thrown in a \$10,000 request for emotional distress as a result of his damaged credit score, and he wants turnover of all monies in the Redwood Merchant Services account. Finally, Khriesat seeks attorney's fees and costs in the amount of \$48,551.67.

Khriesat has not provided support for his claim that he is entitled to the entire purchase price of the bus, nor has he provided any support for the idea that he should be awarded further lost profits, and so those damages will not be awarded. In an order dated April 24, 2012, Khriesat's counsel was previously warned by Magistrate Judge Cole that his unsupported motion for a default, which contained no supporting authority or legal analysis, was inadequate, and this court likewise put Khriesat on notice that these particular issues required additional support. The court will not strive to prove Khriesat's case for him. Similarly, Khriesat is not entitled to recover under his new theory of "emotional distress." Not only is this cause of action not contemplated in the complaint, but the \$10,000.00 figure appears to have been pulled from thin air.

With respect to the disgorgement of any amounts that were processed through the merchant credit accounts opened in Khriesat's name at Redwood Merchant or American

Express, Khriesat has cited caselaw to support his claim to such damages. *See In re Edgewater Med. Cntr.*, 344 B.R. 864, 867 (Bankr. N.D. Ill. 2006) (breach of fiduciary duty claims based on the same operative facts as contractual agreements are not duplicative of the contract claims and may support forfeiture or disgorgement remedies). Khriesat testified under oath that \$50,000.00 was in the American Express account at one point, and that at least \$22,175.00 was processed through the fraudulent Redwood Merchant account in a single month. The court will award these damages, and orders turnover of any funds remaining in these two accounts.

Finally, with respect to Khriesat's request for punitive damages relating to the defendants' fraudulent conduct, the court notes that although punitive damages may be awarded, *see Merrill Lynch Mortg. Corp. v. Narayan*, 908 F.2d 246, 253 (7th Cir. 1990) (punitive damages may be appropriate in a default judgment) *and Tully v. McLean*, 948 N.E.2d 714, 729 (Ill. App. Ct. 2011) (punitive damages are available as a matter of law for breach of fiduciary duty), Khriesat has provided no argument to support his claim to entitlement of four or five times his actual damages. The purpose of punitive damages is to deter future wrongs. *See Perez v. Z Frank Oldsmobile, Inc.*, 223 F.3d 617, 621 (7th Cir. 2000) (further noting that to provide optimal deterrence, the damages equal the harm done by the wrong, divided by the probability of detecting the injury and prosecuting the claim). Khriesat has introduced no evidence as to the total amount earned by the defendants as a result of their scheme, whether the defendants have sufficient assets to pay any punitive damages award, or whether the defendants have perpetrated this scheme upon others. Nor has Khriesat cited similar cases to provide this court with a reference point. *See Tully*, 948 N.E.2d at 735-36 (noting that "the best way to determine whether [a

punitive damages award] is appropriate is to compare it to punitive damages awards in other, similar cases,” and further noting that an award greater than four times the amount of compensatory damages is “close to the line”) (internal quotation marks and citations omitted). The court declines to award punitive damages that are “close to the line” on this record. Instead, the court will award punitive damages equal to twice the amount of the compensatory damages awarded by the court.

In sum, the court awards to Khriesat:

- \$57,853.00 as the purchase price for the bus,
- \$7,500.00 in insurance payments for the bus,
- \$17,500.00 in revenues generated from bus customers while Khriesat was operating the bus (which funds were to be applied toward the purchase price of the bus),
- \$72,175.00 as forfeiture from the fraudulently obtained American Express and Redwood Merchant credit accounts, and
- \$248,000.00 as lost profits, representing the time period from October 2010 until the present (assuming roughly \$62,000.00 would have been earned per six-month period, as Khriesat established at the prove up hearing)

for a total award of \$403,028.00. Khriesat is also awarded \$806,056.00 in punitive damages. In addition, the court orders the turnover of approximately \$5,000.00 or \$6,000.00 remaining in those American Express or Redwood Merchant Services bank accounts that were fraudulently opened under Khriesat’s name. The court does not award the full purchase price of the bus, any future lost profits, any damages for emotional distress, or any punitive damages.

With respect to Khriesat’s attorney fees, the court has analyzed the billing statements provided by counsel to establish his claim to \$46,551.67 in fees. The court notes that the entries are reasonably detailed, clearly relate to Khriesat’s case, and do not indicate excessive time being spent on undeserving tasks. The court subtracts the \$600 in costs that counsel paid for deposition transcripts, as the amount that can be paid for

