

**IN THE COURT OF COMMON PLEAS OF PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

MARLA J. WELKER,	:	September Term 2003
Plaintiff,	:	
v.	:	No. 4221
SAMUEL MYCHACK, PATRICK	:	
G. GECKLE, SAMUEL MYCHAK,	:	COMMERCE PROGRAM
P.C. trading as MYCHAK, GECKLE:	:	
& WELKER, P.C., and MYCHAK	:	
& GECKLE, LLC.,	:	
Defendants.	:	

FINDING

AND NOW, this 12TH day of September, 2006, the Court finds as follows:

- 1) With respect to Plaintiff Marla J. Welker's claim against Defendant Mychak, P.C. for breach of contract, the Court finds in favor of Defendant Mychak, P.C. and against Plaintiff Marla J. Welker;
- 2) With respect to Plaintiff Marla J. Welker's claim against Defendant Mychak, P.C. for violation of the Wage Payment and Collection Law, the Court finds in favor of Defendant Mychak, P.C. and against Plaintiff Marla J. Welker;
- 3) With respect to Defendant Mychak, P.C.'s counterclaim against Plaintiff Marla J. Welker for tortious interference with contract, the Court finds in favor of Defendant Mychak, P.C. and against Plaintiff Marla J. Welker in the amount of \$49,424.61;
- 4) With respect to Defendant Mychak, P.C.'s counterclaim against Plaintiff Marla J. Welker for declaratory judgment, the Court finds in favor of Defendant Mychak, P.C. and against Plaintiff Marla J. Welker. The Court declares as follows: Welker was an employee of Mychak, P.C.; any contractual relationships with the clients while Welker was employed by Mychak, P.C. belonged to Mychak, P.C. and not Welker; and all right, title and interest in

the referral fees for matters referred by Mychak, P.C. and any of its attorneys prior to August 31, 2003 are the property of Mychak, P.C. and not Welker.

- 5) With respect to Defendant Patrick G. Geckle's counterclaim against Plaintiff Marla J. Welker for tortious interference with prospective contractual relations, the Court denies Welker's motion for nonsuit and finds in favor of Plaintiff Marla J. Welker and against Defendant Patrick G. Geckle;
- 6) With respect to Defendant Mychak, P.C.'s claim against Defendants David Perry, Esquire, Sherryl Perry, Esquire, and Perry, Fialkowski and Perry ("the Perrys") for breach of contract and conversion, the Court finds in favor of the Perrys and against Mychak, P.C.
- 7) The Perrys are entitled to costs pursuant to Pa. R.C.P. 2307(b) and attorney's fees pursuant to 42 Pa.C.S.A. § 2503(4).

BY THE COURT,

HOWLAND W. ABRAMSON, J.

**IN THE COURT OF COMMON PLEAS OF PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

MARLA J. WELKER,	:	September Term 2003
Plaintiff,	:	
v.	:	No. 4221
SAMUEL MYCHACK, PATRICK	:	
G. GECKLE, SAMUEL MYCHAK,	:	COMMERCE PROGRAM
P.C. trading as MYCHAK, GECKLE:	:	
& WELKER, P.C., and MYCHAK	:	
& GECKLE, LLC.,	:	
Defendants.	:	

Section I: The Claims Involving Welker and Mychak and Mychak. P.C.

FINDINGS OF FACT

A. Background

1. Plaintiff, Marla J. Welker, Esquire, (“Welker”) is an attorney licensed to practice law in the Commonwealth of Pennsylvania. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 1).
2. Welker was employed by the firm of Samuel Mychak, P.C. (“the Firm”) from 1984 to August 30, 2003. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 2, 72).
3. The Firm is a professional corporation in which Samuel Mychak, Esquire was the sole shareholder. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 3).
4. At various times, Samuel Mychak, P.C. engaged in the practice of law under various designations including the fictitious names of Mychak, Geckle & Welker and Mychak, Geckle & Welker, P.C.

5. Throughout Welker's employment with the Firm, Welker was an employee and received compensation in the form of wages recorded on IRS W-2 Forms. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 63, 65).

B. Compensation

6. From January 1, 2000 to August 2003, Welker's compensation was based upon the following formula: 6% of the first million dollars of gross revenues of the Firm, 10% of the next \$400,000 of gross revenues; and 15% of all gross revenues in excess of \$1,400,000.00. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶¶ 79, 105).

7. Welker received a \$10,000 per month draw against her ultimate compensation referenced above. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 108).

8. At no time was Welker's compensation related to the work she actually performed. (N.T. 12/13/05 p.46- 47).

9. Welker's compensation was calculated on a formula based on the gross fees actually received by the Firm in a calendar year. (N.T. 12/7/05 p. 60).

10. Welker was only entitled to compensation if she was employed when a fee was actually deposited into the Firm's account. (N.T. 12/13/05 p. 65-66).

11. In 2001, the Firm's gross revenue for purposes of calculating Welker's compensation was \$1,777,107.00. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶113).

