JAMS EMPLOYMENT ARBITRATION TRIBUNAL

APOLLO GLOBAL MANAGEMENT, LLC,
APOLLO MANAGEMENT, L.P., APOLLO
CAPITAL MANAGEMENT VIII LLC, AND
APOLLO ADVISORS VIII, L.P.,

Claimants,

Reference Number 1425026462

-against-

IMRAN SIDDIQUI,

Respondent.

Consolidated with

IMRAN SIDDIQUI,

Claimant,

-against-

APOLLO ADVISORS VIII, L.P.,

Respondent.

Consolidated with
APOLLO GLOBAL MANAGEMENT, LLC,
APOLLO MANAGEMENT, L.P.,
APOLLO ADVISORS VIII, L.P.,
APOLLO ADVISORS IX, L.P.,

Claimants,

-against-

MING DANG, IMRAN SIDDIQUI, AND
CALDERA HOLDINGS LTD.,

Respondents.

FINAL ARBITRATION AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties, and having duly heard the proofs and allegations of the parties, hereby issues the following FINAL ARBITRATION AWARD.

A. Procedural Background

This arbitration was commenced on May 3, 2018 by Claimants Apollo Global Management, LLC, Apollo Management, L.P., Apollo Capital Management VIII LLC, and Apollo Advisors VIII, L.P. (collectively "Apollo") against Imran Siddiqui ("Siddiqui"). According to the Statement of Claim, Siddiqui engaged in wrongful use and disclosure of Apollo's "Confidential Information" in violation of the Settlement Agreement and Mutual Release (the "Settlement Agreement") entered into with Apollo on February 21, 2018. The Settlement Agreement resolved an earlier JAMS arbitration for alleged breach of post-employment restrictive covenants filed by Apollo against Siddiqui, a former principal and senior partner of certain Apollo entities.

Siddiqui has filed Responses to the Statement of Claim denying its material allegations and asserting certain affirmative defenses. Although Siddiqui also filed Counterclaims at the time he filed his Responses, those Counterclaims were withdrawn. Siddiqui also requested the appointment of an emergency arbitrator to consider a Motion to Dismiss and a Motion for an Expedited Proceeding, but no such emergency arbitrator was appointed because the appointment of an emergency arbitrator is not available to the parties to an arbitration governed, as this one is, by the JAMS Employment Arbitration Rules & Procedures (the "Employment Rules").

Discovery in this proceeding was difficult to say the least. The undersigned had to rule on countless discovery disputes, and appointed a forensic examiner to determine what, if any, Apollo confidential information was on Siddiqui's electronic devices and whether any of that information had been disclosed to anyone. Notwithstanding the time and expense that went into the efforts of the forensic examiner, that examination did not reveal any evidence that was probative of Apollo's claims. Neither Apollo nor Siddiqui produced all of their responsive documents in a timely manner. On June 18, 2018, the parties entered into what a Stipulation Regarding Confidential Information and [Proposed] Confidentiality Order, but that order was never submitted to the undersigned for signature. Nonetheless, the parties operated under this document during the course of these proceedings.[1]

On July 25, 2018, Siddiqui purported to commence a separate arbitration seeking the advancement of his fees in this arbitration and in a separate action filed by Apollo's insurance company affiliate, Athene Holding Ltd. ("Athene"), in the Supreme Court of Bermuda against Siddiqui, Stephen Cernich, who is a business partner of Siddiqui, and Caldera Holdings Ltd ("Caldera"). According to the pleadings in the Bermuda action, the defendants have used Confidential Information of Athene in an improper attempt to acquire or combine with a target company that Athene has also sought to acquire. Siddiqui sought the appointment of an emergency arbitrator to consider his motion for the immediate advancement of fees and provided an undertaking for the reimbursement of such fees should it be determined that he was not entitled to advancement. On July 26, 2018, the parties were informed that

[1] Pursuant to this tribunal's discovery orders, the parties had the right to designate any documents they produced "For Attorneys' Eyes" only "provided they contain trade secret or competitively sensitive business information." The Order provided for a dispute resolution process if there was disagreement about the propriety of any of these designations or attorney-client privilege issues and in camera review, but the parties never utilized these procedures.

the separate arbitration was being consolidated with this proceeding pursuant to Rule 6(e) of the Employment Rules.

