

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CGB OCCUPATIONAL THERAPY, INC.,	:	CIVIL ACTION
Plaintiff,	:	NO. 00-4918
	:	
v.	:	
	:	
RHA PENNSYLVANIA NURSING HOMES,	:	
<i>et al.</i> ,	:	
Defendants.	:	

ORDER AND MEMORANDUM

NEWCOMER, S.J.

July 5, 2005

Presently before the Court is Defendant's Motion for a New Trial, or in the alternative, for Remittitur, Plaintiff's Response, and the Parties' various Reply Briefs. The Court denies in part, and grants in part, Defendant's Motions.

I. BACKGROUND

The factual background of this case is discussed extensively in CGB Occupational Therapy, Inc. v. RHA/Pennsylvania Nursing Homes, Inc. et al., 357 F.3d 375 (3d Cir. 2004), so the Court will dispense with a lengthy recitation here. In short, at issue is the amount of punitive damages awarded during the remanded portion of this case. Following remand to this Court for retrial on the issue of punitive damages for Defendant's tortious interference with Plaintiff's contractual relationships with its at-will therapists, a jury awarded \$30,000,000 in punitive damages. After retaining a third law firm, Defendant brought the instant Motions. The Court denies Defendant's Motion for a New Trial, and grants, in part, its Motion for Reduction of the

Jury's Punitive Damage Award.

II. LEGAL STANDARD

A. Motion for New Trial

Defendant waived its ability to seek judgment as a matter of law by failing to raise and properly preserve a Rule 50 Motion. It seeks a new trial on the only other ground available to it - that the second Jury's verdict was against the weight of the evidence. Defendant must meet a very high standard to prevail. "New trials because the verdict is against the weight of the evidence are proper only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks our conscience." Williams v. Consol. Rail Corp., 926 F.2d 1344, 1353 (3d Cir. 1991).

B. Motion to Reduce Judgment

The Parties are before the Court on diversity jurisdiction, meaning that the law of the Commonwealth governs this Court's consideration of Defendant's Motion. Remittitur is appropriate in Pennsylvania "where a verdict is plainly excessive and exorbitant, or when it shocks the sense of justice so as to suggest it was influenced by partiality, prejudice, mistake, or corruption." Kornfeld v. Arl. Fin. Fed., 856 A.2d 170, 176 (Pa. Super. 2004). All punitive damage awards, whether or not the product of remittitur, must not be unconstitutionally excessive.

See State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 416 (2003). For the sake of organization, the Court will discuss the substance of this jurisprudence below.

III. ANALYSIS

A. Motion for New Trial

The Court denies Defendant's Motion for a New Trial.¹ As stated above, the standard for granting a new trial in a circumstance such as this is quite high. Without regard to the fact that a prior Jury viewed some of the same conduct at issue before the present one as justifying the imposition of punitive damages, it seems clear to this Court that the second Jury's decision to impose punitive damages was not against the clear weight of the evidence.²

In Pennsylvania, "punitive damages are proper when a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct."

¹ Plaintiff argues that, by failing to preserve its Rule 50 Motion, Defendant has largely waived its right to seek post-trial relief. The law is not quite so unforgiving. Defendant has, it admits, forfeited its right to seek relief based on the legal sufficiency of the evidence. It has not, however, given up the ability to seek a new trial because the verdict is against the weight of the evidence. See Greenleaf v. Garlock, Inc., 174 F.3d 352, 364-65 (3d Cir. 1999) (noting the difference between the two standards). It strikes the Court that certain of Defendant's arguments inappropriately blur the line between weight and sufficiency of evidence, but as the Court denies Defendant's Motion there is no need to belabor this point.

² The Court does not base its holding today on the fact that a prior Jury considering many of the same facts found that punitive damages were called for - it is merely worth noting that, in the history of this particular conflict, a finding of punitive damages based on at least some of Defendant's conduct is not unprecedented.

SHV Coal v. Cont'l Grain Co., 587 A.2d 702, 704 (Pa. 1991).³

Plaintiff presented substantial evidence that Defendant acted wilfully, in direct contravention of explicit instructions from RHA/Pennsylvania not to recruit Plaintiff's therapists. The Jury heard that Sunrise helped Plaintiff's competitor recruit Plaintiff's therapists by arranging meetings and offering space to meet. The Jury heard that Defendant "went to bat" for Plaintiff's employees with Plaintiff's competitor, ensuring that they received the same salaries with their new employer as they had with their old. (Tr. 2 1/12/2005, at 83-85.) The Jury heard that Plaintiff made repeated attempts to stop Defendant, but that all were rebuffed. There was also testimony on Defendant's treatment of Plaintiff throughout the course of their relationship - and this testimony was certainly not favorable to Defendant. In short, the Jury had substantial grounds to reach its conclusion and Defendant has not offered any substantial reason why this Court should disturb it. Although the amount of the Jury's award is extremely high, the Jury's conclusion that