12. Welker was entitled to \$156,566.00 as compensation based solely on the gross revenue of the Firm in 2001. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶116).
13. On March 2, 2002 Welker received \$14,050.00 as part of her compensation based upon the gross revenues of the Firm for the year 2001. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶114).
14. On May 2, 2002, Welker received \$14,050.00 as part of her compensation based upon the gross revenues of the Firm for the year 2001. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 115).
15. In 2002, the Firm's gross revenue was \$2,551,303.00. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 117).
16. In the year 2002, Welker received \$120,000.00 in monthly draws. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 118).
17. For 2002, Welker was entitled to compensation in the amount of \$272,695.00 based solely on the 2002 gross revenues of the Firm. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶119).
18. In February 2003, Welker was paid \$23,000.00 towards her compensation relative to the 2002 revenues. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 120).
19. On July 3, 2003, Welker was paid \$104,435 towards the compensation due to her based on the 2002 revenue. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 121).

20. In 2003, Welker took a draw for the year 2003 in the amount of \$80,769.50. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 124).

21. In 2003, the Firm's gross revenue was \$1,055,555.00. (Welker "1"; N.T. 12/7/05 p. 17).

22. Welker was entitled to compensation in the amount of \$65,555.50 based solely on the 2003 gross revenues of the Firm. (Mychak Exhibit "11").

C. Sale of the Firm

23. In late 2002 and early 2003, Mychak discussed with Welker and another employee, Patrick Geckle ("Geckle"), his intention to retire and his desire to sell his interest or assets in the Firm to them. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶¶ 5, 103).

24. From January 2003 to August 2003, Plaintiff, Mychak and Geckle entered into negotiations regarding acquiring certain assets of the Firm from Mychak and/or the Firm. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 6).

25. In these negotiations the Firm and Mr. Mychak were represented by John Leonard, Esquire. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 7).

26. Leonard drafted and revised numerous versions of an asset purchase agreement for review and comment by Geckle and Welker. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 8).

27. It was agreed by Geckle and Welker that the Firm would withhold \$20,000.00 from their 2003 bonuses during the negotiations of the Asset Purchase Agreement. (N.T. 12/13/05 p. 105).

28. Welker was an active participant in the negotiations and raised a number of issues of concern to her, requested explanations of terms in the proposed agreement that she felt required clarification and made personal interlineations on the draft agreements to record her concerns and proposed interpretations of the agreement. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 9; Mychak Exhibits “24”-“27”).
29. During the negotiations, Welker requested that she be given some consideration for an interest in the MCARE funds that had not yet been received even though she was not entitled to a share of those funds. (N.T. 12/13/05 p. 95-97).
30. Welker made the request since she thought it was fair for Mychak to pay some of the fees to her. (N.T. 12/13/05 p. 109).
31. As a counteroffer, Mychak proposed paying Geckle and Mychak each the sum of \$75,000.00 to help them succeed in their new business. (N.T. 12/14/05 p. 12, 38, 39; Mychak Exhibits “25”, “27”).
32. In mid August 2003, Welker rejected the last proposal from Mychak and Mychak terminated the negotiations. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 10)
33. At the end of August 2003, Mychak sold certain of the Firm’s assets to Geckle. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 11).
34. The terms of the Agreement between the Firm and Geckle were not acceptable to Welker. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 12).

D. Referred Cases

35. Prior to the cessation of business, the Firm, through its representatives, referred a number of personal injury cases to other counsel in exchange for a referral fee calculated as a percentage of any recovery in the case. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 13).
36. Once the matters were accepted by referral counsel, the attorneys associated with the Firm, including Welker, did not perform work on the case. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶¶ 14-21).
37. Welker is not a party to any of the referral agreements between the Firm and referral counsel that were secured during the period of her employment with the Firm. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 69).
38. The Firm referred the medical malpractice matters of Granville v. St. Mary's Medical Center, et. al., Keim v. Polyclinic Hospital, Byrne v. Pocono Medical Center, et. al., Lindenmuth v. Geisinger Health Systems, et. al., Marie Worthington, Shurgalla v. Bobek, M.D., et. al., Kedzierski v. Joseph, M.D. and Metzler v. Penn State Geisinger Health System, et. al. to the law firm of Perry, Fialkowski & Perry. (Stipulated Facts of the Plaintiff Welker and Mychak and Mychak P.C. ¶¶22-29).
39. The Firm referred the medical malpractice matter of Joseph L. Kelly and Joanna Kelly v. Kimmel, et. al. to the firm of Kline & Specter, P. C. (Stipulated Facts of the Plaintiff Welker and Mychak and Mychak P.C. ¶ 30).
40. The Firm referred the medical malpractice matter of Volz v. Spratt Turner, D.O., et. al. to the firm of Feldman, Shepard, Wohleglemter & Tanner. (Stipulated Facts of the Plaintiff Welker and Mychak and Mychak P.C. ¶ 31).