On August 27, 2018, the undersigned issued an order denying the motion for the advancement of fees in this arbitration but granting the motion for advancement of fees in the Bermuda action as to the costs of representing Siddiqui in that action. This ruling did not provide for the advancement of the separate fees of Cernich and Caldera in that action. In the course of that ruling, the undersigned ruled that Siddiqui had no liability for any misuse of confidential information that took place on or before February 21, 2018. The Order provided in pertinent part as follows:

> "In the case of Apollo, any and all claims that arose on or before February 21, 2018 were released by the Settlement Agreement and Mutual Release signed by the parties on that date. That Settlement Agreement relieved Siddiqui of the very restrictive covenants prohibiting Siddiqui from competing with Apollo or soliciting or interfering with investors, and Siddiqui made very substantial financial concessions in exchange for that relief. The release, which is contained in Section 3(a) of the Settlement Agreement, could not be more broad in so far as it applies to Apollo. At the same time, however, the Settlement Agreement provided specifically that the restrictive covenants regarding Apollo's Confidential Information remained in effect. The allegation in this arbitration is that Siddiqui breached his obligations in that regard by using and disclosing that information subsequent to February 21, 2018. If there is no proof of such use or disclosure subsequent to that date Apollo concedes, as it must, that it will not prevail on its claim. Siddiqui attempts to argue that Apollo has sought and been granted discovery relating to time periods prior to February 21, 2018 demonstrates that the claim arose before then. That argument is wrong. Discovery is relevant because it bears on the issue of whether Siddiqui had or obtained Confidential Information during the period when he was still an Apollo partner. That is a necessary predicate to Apollo's claim, but, in and of itself, such evidence does not prove an entitlement to relief. There is no breach of contract, however, until or unless that Confidential Information is used or disclosed. By definition, that did not occur until after February 21, and no claim arose before that date."

As of the time this Order was issued, the arbitration hearing in this matter was scheduled to take place in November 2018 (which in and of itself reflected the rescheduling of the original September 2018 dates). It soon became clear, however, that it would be impossible to adhere to this schedule because of the lack of progress in the forensic examination and the difficulties that both sides had in producing documents in a timely manner, and the parties agreed in October 2018 to vacate these dates. A new scheduling order was issued calling for the arbitration hearing to take place on February 8, 11, 12, and 13, 2019.

The scope of this arbitration expanded dramatically on November 28, 2018 when an additional arbitration proceeding was filed by Apollo against Siddiqui, Caldera and Ming Dang.[2] Dang is a former Apollo employee, who resigned from Apollo on October 26, 2018 following a meeting the day before in which he was accused by Apollo of working with Caldera and Siddiqui for a period of years. The parties consented to the consolidation of that action with the arbitration that had been commenced against Siddiqui in May 2018.

A Statement of Claim in the new Arbitration was filed and was superseded by an Amended Statement of Claim dated December 4, 2018. According to the Amended Statement of Claim, Dang violated his contractual and fiduciary duties by joining Siddiqui and his colleagues at Caldera by sharing Apollo's confidential information with them and aiding in their scheme to usurp what is alleged to be an Apollo corporate opportunity. Numerous claims were asserted against Dang and claims of tortious interference and aiding and abetting a breach of fiduciary duty were asserted against Siddiqui and Caldera. According to a footnote in the Amended Statement of Claim, the claims brought against Siddiqui and Caldera "are only for their misconduct that occurred on and after February 22, 2018", the date that Siddiqui settled the initial arbitration brought against him and was released for any alleged misconduct occurring prior to that date.[3]

On December 21, 2018, Dang filed a Response and Counterclaim, denying the material allegations of the Amended Statement of Claim, asserting certain affirmative defenses, and asserting a counterclaim for the advancement of fees. Siddiqui and Caldera also filed a Response denying the material allegations of the Amended Statement of Claims, and Siddiqui filed a counterclaim alleging that Apollo violated the February 21, 2018 Settlement Agreement by encouraging Athene to commence the Bermuda action.

