

PNY Technologies, Inc. v. Miller, Kaplan, Arase & Co., LLP (November 2016) - A California federal jury deliberated for three hours and awarded zero to plaintiff. Steve Tully and Trang Tran (USDC, N.D. Cal.)

Case Name: *PNY Technologies, Inc. v. Miller, Kaplan, Arase & Co., LLP*

Case Number: 3:15-cv-01728-MMC

Court: United States District Court for the Northern District of California, San Francisco

Case Type: Accountant Misrepresentation

Our Client: Defendant Miller, Kaplan, Arase & Co., LLP

Defense Attorneys: Stephen J. Tully and Trang T. Tran

Case Facts: In 2008, PNY entered into a license agreement with SanDisk Corporation, by which PNY agreed to report and pay royalties on the sale of SanDisk-licensed products. By 2010, PNY had neither reported nor paid any royalties, and SanDisk gave notice of an audit of PNY's royalty obligations. SanDisk engaged defendant Miller Kaplan Arase & Co. LLP to perform an examination of amounts owed by PNY. Before the examination began, PNY disputed Miller Kaplan's independence and requested that Miller Kaplan withdraw. Miller Kaplan maintained that it was independent, and the examination began in December 2010.

In June 2011, Miller Kaplan issued a final examination report that estimated royalties owed by PNY of between \$20 million and \$40 million, but disclaimed an opinion and warned that the estimates may be unreliable due to missing information. During and after the examination, SanDisk proposed meetings, a second examination by another accounting firm, mediation, and that PNY offer some amount in settlement, among other things, to attempt to reach a resolution of the dispute concerning PNY's royalty obligations short of litigation. After PNY declined each of its proposals, SanDisk filed suit against PNY in Santa Clara Superior Court in late July 2011. In March 2014 that case was tried, and a jury returned a verdict finding PNY owed SanDisk over \$28.5 million in royalties and interest, some of which represented PNY's royalty obligation during the period covered by Miller Kaplan's royalty examination. PNY and SanDisk later entered into a settlement, by which PNY agreed to pay a total of \$24 million for a release of all claims and a royalty-free license to sell SanDisk products until 2020.

In May 2014, PNY filed suit against Miller Kaplan in New Jersey state court, alleging causes of action for breach of a non-disclosure agreement, fraud, intentional misrepresentation, negligent misrepresentation and interference with contractual relations. PNY claimed Miller Kaplan had made misrepresentations regarding its independence and in its examination report. Upon removal of the case to federal court and on the motion of Miller Kaplan, venue was changed to United States District Court for the Northern District of California, San Francisco.

On September 28, 2016, the Court granted partial summary judgment in favor of Miller Kaplan on PNY's claims of misrepresentations in the examination report, and on the cause of action for interference with contractual relations. The case went to trial on October 31, 2016 on PNY's claims of misrepresentations regarding independence and breach of the non-disclosure agreement by Miller Kaplan, and PNY's damage claims of over \$11 million in attorneys' fees, \$13 million in lost profits, and a loss of market share.

During trial, the Court granted non-suit on PNY's cause of action for breach of the non-disclosure agreement and its damage claim for loss of market share. PNY's claims of a misrepresentation by Miller Kaplan regarding its independence, and PNY's remaining damage claim went to the jury.

Plaintiff's Contentions: PNY claimed that an intentional or negligent misrepresentation by Miller Kaplan that it could be independent in 2010 caused PNY to submit to Miller Kaplan's royalty examination. PNY further claimed that that examination overstated the amount of royalties it owed, and caused SanDisk to file the Santa Clara lawsuit, and to refuse to sell product to PNY. PNY alleged that as a result, it incurred \$11.765 million defending the SanDisk suit, and lost \$13 million in profits it otherwise would have earned had the SanDisk sales occurred.

Defendant Contentions: Miller Kaplan claimed that it was independent, and that in all events PNY disagreed with, and did not rely on Miller Kaplan's representation concerning independence. Miller Kaplan further contended that its report, which disclaimed an opinion and warned that the numbers in it may be unreliable due to PNY's failure to provide needed information, had no causal connection to SanDisk's decisions to sue or to refrain from selling product to PNY: rather, it was PNY's breaches, bad faith, and rejections of SanDisk's numerous proposals to engage in resolution processes that forced SanDisk to sue and to refrain from any sales or further business relations with PNY. Miller Kaplan also contended that as a result of the 2014 settlement, PNY received monetary benefits in excess of the damage PNY claimed Miller Kaplan caused.

Injuries Damages: PNY claimed attorneys' fees damages of \$11.756 million. PNY also claimed lost profit damages of \$13 million. Finally, PNY claimed additional damages in the form of a loss of market share.

Result: Defense Verdict

Award Amounts: Zero