41. Any medical malpractice fees from referred cases belonged to Samuel Mychak, P.C. (Mychak Exhibit “26”).
42. Under the MCARE Act, the settlement proceeds of any medical malpractice case that is fully and finally resolved prior to August 31 of a claim year will be paid after December 31 of that year.
43. Prior to August 31, 2003, the Granville matter settled and the Firm was awaiting receipt of a referral fee in the amount of \$658, 572.72 and cost reimbursement in the amount of \$698.24. (Stipulated Facts of the Plaintiff Welker and Mychak and Mychak P.C. ¶¶ 34-35).
44. The Firm did not receive any of the proceeds of the Granville referral fee in the calendar year 2003. The Granville fee was recognized as income by the Firm when the cash was actually paid to and received by the Bank. (N.T. 12/7/05 p. 120).
45. Upon receipt of the confirmation that the Granville matter settled and that the Firm was entitled to a referral fee, by agreement dated June 19, 2003, Samuel Mychak and the Firm assigned the proceeds of the settlement to The Bank as security for a loan. (Stipulated Facts of the Plaintiff Welker and Mychak and Mychak P.C. ¶ 40).
46. Welker was aware that the settlement proceeds from the Granville matter had been assigned to The Bank and that the Perry firm was a party to the assignment. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 38, 39).
47. In addition to the Granville matter, the matters of Keim, Byrne, Lindenmuth, Worthington, Kedzierski, Metzler and Kelly also settled. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 41, 43, 45, 47, 48).

48. Ms. Welker ceased her employment with the Firm on or about August 31, 2003.

(Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 56; Mychak Exhibits “53”, “54”).

49. On September 3, 2003, Welker forwarded a letter to referral counsel advising that she was no longer employed by the Firm, that she was a partner and that she had an interest in the referral fees. (Mychak Exhibits “52”, “53”, “60”).

50. Upon receipt of the letter, referral counsel deferred payment of the referral fees and placed same in escrow pending the resolution of Welker’s claim. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 57).

E. Procedural Background

51. In September 2003, Welker filed a multi-count complaint against Samuel Mychak and Samuel Mychak, P.C. doing business as Mychak, Geckle & Welker, P.C. alleging tortious infringement of the right of publicity, breach of contract, violation of the Pennsylvania Wage Payment and Collection Law (“WPCL”), breach of fiduciary duty, fraudulent misrepresentation, negligent misrepresentation, promissory estoppel, tortious interference with prospective contractual relations, conversion, unjust enrichment and *quantum meruit*. The complaint also requested the imposition of a constructive trust, an accounting, injunction and punitive relief.

52. Defendant Samuel Mychak and Samuel Mychak, P.C. filed a counterclaim alleging, breach of contract, tortious interference with contractual relationships, fraud and misrepresentation and sought an accounting, the imposition of a constructive trust, punitive damages and a declaratory judgment.

53. On November 22, 2004, the Court granted Mychak's Partial Motion for Summary Judgment dismissing the following claims: tortious infringement for the right to publicity, breach of contract against Samuel Mychak only, breach of fiduciary duty, promissory estoppel, tortious interference with prospective and contractual relations, conversion, unjust enrichment/*quantum meruit*, constructive trust, accounting and punitive damages.
54. The following claims remained to be tried: breach of contract against Mychak, Geckle & Welker P.C., violation of WPCL, fraudulent misrepresentation and negligent misrepresentation.
55. On December 30, 2004, after holding the assigned referral fees in escrow for one year the Perry firm paid the entirety of the Granville referral fee to The Bank pursuant to the Assignment of Moneys Due Under Contract. (Stipulated Facts of Plaintiff Welker and Defendants Mychak and Mychak, P.C. ¶ 83).
56. The total sum paid to The Bank was \$669,173.29, representing the referral fee of \$658,572.72, reimbursement of costs of \$698.24 and accrued interest of \$9,902.23. (Ibid).
57. On March 28, 2004, this instant matter was consolidated with Mychak v. Perry, January 2005 No. 0442.
58. From December 7 to December 13, 2005, the case was tried before the Honorable Howland W. Abramson, J.
59. During the trial, the Court entered a nonsuit as to Welker's claims for negligent misrepresentation and fraud. (N.T. 12/13/05 p. 27).
60. The Court granted Welker permission to amend her complaint to redefine her contract claim based on a failure to pay \$75,000.00. (N.T. 12/13/05 p. 26).

61. A voluntary nonsuit was entered by the Court with respect to Mychak's claim for an accounting and constructive trust.
62. At the conclusion of the trial, the parties were directed to submit Proposed Findings of Fact and Conclusions of Law.
63. Despite the Court's direction, Welker did not submit Proposed Findings of Fact and Conclusions of Law.
64. On April 11, 2006, after argument and the consideration of evidence presented at a hearing, the Court ordered that the immediate release of \$1,100,000.00 from escrow to be paid to Samuel Mychak P.C.
65. On April 21, 2006, based on Welker's failure to submit proposed findings of fact and conclusions of law or to obtain an extension to do so, the Court entered an order stating it would no longer accept same and that all issues that could be premised upon their submission and review by the Court are waived.

