

**ORDER**

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT – LAW DIVISION**

JENNIFER S. ARONS,	)	
Plaintiff,	)	
	)	
<b>v.</b>	)	
	)	
CENTRUM PROPERTIES, INC.,	)	Honorable Thomas R. Mulroy
ARTHUR SLAVEN, LAURENCE ASHKIN,	)	
and JOHN MCLINDEN	)	
Defendants.	)	
<hr/>		
CENTRUM PROPERTIES, INC.,	)	
Counter-Plaintiff,	)	
	)	
<b>v.</b>	)	
	)	
JENNIFER S. ARONS	)	
Counter-Defendant.	)	

**OPINION AND JUDGMENT ORDER**

**Introduction**

Centrum Properties, Inc. was a successful Chicago based real estate firm which developed projects in various states. It was a full service real estate company which did residential and commercial developments in Washington DC, New York, Florida, Boston, Kansas City, California and St. Louis. It was controlled by Defendants Arthur Slaven, Laurence Ashkin (herein: Ashkin) and John McLinden. In 2001 Plaintiff Jennifer Arons, was an experienced, diligent and effective project manager of real estate development projects and had been in that business for fifteen years when Defendant Arthur Slaven (herein, “Slaven”) began to recruit her to join Centrum. At the time Plaintiff was Vice President of Sales and Marketing for Fordham Company a real estate development firm.

Plaintiff finally expressed interest in working for the residential real estate section of Centrum and she and Slaven began negotiating the terms of her employment agreement. Slaven was an experienced and successful real estate developer who turned Centrum into a

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powerhouse in the residential and commercial real estate business. He was sophisticated and smart and very knowledgeable about the business. The two negotiated in detail Plaintiff's employment agreement from June to September 2002 and met several times to review and discuss drafts of the agreement, which Plaintiff prepared, and make changes to the terms the two proposed. Plaintiff was the first and only Centrum employee to have an employment contract. Slaven had ideas and suggested terms and additions and plaintiff had changes and modifications. The two would discuss the latest draft and plaintiff would revise it accordingly. The agreement went through several drafts and plaintiff had her husband as well as an attorney advise her on the agreement.

The final version of the employment agreement was signed by the Plaintiff and the President of Centrum, Ashkin on September 27, 2002, and all were enthusiastic about their business relationship and were looking forward to a profitable and long association. The residential real estate market was strong and Centrum thought highly of Plaintiff and believed she would help them achieve greater success. This was the first written employment agreement any employee ever had with Centrum; the partners were pleased plaintiff was joining them. Even though Plaintiff's agreement was negotiated by Slaven and Ashkin signed it on behalf of the company there is no doubt or dispute that Defendants are bound by this contract.

The employment agreement is actually a letter signed by the parties, dated September 26, 2002 and has a five year term. It provides, that Plaintiff will join Centrum on September 30, 2002 as a Senior Vice President of Sales and Marketing and that, among other things, including a severance clause, Plaintiff will be compensated as follows:

- A. \$250,000 yearly salary;
- B. 5% partnership or membership interest in each individual Centrum residential project;
- C. Commission of \$1,000 for units developed by Centrum, and the greater of 1/2 of 1% of revenue or \$1000 on fee-based marketing projects (projects where Centrum acts solely as marketing agent and is not the developer); and

D. Health insurance, expenses related to employment and real estate licensing fees

Centrum was organized so that each residential project it developed was owned by a limited liability corporation (LLC) which in turn was owned by the LLC members who were all members or families of Centrum or its employees. Each LLC had its own Operating Agreement which was executed by the members of the LLC. Plaintiff was never asked to sign any Operating Agreement but it was the intent of the parties that she be treated as though she was a member of the LLCs for compensation purposes. During the months of negotiating the agreement the parties never discussed whether a loss from one individual Centrum residential project would be carried over and applied to other, profitable projects, or whether plaintiff's 5% interest was in separate projects or in the aggregate of all projects. In fact, until 2007 Centrum had never lost money on a residential real estate project.

Things began well, Plaintiff proved to be a valuable employee about whom Defendants had no complaints. During her five years with the company she was paid her salary, her benefits, and her expenses and was given \$1.1 million in distributions representing her interest in various Centrum residential projects as well as \$1 million in commission payments. Plaintiff worked on major developments such as the Montgomery in Chicago, a 252 unit residential development, and massive condominium conversion projects in Chicago and Florida. By 2008 Centrum had sold over 7,000 residential units.

Alas, by late 2007 Plaintiff became restless, the real estate market began to soften and Plaintiff asked defendants for a summary of what Centrum owed her and made demands for compensation which she claimed was due. The conversations and emails became sharp and the parties disagreed about what, if anything more plaintiff was due. As Slaven wrote in an email dated February 1, 2008 (PO01719) "your interpretation of your agreement is incorrect and disingenuous." ... "it is obvious that we have a major disagreement..." Defendants then terminated plaintiff in the same email by saying "...given the situation, it is not beneficial for you to work for us any longer so please do not come back to work." Defendants contended that she was entitled to no further compensation above her \$1 million commissions, salary and her \$1.1 million in equity distributions she had already been paid. Plaintiff disagreed and responded by email on February 4, 2008 that she was entitled to \$31,219,830.78 based on her

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employment agreement which she claimed entitled her to interests in 38 projects, including unpaid membership interest in 14 projects, unpaid commissions and a severance payment based on the estimated value of the sales price of all units and parking spaces under development at the time she left Centrum.

Following plaintiff's termination, the dramatic and nightmarish decline of the national real estate market took place. Centrum's business dropped spectacularly and is now worth a fraction of what it was when Plaintiff joined the company. Many of its planned projects failed and some were foreclosed upon by the banks. Some of the projects were never built and no units were ever sold in them. Centrum remains in business but has suffered foreclosures and bank takeovers of many of its properties.

Plaintiff hired counsel and on June 18, 2008 wrote Centrum a demand for wages under the Illinois' Attorneys Fees in Wage Actions Act. The letter stated:

“The total amount due Ms. Arons as compensation under her employment agreement is at least \$29,524,977, consisting of: (1) \$166,000 unpaid salary; (2) \$11,000 unpaid health insurance; (3) \$6,776,500 unpaid commissions; and (4) \$22,517,477 unpaid severance payment.....please consider this letter as Ms. Arons' written demand upon you to pay her the sum of \$20 million....” (Emphasis in the original)

### **Litigation Background**

On July 7, 2008, plaintiff filed a 4-count complaint against Centrum, and Slaven, McLinden, and Ashkin for (1) breach of contract against Centrum, (2) under the Illinois Wage Payment and Collection Act, (3) for tortious interference with contract against the three individual defendants, and (4) for breach of fiduciary duty against the three individual defendants. On August 14, 2008, all four defendants filed an answer to the complaint, affirmative defenses and counterclaims for breach of fiduciary duty and unjust enrichment. Trial was held on September 29<sup>th</sup> and 30<sup>th</sup>, October 3<sup>rd</sup> through 6<sup>th</sup>, October 11<sup>th</sup> through 14<sup>th</sup>, October 25<sup>th</sup>, and November 1<sup>st</sup>, 2011. This cause comes before the court for ruling on the following:

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- Arons' Complaint for Damages for (1) breach of contract against Centrum, (2) under the Illinois Wage Payment and Collection Act, (3) for tortious interference with contract against the three individual defendants, and (4) for breach of fiduciary duty against the three individual defendants.
- Centrum's Counterclaims for (1) breach of fiduciary duty and (2) unjust enrichment.

### **Findings of Fact**

At trial, the court listened to evidence that presented the conflicting views of the litigants on the factual circumstances surrounding the case. The court also heard the evidence that presented a factual dispute between the litigants on issues material to the outcome of the case. In the following Findings of Fact, the court resolves those factual disputes based on the evidence in the case.

### **Background**

1. Defendant Centrum Properties, Inc. ("Centrum") is an Illinois corporation founded in 1980 and specializing in the development of residential and commercial real estate projects in Illinois and around the country. Prior to 2010, Centrum's officers, directors, and controlling shareholders were individual Defendants Arthur Slaven ("Slaven"), Laurence Ashkin ("Ashkin"), and John McLinden ("McLinden"). Ans. (Aug. 11, 2011)<sup>1</sup> 2; Trial Tr. 167:12- 15, 172:6-9 (Oct. 5, 2011) (Ashkin).
  2. Ashkin was President and Chairman of the Board of Directors of Centrum from its formation in 1980 at least until June 2009. Trial Tr. 166:23 — 167:11 (Oct. 5, 2011) (Ashkin). Ashkin, Slaven, and McLinden were Centrum's directors. *Id.* at 172:6-9.
  3. Slaven has been Centrum's Secretary and Treasurer from its formation and became its President sometime after 2009. Trial Tr. 6:4-6 (Oct. 11, 2011) (Slaven).
1. John McLinden has been an officer of Centrum since he joined the company in 1989. Initially he was Vice President, and then he became Senior Vice President. Trial Tr. 53:10- 18 (Oct. 6, 2011) (McLinden).
  2. In September 2002 Plaintiff Jennifer Arons ("Arons") joined Centrum as Senior Vice President of Sales and Marketing pursuant to the terms of a written employment agreement

signed by Ashkin on September 27, 2002. Ans. (Aug. 11, 2011) I1, P21.

3. Centrum does not own the real estate projects it develops. Centrum derives its revenue from developing, managing, and selling real estate owned by other entities. Def. Trial Brief (July 20, 2011) at 2. Defendants create a separate Illinois limited liability company (a "Centrum LLC") to fully or partially own each project. *Id.* at 2-3.

4. Each Centrum LLC is governed by its own operating agreement. P28; P29. The principal purposes of the operating agreements for the Centrum LLCs were (a) to comply with the demands of Centrum's lenders and financial partners, and (b) to limit the liability of the members. Trial Tr. 172:18 – 173:23 (Oct. 11, 2011) (Slaven). As Slaven testified, members of LLCs are not liable for the debts, expenses, or liabilities of the LLC unless they consent to be liable. *Id.*

5. When Centrum develops a project with an outside partner (such as MCZ, another development company), the project is typically owned by a "parent" LLC. A Centrum LLC is created to own Centrum's interest in the parent LLC, and an MCZ LLC is created to own MCZ's interest in the parent LLC. Neither the Centrum LLC nor the MCZ LLC has employees of its own. Trial Tr. 163:18 – 165:12 (Oct. 4, 2011) (Stocking).

6. Each LLC is owned by its members, who own membership interests in the LLC. The members of a Centrum LLC usually include Ashkin, Slaven, McLinden, their families or trusts, and sometimes other Centrum employees. P29. The management and control of each Centrum LLC is vested in a Board of Managers.

### **The Negotiation and Formation of Plaintiff's Employment Agreement**

7. Arons and Slaven began negotiating the terms of her possible employment with Centrum in June of 2002. Trial Tr. (9/30/11) at 21:22-22:1 (Arons).

8. Arons suggested that the employment agreement be in writing, as she "believe[s] it should always be in writing." Trial Tr. (9/30/11) at 22:6-13 (Arons).

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9. Slaven and Arons were the sole participants in the discussion and negotiation of her employment agreement. Trial Tr. (10/5/11) at 176:23-177:2 (Ashkin)' Trial Tr. (10/6/11) at 54:11-22 (McLinden).

10. In June 2002, they discussed salary compensation, "the thousand dollars per unit" and health benefits. Trial Tr. (9/30/11) at 23:9-15 (Arons). The "thousand dollars per unit" was "an override on each unit that gets sold in all the developments," where unit means "[a] residential home or condominium." Trial Tr. (9/30/11) at 23:21-24:2 (Arons). This "thousand dollars per unit" was referred to as a "commission" or "override," because it was not dependent on the price of the unit sold. Trial Tr. (9/30/11) at 24:5-25:4 (Arons). Slaven and Arons discussed that the override would be on "[r]esidential units developed by Centrum." Arons understood this to mean units "[t]hat Centrum built or marketed or sold or converted." Trial Tr. (9/30/11) at 25:17-26:9 (Arons).

11. Although in the course of negotiating the letter agreement, Slaven suggested a few changes to the agreement, Arons or her counsel, Mr. Rubenstein put those suggestions into the contract in her own words or those of her counsel. *See, e.g.*, Trial Tr. (9/30/11) at 40:17-19, 109:10-110:3 (Arons). Arons drafted every single version of the employment agreement she showed to Slaven. Trial Tr. (10/3/11) at 78:22-79:1 (Arons).

12. On or around July 26, 2002, Arons prepared a draft of the employment agreement. Trial Tr. (9/30/11) at 40:5-12 (Arons) & Trial Tr. 42:19-43:22; Pl.'s Ex. 1 at P001791. The July 26, 2002 draft was the first draft Arons presented to Slaven. Trial Tr. (9/30/11) at 44:5-7 (Arons).

13. Before the first draft, Arons and Slaven discussed the possibility of a severance payment. Trial Tr. (9/30/11) at 51:21-55:12. The half of one percent was meant to be a proxy for "the value of purchasing back my interests." Trial. Tr. (9/30/) at 52:12-14 (Arons).