Dang also made a motion for the advancement of his fees in this action, and Siddiqui filed his own motion for advancement of fees. The undersigned invited briefing of that issue at this stage of the proceedings, and counsel for Dang filed a letter motion on December 26, 2018. Counsel for Siddiqui submitted opposition papers on January 4, 2018, and reply papers were filed by Dang were submitted on January 8, 2018. On January 10, 2019, the undersigned entered an order granting Dang's motion and denying Siddiqui's motion. The basis of that Order with respect to Dang was the clear and broad language of the indemnification clause in Dang's partnership agreements. The Order recognized, however, that if the allegations against Dang were true "[i]t may well turn out that Dang has to indemnify Apollo at the end of the day." In the case of Siddiqui, the Order stated that what transpired between him and Dang in 2016 and 2017 is relevant but that liability could only be imposed based on proof of improper actions by him and Caldera subsequent to February 21, 2018. The Order provided as follows:

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[2] The gap between the time Dang resigned and the commencement of proceedings against him is explained by the inability of Apollo and Dang to negotiate successfully a settlement agreement which, among other things, would have required Dang to cooperate in Apollo's action against Siddiqui.

[3] The initial Statement of Claim in the action against Dang had no such explicit limitation and also contained certain allegations that were "clarified" in the Amended Statement of Claim to make clear that Apollo was only seeking to impose liability on Siddiqui and Caldera based on Post-February 22, 2018 conduct.

"In the case of Apollo, any and all claims that arose on or before February 21, 2018 were released by the Settlement Agreement and Mutual Release signed by the parties on that date. That Settlement Agreement relieved Siddiqui of the very restrictive covenants prohibiting Siddiqui from competing with Apollo or soliciting or interfering with investors, and Siddiqui made very substantial financial concessions in exchange for that relief. The release, which is contained in Section 3(a) of the Settlement Agreement, could not be more broad in so far as it applies to Apollo. The allegation in the Dang arbitration is that Siddiqui and Caldera are liable for both tortious interference and aiding and abetting a breach of fiduciary duty because of the actions they took on or after February 22, 2018 by soliciting Dang's assistance in conducting financial analysis, inducing him to disclose Apollo Confidential Information to them, and in soliciting Dang's assistance in a bid for the Target Company. These allegations do not even turn on Siddiqui's status as a former Apollo partner. If there is no proof of improper actions by Siddiqui or Caldera subsequent to February 21, Apollo will not prevail on its claims against them."

Following the decision on this motion, discovery disputes continued to proliferate, and the forensic examiner still needed time to complete his work. As a result, while the February 8, 2019 date was utilized to hear the testimony of two Athene witnesses who previously had indicated their availability for that day, the bulk of the hearing needed to be postponed. The remainder of the hearing was then scheduled for March 4-8, and March 11, 2019, and took place on those dates as scheduled. The hearing transcript consumed 1,800 pages, and a number of witnesses testified live. Hundreds of exhibits were admitted into evidence. At the conclusion of the hearing, counsel for Siddiqui and Caldera renewed a request that it made earlier that the undersigned rule promptly on the scope of an injunction that could be issued. In particular, the parties sought guidance on whether the undersigned concluded that he had power to issue an injunction barring Siddiqui and Caldera from acquiring American Equity Investment Life Holding Company ("AEL"). This issue was briefed separately and in advance of the post-hearing briefing on the arbitration as a whole. The undersigned concluded that in light of certain language in the Settlement Agreement allowing Siddiqui to compete with Apollo, with certain exceptions not pertinent here, that no such injunction could be issued under the circumstances of this arbitration.[4]

The parties submitted simultaneous and voluminous post-hearing briefs on March 26, 2019 together with proposed findings of fact and conclusions of law and submitted simultaneous reply briefs on April 1, 2019. Siddiqui and Caldera also made submissions on that date with respect to the proposed findings submitted by Apollo. All of these submissions have been reviewed with care by the undersigned together with a review of significant portions of the exhibits and the transcript of the proceedings. None of the parties requested post-hearing closing arguments, nor did the undersigned conclude that the holding such arguments was necessary or desirable given how completely the matter

[4] A copy of the Opinion on the Propriety of Injunctive Relief is attached as Exhibit A hereto. There is one inconsequential error in the opinion in that it states that Apollo did not seek injunctive relief against Dang in its claim against him. That is not accurate.

had been briefed. There is no question that all the parties have had a full and fair opportunity to be heard.