CONCLUSIONS OF LAW

I. Plaintiff's Causes of Action

A. Breach of Contract

1. Welker alleges that Mychak entered into a stand alone agreement to pay Welker \$75,000.00.
2. Welker failed to produce evidence to support the existence of an agreement between the parties.
3. In order to form a contract, there must be an agreement on the essential terms of the contract, offer, acceptance, and consideration or mutual meeting of the minds. Jenkins v.

County Schuylkill, 441 Pa. Super. 642, 648, 658 A.2d 380, 383 (1995), allocatur denied, 542 Pa. 647, 666 A.2d 1056 (1995).

4. The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties with the capacity to contract... "If the parties agree upon essential terms and intend them to be binding, 'a contract is formed even though they intend to adopt a formal document with additional terms at a later date.'" Commonwealth v. On-Point Tech. Sys., 821 A.2d 641, 647 (Pa. Commw. 2003).
5. There is no evidence of a written agreement between Mychak and Welker regarding the payment of \$75,000.00.
6. The testimony demonstrates that Mychak offered to pay Geckle and Welker the sum of \$75,000 during the negotiations for the sale of the Firm's assets to Welker and Geckle. (N.T. 12/13/05 p. 103, 12/14/05 p. 12, 38, 39; N.T. 12/7/05 N.T. p. 101).
7. Welker did not accept Mychak's proposal.
8. Failed negotiations do not result in an enforceable contract.
9. The negotiations between Welker, Geckle and Mychak terminated without a binding contract.
10. MG&W is entitled to judgment in its favor on the breach of contract claim.

B. Violation of the Pennsylvania Wage Payment and Collection Law

11. The Wage Payment and Collection Law provides employees a statutory remedy to recover wages and other benefits that are contractually due to them. Oberneder v. Link Computer Corp., 548 Pa. 201, 204, 696 A.2d 148 (Pa. 1997).
12. The WPCL states that "where wages remain unpaid for thirty days beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is applicable, for

sixty days beyond the filing by the employee of a proper claim or for sixty days beyond the date of the agreement, award or other act making wages payable, or where the gross wages payable on any two regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of any wage claim including the good faith assertion of a right of setoff or counter-claim exists accounting for such non-payment, the employee shall be entitled to claim, in addition, as liquidated damages an amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars (\$ 500), whichever is greater." 43 Pa. Cons. Stat. § 260.10.

13. Welker was paid pursuant to an oral compensation agreement whereby she was entitled to 6% of the first million dollars of gross revenues of the Firm, 10% of the next four hundred thousand dollars of gross revenues of the Firm and 15% of any gross revenues exceeding one million four hundred thousand dollars of the Firm.
14. The amount payable was not dependent upon the work performed on any particular case.
15. Welker's compensation was based on the gross receipts of the Firm in the previous calendar year.
16. The Firm utilized the cash accounting method.
17. For 2001, Welker was owed \$8,466.00.
18. For 2002, Welker was owed \$25,260.00.
19. In October 2003, Mychak was paid \$20,000.00, which represented a portion of her 2002 bonus withheld by Mychak during the negotiations for the sale of the Firm. (Mychak Exhibit "10").
20. The Granville fee was received in January 2004 and was recognized as income in 2004 not 2003.

21. Welker's employment with the Firm terminated on August 31, 2003.
22. Welker did not have any entitlement to the Granville fee since she was not employed by the Firm at the time the fee was received.
23. Welker did not have any entitlement to fees generated from any medical malpractice cases referred to outside counsel which were settled prior to August 2003 and the fee recognized in 2004 since she was not employed by the Firm at the time the fee was recognized as income.
24. In 2003, Welker was overpaid \$15,215.00. The overpayment was not returned to Mychak.
25. Mychak owed Welker the sum of \$13,926.00 for the deficiencies in 2001 and 2002.
26. The overpayment in 2003 cures the deficiencies that existed in 2001 and 2002.
27. Course of performance is a sequence of conduct between the parties subsequent to formation of the contract during performance of the terms of the contract. J.W.S. Delavau v. E. Am. Transp. & Warehousing, 810 A.2d 672, 683-684 (Pa. Super. 2002).
28. Application of the overpayment to cure the deficiencies in wages is consistent with Mychak's course of performance in paying bonuses since no specific time period for payment existed.
29. Welker is not owed any wages under the compensation formula and therefore Mychak has not violated the Wage Payment and Collection Law.

Defendants' Counterclaim

A. Tortious Interference with Contract

1. The elements of a cause of action for interference with contractual relations are as follows: (1) the existence of a contractual relation between the complainant and a third

party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct. Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 644 A.2d 188, 191 (Pa. Super. 1994); Strickland v. Univ. of Scranton, 700 A.2d 979 (Pa. Super. 1997).

