

NO. HHD-CV21-6141624-S : SUPERIOR COURT  
JORGE PEREZ, BANKING COMMISSIONER : J.D. OF HARTFORD  
OF THE STATE OF CONNECTICUT  
VS. : AT HARTFORD  
ADAM WESTPHALEN : NOVEMBER 17, 2021

**MEMORANDUM OF DECISION ON PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

**FACTS AND PROCEDURAL HISTORY**

By verified complaint filed on May 5, 2021 (# 100.31) (complaint), the plaintiff Connecticut Banking Commissioner brought an action to enforce certain administrative orders issued against the defendant, Adam Westphalen, under the Connecticut Uniform Securities Act, General Statutes § 36b-2 et seq. (CUSA), and the regulations promulgated thereunder, §§ 36b-31-2 to 36b-31-33, inclusive, of the Regulations of Connecticut State Agencies (regulations). The complaint was supported by the Affidavit of Elena Zweifler dated May 4, 2021 (#100.32) (Zweifler affidavit), an attorney employed by the plaintiff.

The facts set forth in the complaint and Zweifler affidavit are as follows. Based on several complaints that had been received, the plaintiff initiated an investigation of the defendant and entities he controlled, including Mosaic Financial Strategies LLC, d/b/a Mosaic Advisory Partners and Mosaic Financial Strategies LLC, f/k/a Mosaic Portfolio Strategies LLC. The investigation determined that the defendant had engaged in activities that violated CUSA

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and the regulations, including: (1) failure to promptly file a correcting amendment on his Form U4, in violation of § 36b-14e of the regulations; (2) transacting business as an investment adviser agent in Connecticut without proper registration, in violation of § 36b-6 (c) (2); (3) engaging in the sale of unregistered securities, in violation of § 36b-16; (4) committing fraud in connection with the offer and sale of securities, in violation of § 36b-4 (a); and (5) making materially false or misleading statements to the plaintiff during an investigation, in violation of § 36b-23.

The plaintiff commenced a formal administrative proceeding against the defendant under docket number CRNDF-19-8408-S. After a contested case hearing at which the defendant appeared, on July 27, 2020, the plaintiff issued an order (Order) to the defendant by certified mail, return receipt requested: (1) imposing a \$900,000 fine; (2) requiring the defendant to make restitution to an investor in the amount of \$60,000, plus interest at 6% per annum; (3) requiring the defendant to make restitution to a second investor in the amount of \$63,000, plus interest at 6% per annum; and (4) requiring the defendant to make restitution to a third investor in the amount of \$367,000, plus interest at 6% per annum. The fine and restitution amounts were ordered to be paid no later than 45 days after the date the Order was mailed to the defendant. The defendant was further ordered to provide copies of checks and return receipts as proof of the restitution payments within 90 days after the date the Order was mailed to the defendant. The defendant did not file an appeal of the order and it became a final order.

The defendant failed to pay the fine or any of the restitution amounts, or provide proof of payment.

The plaintiff filed its motion for summary judgment and supporting memorandum of law on June 3, 2021 (## 101, 102), seeking the entry of summary judgment on the complaint and a hearing in damages. On July 2, 2021, the defendant moved for an extension of time to September 1, 2021, to respond to the summary judgment motion. On October 1, 2021, the court (Cobb, J.) issued an order advising the parties that the matter would be scheduled for a remote hearing on November 8, 2021. The defendant did not file any papers opposing the summary judgment motion and did not appear at oral argument on November 8, 2021, to contest the motion. The court granted summary judgment on the record, subject to the plaintiff submitting an updated affidavit from Attorney Zweifler confirming the defendant's continued noncompliance with the order. The plaintiff filed a supplemental affidavit of Attorney Zweifler (# 106) confirming the defendant's continued noncompliance as of November 9, 2021.

On November 9, 2021, the day *after* oral argument, the defendant filed a second motion to continue the summary judgment hearing for six months (to May 9, 2022), on the grounds that he allegedly is suffering from complications from the COVID-19 virus, and recently secured employment in Boston, Massachusetts and does not accrue paid time off until ninety days after his September 27, 2021, start date. (# 105).<sup>1</sup> The court denied the continuance request as moot

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<sup>1</sup> The defendant did not provide an affidavit or letter from any health care provider regarding his alleged illness and how, if at all, it impeded his ability to participate in the hearing. Moreover,

on November 10, 2021, noting that argument had been held on November 8, 2021, and that the defendant had not filed opposition papers and had not appeared at the hearing. (# 105.86.)