B. Facts

The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. To the extent that this recitation differs from any party's position, that is the result of determinations as to credibility, relevance, burden of proof, and the weight of the evidence, both oral and written. In this case, there are serious credibility issues with respect to both Dang and Siddiqui. These issues are discussed below.

The four principal corporate entities involved in this arbitration are Apollo, Athene, Caldera and AEL. Each of these four entities is discussed in turn.

Apollo Global Management, LLC is a publicly traded Delaware limited liability company and is the parent company of myriad Apollo subsidiaries. It is a huge entity, with $280 billion in assets under its control. Its operations in the insurance arena are significant to the organization as a whole, and the business area that is the subject of this arbitration has the personal attention of Marc Rowan, an Apollo Senior Managing Director who by function spends "nearly all of my time overseeing Apollo's investments in insurance, both in the U.S. and in Europe."

Business with Athene is a particularly important component of Apollo's insurance business. Apollo participated in its formation back in 2009. Athene is now one of the world's largest providers of fixed annuity products. Athene contracts with Apollo for investment management advisory services and is a lucrative source of fee income for Apollo, paying Apollo hundreds of millions of dollars a year for managing the billions of dollars in insurance-related assets that are controlled by Athene. Athene Asset Management LLC is a subsidiary of Apollo that provides Athene with investment management advisory services. Apollo took Athene public in December 2016, but it still owns approximately 10% of the common equity of Athene, controls 45% of its voting shares, and appoints six of the fifteen Athene Board members. Rowan himself holds one of the Board seats. Apollo continues to exercise considerable control over the affairs of Athene. As a public insurance company, Athene has considerable disclosure and reporting obligations concerning how it conducts its affairs.

AEL itself is also in the insurance business. Athene was launched on the basis of a large reinsurance transaction with AEL, and AEL was Athene's first client. AEL is geographically proximate to Athene, has similar product and product makeup to Athene, and the two companies' strengths and weaknesses are complimentary. Historically, Athene has been interested in acquiring AEL. AEL is also a potential acquisition target of Caldera.

Caldera was incorporated as a Bermuda exempted company in the insurance business in July 2017. In many respects, its business plan is similar to that of Athene, but its competitive advantage is said to lie in its ability to outsource most of its asset management to large outside asset managers for much lower fees than were being paid to Apollo by Athene. The claim was that Caldera would then be

able to manage the assets more safely because it would not be forced to invest in riskier assets to justify a much higher fee income. AEL also was an acquisition target of Athene.

Siddiqui and Cernich founded Caldera.[5] Siddiqui was a very important Partner at Apollo. He began working at Apollo in 2008 and became a Partner in 2011. He held one of the Apollo seats on the Athene Board, but became much less active on the Athene Board in 2015 when he and Rowan had a significant disagreement about the naming of a new CEO for Athene. By 2016 Siddiqui was working on his next venture (which ultimately became Caldera) and was biding his time until Athene went public in a transaction in which Siddiqui received stock that he sold for at least $30 million.[6] In addition, Siddiqui received a payment from Apollo in early 2017 worth approximately $17-18 million. Siddiqui resigned on March 9, 2017 following a meeting a week earlier with Apollo CEO Leon Black, but his resignation did not become effective until June 18, 2017.

Cernich had extensive experience in the life insurance business and was one of the founders of Athene. Cernich had been the head of corporate development for Athene, but he and Athene came to a parting of the ways in 2016. He and Siddiqui began having discussions about the formation of what became Caldera at some point in 2016.

Shortly thereafter, Dang started to work with Siddiqui and Cernich on the new venture. At that time, Dang was working full-time as an Apollo Principal. The claim is that Dang approached them Dang had joined Apollo as an associate in 2011. He was admitted as a limited partner in Apollo Advisors VIII, L.P. in 2016 ("Apollo VII") and a limited partner in Apollo Advisors IX, L.P. in 2018 ("Apollo IX").