2. Ms. Welker is not a party to any of the referral agreements between the Firm and referral counsel that were secured during the period of her employment with the Firm.
3. By letters dated September 3, 2003, Welker intended that referral fees generated in matters referred by the Firm to referral counsel be withheld from the Firm.
4. Welker's letter dated September 3, 2003 to referral counsel constituted purposeful action intended to harm the existing relation between Mychak and referral counsel.
5. Welker was not justified or privileged in sending the letters.
6. As a result of Welker's letter, referral counsel placed the referral fees due and owing into an escrow account which caused Mychak to suffer damages since he was deprived of the use of said fees.
7. Mychak suffered damages in the amount of \$49,424.61.
8. Mychak was unable to pay the Firm's 941 tax liability for August 2003 and was assessed \$19,770.71 in interest and penalty for the failure to pay. (Mychak Exhibit "68"; Mychak Exhibit "74").¹

¹ Mychak testified that in September 2004 a portion of the Kelly settlement funds were due and he was going to use these funds to pay the tax. (N.T. 12/14/05 p. 175). Since the funds were placed in escrow as a result of Welker's letter, the Firm was assessed interest and penalties on the tax due. Accordingly, the interest and penalty is the damage caused by Welker's interference.

9. Mychak was also assessed interest and penalty as a result of his failure repay the loan to The Bank secured by the Granville funds in January 2004 in the amount of \$29,653.92. (Mychak Exhibit “68”; Mychak Exhibit “67”).²
10. The standard under which punitive damages are measured in Pennsylvania requires analysis of the following factors: (1) the character of the act; (2) the nature and extent of the harm; and (3) the wealth of the defendant. See Reading Radio, Inc. v. Fink, 2003 Pa. Super. 353, P43, 833 A.2d 199, 214 (2003). The Court will not award punitive damages because there is no evidence regarding the wealth of Welker as a means of determining what would constitute punishment or deterrence. See Hillier v. M.I.S.I. LP, 2006 Phila. Ct. Com. Pl. LEXIS 71 (Phila. Com. Pl. LEXIS 2006).

B. Declaratory Judgment

1. Welker was an employee of the Firm.
2. Any contractual relationships with the clients while Welker was employed by the Firm belonged to the Firm and not Welker.
3. The Court declares that all right, title and interest in the referral fees for matters referred by the Firm and any of its attorneys prior to August 31, 2003 are the property of the Firm and not Welker.
4. The Court finds in favor of Defendants and against Welker on Defendants’ counterclaims.

² Mychak is not entitled to recover the interest on the Verizon bills since Mychak failed to mitigate his damages by asking Geckle to pay. (N.T. 12/14/05 p. 154).

Section II: Geckle's Counterclaim Against Welker

FINDINGS OF FACT

1. Welker was an employee of Samuel Mychak, P.C. (Stipulated Facts of Welker and Geckle ¶ 1).
2. Welker's employment with Samuel Mychak, P.C. terminated on or about September 1, 2003. (Stipulated Facts of Welker and Geckle ¶ 2).
3. Welker never worked for Patrick G. Geckle, LLC (Stipulated Facts of Welker and Geckle ¶ 3).
4. On August 30, 2003, Mychak and Geckle executed an Asset Purchase Agreement whereby Geckle purchased certain assets of the law firm of Samuel Mychak, P.C. (Stipulated Facts of Welker and Geckle at ¶ 4).
5. On August 30, 2003, Mychak and Geckle sent a letter to all of the clients of Samuel Mychak, P.C. informing them that Mychak was retiring and that he was referring their cases to Geckle. (Stipulated Facts of Welker and Geckle ¶ 5).
6. Mychak referred approximately four hundred (400) cases that were clients of Samuel Mychak, P.C. to Geckle. (N.T. 12/15/05 p. 141).
7. On September 1, 2003, Geckle called Welker and informed her that he had purchased certain assets of the law firm of Samuel Mychak, P.C. (the "Firm") (Stipulated Facts of Welker and Geckle ¶ 6).
8. Geckle's law firm was a new law firm, not a legal successor to Samuel Mychak, P.C. (N.T. 12/15/05 p. 188; Geckle Exhibit "3").
9. Welker started her own law firm on or around September 2, 2003 or September 3, 2003 (N.T. 12/15/05 p. 60, p. 110-111).