14. Arons also drafted the September 3, 2002 second draft of the employment agreement as well as the September 11, 2002 version. Trial Tr. (9/30/11) at 60:13-14, 75:4-7; Pl.'s Ex. 1 at P001793-95.

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15. The agreement did not have an end date. Trial Tr. (9/30/11) at 82:20-83:3 (Arons).

16. During the course of the negotiations for Arons' employment agreement, Slaven sent Arons an e-mail dated September 12, 2002. Pl.'s Ex. 1 at P001795. The September 12, 2002 e-mail says:

We are getting closer. We need to define, units under development. This should to [sic] projects in which you have an equity interest and which are approved and under development.

The second question is timing. If you leave for any reason, we would only be able to pay you as units close. Otherwise there is not a source of funds.

Pl.'s Ex. 1 at P001795.

17. "Approval" meant city approval, it had to have zoning to be a residential development. Trial Tr. (9/30/11) at 86:12-13 (Arons).

18. Plaintiff testified that although the concept of a definition for "under development" came from Slaven, she herself drafted the language that appears in the agreement. Trial Tr. (9/30/11) at 109:10-110:3 (Arons).

19. The definition first appears in September 26 (signed) version of the document. Pl.'s Ex. 1 at P001800. The definition says:

A unit will be deemed under development if (a) at the time of my departure, any actions have been taken with respect to developing the project and (b) at any time, financing (whether debt or equity) is received for such project.

Pl.'s Ex. 1 at P001800.

20. Arons is not certain when she and Slaven first discussed "the five percent membership, equity position membership, ownership in each residential development," whether in June or early July. Trial Tr. (9/30/11) at 26:21-27:9.

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21. Slaven agreed that Arons would receive 5% of Centrum's equity interest in each individual residential project. Trial Tr. 42:20 – 43:9 (Oct. 11, 2011)(Slaven).

22. The change from "5% of Centrum's equity interest" to "5% partnership or membership interest" between the drafts dated September 11 and September 16, 2002 was added by Arons and her lawyer to clarify what type of equity interest Arons would receive; Arons and Slaven reviewed that change together and Slaven did not object to it. Trial Tr. 98:10– 99:10 (Sept. 30, 2011)(Arons). P1 at P001794 and 1798.

23. In negotiating Arons' employment agreement and her 5% interests, Slaven did not discuss allocation of profits and losses. Trial Tr. 26:15 – 27:3, 44:4-13 (Oct. 12, 2011)(Slaven). He and Arons discussed her receiving 5% of Centrum's residential real estate business. *Id.*

24. Arons was not required to contribute capital to receive her membership interests under her employment agreement, nor were her 5% membership interests subject to capital calls or dilution. P2. Arons was to receive her membership interests in exchange for her "sweat equity" – i.e., for joining and working at Centrum. Trial Tr. 58:15 – 59:1 (Oct. 3, 2011)(Arons).

25. The words "5% partnership or membership interests" and "equity interests" in Arons' final employment agreement mean the same thing. Trial Tr. 219:13 – 220:17 (Oct. 12, 2011)(Slaven).

26. Under Arons' employment agreement, a partnership interest is an interest in a partnership, and a membership interest is an interest in a limited liability company ("LLC"). The type of interest would depend on which type of entity was used by Centrum to own a project. Trial Tr. 50:3-11, 51:3-20 (Oct. 11, 2011)(Slaven).

27. Arons discussed with Slaven her addition to her agreement that states, "Whether I remain with the company or not, I will be fully paid on all partnership or membership interests at the same time as all other partners or members in such deals." P1 at P001798. Arons told him that she wanted to be paid when other members got paid distributions from projects in accordance

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with her percentage interest. Trial Tr. 103:10 – 104:17, 105:5 – 106:4, 106:20 – 107:6 (Sept. 30, 2011)(Arons).

28. Slaven never discussed with Arons that idea that if Centrum decided not to pay distributions to the other LLC members, then Arons would not receive distributions either. Trial Tr. 56:24 – 55:5 (Oct. 11, 2011)(Slaven).

29. Slaven and Arons discussed the concept that if she left Centrum she would agree to give up any claims to her 5% interests in exchange for the liquidated amount of the severance payment. Trial Tr. 146:20 – 148:8 (Oct. 11, 2011)(Slaven). It was Slaven's idea that Arons would receive a severance payment if she were terminated for reasons other than cause. *Id.* at 51:15 – 52:24 (Sept. 30, 2011)(Arons). Slaven suggested the formula of one-half of 1% of estimated sales price as an estimate of the value of Arons' 5% interests. *Id.* at 107:17-108:9.

30. Arons and Slaven discussed that a termination for cause (bad acts) under her employment agreement would mean reasons other than just poor work performance (e.g., coming in to work drunk). Trial Tr. 50:7-24, 100:23 – 101:19 (Sept. 30, 2011)(Arons).

31. Centrum was not represented by counsel in the negotiations or execution of Arons' letter agreement. Trial Tr. (9/30/11) at 117:5 (Arons); Trial Tr. (10/3/11) at 92:7-9 (Arons) (Arons never talked to counsel nor saw one present).

32. Slaven believed that he could negotiate Arons' employment agreement without a lawyer. He thought of himself as a sophisticated real estate businessman. Trial Tr. 64:10 – 65:1, 67:1-2 (Oct. 11, 2011)(Slaven).

33. Plaintiff alleged in her Complaint that the terms of “the parties’ negotiated agreement . . . were agreed to by Defendants on or about September 27, 2002, through Ashkin, President of Centrum and partner of Slaven and McLinden [sic] (Exhibit A hereto).” Compl. ¶ 6. The evidence showed that the agreement was between Centrum and Plaintiff, not among all parties. Trial Tr. (10/13/11) at 158:21-159:2 (Arons).

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34. Although Ashkin had no substantive involvement in the negotiations or drafting of the letter agreement, he signed it on behalf of Centrum. Pl.'s Ex. 2. *See also* Trial Tr. (10/5/11) at 178:12-15 (Ashkin).

35. Ashkin signed Arons' letter agreement because Arons wanted to finalize the agreement on September 26, 2002, Slaven was out of town, and Ashkin happened to be in the office that day. Trial Tr. (10/5/11) at 229:21-230:8 (Ashkin); Trial Tr. (10/12/11) at 42:5-7 (Slaven). In order to finalize the contract and bring Arons on board, Slaven asked Ashkin to sign the agreement. Trial Tr. (10/5/11) at 229:21-230:5 (Ashkin); Trial Tr. (10/11/11) at 58:10-16 (Slaven). Ashkin did so without reading the language in detail and without discussing the substance or meaning of it with Slaven, Arons or anyone else. Trial Tr. (10/5/11) at 178:16-22 (Ashkin); Trial Tr. (10/6/11) at 54:11-13 (Ashkin)

36. Although Arons had added a provision to the final draft of the agreement calling for a more formal document to be drawn up, Slaven told her they didn't need any other document when he handed her the agreement dated September 27, 2002 and signed by Ashkin. Trial Tr. 115:19 – 117:16 (Sept. 30, 2011)(Arons).

37. Arons' was the only written employment agreement that Centrum had with any of its employees. None of the Centrum LLC members (including Ashkin, Slaven, and McLinden) ever had a separate written employment agreement with Centrum. Trial Tr. (Oct. 6, 2011) 111:17-18 (McLinden).

### **Key Terms of the Letter Agreement**

38. The letter agreement is the only written agreement between Arons and Centrum.

39. It does not specify the duration of Arons' employment. Pl.'s Ex. 2. It does not prohibit Arons from resigning at any time. Pl.'s Ex. 2. It does not restrict Centrum from terminating Arons' employment at any time. Pl.'s Ex. 2.

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40. Although the letter agreement states in the second paragraph of the first page that Arons “will join Centrum Properties on September 30, 2002 and execute a five-year employment agreement” and, on the second page, that the parties will promptly negotiate and execute a definitive agreement, Pl.’s Ex. 2, the parties never executed any other written agreement. Trial Tr. (9/30/11) at 116:21-117:6 (Arons).

41. The second paragraph of the letter agreement provides for three forms of compensation to Arons: (1) a \$250,000 base salary; (2) “a 5% partnership or membership interest in each individual Centrum residential project, including but not limited to: Pilsen; Ward’s Tower; a 2.5% partnership or membership interest in Bradley Place;” and (3) a commission entitlement of \$1,000 “for units developed by Centrum . . . .” Pl.’s Ex. 2.

42. With respect to commissions, the first sentence of the third paragraph states that Arons is entitled to a monthly draw of 50% of non-contingent sales contracts, with the remaining 50% due upon unit closings. Pl.’s Ex. 2. The parenthetical clause in the same sentence defines “non-contingent” as “a contract is non-contingent when all buyer contingencies have been satisfied and the projects [sic] financing is in place and its contingencies satisfied.” Pl.’s Ex. 2.

43. The letter agreement also addresses how Arons is to be compensated after she leaves Centrum’s employ. How she is to be compensated depends on the circumstances of her departure and, in certain instances, whether at that time she relinquishes her membership and partnership interests. Pl.’s Ex. 2.

44. If Centrum terminates her employment without cause, the third paragraph of the agreement provides that she will receive the balance of all earned commissions and, “in exchange for relinquishing all of her project membership or partnership interests,” severance of 1/2 of 1% of the estimated sales price of all “units and parking spaces under development.” Pl.’s Ex. 2.

45. The third paragraph defines “unit under development” as follows: “a unit will be deemed under development if (a) at the time of [Arons’] departure, any actions had been taken with

respect to developing the project and (b) at any time, financing (whether debt or equity) is received for such project.” Pl.’s Ex. 2.

46. Finally, the third paragraph requires that the severance be paid within 120 days following termination with respect to projects already financed, and concurrent with the later financing of projects not financed at the time of termination. Pl.’s Ex. 2.

47. The fourth paragraph of the letter agreement provides that if Arons leaves Centrum’s employ voluntarily or is terminated for cause, she is entitled to the balance of all commissions theretofore earned and, if the separation occurs after she has been employed for five years, to retain all of her partnership or membership interests. Pl.s’ Ex. 2.

**Plaintiff’s Employment With Centrum**

48. Arons was employed by Centrum from on or around September 27, 2002 until February 1, 2008. As the Senior Vice President of Sales and Marketing, Arons oversaw the sales and marketing of all of the residential projects Centrum developed. Trial Tr. 8:17-24 (Sept. 30, 2011)(Arons).

49. When she joined Centrum, Arons started by working on projects in Chicago such as Domain Lofts, Bradley Place, Montgomery, and River Village North. Trial Tr. 119:6-20 (Sept. 30, 2011) (Arons).

50. Arons started traveling for Centrum within a few months of joining the company. At Slaven’s request in late 2002 or in early 2003, Arons started working on a Centrum project in Kansas City, Missouri called Western Auto Lofts. This development consisted of three buildings and 157 lofts. Trial Tr. 126:9 – 127:3, 129:12-14 (Sept. 30, 2011)(Arons). Arons traveled to Kansas City every other week in the first six months. *Id.* at 128:18 – 129:3.

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51. Beginning in August 2003, and at the request of Slaven, Arons began traveling to Florida for Centrum. She first went to look at a project Centrum was considering developing (Cite), then she went to work on a 551-condominium project called The Wave. Trial Tr. 129:21 – 130:17, 131:3-12, 131:24 – 132:17 (Sept. 30, 2011)(Arons).

52. Beginning in the fall of 2003 Arons was traveling back and forth between Chicago and Florida every week, usually going to Florida every Wednesday morning and coming back every Friday evening or Saturday morning. She worked on more than 30 projects in Chicago and Florida during this time. Trial Tr. 132:18 – 133:14, 133:21 – 134:5 (Sept. 30, 2011)(Arons). Arons continued traveling back and forth between Chicago and Florida every week for about three-and-a-half years (from fall 2003 to January 2007). *Id.* at 134:11 – 135:15, 136:11-15.

53. In 2004, Centrum began a major expansion into the condominium conversion business in Florida and Chicago. P49 at 1 (the Centrum website).

54. Defendants and other Centrum employees agreed that Arons had a lot of knowledge in the sales and marketing area of real estate, she was a talented employee, and she helped Centrum grow its residential real estate business. Trial Tr. 142:2-9, 143:1-6, 143:10-20 (Oct. 4, 2011) (Stocking).

55. In November 2006 Arons asked for permission to stop working in Florida. Slaven and McLinden agreed. P6; Trial Tr. 82:3-22 (Oct. 6, 2011) (McLinden); *Id.* at 85:20 – 86:12 (Oct. 11, 2011)(Slaven); *Id.* at 140:8-16, 140:22 – 142:18 (Sept. 30, 2011)(Arons); *Id.* at 205:13-206:10 (Oct. 3, 2011) (Arons). Arons told Slaven and McLinden in a meeting in November or December

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2006 that she did not want to work with their partner from MCZ, Michael Lerner. Trial Tr. (Sept. 30, 2011) (143:3-144:7 (Arons)).