Apollo has a Code of Ethics. Both Siddiqui and Dang were employees of Apollo Management L.P. throughout their tenure at Apollo, and that entity paid their salaries and issued them W-2s. Becoming limited partners in Apollo carry vehicles neither changed their basic employment relationship nor did it relieve them of their obligations and duties under the Code. Both Siddiqui and Dang participated in trainings and certified their compliance with the Code on an annual basis. Siddiqui conceded that he was bound to comply with the Code, but Dang made the ridiculous claim that he did not know whether he was bound or not, and his counsel argued that as a limited partner he was not bound by the Code, an argument that is belied by the language of the Code itself and the testimony by several other witnesses on this subject at the arbitration hearing. Dang's testimony on this subject reflected a lack of a moral compass.

The Code itself sets forth "minimum standards" that are expected of all Apollo employees. The Code emphasizes the need to protect what it describes as "Business Sensitive Information", which includes, among other things, financial information about Apollo and its clients and reports and analyses prepared by the Firm or its clients that are based on Business Sensitive Information. All such information is to be treated as confidential and is to be accessed only for valid business purposes and with proper authorization. Use of the Firm's computers, networks and systems is limited, with

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[5] Thomas Daula, who was formerly the chief risk officer of Athene, was involved early on, but he no longer had any meaningful involvement by some point in 2017.

[6] Siddiqui admitted that he should have resigned from the Athene Board before the company went public.

exceptions not relevant here, to the extent necessary to perform work on behalf of Apollo. These systems are not to be used to copy documents. The Code states that Apollo employees may not take for themselves business opportunities that belong to the Firm or its clients. The Code emphasizes that employees should devote the whole of their time and attention to their duties for Apollo and that employees needed to be sensitive to conflicts of interest. Engaging in an outside business activity requires approval of the Chief Compliance Officer of Apollo. As the Chief Compliance Officer testified, accessing the data room on behalf of a competitor and sharing non-public information about a company Apollo was considering acquiring is a clear violation of these policies.

Unfortunately, beginning in mid-2016, Siddiqui and Dang began to engage in conduct that violated both the letter and the spirit of the Code of Ethics. Starting in July 2016 and continuing regularly thereafter, Siddiqui, while an Apollo partner, began sending internal Apollo reports, decks, and analyses from his personal Gmail account to the personal email accounts of Cernich, Daula, and Dang. There are at least five such examples from July 2016 through January 2017. Information from these documents was incorporated into decks and models Caldera was using to solicit potential investors to invest in Caldera. There are at least four examples of this. Around the same time Dang began working surreptitiously on these matters and began using his fiancé's Gmail account for that purpose. Dang was involved actively in efforts to solicit Apollo investors to do business with Caldera going forward. Siddiqui bought Dang a laptop for his use on these matters. Many active steps were taken by Siddiqui and Dang to hide their involvement. In 2016 Dang admitted that he spent up to two to three hours per day on these matters. This amount increased to as much as four to five hours per day in 2017. Neither Siddiqui nor Dang sought the approval of Apollo's Chief Compliance Officer to engage in these outside business activities.

At the same time that Siddiqui was working actively on an Apollo bid for FGL, which was a public company, he, with the assistance of Dang, was working on Caldera's efforts to acquire FGL. Siddiqui even went so far as to in effect grant Dang access to FGL's virtual data room. Another company (a Blackstone-controlled entity) was the winning bidder, but this episode demonstrates how both Siddiqui and Dang were working at cross-purposes with their employer.

Pursuant to the terms of the limited partnership agreements that Siddiqui and Dang had signed, they were not permitted to engage or participate in any Competitive Business. A "Competitive Business" was defined to include an "alternate asset manager". There is sufficient record evidence to conclude that Caldera fit that definition. Those same documents prohibited the solicitation of Apollo investors and prohibited the use of Apollo's Confidential Information. In addition, Dang's two partnership agreements contain language that provides that an Apollo employee must forfeit all the points he was awarded as a result of a "Bad Act". A "Bad Act" is defined to include, among other things, "commission of an intentional and material breach" of the Code of Conduct and intentional misconduct by the limited partner in his services for Apollo.