10. Prior to the sale of Samuel Mychak, P.C., Welker had no contractual relationships with clients of the law firm of Samuel Mychak, P.C. (Stipulated Facts of Welker and Geckle ¶ 7).
11. Prior to the sale of Samuel Mychak, P.C., Geckle had no contractual relationships with the clients of the law firm of Samuel Mychak, P.C.
12. Subsequent to August 30, 2003, Welker contacted approximately forty-nine (49) former clients of the firm Samuel Mychak, P.C. (Stipulated Facts of Welker and Geckle ¶ 12).
13. The clients that Welker contacted were clients that Welker previously represented at Mychak, Geckle & Welker, P.C. (N.T. 12/15/06 p. 58, p. 114, p. 117-118). Welker had built strong relationships and developed close bonds with many of these clients. (N.T. 12/5/05 p. 60-61, p. 126, p. 130-131).
14. Subsequent to August 30, 2003, Welker sent letters to numerous former clients of the law firm of Samuel Mychak, P.C. (Stipulated Facts of Welker and Geckle ¶ 10). The letters informed the former clients that that they had three choices in choosing who would continue handling their cases: 1) they could choose a new and different law firm; 2) they could choose Geckle; or 3) they could choose Welker. (Geckle Exhibit “1”).
15. The only remaining claim at trial between Geckle and Welker was Geckle’s counterclaim for tortious interference with prospective contractual relations.
16. At trial, Welker moved for nonsuit on Geckle’s counterclaim. (N.T. 12/15/05 p. 205). The Court took this motion under advisement. (N.T. 12/15/05 p. 206).

CONCLUSIONS OF LAW

1. Pennsylvania courts have adopted the Restatement definition of the tort of tortious interference with contractual relations. See Adler, Barish, Daniels, Levin & Creskoff v.

Epstein, 482 Pa. 416, 431, 393 A.2d 1175, 1183 (1978); see also Joseph D. Shein, P.C. v. Myers, 394 Pa. Super. 549, 555, 576 A.2d 985, 988 (1990).

2. The elements of a cause of action for intentional interference with a contractual relation, whether existing or prospective, are as follows: (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct. Strickland v. University of Scranton, 700 A.2d 979, 985 (Pa. Super. 1997).
3. Pennsylvania law permits an intentional interference action based on both existing and prospective contractual relationships. Glenn v. Point Park College, 441 Pa. 474, 477-78, 272 A.2d 895, 897 (1971).
4. A prospective contractual relation is “something less than a contractual right, something more than a mere hope,” although the term admittedly “has an evasive quality, eluding precise definition.” Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 209, 412 A.2d 466, 471 (1979).
5. Although a prospective contractual relation is not based on a certain contractual right, it must be grounded in the *reasonable likelihood or probability* of an enforceable contractual relationship. See Glenn, 441 Pa. at 480, 272 A.2d at 898-99 (emphasis added).
6. A plaintiff may recover for intentional interference with a prospective contractual relation when “but for the wrongful acts of the defendants it is reasonably probable that a contract

would have been entered.” Amico v. Radius Communications, 2001 Phila. Ct. Com. Pl. LEXIS 89, *15-16, Commerce Program (2001), quoting SHV Coal, Inc. v. Continental Grain Co., 376 Pa. Super. 241, 250, 545 A.2d 917, 921 (1988) (citation omitted), rev'd on other grounds, 526 Pa. 489, 587 A.2d 702 (1991).

7. This is an objective standard which must be supplied by adequate proof. See Glenn, 441 Pa. at 481, 272 A.2d at 899.
8. Geckle has not sufficiently proven that, but for Welker's actions, it was reasonably probable that the prospective clients would have chosen him as their attorney.
9. Geckle has not shown that the prospective contracts were anything more than a mere hope.
10. It was more likely that the clients at issue would have chosen Welker as their attorney because she had previously represented them and she had established strong relationships with them. (See Finding of Fact ¶ 13).
11. Welker's motion for nonsuit is denied.
12. The Court finds in favor of Welker and against Geckle on Geckle's counterclaim for tortious interference with prospective contractual relations.

Section III: The Claims Involving Mychak P.C. and the Perrys

FINDINGS OF FACT

1. The Joint Stipulation of Undisputed Facts of Samuel Mychak, P.C., trading as Mychak, Geckle & Welker, P.C. and David Perry, Esq., Sherryl Perry Esq., and Perry, Fialkowski & Perry (“the Perrys”) is incorporated herein by reference. (See Court Exhibit).
2. The members of Mychak, Geckle & Welker, P.C. held themselves out to the public as

being partners. (N.T. 12/13/05 p. 58; N.T. 12/14/05 p. 23; N.T. 12/14/05 p. 187; N.T. 12/15/05 p. 56). The firm held themselves out to the public as partners because Mychak wanted to give Welker and Geckle “prestige in dealing with clients and with other attorneys.” (N.T. 12/14/05 p. 190-191).

