

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HECTOR ALCALDE, et al.,

Plaintiffs,

v.

BUCHANAN INGERSOLL &
ROONEY P.C., et al.

Defendants.

LAW NO.: 1:09-cv-01341

DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT

Defendants Buchanan Ingersoll & Rooney PC and Louis H. Diamond (“Defendants”), by and through their undersigned counsel, hereby answer Plaintiffs Hector Alcalde and Kevin J. Fay’s (“Plaintiffs”) Amended Complaint, and state as follows:

ANSWER

Parties

1. Defendants lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 1.
2. Defendants lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2.
3. Defendants admit the allegations contained in the first, third and fourth sentences of Paragraph 3. Defendants further admit that Buchanan Ingersoll PC merged with Silverstein and Mullens, P.L.L.C sometime after January 1, 2000. Defendants further admit that Buchanan Ingersoll & Rooney PC is the successor to the entity that merged with Silverstein & Mullens.

4. Whether Buchanan Ingersoll & Rooney PC “is legally responsible for the professional services and advice provided to [Plaintiffs] by Mr. Diamond” is a legal conclusion to which no response is required. Defendants admit the remaining allegations contained in Paragraph 4.

5. Defendants admit that they represented Plaintiff in connection with the Alcalde & Fay, Ltd. Employee Stock Ownership Plan (the “ESOP”). Defendants deny, as phrased, the remaining allegations contained in Paragraph 5.

6. Paragraph 6 is a legal conclusion to which no response is required.

Jurisdiction and Venue

7. Paragraph 7 is a legal conclusion to which no response is required.

8. Paragraph 8 is a legal conclusion to which no response is required.

9. Paragraph 9 is a legal conclusion to which no response is required.

The A&F ESOP Transactions

10. Defendants admit that they represented Plaintiffs in connection with the ESOP. Defendants deny, as phrased, the remaining allegations contained in Paragraph 10.

11. Defendants admit that Mr. Diamond held himself out as attorney whose practice primarily involved the creation and operation of employee stock ownership plans. Defendants deny, as phrased, the remaining allegations contained in Paragraph 11.

12. Defendants admit that they were retained by Plaintiffs in connection with a series of related transactions. With regard to allegations contained in the subparts of Paragraph 12, Defendants respond as follows:

- a. Defendants admit that they represented Plaintiffs in connection with the establishment and tax qualification of the Alcalde & Fay, Ltd. Employee Stock

Ownership Plan and Employee Stock Ownership Trust. The remaining allegations contained in Paragraph 12(a) are legal conclusions to which no response is required.

- b. Defendants admit that they represented Plaintiffs in connection with their sale of stock to the ESOP. Defendants further answer that the document referenced in Paragraph 12(b) speaks for itself. Defendants deny, as phrased, the remaining allegations contained in Paragraph 12(b).
- c. Defendants admit that they represented Plaintiffs in connection with their sale of stock to the ESOP. Defendants further answer that the document referenced in Paragraph 12(c) speaks for itself.
- d. Defendants admit that they represented Plaintiffs in connection with the tax treatment of their sale of stock to the ESOP. Defendants lack sufficient knowledge or information to admit or deny whether Plaintiffs would have entered into the transaction without receiving favorable tax treatment. The remaining allegations contained in Paragraph 12(d) are legal conclusions to which no response is required.
- e. Defendants admit that they represented Plaintiffs in connection with the tax treatment of their sale of stock to the ESOP. The second, third and fourth sentences of Paragraph 12(e) are legal conclusions to which no responses are required. Defendants deny, as phrased, the remaining allegations contained in Paragraph 12(e).

f. Defendants admit that they represented Plaintiffs in connection with the tax treatment of their sale of stock to the ESOP. Defendants deny, as phrased, the remaining allegations contained in Paragraph 12(f).

g. Defendants admit that they represented Plaintiffs in connection with the tax treatment of their sale of stock to the ESOP. Defendants deny, as phrased, the remaining allegations contained in Paragraph 12(g).

h. Defendants admit that they represented Plaintiffs in connection with the tax treatment of their sale of stock to the ESOP. Defendants deny, as phrased, the remaining allegations contained in Paragraph 12(h).

13. Defendants admit that they represented Plaintiffs in connection with ESOP transactions between 1998 and 2007. Defendants deny, as phrased, the remaining allegations contained in Paragraph 13.

14. Defendants admit that they invoiced Plaintiffs for services related to the ESOP. Defendants deny, as phrased, the remaining allegations contained in Paragraph 14.

The Replacement of Morgan Stanley With Derivium

15. Defendants admit the allegations contained in Paragraph 15.

16. Defendants deny, as phrased, the allegations contained in Paragraph 16.

17. Defendants admit that Mr. Diamond presented the possibility of Plaintiffs entering into a loan transaction with Dervium Capital, LLC, in lieu of the existing margin loan agreement with Morgan Stanley. Defendants lack sufficient knowledge or information to admit or deny whether Plaintiffs had ever heard of Derivium. Defendants deny, as phrased, the remaining allegations contained in Paragraph 17.

