



### Attorney for Defendant:

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### **\$1,965,081 JUDGMENT FOR SELLER**

### **Contract – Business seller obtains judicial dismissal of buyer’s claim for rescission of transaction – Defeats buyer’s claim for fraud and obtains monetary judgment against buyer.**

U.S. District Court – Eastern District of New York

**Asset Management Associates of New York, Inc. (buyer) purchased two businesses from Emerson Telecommunication Products, LLC (seller) in November, 2006. The parties’ acquisition agreement provided for a post-closing adjustment procedure whereby the true value of working capital, according to consistently applied Generally Accepted Accounting Principles (GAAP), would be determined post-closing, and required an arbitrator to settle any disputes regarding such post-closing adjustment.**

A valuation dispute quickly occurred, which included allegations by the buyer that seller misrepresented the applicable GAAP value of certain inventory. Unable to resolve their disputes, the seller referred the matter to the designated arbiter for the stipulated arbitration. In response, the buyer commenced two litigations. The first action sought to stay the arbitration, and the second action sought to assert claims for damages based on the disputes the seller referred to arbitration. After the district court in the first action compelled arbitration of the parties’ post-closing valuation disputes, the buyer moved to amend its complaint in the second action more than a year after the closing to first assert claims for rescission of the entire transaction, and also attacked the arbitration provision based on allegations of fraudulent inducement.

The district court denied the buyer’s motion to amend in a short form order which the buyer appealed to the United States Court of Appeals, Second Circuit. The Second Circuit remanded the matter to the district court for explanation of its decision. Following remand, the district court issued its decision justifying its denial of the buyer’s motion to assert a claim for rescission of the transaction, given the length of time that had expired between the closing of the transaction and the buyer’s first attempt to assert the equitable claim. The district court also denied

the buyer’s motion to assert a claim for rescission of the arbitration provision which it determined was based on purely conclusory allegations of fraudulent inducement.

The matter was then arbitrated in 2013 before a forensic accounting examiner. The buyer asserted a claim for \$3.2 million based on allegations that the seller misrepresented: the nature of certain pre-closing inventory disposal activity; the condition of certain inventory items; the utility of certain inventory; and the seller’s level of compliance with the applicable inventory accounting principles. The seller disputed the buyer’s contentions and sought a purchase price adjustment from buyer. The arbitrator ultimately rejected the buyer’s inventory claims and found in favor of the seller on its claim for a post-closing adjustment. Following the district court’s confirmation of the arbitration award, it entered judgment against the buyer in the amount of \$1,965,081.40, inclusive of pre-judgment interest.

### REFERENCE

Asset Mgmt. Assocs. of NY, Inc. vs. Emerson Telcom. Prods. LLC. Index no. 08-CV-2128; 08-CV-2506; Judge Thomas C. Platt, 01-09-14.

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