56. Arons stopped working regularly in Florida in January 2007. From that time through her termination, no one from Centrum ever disagreed with or objected to her decision. Trial Tr. 150:7– 151:5 (Sept. 30, 2011)(Arons); *Id.* at 205:13 –206:10 (Oct. 3, 2011)(Arons). Arons was never reprimanded in any way for her decision. *Id.* at 82:3-22 (Oct. 6, 2011)(Slaven).

57. Arons stopped traveling back and forth to Centrum's Florida projects around January 15, 2007, though she continued to be involved in the projects. For example, she took a trip to Florida in spring 2007 with a broker named Ron Vergara so he could see the Centrum projects and sell units there. Trial Tr. 147:17 – 150:6 (Sept. 30, 2011)(Arons).

58. Although Arons has alleged that the reason she no longer wanted to work in Florida had to do with Mike Lerner and being “uncomfortable with some of the things they were doing in Florida” (Trial Tr. (9/30/11) at 136:24-137:5 (Arons)), under cross-examination Arons admitted that she did not learn about what she now alleges were mortgage improprieties until after she had returned to Chicago, in 2007. Trial Tr. (9/30/11) at 138:6-16 (Arons).

59. When Arons left Florida, she did not tell anyone at Centrum anything about any alleged fraud. Trial Tr. (10/3/11) at 125:16-18 (Arons).

60. Arons also did not tell Slaven or McLinden that she thought there were excessive credits being given to buyers. Trial Tr. (10/3/11) at 125:19-126:5 (Arons). Her June 2007 letter to Slaven and McLinden made no mention of any alleged fraud or excessive credits. Pl.’s Ex. 223.

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61. These credits were disclosed on the HUD statements. Trial Tr. (10/3/11) at 122:10-123:6 (Arons).

62. The first time Plaintiff made any allegation of fraud occurring in connection with the Florida projects was after she had left Centrum. Trial Tr. (10/3/11) at 126:6-10 (Arons).

63. Arons reviewed potential projects for Centrum as part of her job. Sales materials for potential projects were sent to her by Centrum personnel (including Centrum's owners) as well as by outside persons. Trial Tr. 324:13-23, 327:20 — 328:3 (Sept. 30, 2011)(Arons); P13; P14. Arons received material for hundreds of potential projects while she worked at Centrum. Trial Tr. 328:4-7 (Sept. 30, 2011)(Arons).

### **Communications Preceding Arons' Departure from Centrum**

64. On January 15, 2008, Plaintiff requested via e-mail a formal accounting and reconciliation of all Centrum projects with respect to, *inter alia*, her “equity interests.” Pl.’s Ex. 19.

65. Slaven responded to her e-mail eleven minutes later, copying McLinden and Michael Hanbury, Centrum’s controller. Slaven advised Arons that Mr. Hanbury was already working on the accounting and reconciliation and was almost done. Slaven also suggested a meeting the following week “to review and discuss.” Pl.’s Ex. 19.

66. Arons and Slaven met to discuss her demands on January 29, 2008 at the O’Hare Hilton. Trial Tr. (9/30/11) at 204:18-205:2 (Arons).

67. The paperwork that Slaven provided to Arons at the O’Hare Hilton meeting reflected that her distributions were a negative balance, because losses on losing projects exceeded profits from profitable ones and the distributions already made to Arons. Pl.’s Ex. 21; Trial Tr. (9/30/11) at 210:4-7 (Arons).

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68. The paperwork that Slaven gave Arons at the O'Hare Hilton meeting also indicated her three previous distribution payments, including the \$500,000 payment she now claims was for commissions. Pl.'s Ex. 21 at p. 2. She did not take issue with the treatment of that payment at that time, or at any point until after she filed her lawsuit. Trial Tr. (10/12/11) at 115:23-116:19 (Slaven).

69. On January 31, 2008, Slaven received additional reconciliations that had been calculated by one of Centrum's accountants, Mr. Vijay Ramarao. Pl.'s Ex. 86. Mr. Ramarao calculated Arons' interest assuming both a 15% and a 20% preferred return on equity. Pl.'s Exs. 86, 100, 101. Slaven explained that he asked Mr. Ramarao to calculate her interest both ways because he could not recall what percentage the operating agreements typically called for and he wanted to be as fair as possible. Trial Tr. (10/12/11) at 114:5-24 (Slaven). Arons' interest was negative under both assumptions. Pl.'s Exs. 100 at MC 042152, 101 at MC 042375.

70. On February 1, 2008, Plaintiff raised her contention that her equity interest would not be affected by losses in unsuccessful projects. Pl.'s Ex. 22.

71. In a February 1, 2008 e-mail, Arons stated her position that she was entitled under the letter agreement to 5% of the profits of all profitable Centrum residential projects without any reduction by losses on unprofitable ones. She further demanded a payment of \$750,000 within four days and demanded detailed financial information regarding all Centrum residential projects. Pl.'s Ex. 22A.

72. In that same e-mail, Arons demanded "executed partnership/LLC operating agreements for my ownership interest." Pl.'s Ex. 22A.

### **Plaintiff's Departure From Centrum and Communications Thereafter**

73. Slaven responded to Arons' February 1, 2008 e-mail that same evening at 5:52 p.m. Slaven disputed Arons' contentions and reiterated that although entitled to a share of profits, she also must share in the losses, just "as all other employees with a share of profits are treated." Pl.'s Ex. 22. Slaven also stated: "I hope this does not explain your unilateral decision to stop

working on the Florida projects.” *Id.* Finally, Slaven stated that in view of their major disagreement and “the situation,” “it is not beneficial for you to work for us any longer so please do not come back to work.” *Id.*

74. In response to Arons’ requests for project documentation, throughout February and March, Centrum provided Operating Agreements and other project documents responsive to her request and answered questions she asked regarding these materials. *See, e.g.*, Pl.’s Exs. 26, 27, 28, 32, 32A, 33, 34A, 35, 36, 37, 37A, 38, 39, 39B, 40A, 41.

75. Prior to that time, Arons had not requested to see Centrum Operating Agreements. Trial Tr. (10/3/11) at 44:21-24 (Arons).

**Plaintiff’s Expert Report**

76. On or about May 27, 2011, Arons submitted the damages report of her expert, Michael D. Pakter. Mr. Pakter’s opinions as to the nature and amount of compensation allegedly due Arons upon the termination of her employment differ from all of her prior demands. Pl.’s Ex. 232.

77. Plaintiff’s expert’s opinion is that Plaintiff is due either membership interests or severance, depending on whether she was fired for cause, but not both. Pl.’s Ex. 232 at p. 17.

78. Plaintiff’s expert report abandons some of the claims made in her February 4, 2008 and June 18, 2008 demands for commissions on projects that were not closed or built, including Coral Reef, Satori, Lofts, St. Clair, and Flamingo II. Trial Tr. (10/3/11) at 102:3-17 (Arons); Pl.’s Ex. 232.

79. Arons admitted repeatedly at trial that she is not due any commissions for units that sold but did not close. Trial Tr. (10/13/11) at 79:5-10 (Arons). She believed that her expert had excluded such commissions from his calculations. Trial Tr. (9/30/11) at 35:5-8 (Arons).

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80. In fact, Mr. Pakter testified that he did include commissions on sold but unclosed units in his calculations. *See, e.g.*, Trial Tr. (10/5/11) at 31:19-23 (Pakter); *see also* Trial Tr. (10/5/11) at 32:7-11 (Pakter) (“I had no discussion about numbers closed or unclosed. I used documents reflected – provided by the Defendants indicating the numbers sold”). This methodology is contrary to Arons’ agreement, Pl.’s Ex. 2, and by her own admission overstates her claims.

81. Mr. Pakter also included in his severance calculations units that already been developed and sold. Trial Tr. (10/5/11) at 59:9-13 (Pakter).

82. Insofar as Mr. Pakter calculated estimated sales prices on unsold units for his severance calculations, he admitted that he did so without taking into consideration the prevailing economic conditions. Trial Tr. (10/5/11) at 60:9-61:13 (Pakter). He selected sales prices from various documents he found on Centrum’s server, going back as far as 2004. Pl.’s Ex. 232 (at Ex. 2 thereto).

83. Mr. Pakter’s severance calculations also used the entire estimated selling price, regardless of the percentage of the Centrum LLC’s share in the project. Trial Tr. (10/5/11) at 52:4-53:12 (Pakter).

84. Although Mr. Pakter relied on personal financial statements of Messrs. Slaven, McLinden, and Ashkin in reaching his calculations on the valuation of certain real estate assets, he does not know the valuation methodology they used. Trial Tr. (10/5/11) at 112:12-18 (Pakter). He also does not know the project cost methodology. Trial Tr. (10/5/11) at 112:19-24 (Pakter).

85. Plaintiff’s expert – during the trial itself – revised and changed his calculations of what he claims Arons is due, admitting one error in his calculation “of an order of magnitude that would certainly require corrections,” in the millions of dollars. Trial Tr. (10/5/11) at 20:19-21:3.

86. As Plaintiff herself admitted at trial, her expert “[h]e had taken damages for all of Roosevelt, which included a residential side and the commercial side,” and Plaintiff

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acknowledges she is not entitled to distributions from the commercial development. Trial Tr. (10/3/11) at 202:1-10 (Arons). *See also* Trial Tr. (10/5/11) at 18:6-14 (Pakter).

87. Despite the fact that Mr. Pakter had filed a supplemental report (*see* Pl.'s Ex. 233), he did not correct these errors until trial. Trial Tr. (10/5/11) at 150:18-151:3; Pl.'s Exs. 300, 301.

88. Defendants' expert, Mr. Bero pointed out in his report that Mr. Pakter double-counted the Sian 4000 Building. Defs.' Ex. 809 at Sched. 3.2d. Mr. Pakter ignored the error until his initial cross-examination. Trial Tr. (10/5/11) at 19:18-20, 21:11-16 (Pakter). He then claimed that Plaintiff informed him of the mistake "during the pendency of this trial." Trial Tr. (10/5/11) at 16:22-17:5 (Pakter). He believed the error was "80 or \$800,000." Trial Tr. (10/5/11) at 21:14-16 (Pakter). The corrected exhibit he produced following his cross-examination shows that he had overstated Plaintiff's claim for severance on this sub-project by \$411,060. *See* Pl.'s Ex. 232 at Ex. 2; Pl.'s Ex. 300. He did not revise his calculation of her membership interest claim.

89. Mr. Pakter agreed that he should not have included the retail portions of any projects in his calculations for either the 5% interest or severance. Trial Tr. (10/14/11) at 17:2-17 (Pakter).

90. Mr. Pakter also relied heavily on the Individual Defendants' personal financial statements, which include the retail components of the projects, which Arons agreed was not part of her deal. Trial Tr. (10/13/11) at 168:9-16 (Slaven).

91. Mr. Pakter used these personal financial statements to arrive at roughly 75%, by value, of her claim for distributions. Defs.' Ex. 809 at 19, Sched. 7.0. In his rebuttal report, he failed to identify why the figures in these statements were appropriate proxies for Arons' interest, despite the material differences between her interest and that of the Defendants; he merely opined that the financial statements "contain calculations of membership interests," and so assumed they were appropriate. Pl.'s Ex. 233 at 8.

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92. Defendants' personal financial statements included amounts that were related to the projects but irrelevant to Arons, such as notes receivable to third-party LLCs in which the defendants had interests. Trial Tr. (10/12/11) at 147:7-148:14 (Slaven).

93. The personal financial statements generally are not appropriate sources of data in calculating damages. For example, Slaven's statements indicated that the Metro West projects' loans were current, but only because of a restructuring. Trial Tr. (10/12/11) at 157:8-13 (Slaven). Relying solely on that notation, out of context, is misleading.

94. Mr. Pakter never calculated the amount of distributions Arons should have received under her employment agreement. Trial Tr. (10/5/11) at 103:2-5 (Pakter). He also never calculated what distributions were made to what members on what projects. Trial Tr. (10/5/11) at 126:14-21 (Pakter) & Trial Tr. (10/5/11) at 128:3-7 (Pakter) ("I did not add up all of the distributions made by Centrum Level LLCs to their members").

### **Defendants' Expert Report**

95. The report of Defendants' expert witness was entered into the record in place of a direct examination. Trial Tr. (10/13/11) at 19:3-7 (statements of the Court). Plaintiff chose not to cross-examine Mr. Bero. Trial Tr. (10/13/11) at 19:18 (Becka). Mr. Bero's report stands as un rebutted direct testimony.

96. Mr. Bero did not address Mr. Pakter's calculations of the commissions Arons demands. Defs.' Ex. 809.

97. Mr. Bero's report identified a number of flaws in Mr. Pakter's severance calculation. Mr. Bero's report showed that Mr. Pakter improperly ignored the percentage of Centrum's membership interest (Defs.' Ex. 809 at 13); that Mr. Pakter failed to properly define "units under development" (*id.* at 14-16); that Mr. Pakter speculated (in contravention of proper accounting procedures) in selecting "estimated sales prices" (*id.* at 16); and that Mr. Pakter

reached internally inconsistent results (*id.* at 16-17). After correcting for these flaws, Mr. Bero calculated severance of just \$175,000. *Id.* at 17-18.