Following his resignation from Apollo, Siddiqui was subject to various post-employment restrictions, including a one-year non-compete, a one-year prohibition against contacting Apollo's

investors in a manner that would interfere with their relationship with Apollo, a prohibition against disparaging Apollo and an indefinite prohibition against using Apollo's Confidential Information.

Notwithstanding these prohibitions, Siddiqui continued to solicit investors, and Caldera began its first active attempt to purchase AEL. Siddiqui admitted that rather than engage in this activity his wife told him that "he should have just sat on the beach for a while." His wife was right. Caldera retained a number of outside advisors and engaged in considerable due diligence. Caldera made certain offers for AEL in late 2017, but no transaction was consummated at that time.

In early 2018, Apollo brought the initial arbitration against Siddiqui that is described above. That arbitration was settled in February 2018, and, with exceptions not relevant here, the non-compete was released and the prohibition against soliciting or interfering with Apollo investors was removed. In exchange, Siddiqui forfeited limited partnership interests worth nearly $15 million, but Apollo did agree that he would receive over $7.5 million in additional distributions. Siddiqui was required to continue to comply with his obligations with respect to the use and disclosure of Apollo's Confidential Information, was required to return or destroy all Apollo documents or other Confidential Information in his possession, and to execute an "attestation verifying that he has returned or destroyed all Apollo property and/or Confidential Information in his possession, custody or control." Siddiqui executed such an attestation, but it was false in that discovery in this arbitration established that voluminous quantities of such information remained under his possession, custody, and control. These documents dated back until 2016. Siddiqui admitted that he did not run any searches in his email accounts for these documents, which is where these documents resided, at the time that he swore under penalty of perjury that he had destroyed all such documents. The documents included much of the correspondence with Dang that was the subject of testimony during the arbitration hearing and which was not even produced in this action until around the time that Apollo learned of Dang's involvement with Siddiqui.[7] For its part, Apollo agreed it "shall not take any action to encourage or support [Athene] in asserting any claims covered by or relating to this release or related to facts alleged" in the arbitration.

Apollo claims there are three examples following the execution of the Settlement Agreement of Siddiqui using and disclosing Apollo's Confidential Information, but, as described in greater detail below, none of these is of any consequence.

Following the execution of the Settlement Agreement, Dang continued to work on Caldera matters. By this time, both Athene and Caldera were considering whether to make a bid for AEL. Even so, there are over 20 email examples of Dang's involvement in Caldera's bidding efforts including one email exchange in which Dang suggested that Caldera should emphasize that it was a better buyer than Apollo and Athene, because, according to Dang, Athene needed to pay an affiliated asset management

[7] Siddiqui suggests that having entered into the Settlement Agreement it is unfair for so much of his conduct from the period prior to that to be a subject of these proceedings, particularly given that he was released for liability for that conduct. But describing that conduct is necessary to understanding what follows. Had Siddiqui destroyed the documents, as he had agreed to do, very little of it would have come to light, and his claims and defenses in this arbitration would have been stronger than they are. In any event, a reasoned Award, such as this one, must weigh all the evidence.

fee to Apollo, while Caldera would not. This email was disloyal to say the least. On April 22, 2018, Dang submitted comments on Caldera's bid for AEL.

Even worse, on April 23, 2018, Dang secretly accessed Apollo's highly confidential AEL –related folders on Apollo's shared drive. These documents reflected that what Apollo's own bid price would be. Dang had no Apollo-related reason for accessing these folders. Apollo's Chief Information Security Officer testified that, after reviewing the forensic evidence, he had concluded with a high degree of certainty that Dang had used a Google-based email address to transmit these files outside of Apollo. This testimony was credible, and it is telling that Dang never took the witness stand following this testimony to attempt to rebut it. Cernich admitted that this conduct was "stupid and sophomoric." Dang's involvement subsequent to February 21, 2018 Settlement Agreement is impossible to justify.

On April 24, 2018, Caldera made a bid in excess of the Apollo price. This bid was not accepted.