3. Mychak referred to Welker as a partner numerous times throughout the years. (Mychak N.T. 12/7/05 p. 91-93).
4. The members of Mychak, Geckle & Welker, P.C. agreed for advertising purposes to publicize their likeness in the Yellow Pages as partners and “hold themselves out that way to the outside world.” (Leonard N.T. 12/13/05 p. 92; Geckle N.T. 12/14/05 p. 187).
5. The firm’s advertisements in the Verizon Yellow Pages listed Welker as a partner of Mychak, Geckle & Welker, P.C. (Mychak N.T. 12/7/05 p. 86-87, p.123; Perry Exhibit “6”). These advertisements were in approximately twenty (20) Yellow Page books and ran for about three or four years. (Mychak N.T. 12/7/05 p. 86-87). Samuel Mychak, P.C. paid for these ads. (Perry N.T. 12/5/05 p. 110; Mychak N.T. 12/7/05 p. 130; Mychak N.T. 12/14/05 p. 114).
6. The Perrys saw these advertisements and these advertisements, *inter alia*, led the Perrys to believe that Welker was a partner of the firm and that “any dealings with the firm that were of significance had to be approved by everybody.” (Perry N.T. 12/5/05 p. 108-110).
7. The firm’s stationary and fee agreements identified the firm as Mychak, Geckle, and Welker, P.C. (N.T. 12/7/05 p. 117-118).
8. At all times, the primary person communicating on behalf of Mychak, Geckle & Welker, P.C. with respect to matters referred to the Perrys was Welker. (Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 4).

9. On September 3, 2003, Abraham C. Reich, Esquire,³ counsel for Welker, sent the Perrys a letter which stated in relevant part:

As you may know, Ms. Welker is a partner of Mychak, Geckle & Welker. A dispute has arisen between Ms. Welker and her partners/firm. Accordingly, we are putting you on notice of this dispute and request that any referral fees which may be due and owing – presently or in the future – to Mychak, Geckle, & Welker (or any successor firm) be placed in escrow until such time as the dispute is resolved. In that regard, your attention is directed to Rule 1.15 of the Rules of Professional Conduct. (Perry Exhibit “21”; Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 60).

10. Welker commenced suit in September 2003. (Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 59).

11. On December 10, 2003, Zachary Grayson, Esquire, new counsel for Welker, sent the Perrys a letter, which reiterated Mr. Reich’s earlier letter:

As per our previous request, please note that ownership of all referral fees is currently in dispute, and we request that all such funds remain in your escrow account pending the resolution of the dispute or interpleaded with the court. (Perry Exhibit “24”).

12. On January 5, 2004, upon receipt of the settlement funds from the MCARE Fund, the Perrys placed all of the disputed referral fees and costs into separate interest-bearing accounts, and informed both Welker and Mychak by letter of this action. (Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 62; N.T. 12/5/05 p. 90-91).

13. There was active litigation going on between Welker and Samuel Mychak and Mychak, Geckle & Welker, P.C., as to the entitlement of the referral fees, when the Perrys

³ The Court takes judicial notice that Abraham C. Reich, Esquire, was formerly the Chancellor of the Philadelphia Bar Association and has chaired its Professional Responsibility and Professional Guidance Committees. He is also a member of the Pennsylvania Bar Association’s Legal Ethics and Professional Responsibility Committee and serves as an expert witness in legal ethics and professional responsibility matters.

deposited the disputed funds into escrow. (N.T. 12/5/05 p. 79, p. 89).

14. The Perrys never claimed any entitlement to any of the fees at issue. (N.T. 12/5/05 p. 104-105).
15. On or around December 30, 2004, the Perrys and Mychak signed a release with regard to the Granville matter. The release stated that Mychak and the law firm of Mychak, Geckle & Welker, P.C. specifically “agreed to release the law firm of Perry, Fialkowski, and Perry...from any and all of their obligations under said Assignment,” and further agreed to “fully give up any and all claims they have against [Perry, Fialkowski, and Perry] with respect to this Assignment.” (Perry Exhibit “39”).
16. After said release was signed, the Perrys paid The Bank the funds relating to the Granville matter on December 30, 2004. (Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 64; N.T. 12/5/05 p. 101-105).
17. The Perrys moved to intervene in this case for the sole purpose of interpleading the funds on December 30, 2004. The Court granted the Perry’s motion and directed the Perrys to deposit all funds at issue with this Court. See Court’s Docket.
18. Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. brought suit against the Perrys in January 2005 for breach of contract and conversion.
19. The Perrys deposited the referral fees into this Court on May 10, 2005. (Stipulated Facts of Samuel Mychak, P.C., trading as Mychak, Geckle and Welker, P.C. and the Perrys ¶ 65).

CONCLUSIONS OF LAW

1. Section 8328 of the Uniform Partnership Act entitled “Partnership by Estoppel” provides,

in pertinent part:

- (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership; and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made. 15 Pa. C.S. § 8328(a).
2. “One may have partnership obligations imposed upon himself by estoppel. This occurs when one holds himself out, or knowingly permits himself to be held out, as a partner in a particular firm.” See Lazarus v. Goodman, 412 Pa. 442, 445, 195 A.2d 90, 91-92 (1963); Import Products Co. Inc. v. Group RL Inc., 40 Pa. D. & C.4th 50, 56 (Del. Cm. Pl. 1998).
3. “Third persons who are misled by such holding out, and act to their detriment have rights against such individual so holding out based upon the doctrine of estoppel.” See In re Ganaposki, 27 F. Supp. 41, 42 (M.D. Pa. 1939).
4. Mychak, Geckle & Welker, P.C held themselves out to the public as partners. (See Findings of Fact ¶¶ 2-7). The Perrys were misled into believing that Welker was a partner of Mychak, Geckle and Welker, P.C. and acted to their detriment by depositing the money into escrow (to wit, they were sued by Samuel Mychak, P.C.).
5. “A lawyer should hold property of others with the care required of a professional fiduciary.” See Comment to Rule of Professional Conduct 1.15.⁴
6. Rule of Professional Conduct 1.15(c) states: “When in connection with a client-lawyer relationship a lawyer is in possession of property in which two or more persons, one of