98. Mr. Bero further identified methodological and factual errors in Mr. Pakter's calculations relating to Arons' 5% membership interest. He showed that Mr. Pakter used the defendants' personal financial statements to calculate 75% of her claim for distributions (Defs. Ex. 809 at 19); that Mr. Pakter improperly included speculative future value in his present damages calculations (*id.* at 20); that Mr. Pakter improperly assumed that potential future values from a personal financial statement are convertible into cash damages (*id.* at 20); that Mr. Pakter again reached internally inconsistent results (*id.* at 20); that Mr. Pakter disregarded the prevailing market conditions in valuing projects (*id.* at 20-21); and that Mr. Pakter's analysis was highly subjective (*id.* at Sched. 9.0).

99. Mr. Bero specifically pointed out that Mr. Pakter's calculations regarding the Roosevelt project were incorrect, and absurdly high; the overall project would have to have been worth more than \$5 billion (more than the World Trade Center), to make Arons' 5% membership interest worth as much as Mr. Pakter claimed. Defs.' Ex. 809 at 21, Sched. 10.0.

100. Mr. Pakter submitted a rebuttal report in which he defended his report, and insisted that his calculations were accurate. Pl.'s Ex. 233.

101. At trial, however, Mr. Pakter conceded that he had in fact overstated the value of the Roosevelt project by "an order of magnitude that would certainly require corrections." Trial Tr. (10/5/11) at 20:19-22 (Pakter). He thought his error was "in the millions perhaps." Trial Tr. (10/5/11) at 20:23-21:1 (Pakter). The corrected figures, which Plaintiff had in hand during Mr. Pakter's cross-examination but did not disclose to Defendants until after his initial cross-examination, showed that he had reduced his calculation on that project alone from \$6,655,500 to \$654,804, a reduction of over 90%. Pl.'s Exs. 232 (at Ex. 3 thereto), 301.

### **The Operating Agreements for the Centrum LLCs**

102. Each of the Centrum LLCs were formed via an Operating Agreement. Pl.'s Ex. 29.

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103. The Operating Agreements provide that all members are subject to having their capital accounts charged with losses and deductions allocated to them and, further that they have to pay any resulting deficit capital account balance at the time of dissolution if any other member has a positive capital account balance. Pl.'s Ex. 29 at §§ 6.5(ii)(B) and 6.8.
104. All members of the Operating Agreements were charged with a proportionate share of the capital Centrum Realty Services contributed to each Centrum LLC.
105. Where a project did not generate cash receipts sufficient to recoup that capital, the member's entitlement to receipts from profitable projects would be applied by Centrum to repay that capital. Trial Tr. (10/4/11) at 55:24-60:23 (Hanbury) & Pl.'s Ex. 158.
106. Centrum employees who were actual members of the LLCs had profits from profitable projects applied to offset losses from unprofitable ones, the losses being reflected in lost capital.
107. In addition, all of the Centrum employee-members were allocated shares of losses sustained by the projects they were involved in for tax purposes. *See, e.g.*, Trial Tr. (10/4/11) at 111:13-114:5 (Tucker) & Pl.'s Ex. 157 at NS81-110.
108. Centrum, with the knowledge and at least tacit consent of all its employee-members was contributing all of the millions of dollars of capital required by the Centrum LLCs so that the members themselves would not have to call upon their personal resources to do so. Trial Tr. (10/11/11) at 229:7-232:20 (Slaven).
109. In return, Centrum maintained a capital account for each member wherein it applied profits from profitable projects as the exclusive source to fund each member's share of that capital. Trial Tr. (10/12/11) at 127:8-128:3 (Slaven).
110. Reconciliations of these accounts for members of the LLCs showed Arons' share of profits for each project as marketing expense liabilities. Trial Tr. (10/11/11) at 99:5-102:4 (Slaven).

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111. The operating agreements for the Centrum LLCs do not contain provisions permitting the managers to withhold distributions due from one LLC to offset losses or anticipated losses from another LLC, or to reinvest or otherwise determine the disposition of distributions to be paid to the LLC members. P29 (operating agreements, generally).
112. Capital contributions, preferred returns, legal and tax expenses, and project overhead for each Centrum LLC are supposed to come from available cash from the project. Trial Tr. 251:210 – 255:8 (Oct. 3, 2011)(Hanbury); *Id.* at 40:22 – 41:9, 42:3-23 (Oct. 6, 2011) (Ashkin). If there were no available cash, those amounts would not be paid, *Id.*, but would remain as an expense to be paid from future available cash. *Id.* at 254:21 – 256:17 (Oct. 3, 2011) (Hanbury). Capital contributions made by contributing members such as Ashkin, McLinden, and Slaven were to come out of future available cash, not from non-contributing members such as Dan Tucker and Nick Stocking. Trial Tr. 257:3-22 (Oct. 3, 2011)(Hanbury).
113. Prior to January 15, 2008, no one from Centrum ever told Arons that distributions she was due from one project would be offset by losses or anticipated losses from another project. Trial TR. (Oct. 11, 2011) 94:13-18, 95:8-18 (Slaven); *Id.* at (Sept. 30, 2011) 195:6-18 (Arons).
114. Prior to January 15, 2008, no one ever told Arons that distributions from one project would be withheld to cover expenses or liabilities of any other project. Trial Tr. 95:2-7 (Oct. 11, 2011)(Slaven).
115. Arons never agreed to be liable for any personal guaranties on any Centrum projects or to indemnify any guarantors for any amounts that might be paid under any guaranties. Trial Tr. 136:22 – 137:4 (Oct. 11, 2011)(Slaven).
116. No one ever asked Arons to agree that distributions due her from one Centrum project could be rolled into another project. Trial Tr. 94:2-11 (Oct. 11, 2011)(Slaven).
117. McLinden testified that he was not aware of any contract that allowed Centrum to withhold distributions from one project to offset anticipated financial losses from another project. Trial Tr. (10/6/11) at 131:14-21 (McLinden). Plaintiff did not ask whether there was any agreement that would allow the managing members of the LLCs to withhold distributions,

or whether there was an agreement among the members of the Centrum LLCs to permit such withholdings. *See* Trial Tr. (10/12/11) at 126:5-128:3 (Slaven) (describing the rolling capital account system).

**Plaintiff's Complaint**

**Count I – Breach of Contract**

118. Plaintiff concedes she has no contract with the Individual Defendants. The evidence at trial is that Plaintiff only had an agreement with Centrum, not the other Defendants. Trial Tr. (10/13/11) at 158:21-159:2 (Arons) .

119. The agreement between Centrum and Plaintiff is an employment agreement that includes three components of compensation: (1) a \$250,000 salary; (2) commissions payable, in relevant part, at \$1,000 per unit sold and closed; and (3) “a 5% partnership or membership interest in each individual Centrum residential project.” Pl.’s Ex. 2.

120. Although the letter agreement specifically discusses the initial five years of Arons’ contemplated employment, the Court in this case, The Honorable Charles R. Winkler presiding, correctly determined, in a non-final ruling rendered on November 25, 2008, that the letter agreement does not alter the at-will nature of Arons’ and Centrum’s employment relationship, given that it does not prohibit either party from ending the relationship at any time.

***Plaintiff's Claim for Commissions***

121. Arons was paid slightly under a million dollars in commissions in her five years and four months of employment at Centrum. Trial Tr. (10/3/11) at 7:23-8:3 (Arons).

122. Plaintiff claims an entitlement to \$6,108,000 in allegedly unpaid commissions. Pl.’s Ex. 232. The vast majority of this amount comes from projects that were sold by third-party brokers. Trial Tr. (10/3/11) at 8:4-9 (Arons).

123. These were: Indigo/Sian complex (Trial Tr. (10/12/11) at 92:10-11 (Slaven)); Avalon/Mandalay on the Hudson (*id.* at 92:12-13); Bay Club/Parc Central (*id.* at 92:14-15); Cité (*id.* at 92:16); Coral Reef Resort (*id.* at 92:17-19); Douglas Grand Metro West / Serenata Orlando (*id.* at 92:20-21); Elmwood Park Rowhouses (“for at least 90 percent of the time we were selling,” *id.* at 92:22-24); Flamingo I (South Tower) (*id.* at 93:1-2); Flamingo II (North Tower) (*id.* at 93:1-2); Jamison Station (*id.* at 93:1-2); Mirabella/Emperian (*id.* at 93:6); Ocean Crest (*id.* at 93:13); Park Millennium (*id.* at 93:14-15); Regent Park/Jefferson at Young Circle (*id.* at 93:16); Serenata Sarasota (*id.* at 93:17-18); Serenata Tampa/Grand Reserve (planned to use third-party broker before being sold as an apartment building, *id.* at 93:19-94:9); Somerset/Cobblestone Crossing (*id.* at 94:10-11); Sunscape Villas (*id.* at 94:12); The Palms/Windsor (*id.* at 94:15); The Wave (*id.* at 94:16); View 14 (when Centrum was still trying to sell units, *id.* at 94:17-18); Villa Medici (*id.* at 94:19); Western Auto Lofts (*id.* at 94:22-23); Willow Lake (“was being handled in-house with the cooperation of a third-party broker,” *id.* at 95:2-5).
124. Slaven testified that Arons agreed to amend her employment agreement in late 2003 or early 2004 and give up her right to receive commissions from projects where Centrum used a third-party broker to sell the units. Trial Tr. 87:12 – 88:22 (Oct. 11, 2011)(Slaven).
125. McLinden and Slaven did not discuss any different commission arrangements for third-party broker projects while Arons' employment agreement was being negotiated; Centrum had never used a third-party broker up to that time. Trial Tr. 60:13-19 (Oct. 6, 2011) (McLinden).
126. Where a project was sold by in-house salespeople, Arons' staff would create an invoice with commissions that were due to the staff and to Arons. Trial Tr. (10/3/11) at 12:20-13:3. In 2004, Arons received commissions on projects where Centrum used its own salespeople. Trial Tr. 165:7-24 (Sept. 30, 2011)(Arons).
127. For third-party brokered projects, Arons did not have these invoices created. Trial Tr. (10/3/11) at 15:6-13 (Arons).

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128. During the development of the first Centrum-MCZ Florida condominium conversion project, The Wave, Michael Lerner of MCZ Development Corporation had a discussion with Slaven of Centrum and told him that the project LLC would not pay a sales override to the Centrum LLC because The Wave units were to be sold through a full-service third-party brokerage firm. Trial Tr. (10/14/11) at 8:6-9:11 (Lerner).
129. As a result of this conversation, Slaven spoke with Plaintiff in late 2003 or early 2004 at The Wave property just prior to the time the LLC began selling units. In that conversation Slaven and Plaintiff agreed that because The Wave units were being sold through Rosalia Picot (the third-party broker), Plaintiff would not be expecting to be paid \$1,000 per unit in commissions. Trial Tr. (10/12/11) at 65:3-9 (Slaven).
130. Plaintiff confirmed that she did not expect such payment. Trial Tr. (10/12/11) at 65:3-9 (Slaven).
131. From 2003 until shortly before she left Centrum, Plaintiff never sought nor was paid a \$1,000 commission on any unit in any project sold through a third-party brokerage firm. Trial Tr. (10/13/11) at 105:6-14 (Arons).
132. In non-third-party-brokered projects, Plaintiff, through the contract administrator, submitted detailed invoices to Centrum on a monthly basis requesting her \$1,000 per unit commissions, specifically identifying the projects and units sold. Defs.' Exs. 200, 363-67, 370 & 371. Plaintiff received regular, monthly payments on commissions from Chicago on non-third-party brokered projects. Trial Tr. (9/30/11) at 184:10-185:1 (Arons).
133. Although Plaintiff now claims that she agreed to take her commissions at the end of a project for the Florida third-party brokered projects (Trial Tr. (9/30/11) at 167:6-15 (Arons)), such a contention does not make sense, in light of the fact that the final distributions for these projects occurred long in advance of her February 2008 demand for commissions.

134. Plaintiff was aware in 2005 that Centrum was paying commissions to third-party brokers in 2005. For example, she received a spreadsheet calculating those commissions on the Wave in 2005. Defs.' Ex. 674. That spreadsheet did not include any amount for commissions to Plaintiff, and Plaintiff admitted that her sales staff never prepared any reports showing commissions due to her for projects being sold by third-party brokers. Trial Tr. (10/3/11) at 14:2-16:24 (Arons).

***Plaintiff's Claim Regarding Her 5% Partnership or Membership Interest***

135. Plaintiff received a total of \$1.1 million in distributions from the Centrum projects. Plaintiff received a \$500,000 check on January 20, 2006, that Slaven told her was a distribution related to Bradley Place and the Wave. Trial Tr. (10/12/11) at 204:5-17 (Slaven). Plaintiff received a \$100,000 check in "the summer of 2004" that was related to Bradley Place (Trial Tr. (10/12/11) at 203:17-19 (Slaven); Trial Tr. (9/30/11) at 160:2-9 (Arons) (establishing date of payment) & Trial Tr. 160:17-163:4 (Arons) & Trial Tr. (9/30/11) at 213:10-17 (her assumption that it was related to Bradley Place)). Plaintiff received a \$500,000 check in January 2007. Trial Tr. (9/30/11) at 179:11-17 (Arons).