In and around this time, Athene became more active in its pursuit of AEL. It submitted a bid of $43.50 per share subject to due diligence. The due diligence showed, however, that, as a result of AEL's reserving practices, among other things, that there was no basis for Athene to make a bid at anywhere near that level. Rather, its analysis showed that only bid that could be made was one that was below AEL's market price. Internal management concluded that an acquisition of AEL would actually be quite harmful. There was some discussion about the possibility of a large reinsurance transaction instead, but that proposal never gained traction. Although Apollo and Athene continue to insist that they have a long-term interest in acquiring AEL, and have continued to tell that to AEL, the evidence does not support the conclusion that any such acquisition would be viable. Indeed, in mid-May 2018 an email exchange between senior Athene executives characterized the potential transaction as "mortally wounded". There is no credible evidence to suggest that the accuracy of this description ever changed.

In May of 2018, Athene commenced the Bermuda action. Marc Beilinson was the Chair of the independent directors of the Athene Board and the head of the Special Committee of the Board responsible for overseeing Athene's litigation in connection with its bid on AEL. The unrebutted evidence is that Beilinson authorized the commencement of the Bermuda action based on his reaction to learning that Siddiqui and Cernich had formed a competing entity and this pre-dated his receipt of a letter from counsel for Apollo alleging that they had acted improperly. While Apollo and Caldera surmise that Apollo must have encouraged or supported the filing of this action, there is no real proof of that.

In October of 2018, Apollo learned for the first time about Dang's involvement with Caldera, Siddiqui and Cernich. When Dang was confronted about this, he lied about it and resigned the next day. For some period of time thereafter, Apollo and Dang had discussions about his possible cooperation in this arbitration, but no agreement was reached, and the Statement of Claim against him was filed on November 28, 2018.

C. Liability

Claimants have asserted a number of claims against Respondents, and Respondents have asserted a counterclaim against Claimants. The question of liability, if any, pursuant to any of these claims is addressed in this section of the Award. Before addressing those claims, however, threshold consideration needs to be given to the impact of the February 21, 2018 Settlement Agreement. This issue is addressed in the next section of this Award.

1. The Impact of the February 21 Settlement Agreement

Two separate issues arise under the February 21 Settlement Agreement. The first is how it impacts claims asserted against Siddiqui and Caldera. The second is whether the release contained in the Settlement Agreement applies to the claims asserted against Dang. Each of these issues is considered in turn.

The Settlement Agreement provides in pertinent part as follows:

> *"Apollo Release.* Apollo releases Mr. Siddiqui and his affiliates, employers, and any company formed by Mr. Siddiqui (the "Siddiqui Released Parties") from all claims, complaints, demands, or causes of action relating to the Action and/or the Restrictive Covenants, whether known or unknown, liquidated or unliquidated, at law or in equity, that exist as of, or which have ever existed at any time up to and including, the Effective Date."

The "Action" is defined to include all the pleadings in the initial arbitration proceeding. The "Restricted Covenants" refer to the Siddiqui's covenants not to compete. The "Effective Date" is February 21, 2018.

The impact of these definitions is that any conduct by the Siddiqui Released Parties on or before February 21, 2018 is released. Thus, as explained in prior orders in this arbitration, in order for Apollo to prevail against Siddiqui (and the same applies to Caldera) it must prove that there was a violation of the terms of the Settlement Agreement that took place subsequent to February 21, 2018. If there is no use or disclosure of Confidential Information subsequent to that date, Apollo conceded, as it must, that it will not prevail on its claim.

The second threshold issue is whether Dang is among the "Siddiqui Released Parties". He argues that he is included because of the inclusion of the word "affiliates" in the list of "Siddiqui Released Parties". It is true that as a general matter releases are to be interpreted broadly. Nonetheless, Dang's argument is wrong. As an initial matter, Apollo as the releasing party, did not even know of the disloyalty of its employee, Dang, at the time of the Release. Rather, his involvement was hidden by Siddiqui and Dang himself. There is no evidence whatsoever to suggest that Apollo intended to release Dang. Furthermore, the argument that Dang asserts is contrary to the plain language of the language of the release, which by its terms does not list employees or agents on the list of Siddiqui Released Parties. If the word "agent" had been used, then Dang's argument would have been far stronger than it is. Finally, the case law itself would appear to require the presence of "control" over the

affiliate in order for it to apply to individuals. *See, e.g., Geier v. Mozido, LLC,* 2016 Del. Ch. LEXIS 149, at *15-19 (Del. Ch. Sept. 29, 2016). There is no evidence in this case to suggest that Caldera or Siddiqui controlled Dang. Similarly, given that Dang was not yet an officer, employee, or agent of Caldera, he in turn had no ability to bind that entity.[8] Thus, Dang cannot argue that he was an affiliate of Siddiqui under the plain language of the Release.[9]

2. Apollo's Breach of Contract Claims against Siddiqui

Apollo asserts four breach of contract claims against Siddiqui. Three of these claims have merit. One does not.