18. Defendants admit that Mr. Diamond provided Plaintiffs with information related to Derivium's loan structure. Defendants deny, as phrased, the remaining allegations contained in Paragraph 18.

19. Defendants deny the allegations contained in Paragraph 19.

20. Defendants deny the allegations contained in the first sentence of Paragraph 20. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 20.

21. Defendants lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 21 and, therefore, deny the same.

22. Defendants lack sufficient knowledge or information to admit or deny what was known or readily discoverable by Plaintiffs and, therefore, deny the same. Defendants lack sufficient knowledge or information to admit or deny whether Derivium or Bancroft provided certain documents to Plaintiffs and, therefore, deny the same. Defendants deny, as phrased, the remaining allegation contained in Paragraph 22.

Defendants' Knowledge of Derivium's Fraud

23. Defendants lack sufficient knowledge or information to admit or deny what was known by Plaintiffs. Defendants further respond that the document referenced in Paragraph 23 speaks for itself.

24. Defendants deny the allegations contained in Paragraph 24.

25. Defendants deny the allegations contained in Paragraph 25.

26. Defendants admit that the IRS has investigated transaction related to Derivium. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 26.

27. Defendants deny, as phrased, the allegations contained in Paragraph 27.

28. Defendants deny, as phrased, the allegations contained in Paragraph 28.

29. Defendants deny, as phrased, the allegations contained in Paragraph 29.

30. Defendants admit that Plaintiffs have attached "Preliminary Notices" from the IRS as exhibits to the Amended Complaint. With regard to contents of the Notices, Defendants respond only that the documents referenced in Paragraph 30 speak for themselves.

31. Defendants respond that the documents referenced in Paragraph 31 speak for themselves. Defendants deny, as phrased, the remaining allegations contained in Paragraph 31.

32. Defendants respond only that the documents referenced in Paragraph 32 speak for themselves. Defendants deny, as phrased, the remaining allegations contained in Paragraph 32.

33. Defendants respond only that the documents referenced in Paragraph 33 speak for themselves. Defendants deny, as phrased, the remaining allegations contained in Paragraph 33.

34. Defendants admit that they were put on notice of the IRS claims. Defendants further admit that they declined to represent the Plaintiffs in the IRS matters. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 34.

35. Defendants lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 35 and, therefore, deny the same.

36. Defendants lack sufficient knowledge or information to admit or deny the allegations contained in Paragraph 36.

37. Defendants deny the allegations contained in Paragraph 37.

The Defendants' Duties of Care to the Plaintiffs

38. Paragraph 38 is a legal conclusion to which no response is required.

39-44. Paragraphs 39-44 contain legal conclusions to which no response is required.

Count One
Professional Malpractice – All Defendants

45. Defendants adopt and incorporate their answers as set forth in Paragraphs 1-44.

46-48. Defendants deny the allegations contained in Paragraphs 46-48.

Count Two
Negligence – All Defendants

49. Defendants adopt and incorporate their answers as set forth in Paragraphs 1-48.

50-52. Defendants deny the allegations contained in Paragraph 50-52. Defendants further respond that Count II should be dismissed as duplicative.

Count Three
Declaratory Judgment – All Defendants

53. Defendants adopt and incorporate their answers as set forth in Paragraphs 1-52.

54-55. Defendants deny the allegations contained in Paragraphs 54-55. Defendants further respond that Count III should be dismissed, as it fails to state a claim upon which relief can be granted.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs have failed to mitigate their damages.

Second Affirmative Defense

The Amended Complaint is barred by the doctrine of contributory negligence.

Third Affirmative Defense

The Amended Complaint is barred by the doctrine of assumption of risk.

Fourth Affirmative Defense

The Amended Complaint is barred by the equitable doctrines of waiver, consent, authority, acquiescence, ratification and/or estoppel.

Fifth Affirmative Defense

The Amended Complaint is barred by the doctrines of payment, settlement, accord, satisfaction and/or release.

Sixth Affirmative Defense

The Amended Complaint is barred by the doctrine of intervening/superseding causation.

Seventh Affirmative Defense

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

Eighth Affirmative Defense

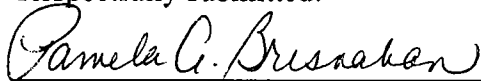
Plaintiffs' damages, if any, were caused in whole or in part by third parties over whom Defendants had no control.

Ninth Affirmative Defense

Defendants reserve the right to amend or supplement their affirmative defenses as discovery proceeds in this matter.

WHEREFORE, Defendants respectfully request that the Court dismiss the Amended Complaint with prejudice, with costs and attorneys fees awarded to Defendants.

Respectfully submitted:

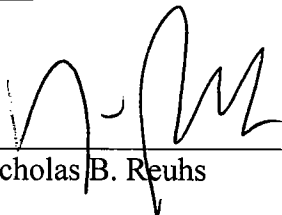


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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2009 a copy of the foregoing Answer was served through the court electronic filing system upon the following individuals:

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