³SHV Coal notes that Pennsylvania has adopted Section 908(2) of the Restatement (Second) of Torts, which states:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

SHV Coal, 587 A.2d at 704.

some award is justified is supported by the evidence. Given the facts, the Court cannot say that the Jury's decision to award punitive damages is conscience-shocking or that the award cries out to be overturned. Although the Jury's second finding, that \$30,000,000 is the appropriate amount of damages, is constitutionally problematic, the remedy for this is remittitur, not a new trial. As such, Defendant's Motion for a New Trial is Denied.

B. Motion for Reduction of the Punitive Damage Award

1. Under Pennsylvania Law

In Pennsylvania, "where a verdict is plainly excessive and exorbitant," remittitur is appropriate. Kornfeld v. Atl. Fin. Fed., 856 A.2d at 176. Here, the Court feels quite comfortable concluding that the second Jury's award is plainly excessive, and that the award must be reduced to an amount that furthers the ends of the Commonwealth's interest in punishing acts like those undertaken by Defendant, while still comporting with Defendant's Due Process rights.

In Pennsylvania the "size of a punitive damages award must be reasonably related to the State's interest in punishing and deterring the particular behavior of the defendant and not the product of arbitrariness or unfettered discretion." Hollock v. Erie Ins. Exch., 842 A.2d 409, 419 (Pa. Super. 2004) (internal citations omitted). Pursuant to Pennsylvania law, punitive

damage awards are evaluated on the basis of four factors: "(1) the character of [defendant's] act; (2) the nature and extent of the harm [done to plaintiff]; and (3) the wealth of the defendant." Pioneer Comm. Funding Corp. V. American Fin. Mortgage Corp., 797 A.2d 269, 290 (Pa. Super. 2002). With this in mind the Court turns to the award in this case.

In the instant case, the character of the Defendant's act is quite offensive. In addition to exhibiting virtually total disregard for the instructions of its principal, Defendant ensured that Plaintiff's competitor would prosper while Plaintiff starved. Following its actions, Defendant continually refused to be held responsible for its actions, ignoring and rebuffing Plaintiff and presenting countless obstacles to rapid resolution of Plaintiff's claims. The nature and extent of the harm done to Plaintiff, although small in dollar terms, was clearly quite severe. Both Juries heard testimony on Defendant's actions and their impact, in terms not just financial, on Plaintiff. Both Juries decided that Plaintiff's evidence called for a substantial award, and this Court will not blindly discard both Juries' conclusions. Finally, Plaintiff presented extensive evidence on the tremendous wealth of Defendant - and further presented evidence that allows the conclusion that only a substantial award would register in Defendant's corporate conscience. All of these considerations weigh in favor of a very substantial punitive

damage award.

This Court has not had an easy time determining an appropriate reduction, particularly given the nature of the harm done to Plaintiff, and the relative absence of examples of Pennsylvania punitive damage awards for conduct similar to Defendant's. The harm done to Plaintiff is not embodied exclusively by the \$109,000 argued by Defendant. Although this number has the virtue of simplicity, Pennsylvania state law is quite clear that punitive damages must address both the character and extent of the harm done to a plaintiff. See id. This clearly implies that a jury (and, in this case, a reviewing court) must consider not just the amount of compensatory damages in determining harm, but also the character of the harm engendered by that amount. Here, the harm caused by Defendant's actions is much more than \$109,000, as both Juries heard. But the Court cannot merely determine a dollar figure for the nature of that harm (as discussed below). The Court will therefore focus on the conclusions of both Juries, the testimony adduced at trial, and on the wealth of Defendant, in crafting its remedy.

The Court has concluded, based on its experience, and having seen and heard the evidence in the instant case, that \$2,000,000 is the appropriate amount of punitive damages given the harm caused by Defendant, the wealth of Defendant, and the likelihood that this amount would punish Defendant and deter others like it

from acting in a similar fashion in the future. Having determined that \$2,000,000 is the appropriate amount of punitive damages, the Court must ensure this amount passes muster under federal Due Process jurisprudence.