⁴ The Rules of Professional Conduct govern the conduct of Pennsylvania attorneys.

whom may be the lawyer, claim an interest, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.”

7. Rule of Professional Conduct 1.15(a) “requires that an attorney who comes into possession of property that belongs to third parties, be they clients *or other individuals*, keep such funds in a separate account usually referred to as an ‘escrow account.’” See Philadelphia Bar Association Ethics Opinion 99-2 (May 1999) (emphasis added).⁵
8. An attorney should not “take it upon himself to determine what the entitlements to the escrowed funds are.” See Philadelphia Bar Association Ethics Opinion 99-2 (May 1999).
9. The Perrys complied with R.P.C. 1.15 by placing the disputed funds into interest-bearing escrow accounts. See Philadelphia Bar Association Ethics Opinion 99-2 (May 1999) (finding that an attorney who received a referral from Attorney R who was employed at Law Firm M acted properly when he placed the referral fee in an escrow account when both Attorney R and Law Firm M claimed entitlement to the fee after Attorney R left Law Firm M).
10. The Perrys acted in good faith by placing the disputed funds in escrow.⁶
11. There was a bona fide dispute, i.e. litigation had commenced regarding the entitlement to the referral fees, when the Perrys deposited the funds into escrow.
12. Conversion is “the deprivation of another's right of property in, or use or possession of, a chattel, without the owner's consent and without lawful justification.” Francis J. Bernhardt, III, P.C. v. Needleman, 705 A.2d 875, 878 (1997), citing Shonberger v. Oswell, 365 Pa. Super. 481, 484, 530 A.2d 112, 114 (1987). The defendant’s “intent to

⁵ The Court finds this Ethics Opinion to be instructive on the issues in this case.

⁶ The Court appreciates that the Perrys were stuck between a rock and a hard place. As the Perrys themselves recognized, they would have been sued no matter what they would have done. (Perry N.T. 12/7/05 p. 58).

exercise dominion or control over the goods which is in fact inconsistent with the plaintiff's rights establishes the tort.” Shonberger, 365 Pa. Super. at 485.

13. Referral fees, once they have been received, may be the subject of a conversion.

Bernhardt, 705 A.2d at 879.

14. The Perrys are not liable for conversion of the referral fees because the Perrys were justified in depositing the fees in escrow, given that there was a lawsuit pending regarding entitlement of the fees. Additionally, the Perrys never claimed any entitlement to the fees and did not convert the fees for their own use.

15. Samuel Mychak, P.C.’s claim against the Perrys for damages in the Granville matter is barred by the release that Mychak entered into. (See Finding of Fact ¶ 15).

16. The Court finds in favor of the Perrys and against Samuel Mychak, P.C.

17. The Perrys are entitled to costs pursuant to Pa. R.C.P. 2307(b).⁷ The parties shall simultaneously submit supplemental briefs on the issue of the amount of costs. An Order consistent with this Conclusion of Law will be issued contemporaneously with these Findings of Fact and Conclusions of Law.

18. The Perrys are entitled to attorney’s fees pursuant to 42 Pa.C.S.A. § 2503(4).⁸ The parties shall simultaneously submit supplemental briefs on the issue of the amount of

⁷ Pa. R.C.P. 2307 (Order for Payment, Delivery or Sale of Property. Effect of Compliance Therewith) states: (a) Upon granting a petition for interpleader, the court shall make such order as may be deemed just under the circumstances relating to the payment or delivery into court, or to such person as the court shall direct, of any money or property in controversy disclaimed by the defendant. (b) When the defendant has complied with such order, the court shall enter an order discharging the defendant of all liability to the plaintiff and to any interpleaded claimant who has been served as required by these rules in respect to the money or property so paid or delivered. If the defendant has disclaimed all interest in the action the court in its order shall also discharge the defendant from all liability for any costs accruing after the entry of the order and shall allow the defendant the costs incurred by him or her in the action, to be paid from such money or property in the first instance and taxed as costs in the action.

⁸ 42 Pa.C.S.A. § 2503 (“Right of participants to receive counsel fees”) states, in relevant part: “The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter: (4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.”

attorney's fees. An Order consistent with this Conclusion of Law will be issued contemporaneously with these Findings of Fact and Conclusions of Law.

BY THE COURT:

HOWLAND W. ABRAMSON, J.