136. Arons is the only Centrum employee who was supposed to have membership interests in the Centrum LLCs but who was not actually given any interests. Trial Tr. 112:12 – 113:1 (Oct. 6, 2011)(McLinden); *Id.* at 139:9-12 (Oct. 11, 2011)(Slaven). Slaven made that decision. *Id.* at 112:12– 113:1 (Oct. 6, 2011)(McLinden). Slaven told McLinden that Arons was to be treated as if she were a member in the Centrum LLCs from an economic standpoint. *Id.* at 119:9-17. McLinden called Arons' interest a "phantom interest" or "shadow interest." *Id.* at 117:19 – 118:16, 127:21 – 128:4. Only Arons was treated as holding a "phantom interest." *Id.*

137. Because Arons was not an actual member in the Centrum LLCs her distributions were supposed to be taken out of available cash as marketing expenses before the actual members' shares of distributions to be paid were calculated. Trial Tr. 258:14 – 259:10; 309:22 – 310:7 (Oct. 3, 2011)(Hanbury); *Id.* at 130:18 – 131:3, 139:5-8 (Oct. 11, 2011) (Slaven). The "Sales and Marketing Fee" referred to in the Centrum LLCs' operating agreements is the same thing as Arons' distributions from the LLCs, which amounts were accounted for as marketing expenses.

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Trial Tr. 365:14 – 367:15 (Oct. 3, 2011)(Hanbury); *Id.* at 49:14-23 (Oct. 4, 2011)(Hanbury); P29, Tab 3 at P00595.

138. Section 7.1 of the operating agreements for the Centrum LLCs requires that Available Cash be distributed to the members on at least an annual basis. P29. Centrum paid out distributions every year to the Centrum LLC members, but Arons was not paid distributions at the same time, and not every year. Trial Tr. (Oct. 11, 2011) 132:19-133:10 (Slaven); see also Trial Tr. (Oct. 3, 2011) 297:19-293:2; 297:22-298:12 (Hanbury).

139. Centrum gave Centrum LLC members such as Mary Koberstein, Nick Stocking, and Dan Tucker distributions from the LLCs so they could pay their income taxes. Trial Tr. 293:4 – 294:7 (Oct. 3, 2011)(Hanbury); *Id.* at 134:10-14 (Oct. 11, 2011)(Slaven). Arons never received similar payments for taxes. *Id.*

140. Unlike the Centrum LLC members, Arons was never allocated tax losses from any of the Centrum LLCs and never received Schedule K-s. Trial Tr. 294:14 – 295:16 (Oct. 3, 2011) (Hanbury); *Id.* at 134:10-14 (Oct. 11, 2011)(Slaven).

141. Mike Hanbury, Centrum's comptroller and chief accountant, met with Dan Tucker and Nick Stocking to review and discuss their reconciliations of their membership interests about four or five times each while they worked at Centrum. Trial Tr. 302:6 – 303:18 (Oct. 3, 2011) (Hanbury). Hanbury met with Mary Koberstein three or four times to go over her reconciliations. *Id.* at 304:17-22. Hanbury never met with Arons to discuss any reconciliations for her membership interests, nor did anyone at Centrum ask him to do so. *Id.* at 303:19 – 304:1.

142. After Arons was terminated she received from Centrum reconciliations purportedly showing amounts due to, or from, Arons for 23 projects. P44. The reconciliations showed that distributions had been made previously in at least 13 projects. *Id.*

### ***Plaintiff's Claim for Severance***

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143. As noted, on February 1, 2008, Slaven sent Arons an e-mail asking that she not come back to work.

144. Plaintiff alleged in her Complaint that “Defendants’ termination of Arons was without cause, as Slaven acknowledged in the termination notice and as Centrum stated in the Notice of Right to Continue Group Health Coverage under COBRA it sent to Arons on or about February 1, 2008.” Compl. ¶ 14; Pl.’s Ex. 46 at MC 026460.

145. Slaven testified that the only reason he fired Arons for cause is because somebody told him that Arons had solicited another Centrum employee to leave the company. Trial Tr. 36:7-12, 36:20-22, 37:5-23 (Oct. 11, 2011)(Slaven). However, Slaven has no personal knowledge of whether Arons ever tried to solicit another Centrum employee to leave the company. Trial Tr. 28:24 – 29:7 (Oct. 11, 2011)(Slaven).

146. There is no documentation dating from before this lawsuit was filed claiming that Arons was terminated for cause. Trial Tr. 143:13 – 144:7 (Oct. 6, 2011)(McLinden); *Id.* at 307:4- 21 (Sept. 30, 2011)(Arons).

147. The conversation that McLinden says he had with a Centrum employee, who allegedly suggested that Arons tried to solicit her to leave, took place on February 4, 2008 – after Arons had already been terminated. Trial Tr. 151:17 – 152:19 (Oct. 6, 2011)(McLinden); P171.

148. Centrum states in the COBRA form for continued health benefits that Centrum prepared and sent to Arons on October 31, 2008 that Arons was terminated other than for gross misconduct. P46 at MCO26460.

149. Plaintiff’s employment agreement provides:

If I were terminated other than for cause (constituting bad acts), I would receive the balance of all earned commissions and, in exchange for relinquishing all of my project membership and partnership interests, I would receive a severance payment based on the formula of 1/2 of 1% on the estimated sales price of all units and parking spaces under development.

Pl.’s Ex. 2.

150. Arons never received any membership interests that she could relinquish in exchange for the severance payment. Trial Tr. 110:17-19, 199:8-17, 200:2-9 (Oct. 6, 2011) (McLinden)
151. No one from Centrum ever asked Arons to give up her claim to her membership interests in exchange for the severance payment after she was terminated and before she filed this suit. Trial Tr. 148:13-17 (Oct. 11, 2011)(Slaven); *Id.* at 329:20 – 330:2 (Sept. 30, 2011) (Arons).
152. Defendants admitted in discovery responses that 35 of the 38 projects at issue in this case included residences that were under development or in process in any way from September 30, 2002 to February 1, 2008. P63 at 4-6; P67 at 4-6; P71 at 4-6.
153. The agreement gave Centrum only 120 days from the date that Plaintiff relinquished her membership interests to pay severance on projects theretofore financed. Pl.’s Ex. 2. The agreement provides: “[s]everance payment will be made within 120 days of my termination for projects which have been financed and shall be made concurrent with financing for any projects financed after my termination.” Pl.’s Ex. 2.
154. Plaintiff’s asserted calculation of the severance owed to her does not take into account the fact that Centrum owned less than 100% of all but one of these projects. Trial Tr. (10/5/11) at 52:4-24 (Pakter).
155. The agreement provides for her to receive severance based on a formula which uses the “estimated sales price of all units and parking spaces under development.” Pl.’s Ex. 2.
156. Although the language does not specifically say that this refers only to the Centrum LLCs’ portion of the development, a fair reading of the agreement indicates that this was the intent because (a) the entire agreement is concerned only with “Centrum residential projects,” thereby implying that everything in the agreement should be interpreted as relating only to Centrum’s interest, and (b) it is patently unreasonable to interpret the

agreement as obligating Centrum to make a payment to Plaintiff based on something Centrum-related parties did not own.

157. The agreement provides that:

A unit will be deemed under development if (a) at the time of my departure, any actions have been taken with respect to developing the project and (b) at any time, financing (whether debt or equity) is received for such project.

Pl.'s Ex. 2.

158. The parties talked about this concept extensively in their negotiations. Both were sophisticated real estate people. Both understood that this language would mean that the company had been successful in arranging the zoning which was required to actually break ground and complete the project. Trial Tr. (10/11/11) at 66:23-69:10 (Slaven).

159. Zoning was a necessary consideration for whether a project was “under development.” According to Arons’ own testimony, the project had to be “viable.” Trial Tr. (9/30/11) at 109:3-18 (Arons).

## **Count II – Illinois Wage Payment and Collection Act**

160. Plaintiff alleged that “[e]ach of Slaven, Ashkin and McLinden knew that Centrum owed Arons final compensation under the Illinois Wage [Payment and Collection] Act upon her termination.” Compl. ¶ 28. The evidence at trial was that Mr. Ashkin did not know whether Plaintiff was owed any amount, or whether she was paid any amount after her first demand for money. Trial Tr. (10/6/11) at 26:14-27:2 (Ashkin). He also testified that he had no ability to find out. Trial Tr. (10/6/11) at 20:13-16 (Ashkin). He further testified that he does not know today whether she is owed anything. Trial Tr. (10/6/11) at 25:22-26:2 (Ashkin).

161. As for McLinden and Slaven, the evidence at trial was that they agreed to pay Plaintiff any amount she was actually due, but did not know or believe that she was owed the disputed amounts she demanded. *See, e.g.*, Trial Tr. (10/6/11) at 162:6-24 (McLinden).

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162. Plaintiff presented no evidence that any Defendant knew or believed that she was owed more than she was actually paid.

163. Plaintiff alleged that “Slaven, Ashkin and McLinden (sic) knowingly permitted Centrum to fail and refuse to pay Arons the final compensation due her.” Compl. ¶ 29. The evidence at trial was that Mr. Ashkin had no knowledge of what, if anything, Plaintiff was owed. Trial Tr. (10/6/11) at 26:14-27:2 (Ashkin). The evidence further showed that Slaven and McLinden did pay Plaintiff the final compensation actually due her. Defs.’ Ex. 83; Trial Tr. 10/6/11 at 154:7-11 (McLinden).

164. Centrum “went through a detailed calculation and determined if there was anything else that Plaintiff was owed in commissions, and then Arthur and I both said, ‘If she’s owed money, let’s pay it.’” Trial Tr. (10/6/11) at 162:16-24 (McLinden).

165. Plaintiff’s demands shifted, including up to and during trial, with the revisions to the report of her expert. Pl.’s Ex. 24, Defs.’ Ex. 885, Pl.’s Ex. 45, Pl.’s Ex. 232, Pl.’s Ex. 300, 301.

166. Arons alleged in her Complaint that Centrum had the ability to pay her demands, Compl. ¶ 17, but failed to prove this allegation at trial.

167. At the various times in 2008 that Arons made her demands, the real estate market was already in the throes of the steep decline that devastated the residential condominium market nationwide and hit the Florida and Gulf Coast markets particularly badly. *See* Defs.’ Ex. 949 (September 2006 email to Arons and others stating that Centrum would have to lower its prices to stay competitive, given a reported “39% year to date decline in condo sales and a 50% decline” year-over-year); Defs.’ Ex. 950 (June 2007 email from Arons forwarding an article titled “Condo freefall,” with comment from Arons, “Wow”); & Defs.’ Ex. 951 (Arons forwarding e-mail contained in Defs.’ Ex. 950); Trial Tr. (10/4/11) at 193:8 (Stocking) (“definite signs of decreased demand” in 2007).

168. Centrum, with its multiple in-progress Florida and Gulf Coast condominium developments, suffered badly from this downturn in business. Trial Tr. (10/6/11) at 181:13-23 (McLinden) (“clearly the market had tanked”).

169. Centrum made layoffs throughout 2008 (Trial Tr. (10/12/11) at 149:2-20 (Slaven)) – including layoffs of many of the former employees who testified at trial, like Mr. Stocking (Trial Tr. (10/4/11) at 124:17-23 & 153:21-23 (Stocking)) and Mr. Tucker (Trial Tr. (10/4/11) at 79:20-23 (Tucker)), and thereafter, including Mr. Ramarao (Trial Tr. (10/4/11) at 197:11-15 (Ramarao)).

**Count III – Tortious Interference With Contract**

170. Arons alleged that she “had a valid and enforceable contract with Centrum.” Compl. ¶ 33. She did not allege the existence of any contract between her and the Individual Defendants, and offered no evidence at trial to support the existence of such a contract.

171. Plaintiff alleged that “[e]ach of Slaven, Ashkin and McLinden (sic) intended that Centrum breach its contract with Arons solely for his own gain.” Compl. ¶ 36. She failed to offer any evidence at trial of such intent on the part of the Individual Defendants. Plaintiff also failed to offer any evidence that failing to cause Centrum to pay sums to her would not operate to Centrum’s gain.

172. Plaintiff alleged that causing her to bear losses in the Centrum residential projects “meant that there was more money available to distribute directly to each of Slaven, Ashkin and McLinden (sic), and each Defendant so intended such a result.” Compl. ¶ 37. Plaintiff offered no evidence at trial that allocating losses to her made more money actually available to be distributed at the time those allocations were made.

173. Plaintiff alleged that, “[u]pon information and belief, each of Slaven, Ashkin and McLinden (sic) has received more money than they otherwise would have received had Centrum not breached its agreement with Arons.” Compl. ¶ 38. Plaintiff offered no evidence

at trial that any of the Individual Defendants received any more money than they otherwise would have received had Centrum paid Plaintiff the sums she now alleges were due her.