#### DISCUSSION

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.” *Connecticut Medical Insurance Co. v. Kulikowski*, 286 Conn. 1, 4-5, 942 A.2d 334 (2008). “When a motion for summary judgment is supported by affidavits and other documents, an adverse party . . . must set forth specific facts showing that there is a genuine issue for trial, and if he does not so respond, the court is entitled to rely upon the facts stated in the affidavit of the movant.” *Bartha v. Waterbury House Wrecking Co., Inc.*, 190 Conn. 8, 11-12, 459 A.2d 115 (1983).

The defendant failed to set forth any facts showing that there is a genuine issue for trial. Therefore, the court relies on the facts set forth in the plaintiff’s moving papers and finds that

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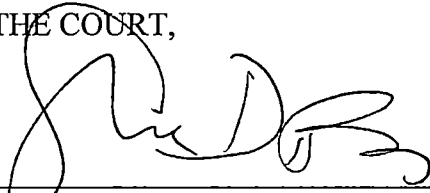
the defendant’s alleged health issues apparently did not impair his ability to start a new job in Boston commencing on September 27, 2021. The defendant did not request additional time for submission of opposing papers (which were due, based on the defendant’s prior continuance request, on September 1, 2021), and did not move to further postpone the argument date until after the argument took place.

there is no genuine issue of material fact and that the plaintiff is entitled to summary judgment on its complaint as a matter of law as to liability only.

CONCLUSION

For all of the foregoing reasons, the plaintiff's motion for summary judgment is granted as to liability only. A hearing in damages is hereby ordered.

BY THE COURT,



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Rosen, J.

## CHECKLIST FOR CLERK

Docket Number CV 21-6141624-5

Case Name Perez, Banking Comm. of the  
State of Conn. vs. Adam Westphalen

Memorandum of Decision dated 11-17-21

File Sealed:            yes \_\_\_\_\_    no X

Memo Sealed:        yes \_\_\_\_\_    no X

This memorandum of Decision may be released to the Reporter of  
Judicial Decisions for publication. X

This Memorandum of Decision may NOT be released to the  
Reporter of Judicial Decisions for publication. \_\_\_\_\_



State of Connecticut Judicial Branch  
**Superior Court Case Look-up**



Superior Court Case Look-up  
 Civil/Family  
 Housing  
 Small Claims

Ⓜ HHD-CV21-  
 6141624-S

**JORGE PEREZ, BANKING COMMISSIONER OF THE STATE OF v.  
 WESTPHALEN, ADAM**

Prefix: HD2

Case Type: M90 File Date: 05/05/2021 Return Date: 06/01/2021

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help ▶ Exhibits

Attorney/Firm Juris Number Look-up

To receive an email when there is activity on this case, [click here.](#)

Case Look-up  
 By Party Name  
 By Docket Number  
 By Attorney/Firm Juris Number  
 By Property Address

Information Updated as of: 11/17/2021

**Case Information**

Short Calendar Look-up  
 By Court Location  
 By Attorney/Firm Juris Number  
 Motion to Seal or Close  
 Calendar Notices

Case Type: M90 - Misc - All other  
 Court Location: HARTFORD JD  
 List Type: No List Type  
 Trial List Claim:  
 Last Action Date: 11/15/2021 (The "last action date" is the date the information was entered in the system)

Court Events Look-up  
 By Date  
 By Docket Number  
 By Attorney/Firm Juris Number

**Disposition Information**

Disposition Date:  
 Disposition:  
 Judge or Magistrate:

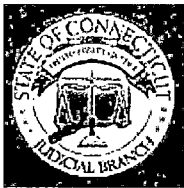
Legal Notices  
 Pending Foreclosure Sales

**Party & Appearance Information**

Understanding  
 Display of Case Information

Contact Us

Party	No Fee Party	Category
<b>P-01 JORGE PEREZ, BANKING COMMISSIONER OF THE STATE OF CONNECTICUT</b> Attorney: Ⓜ JOHN AB LANGMAID (434418) File Date: 05/05/2021 AG-FINANCE 165 CAPITOL AVE 5TH FLR HARTFORD, CT 061060001	Y	Plaintiff
<b>D-01 ADAM WESTPHALEN</b> Self-Rep: 40 MAPLE ROAD File Date: 07/15/2021 EASTON, CT 06612		Defendant



Comments

**Viewing Documents on Civil, Housing and Small Claims Cases:**

If there is an Ⓜ in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.\* For more information on what you can view in all cases, view the [Electronic Access to Court Documents Quick Card](#).
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.\*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.\*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.\*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.\*