2. *Constitutional Considerations*

In State Farm Mut. Auto. Ins. v. Campbell, 538 U.S. 408 (2003), the Court discussed a number of factors which lower courts must consider when evaluating punitive damages awards. In State Farm the Court first noted that its prior guidance on punitive damages is still, for the most part, intact. The Court's earlier instruction that lower courts consider "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in similar cases." Id. at 418 (citing BMW of North America, Inc. v. Gore, 517 U.S. 559, 575 (1996)).⁴ The State Farm Court offered further detail on the elements a lower court should examine, including whether "the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or reckless disregard of the

⁴ As noted earlier, the Parties and the Court have been unable to locate precisely similar Pennsylvania cases involving punitive damage awards for tortious interference with contracts. There are also no civil sanctions under Pennsylvania law that would punish Defendant's specific conduct. The Court's analysis will, therefore, focus on the other State Farm factors.

health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” Id. at 419 (citing Gore, 517 U.S. at 575).⁵

Applying the State Farm factors to the case at hand, it is clear that some reduction of the second Jury’s award is necessary. First, the harm caused by Defendant was economic, not physical. Second, Defendant’s conduct cannot rationally be said to have been in reckless disregard of the health or safety of others. Plaintiff here was financially vulnerable and the evidence tells a tale of repeated stalling and dishonesty, starting from the initial interference with Plaintiff’s relationships with her therapists and extending to the eve of the first trial. There is also evidence that Defendant’s conduct was intentional. Taken as a whole, the State Farm and Gore factors weigh in favor of a substantial punitive damage award, although not as high as that found by the second Jury. Additionally, there was testimony indicating that only a substantial award would actually accomplish the goal of punitive damages under Pennsylvania state law - to punish and deter. See Hollock, 842

⁵The Third Circuit recently offered further guidance to lower courts. In Willow Inn v. Pub. Service Mut. Ins. Co., 399 F.3d 224 (3d Cir. 2004), Judge Smith presented a crisp and thorough discussion of the State Farm factors, paying particular attention to the intricacies of the ratio between actual damages and punitive damages.

A.2d at 419 (punitive damages must be reasonably related to state's interest in punishment and deterrence); State Farm, 538 U.S. at 416 (noting that punitive damages are "aimed at deterrence and retribution."). Other considerations aside, the primary sticking point in terms of Due Process is the ratio of actual harm done Plaintiff to the amount of punitive damages.

Plaintiff sought, and received, \$109,000 in compensatory damages for the economic harm done to Plaintiff. Using this number as the exclusive term for actual damages in the punitive damages calculus for the second Jury's award yields a whopping 275:1 ratio - one that is clearly unacceptable given the facts of this case as applied to the present state of the law. But the \$109,000 was not the only conduct that both Juries were allowed to punish. In Willow Inn, the Third Circuit was extremely careful to discuss why, given Pennsylvania's approach to bad-faith, some examination of the term used as the harm figure may be legally justifiable. See Willow Inn, 399 F.3d at 235-36. At least one of my colleagues seems to view Willow Inn as granting the district courts substantial freedom in determining the harm term in the State Farm ratio analysis. See Sheedy v. City of Philadelphia et al., No. 03-6394, 2005 U.S. Dist. LEXIS 2208, at *11-13 (E.D. Pa., Feb. 15, 2005) (finding that a jury's numerically small compensatory damage award did not encompass the substantial non-economic harm suffered by the plaintiff - and

that this non-economic harm could be utilized as the harm term for ratio analysis). Given the facts of the instant case, though, the Court must conclude that its latitude is somewhat more limited than was the case with the bad faith statutes in Willow Inn. The Court's reduction to \$2,000,000 is based on its evaluation of Defendant's conduct, the character and extent of the harm done to Plaintiff, and the amount needed to effect the goals of Pennsylvania's punitive damage system. At the very narrowest reading of the facts, this would yield a ratio of roughly 19:1 - which is not constitutionally excessive given the facts of this case (including the wealth of Defendant and the state's interest in punishment and deterrence). The Court suspects, however, that given the hardships Defendant imposed on Plaintiff in its treatment of Plaintiff after the interference took place, and given Defendant's antics leading up to the first trial, the true ratio, could the harm caused by Defendant be expressed as a simple dollar value, would be closer to three to one. In either case, this conclusion is acceptable under both Pennsylvania and federal law.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion for a New Trial is denied, and Defendant's Motion for Reduction of Award is granted. An appropriate Order follows.

/s/ Clarence C. Newcomer
United States District Judge

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v.	:	
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RHA PENNSYLVANIA NURSING HOMES,	:	
<i>et al.</i> ,	:	
Defendants.	:	

O R D E R

AND NOW, this 5th day of July, 2005, upon consideration of Defendant's Motion for a New Trial or, in the Alternative Motion for Remittitur (Doc. 221), Plaintiff's Response, and the Parties' Replies, it is hereby ORDERED that Defendant's Motion is GRANTED in part and DENIED in part. Defendant's Motion for a New Trial is DENIED. Defendant's Motion for Remittitur is GRANTED in part. The award of punitive damages in the above-captioned case is hereby reduced to the amount of \$2,000,000.

AND IT IS SO ORDERED.

/S Clarence C. Newcomer
United States District Judge