174. Plaintiff alleged that, “[u]pon information and belief, each of Slaven, Ashkin and McLinden will receive in the future money from Centrum projects than they otherwise would receive had Centrum not breached the contract, unless Centrum’s breach of contract is rectified.” Compl. ¶ 38. Plaintiff offered no evidence to support this allegation.

175. Plaintiff presented no evidence that the Individual Defendants benefitted at all from the actions Plaintiff alleges.

176. And the refusal to pay Plaintiff was clearly in Centrum’s interest, both because of the disputed nature of the claims as well as the fact that Centrum did not have the funds available to pay the amounts demanded.

#### **Count IV – Breach of Fiduciary Duty**

177. Each Operating Agreement provides, in pertinent part, that:

Except as herein otherwise expressly stipulated to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. **Nothing herein contained, express or implied, is intended to confer upon any person other than the parties hereto and their respective successors and permitted assignees any rights or remedies under or by reason of this Agreement.**

*See, e.g.*, Pl.’s Ex. 29, ¶ 13.4. or 13.5 (depending on the agreement) (emphasis added).

178. Arons was never a party to any of the Operating Agreements. Pl.’s Ex. 29.

179. No one ever represented to Arons that they were making her an official member of any Centrum LLC. Trial Tr. (10/3/11) at 59:8-11 (Arons).

180. Arons never received K-1s. Trial Tr. (9/30/11) at 301:19-20 (Arons); Trial Tr. (10/3/11) at 62:16-18 (Arons).

181. Section 7.1 of each Operating Agreement provides that the priorities regarding distributions of Available Cash “are for the benefit of the Members only and not for the benefit of any third party or creditor of the Company, and neither the Company nor the Board of Managers shall be liable or responsible to any third party or creditor of the Company for any deviation from such priorities.” *See* Pl.’s Ex. 29, § 7.1.

182. Section 9.2 of the Operating Agreements also expressly provided that no person could be admitted “as an additional or substituted Member” under the agreement unless and until, among other requirements, “the prospective admittee executes and delivers to the Company a written agreement in form reasonably satisfactory to the Board of Managers, pursuant to which said person agrees to be bound by and confirms the obligations, representations and warranties contained in this agreement.” *See* Pl.’s Ex. 29, § 9.2(c).

**Defendants’ Affirmative Defenses and Counterclaims**

***Licensing***

186. Slaven never suggested to Arons before Centrum hired her that she would need a real estate license to perform her job duties and responsibilities. Trial Tr. 112:7-19 (Sept. 30, 2011) (Arons). No one at Centrum ever suggested to Arons that she needed a license at any time while she worked there. *Id.* at 114:14-23. Arons had a real estate salesperson's license when she joined Centrum that lapsed in 2003 after she did not take the bi-annual test; she did not think she needed a real estate license to do her job at Centrum. *Id.* at 113:5 – 114:13.

187. Arons did not negotiate the purchase in any of the more than 6,100 real estate transactions on which she seeks her \$1000 commission override, not is she seeking any compensation in this case for negotiating the sale of any real estate. Trial Tr. 219:3-6, 219:20 – 220:3, 221:21 –222:8 (Oct. 3, 2011)(Arons).

188. Defendants have failed to meet their burden of proving that Arons needed a license to perform her job duties and responsibilities at Centrum.

***Counterclaims – Count I Breach of Fiduciary Duty and Count II Unjust Enrichment***

189. An employee handbook was in effect throughout at least part of Arons' tenure at Centrum ("Centrum Employee Handbook"). Pl.'s Ex. 9.

190. Centrum's Employee Handbook did not modify the terms of Arons' employment agreement. Trial Tr. 206:11-24 (Oct. 3, 2011)(Arons); P9 at MCo11064, MCo11109.

191. Arons never solicited any Centrum employee to leave the company. Trial Tr. 328:24 – 329:2 (Sept. 30, 2011)(Arons).

192. None of the Defendants has any personal knowledge of whether Arons solicited another employee to quit Centrum, tried to develop other properties in competition with Centrum, or intentionally misrepresented any business expenses. Trial Tr. 29:18 – 30:2 (Oct. 6, 2011) (Ashkin); *Id.* at 61:12 – 63:10, 75:12-15 (Oct. 6, 2011)(McLinden).

193. Centrum did not lose any employees, business opportunities, customers, or clients as a result of any actions by Arons. Trial Tr. 134:8-23 (Oct. 6, 2011) (McLinden).

194. Defendants have failed to meet their burden of proving that Arons ever solicited a Centrum employee to quit.

195. The evidence at trial included a variety of communications between Plaintiff and third parties relating to developments she pursued. For example, Plaintiff actively pursued a project known as the "Four Palms Resort" in St. Martin. Trial Tr. (10/3/11) at 171:7-13 (Arons); *see also* Defs. Exs. 28, 33; Trial Tr. (10/3/11) at 165:20-168:8 (Arons).

196. Plaintiff admitted she did not bring the Four Palms Resort project to Centrum's attention "until much later," the land was sold three days after she looked at it, in February 2007. Defs.' Ex. 28; Trial Tr. (10/3/11) at 167:22-168:1 (Arons). She admitted that she did not

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discuss the project with anyone at Centrum until November 2007, nine months after she sought additional information, because the land became available again. Trial Tr. (10/3/11) at 167:16-19; 168:2-11 (Arons).

197. In February 2007, Plaintiff told another person that she was “seriously starting to work on this deal with the hotel guy I met,” and asked him not to tell Mike Lerner, Centrum’s developer partner, about it. Defs. Ex. 32; Trial Tr. (10/3/11) at 170:1-171:3 (Arons).

198. She conducted this meeting in Aspen, by herself, without any Centrum oversight and never notified anyone at Centrum about that meeting Trial Tr. (10/3/11) at 169:16-17, 21:24. (Arons).

199. Her explanation, was that the project “sold two days after I met with him.” Trial Tr. (10/3/11) at 169:23-24 (Arons).

200. Plaintiff also admitted to doing research into the feasibility of projects that would compete with Centrum in the Florida market. Defs.’ Exs. 56, 57, 59; Trial Tr. (10/3/11) at 176:2-180:9 (Arons).

201. Plaintiff ran financial projections for deals in Sarasota, Florida, that were sited next to Centrum’s Serenata Sarasota project. Defs.’ Ex. 230; Trial Tr. (10/13/11) at 43:1-10 (Arons). In November 2007, she forwarded the projections to Alex Ballerini, with specific comments about how to finance the deal. Defs.’ Ex. 230; Trial Tr. (10/13/11) at 43:22-44:10 (Arons). She admitted, “I looked at a loan – I put a loan to value in, yes.” Trial Tr. (10/13/11) at 44:16-20 (Arons).

202. Although she testified that she was looking at these competing projects on Centrum’s behalf, she admitted that the only people she talked to about her analyses were her brother and Alex Ballerini, an MCZ/Centrum employee in her confidence. Trial Tr. (10/3/11) at 178:9-11 (Arons).

203. She admitted that she analyzed the use of a loan to finance the development. Trial Tr. (10/13/11) at 44:3-20 (Arons). She claimed she did not bring the project to Centrum's attention because it was not viable. Defs.' Ex. 59; Trial Tr. (10/13/11) at 47:24-49:8 (Arons).

204. Defendants have failed to meet their burden of proving that Arons ever developed properties in competition with Centrum while she was a Centrum employee.

205. Arons never intentionally misrepresented any amounts in her expense reports to Centrum. Trial Tr. 214:22 – 215:7 (Oct. 3, 2011)(Arons). Arons learned of two mistakes while she was at Centrum that she corrected, but she did not know of any other mistakes until after she filed this lawsuit. *Id.* at 215:8-23. Arons did not prepare or review her expense reports; they were prepared by Elly, her assistant. *Id.* at 215:24 – 216:9, 216:21 – 217:15 (Oct. 3, 2011)(Arons); *Id.* at 121:24 – 123:17 (Oct. 13, 2011)(Arons).

206. Arons admitted that she received reimbursement from Centrum for expenses that were personal and not business-related; she admitted that she owes this money to Centrum but has not paid it because the parties are in litigation. Trial Tr. (10/13/11) at 124:10-20 (Arons).

1. Defendants have failed to meet their burden of proving that Arons ever intentionally misrepresented personal charges in her business expense reports.

### **Conclusions of Law and Decisions**

This case is about these sentences in the letter agreement under which Plaintiff seeks \$29 million in damages for:

1. Failure to pay her commissions on units sold by third party brokers;
2. The value of her interest in various projects developed while she was employed but which were never paid to her; and
3. The estimated sales price of all units and parking spaces under development at the time she was terminated.

Thus the employment agreement negotiated over months by Plaintiff and Slaven and signed by Ashkin are at the heart of this case. The meanings of some of its terms are agreed and some are disputed. Although Defendants argue they fired Plaintiff for cause, the evidence does not

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support that position. After judging the credibility of the witness on that issue, the court finds Plaintiff was terminated without cause and the provisions in the agreement relating to that status are examined and ruled upon here.

### **The Employment Agreement, Severance Provision**

The employment agreement provides that if Plaintiff is terminated other than for cause she is owed:

- A. The balance of all earned commissions and
- B. In exchange for relinquishing all of her project membership and partnership interests, she would receive a severance payment based on the formula of 1/2 of 1% on the estimated sales price of all units and parking spaces under development.

During contract negotiations with plaintiff in 2002, Slaven insisted that the agreement define “under development” and the parties agreed on this definition which they included in the employment contract:

“...if (a) at the time of my departure, any actions have been taken with respect to developing the project and (b) at any time, financing (whether debt or equity) is received for such project.”

The agreement provides that “the payment will be made within 120 days of the termination for projects which have been financed and shall be made concurrent with financing for any projects financed after my termination.” The parties agreed that if plaintiff was terminated without cause she would surrender her 5% interest in the incompleting projects which were under development, as defined by the parties, in return for a severance payment which was to be calculated as 1/2 of 1% of the estimated sales price of all units and parking spaces in the incompleting projects which were under development. This was to provide a method for Centrum to buy back plaintiff’s percentage interest and sever ties with her.

### **Plaintiff Claims Compensation from 38 Individual Centrum Projects**

Plaintiff contends that her employment agreement entitles her to a 5% membership interest in certain individual projects for which she was not compensated, \$1,000 commission on units sold and/or a severance payment of 1/2 of 1% of the estimated sales price of all units

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and parking spaces under development at the time of her termination in the following 38 projects in which Centrum owned varying percentages. She admits she is only entitled to a percentage interest in the percentage which Centrum owned of each project, she does not claim an interest in 100% of any project.

Plaintiff demanded

(1.) a total of \$6.1 million in unpaid *commissions from third party brokered sales*.

(2.) In addition, Plaintiff's expert estimated the total sales price of each individual project and applied her percentage interest. If the project lost money, Plaintiff calculated her interest as 0 and not as a loss. Based on this calculation, Plaintiff demanded an additional \$23,469,078 consisting of *unpaid membership interests* in various projects and her *severance payment of 1/2 of 1%* in the estimated sales price of all units and spaces under development. Defendants computed the estimated sales price based on the percentage owned by Centrum and calculated that her demand, which was unjustified, they argued, should have been, at the most, \$11,627,002. Of that sum, Plaintiff is due nothing.

Defendants reply that the agreement was to aggregate all the projects to compute profit or loss as a *whole* and when that is done, Plaintiff's losses exceeded her gains and she is due nothing more. Additionally, Defendants contend she is due no commission for third party brokered sales, because that was the parties' agreement.

The projects, percentages Centrum owned, the total estimated project sales price, and the estimated sales price based on Centrum's interest are (Bero Report Schedule 1.1):

<b>Project Name</b>	<b>Total Estimated Project Sales Price</b>	<b>Percentage Centrum Owned</b>	<b>Estimated Sales Price Centrum Member Value</b>	<b>Plaintiff's Claims</b>	<b>Comments</b>
500 Ocean Plaza	\$148,377,750	54%	\$80,123,985	Severance	
Ambassador Hotel	\$328,803,437	60%	\$197,282,062	Severance; Commission	Third-Party Broker
Avalon	\$140,149,000	16.40%	\$22,984,436	Commission Due; Severance	Third-Party Broker

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Bay Club	\$134,526,049	60%	\$80,715,629	Commission Due; Severance	Third-Party Broker
Bradley Place I	\$0	100%	\$0	Membership Interest	
Bradley Place II	\$26,701,100	87.50%	\$23,363,463	Membership Interest	
Cite	\$128,531,365	55%	\$70,692,251	Membership Interest; Commission	Third-Party Broker
Cityfront-Astor	\$233,797,055	50%	\$116,898,528	Severance	
Cityfront-St. Clair	\$207,565,015	50%	\$103,782,508	Severance	
<b>Project Name</b>	<b>Total Estimated Project Sales Price</b>	<b>Percentage Centrum Owned</b>	<b>Estimated Sales Price Centrum Member Value</b>	<b>Plaintiff's Claims</b>	<b>Comments</b>
Cityfront-Fairbanks	\$169,105,968	50%	\$84,552,984	Commission Due; Severance	
Coral Reef Resort	\$320,946,300	50%	\$160,473,150	Severance	
Douglas Grand	\$130,315,698	50%	\$51,657,849	Membership Interest; Commission	Third-Party Broker
Elmwood	\$12,378,600	80%	\$9,902,880	Membership Interest; Commission	Third-Party Broker
Flamingo I	\$249,416,989	62%	\$154,638,533	Commission Due; Severance	Third-Party Broker
Flamingo II	\$258,172,475	62%	\$160,066,935	Severance	
Jamison Station	\$121,178,571	47.50%	\$57,559,821	Commission Due; Severance	Third-Party Broker
Lofts at Lakeview	\$52,446,000	100%	\$52,446,000	Severance	
Millenium Garage	\$16,560,000	60%	\$9,936,000	Membership Interest	
Mirabella	\$70,491,217	60%	\$42,294,730	Commission Due; Severance	Third-Party Broker
Montgomery	\$154,338,214	1.25%	\$1,929,228	Membership Interest	
No. Ten Lofts	\$74,609,100	55%	\$41,035,005	Membership Interest	

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Oceancrest	\$324,656,777	59%	\$191,547,498	Membership Interest; Commission	Third-Party Broker
Park Millennium	\$164,981,838	60%	\$98,989,103	Membership Interest; Commission	Third-Party Broker
Regent Park	\$0	60%	\$0	Membership Interest; Commission	Third-Party Broker
River Village	\$68,422,543	33%	\$22,579,439	Severance	
Roosevelt	\$130,960,878	10%	\$13,096,088	Severance	
	<b>Total Estimated Project Sales Price</b>	<b>Percentage Centrum Owned</b>	<b>Estimated Sales Price Centrum Member Value</b>	<b>Plaintiff's Claims</b>	<b>Comments</b>
Serenata Sarasota	\$50,597,869	60%	\$30,358,721	Commission Due; Severance	Third-Party Broker
Serenata Tampa	\$73,332,050	50%	\$36,666,025	Membership Interest; Commission	Third-Party Broker
Somerset	\$72,991,060	50%	\$36,495,530	Commission Due; Severance	Third-Party Broker
Sunscape	\$96,500,000	60%	\$57,900,000	Commission Due; Severance	Third-Party Broker
The Cove	\$127,750,000	0%	\$0	Severance	
The Palms	\$102,112,345	60%	\$61,267,407	Commission Due; Severance	Third-Party Broker
The Wave	\$135,606,544	60%	\$81,363,926	Membership Interest; Commission	Third-Party Broker
View 14	\$86,976,900	75%	\$65,232,675	Commission Due; Severance	Third-Party Broker
Villa Medici	\$19,300,000	50%	\$9,650,000	Severance	
Waterford	\$0	0%	\$0	Severance	
Western Auto	\$39,119,900	50%	\$19,559,950	Membership Interest; Commission	Third-Party Broker
Willow Lake	\$80,922,920	50%	\$40,461,460	Severance; Commission	Third-Party Broker

**Commission on Units Sold by Third Party Brokers**

Plaintiff claimed she was owed \$6.1 million on the following 22 projects (included in the list above) for which she was to receive \$1,000 commission for each unit sold by a third party. Plaintiff contends she only agreed to delay receipt of third party commissions to a time in the future and that she never agreed to forgo those commissions while Defendants contended that plaintiff was not entitled to \$1,000 commission on any third party brokered sales because she agreed to this term in a conversation with Slaven:

1. Ambassador Hotel
2. Avalon
3. Bay Club
4. Cite
5. Cityfront-Fairbanks
6. Douglas Grand
7. Elmwood Park
8. Flamingo I
9. Jamison Station
10. Mirabella
11. Oceancrest
12. Park Millenium
13. Regent Park
14. Serenata Sarasota
15. Serenata Tampa
16. Somerset
17. Sunscape
18. The Palms
19. The Wave
20. View 14
21. Western Auto
22. Willow Lake

Slaven testified that in 2003 or 2004 he had a conversation with plaintiff wherein he explained that since Centrum engaged third party brokers to sell units in certain projects Plaintiff would not receive a \$1,000 commission for those units sold by third parties. He testified that Plaintiff replied “Of course not. I would never think of it.” Plaintiff agrees that she discussed the issue of third party broker commissions with Slaven and said “In the summer of 2004 in a rental car in Florida on the way to the airport Slaven asked if she would take the commissions on third party broker projects at the end of a project. She responded “sure.”

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Subsequently Slaven notified Centrum's accountant that Plaintiff was not to receive commissions on third party brokered sales. Plaintiff asked for and received her commissions on non third party sales but never asked for or claimed commissions on third party sales. Plaintiff claimed that a \$500,000 distribution to her was for third party brokered sales, while Defendant disputed that and argued that payment represented a distribution of part of plaintiff's equity in certain projects.

The court was in a position to judge the credibility of the witnesses based on the substance of their testimony and their demeanor on the witness stand. The court finds plaintiff not believable on this rendition of the conversation relating to third party brokered commissions and Slaven believable. Thus, plaintiff is not entitled to commissions on third party brokered sales. The parties clarified their agreement in this conversation and plaintiff expressed her understanding that she was not entitled to commissions on what others had sold on certain projects in Florida. Additionally, based on a review of the documents introduced into evidence and based upon the credibility of the witnesses on this issue, the court finds the \$500,000 payment was an equity distribution and not a commission payment. Therefore this amount shall be deducted from the amount awarded plaintiff for her unpaid membership interest which she was due while she was with the company.

### **Membership Interests Not Paid Plaintiff While At Centrum**

Plaintiff asserted that she was not paid her 5% membership interest in 14 projects while employed. She contends that her membership interest was based on individual projects, not 5% of the aggregated total of all development projects. Those 14 projects (included in the list above) are:

1. Bradley Place I
2. Bradley II
3. Cite
4. Douglas Grand
5. Elmwood Park
6. Millennium Garage
7. Montgomery
8. No. Ten Lofts
9. Oceancrest
10. Park Millennium
11. Regent Park

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12. Serenata Tampa
13. The Wave
14. Western Auto

Defendants maintained that she was given a 5% interest in the business and not in each project separately and that to calculate what she was owed one had to aggregate all the profits and losses of each of the projects and if the grand total was negative, plaintiff was entitled to no additional membership interest payment. Defendants performed a calculation which showed plaintiff's "account" to be negative. Prior to 2007 Centrum never had a loss on a project, so this concept was never discussed when the parties were negotiating and drafting plaintiff's employment agreement.

Plaintiff was never given an actual ownership interest in the separate LLCs, although all agree that she was to be treated as a member of the individual LLCs pursuant to her employment agreement. The members of the LLCs were given tax loss documents or given credits to use in other ventures instead of payouts. During plaintiff's employment, Centrum paid her over \$1 million for her membership interest in various projects. Centrum did not pay her on fourteen of the projects developed while plaintiff was with the company although Centrum identified the amounts she was due and categorized them as marketing expenses to be paid before profit distribution. Plaintiff should have been paid her 5% on the fourteen projects at the time other members were given their credits which were used to develop new projects. Because these sums were fixed and ascertainable and carried on Centrum's books, pre judgment interest is awarded on those amounts.

As an incentive to make individual projects successful, Plaintiff and Slaven agreed that she would own an individual interest in each project. Her compensation was not based on 5% of the company as a whole. Thus, plaintiff is entitled to 5% of whatever each project made without a deduction for losses on prior or subsequent projects. It is not the spirit of the agreement to hold her responsible for the company's overall success/failure, but only for each individual project. The parties agreed they never discussed aggregating the losses and profits overall. This is a subject which they would have discussed had Centrum intended to negate the profit of one project with the loss from another, separate project. If that were the case, the letter agreement would not have clearly stated plaintiff had interests in separate projects.

**Severance**

In addition, under her severance clause in the employment agreement, she is to be paid 1/2 of 1% of the estimated sales price of all units and parking spaces in 24 projects “under development” when she was with the company. Those projects are:

1. 500 Ocean Plaza
2. Ambassador Hotel
3. Avalon
4. Bay Club
5. Cityfront -Astor
6. Cityfront -St. Clair
7. Cityfront-Fairbanks
8. Coral Reef
9. Flamingo I
10. Flamingo II
11. Jamison Station
12. Lofts at Lakeview
13. Mirabella
14. River Village
15. Roosevelt
16. Serenata Sarasota
17. Somerset
18. Sunscape
19. The Cove
20. The Palms
21. View 14
22. Villa Medicia
23. Waterford
24. Willow Lake

Plaintiff contends she is entitled to a percentage of the units and spaces even if they were sold after her termination, or even if the units and parking spaces were never sold, or even if the entire projects were abandoned in the future. She further contends the estimated value of the units and spaces is to be computed as of the date of her termination. Defendants argue that if she is entitled to this compensation as severance, the estimated values must be computed as of today which would drastically reduce plaintiff’s compensation since many of the projects failed and no units were ever sold. It is interesting to note, that if America’s real estate boom had continued to today, under Defendants’ theory that Plaintiff should value her interest as of today, her severance payment would be enormous.

## **ORDER**

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According to Slaven, during the negotiations of plaintiff's employment agreement, he wanted the term "under development" clearly defined and having a particular starting date. The parties agreed on the language:

"A unit will be deemed under development if (a) at the time of my departure, any actions have been taken with respect to developing the project and (b) at any time, financing (whether debt or equity) is received for such project."

He testified that the definite start date he wanted in the agreement was at a time "...any actions have been taken with respect to developing the project..." He further testified that he never proposed a particular ending date. Plaintiff testified that she understood under development to mean that the project had zoning approved by the city where it was located to be a residential development and that it had to be a "viable" development. Slaven agreed and said simply buying a piece a property or trying to get zoning was not enough. He said zoning had to have been gotten from the city where the property was located.

Plaintiff testified that (b) of the under development definition meant what it said, if the zoned project had debt or equity financing at any time, she was entitled to include it in her severance calculation. This term is unambiguous and must be interpreted as written and agreed to by the parties. Slaven testified that the term meant "construction financing" but there is no hint of that in the definition Slaven himself proposed. Thus any residential projects which had city approved zoning to be a residential project and on which Centrum received debt or equity financing before or after plaintiff was terminated qualifies as a project she may include in her severance calculation. Had the real estate market continued to soar, the values of the projects under development would have soared also and would have been worth far more than the estimated value of their individual units and parking spaces. Severance is a concept which means payment at the time of severance, not payment based on factors in the future. Plaintiff gave up any claim to her 5% interest in undeveloped but planned projects in return for a payment based on the estimated value of units in the future. The time to value these units is at the time of severance, not at the present time. That is what the parties agreed.

## **JUDGEMENT**

### **I. Breach of Contract**

## ORDER

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Plaintiff was terminated by Centrum without cause.

Further Plaintiff's contract was with Centrum and not with any of the Individual Defendants. Therefore, the Plaintiff failed to prove her Breach of Contract claim against any of the Individual Defendants. As such, the Judgment Award Plaintiff receives is against Centrum only.

### A. Commission

Plaintiff is not entitled to any commission relating to sales made by third party brokers. Therefore, as the chart below demonstrates, of the 22 projects Plaintiff requested commissions from, she is only entitled to commissions for Cityfront-Fairbanks as it did not involve third party brokers. Therefore, Plaintiff is entitled to \$62,000 in unpaid commissions.

<b>Project Name</b>	<b>Amount Plaintiff Claiming for Commission</b>	<b>Third-Party Broker</b>	<b>Comments</b>
Ambassador Hotel		Third-Party Broker	
Avalon		Third-Party Broker	
Bay Club		Third-Party Broker	
Cite		Third-Party Broker	
Cityfront-Fairbanks	\$62,000		
Douglas Grand		Third-Party Broker	
Elmwood		Third-Party Broker	
Flamingo I		Third-Party Broker	
Jamison Station		Third-Party Broker	
Mirabella		Third-Party Broker	
Oceancrest		Third-Party Broker	
Park Millennium		Third-Party Broker	
Regent Park		Third-Party Broker	
Serenata Sarasota		Third-Party Broker	
Serenata Tampa		Third-Party Broker	
Somerset		Third-Party Broker	
Sunscape		Third-Party Broker	
The Palms		Third-Party Broker	
The Wave		Third-Party Broker	
View 14		Third-Party Broker	
Western Auto		Third-Party Broker	Plaintiff testified no commission owing. Trial Tr. (9/30/11) at 128:6-12



**ORDER**

<b>Project Name</b>	<b>Percentage Centrum Owned</b>	<b>5% Membership Interest through 2/1/08 per Bero's Schedule 2.1</b>	<b>Pakter's 5% Lower Range</b>	<b>Comments</b>
Bradley Place I	100%	\$142,062		2.5% per contract
Bradley Place II	87.50%	\$43,279		2.5% per contract
Cite	55%	\$325,232		
Douglas Grand	50%	\$391,253		
Elmwood	80%	\$34,894		
Millennium Garage	60%	\$0	\$ 483,099	
Montgomery	1.25%	\$1,420		
No. Ten Lofts	55%	\$98,017		
<b>Project Name</b>	<b>Percentage Centrum Owned</b>	<b>5% Membership Interest through 2/1/08 per Bero's Schedule 2.1</b>	<b>Pakter's 5% Lower Range</b>	<b>Comments</b>
Oceancrest	59%	\$1,888,631		
Park Millennium	60%	\$320,968		
Regent Park	60%	\$446,719		
Serenata Tampa	50%	\$198,618		
The Wave	60%	\$426,037		
Western Auto	50%	\$41,104		

Sub-Total:	\$4,358,234	\$ 483,099
Total of Column C & D:	\$4,841,333	
Subtract Distributions already paid	\$1,100,000	
<b>Grand Total:</b>	<b>\$3,741,333</b>	

**C. Severance Payment**

Plaintiff is entitled to her severance payment of the estimated value of all units and parking spaces for projects which were under development as of February 2008 when she was terminated by Centrum. The time to value these units is at the time of severance, not at the present time, as that is what the parties agreed. Under development is defined as those

**ORDER**

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projects which had zoning for residential project approved by the municipality where they were located and which had debt or equity financing. Plaintiff had the burden to prove that a project had approved zoning and financing. Plaintiff proved that out of the 24 projects, all but three had zoning and financing. Mr. Slaven testified on October 12, 2011 that both the 500 Ocean Plaza and Waterford Crest projects had not achieved zoning approval. (Trial Tr. (10/12/11) at 183-85 (Slaven). Further in regards to the River Village project, Defendants' Exhibit 809 at Schedule 3.25 establishes that the project was completed prior to Plaintiff's departure from Centrum. See Def. Exhibit 809 at Sched. 3.25. Plaintiff has not presented any evidence to refute this claim. As such, Plaintiff has not established that the 500 Ocean Plaza, River Village, and Waterford Crest projects had approved zoning at the time she was terminated and those projects are not to be included in her severance payment.

Based on the chart below, the court finds that Plaintiff is entitled to \$7,740,786 as severance for the 21 projects that were under development at the time she was terminated from Centrum.

Project Name	Under-Development	Total Estimated Project Sales Price	% Centrum Owned	Estimated Sales Price Centrum Member Value	1/2 of 1% of Estimated Sales Price Centrum Member Value	Comments
500 Ocean Plaza	No	\$148,377,750	54%	\$80,123,985	\$0	No Zoning on the Project. Trial Tr. (10/12/11) at 184-185.
Ambassador Hotel	Yes	\$328,803,437	60%	\$197,282,062	\$ 986,410	
Avalon	Yes	\$140,149,000	16.40%	\$22,984,436	\$ 114,922	
Bay Club	Yes	\$134,526,049	60%	\$80,715,629	\$ 403,578	
Cityfront-Astor	Yes	\$233,797,055	50%	\$116,898,528	\$ 584,493	
Cityfront-St. Clair	Yes	\$207,565,015	50%	\$103,782,508	\$ 518,913	
Cityfront-Fairbanks	Yes	\$169,105,968	50%	\$84,552,984	\$ 422,765	
Coral Reef Resort	Yes	\$320,946,300	50%	\$160,473,150	\$ 802,366	
Flamingo I	Yes	\$249,416,989	62%	\$154,638,533	\$ 773,193	
Flamingo II	Yes	\$258,172,475	62%	\$160,066,935	\$ 800,335	
Jamison Station	Yes	\$121,178,571	47.50%	\$57,559,821	\$ 287,799	
Lofts at Lakeview	Yes	\$52,446,000	100%	\$52,446,000	\$ 262,230	
Mirabella	Yes	\$70,491,217	60%	\$42,294,730	\$ 211,474	

**ORDER**

River Village	No	\$68,422,543	10%	\$22,579,439	\$0	Projected completed prior to 2/1/08. Def. Exhibit 809 at Sched. 3.25.
Roosevelt	Yes	\$130,960,878	10%	\$13,096,088	\$ 65,480	
Serenata Sarasota	Yes	\$50,597,869	60%	\$30,358,721	\$ 151,794	
Somerset	Yes	\$72,991,060	50%	\$36,495,530	\$ 182,478	
Sunscape	Yes	\$96,500,000	60%	\$57,900,000	\$ 289,500	
The Cove	Yes	\$127,750,000	0%	\$0	\$0	
The Palms	Yes	\$102,112,345	60%	\$61,267,407	\$ 306,337	
View 14	Yes	\$86,976,900	75%	\$65,232,675	\$ 326,163	
Villa Medici	Yes	\$19,300,000	50%	\$9,650,000	\$ 48,250	
					<b>1/2 of 1% of Estimated Sales Price Centrum Member Value</b>	
<b>Project Name</b>	<b>Under-Development</b>	<b>Total Estimated Project Sales Price</b>	<b>% Centrum Owned</b>	<b>Estimated Sales Price Centrum Member Value</b>		<b>Comments</b>
Waterford	No	\$0	0%	\$0	\$0	No Zoning on the Project. Trial Tr. (10/12/11) at 184-185.
Willow Lake	Yes	\$80,922,920	50%	\$40,461,460	\$ 202,307	

**Grand Total: \$7,740,786**

**II. Wage Payment Act**

Defendants are not guilty of violating the Illinois Wage Payment Act.

The Illinois Wage Payment and Collection Act (“WPCA”), requires corporate employers to “pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee.” 820 ILCS 115/5 (2008). Plaintiff alleged that the Defendants violated Section 5 of the WPCA by not paying her 5% membership interest or severance. However, Defendants went through a detailed calculation of whether plaintiff was owed additional compensation in January, February 2008 and came to the conclusion that she was due nothing more. Defendants had paid plaintiff’s salary, commissions and had made distributions to her of her 5% interests in individual projects. Defendants believed that plaintiff’s employment agreement did not entitle

## ORDER

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her to commissions on third party brokered sales and that all projects had to aggregate as to profits and loss to determine her 5% interest. Defendants calculated that the overall projects had lost more than plaintiff had due. Plaintiff's demands varied in amounts claimed and in the details of her calculations of what was owed. There is no evidence that Defendants knowingly and intentionally refused to pay plaintiff what they knew they owed her.

Since Plaintiff has failed to establish that Centrum violated the Wage Payment Act, she has necessarily failed to establish that any Individual Defendant violated the Act by failing to pay her demands. Section 115/13 of the WPCA provides (emphasis added):

Any officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.

*See* 820 ILCS 115/13. Section 13 of the WPCA provides that only officers of a corporate employer “who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers” themselves. WPCA § 13 (emphasis added); *Andrews*, 217 Ill. 2d at 109. The administrative code provisions that apply to the Act require each individual to have had “knowledge of the existence of facts constituting the alleged violation” in order to incur personal liability. 56 Ill. Admin. Code 300.620. As there is no evidence that Defendants knowingly and intentionally refused to pay plaintiff what they knew they owed her, the Plaintiff has failed to establish that any Individual Defendant violated the Act.

### III. Tortious Interference with Contract

For the reasons above, plaintiff failed to prove Defendant's tortuous interference with her contract.

### IV. Breach of Fiduciary Duty

Plaintiff failed to prove her breach of fiduciary duty claim because she was not a party to the Operating Agreements. Each Operating Agreement provides, in pertinent part, that:

Except as herein otherwise expressly stipulated to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. **Nothing herein contained, express or implied, is intended to confer upon any person other than the parties hereto and their respective successors and permitted**

**assignees any rights or remedies under or by reason of this Agreement.**

*See, e.g.*, Pl.'s Ex. 29, ¶ 13.4. or 13.5 (depending on the agreement). Plaintiff was never a party to any of the Operating Agreements. Pl.'s Ex. 29. No one ever represented to Plaintiff that they were making her an official member of any Centrum LLC and she never received K-1s. *See* Trial Tr. (9/30/11) at 301:19-20 (Arons); Trial Tr. (10/3/11) at 59:8-11, 62:16-18. (Arons). Section 7.1 of each Operating Agreement provides that the priorities regarding distributions of Available Cash “are for the benefit of the Members only and not for the benefit of any third party or creditor of the Company, and neither the Company nor the Board of Managers shall be liable or responsible to any third party or creditor of the Company for any deviation from such priorities.” *See* Pl.'s Ex. 29, § 7.1. As Plaintiff was not a member to any of the Operating Agreements, Plaintiff has failed to prove that Defendants owed her a fiduciary duty or breached such a duty.

**Centrum's Counterclaims**

Defendants failed to prove that plaintiff breached her fiduciary duty by pursuing real estate projects on her own behalf, soliciting another Centrum employee to leave Centrum and work for her on a competing project, violating Centrum's Employee Handbook, and intentionally misrepresenting personal charges as business charges on her expense reports. The court believed the testimony of plaintiff in this regard. First, Centrum's Employee Handbook did not modify the terms of Arons' employment agreement. *See* Trial Tr. (Oct. 3, 2011) 206:11-24 (Arons); P9 at MCo11064, MCo11109. Further, Plaintiff testified that she never solicited any Centrum employee to leave the company. *See* Trial Tr. (Sept. 30, 2011) 328:24-329:2 (Arons). In contrast, none of the Defendants had any personal knowledge of whether Plaintiff solicited another employee to quit Centrum, tried to develop other properties in competition with Centrum, or intentionally misrepresented any business expenses. Trial Tr. (Oct. 6, 2011)29:18 – 30:2 (Ashkin); *Id.* at 61:12 – 63:10, 75:12-15 (McLinden). In addition, Centrum did not lose any employees, business opportunities, customers, or clients as a result of any actions by Plaintiff. *See* Trial Tr. (Oct. 6, 2011) 134:8-23 (McLinden). As such, Defendants have failed to meet their burden of proving that Plaintiff breached any fiduciary duty she owed to Centrum.

**ORDER**

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Defendant's failed to prove its unjust enrichment claim as the court believed the testimony of plaintiff on this count. Plaintiff testified that she never intentionally misrepresented any amounts in her expense reports to Centrum. *See* Trial Tr. (10/3/11) at 214:22 -215: 7 (Arons). In fact, Plaintiff learned of two mistakes while she was Centrum that she corrected, but she did not know of any other mistakes until after she filed this lawsuit. *Id.* at 215:8-23. Plaintiff did not prepare or review her expense reports; they were prepared by her assistant. *Id.* at 215:24 – 216:9, 216:21 – 217:15. Defendants failed to show that any of the personal charges that were included in Plaintiff's expense report were anything other than unintentional mistakes.

Even though this court finds that any personal charges listed on Plaintiff's expense report were unintentional mistakes, Plaintiff is still responsible for reimbursing Centrum for these personal expenses. The expenses at issue are as follows:

<b>Exhibit</b>	<b>Amount</b>	<b>Trial Tr. (10/13)</b>	<b>Notes</b>
969	\$186.70	127	Airfare Ms. Arons charged and refunded, keeping the refund
517	\$766.90	131	Airfare Ms. Arons charged and refunded, keeping the refund
308	\$56.00	137	Parking on a personal trip
322	\$257.53	139	Finance charges on Ms. Arons' personal card
350	\$145.37	140	Accessories
497	\$591.50	141	Airfare to Dallas.
148	\$324.00	142	Massages
580	\$262.38	143	Rental car in Philadelphia (while visiting daughter)
82	\$63.85	144	Rental car
92	\$574.76	145	Rental car
82	\$208.00	145	Shuttle on Aspen vacation
<b>TOTAL:</b>	<b>\$3,436.99</b>		

Therefore, Plaintiff owes Centrum \$3,436.99 for personal expenses listed on her expense report. This amount will be deducted from Plaintiff's Judgment Award.

**ORDER**

## ORDER

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IT IS HEREBY ORDERED:

For the above and foregoing reasons, the Court finds:

1. Plaintiff has proved her case for Breach of Contract under Count I of the Complaint against Centrum, and is awarded \$62,000.00 for commissions; \$3,741,333.00 for her membership interest; and \$7,740,786.00 as her severance payment.
2. The Contract at issue was between Plaintiff and Centrum and therefore the Individual Defendants are not personally liable for the judgment Plaintiff is to receive.
3. Defendants are not guilty of violating the Illinois Wage Payment Act as claimed in Count II of the Complaint.
4. Plaintiff has failed to prove Defendant's tortuous interference with her contract as alleged in Count III of the Complaint.
5. Plaintiff has failed to prove that Defendants owed her a fiduciary duty or breached such a duty as alleged in Count IV of the Complaint.
6. Defendants have failed to prove that Plaintiff breached any fiduciary duty she may have owed to Centrum, as claimed in Count I of the Counterclaim.
7. Defendants have failed to prove their unjust enrichment claim as alleged in Count II of the Counterclaim.
8. Plaintiff is responsible for reimbursing Centrum the sum of \$3,436.99 for personal expenses listed on her expense report.
9. Therefore, Plaintiff is awarded **\$11,540,682.00**.

**ORDER**

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ENTERED:

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Judge Thomas R. Mulroy