The first two claims that have merit have to do with Siddiqui's obligations with respect to Apollo documents. The Settlement Agreement required Siddiqui to return or destroy within five days of the Effective Date "all Apollo property, including without limitation, any Apollo documents or other Confidential Information . . . in Mr. Siddiqui's possession or under his control that is in electronic, written, or other tangible form". During discovery in this arbitration Siddiqui produced countless documents that fit squarely within this definition, and he admitted that he did not conduct any electronic searches of his devices that would ferret this out. This breach could not be any clearer.

As an enforcement tool, the Settlement Agreement required Siddiqui to execute an attestation "verifying that he has returned or destroyed all Apollo property and/or Confidential Information in his possession, custody, or control." Although Siddiqui submitted such an attestation, "under oath and penalty of perjury," that attestation was false. There is no legitimate excuse for this blatant failure.

Siddiqui tried in his testimony to defend his conduct on this subject by pointing to a provision in the Settlement Agreement that states that if at some future date he came across Apollo Confidential Information he was to return it or destroy it within five business days. This provision may have been designed to cover the inadvertent failure to return or destroy everything in the immediate aftermath of signing the Settlement Agreement, but it does not excuse the wholesale failure to do what was required in the first place.

The third claim relates to Siddiqui's breach of the Settlement Agreement in soliciting Dang to work on Caldera matters. In Section 7(c) of the Settlement Agreement, he agreed not to directly or indirectly "solicit or induce" any officer or employee of Apollo to leave or sever his employment with Apollo until June 18, 2018. The undisputed evidence of Siddiqui's frequent interactions with Dang, Dang's input into Caldera work product, and Dang's surreptitious accessing of Apollo files relating to the

[8] This reading does not make the inclusion of the word "affiliates" in the Release superfluous. Given that Siddiqui made investments in Athene through various family trusts, it was clearly in his interest to include this term in the list of "Released Parties".

[9] There is no disagreement that Caldera is an "affiliate" within the meaning of the Release.

Athene bid for AEL are evidence that he was attempting to do just that and continued to do that subsequent to February 21, 2018. [10]

Apollo's fourth and principal breach of contract claim relates to Siddiqui's alleged use or disclosure of Apollo Confidential Information, which was strictly forbidden under the terms of the Settlement Agreement. Apollo's proof of this is deficient in a number of respects.

As an overall matter, Apollo seems to contend that Caldera could not have made the bids it did for AEL without using in some broad sense the confidential information it gleaned from Siddiqui's work on these matters while at Apollo. Having agreed in the Settlement Agreement to remove the covenant not to compete, it follows that Siddiqui would use whatever overall knowledge and experience he had in his future endeavors including whatever he did in competition with Apollo. If Apollo wanted to prevent that activity, then it should not have agreed to release the covenant not to compete in exchange for $15 million in consideration from Siddiqui in the first place.[11] Furthermore, Cernich brought his considerable experience and knowledge to formulate Caldera's bids. There is considerable unrebutted evidence of his efforts to build Caldera, to consult with outside advisors to the extent necessary and ultimately to make bids for AEL. No witness at the hearing analyzed those bids and presented evidence that the bids themselves reflected the use of confidential information obtained from Apollo or Athene.

During the course of discovery in these proceedings, the undersigned granted Apollo's request that a forensic examination of Siddiqui's electronic devices take place in order to determine whether there was disclosure of Apollo Confidential Information to anyone after February 21, 2018. It is worth noting that despite the time-consuming and expensive work of the forensic examination no evidence was adduced at the hearing that would substantiate the claim that this in fact happened. There is evidence that Siddiqui had countless pre-release emails containing such Confidential Information, but there is no evidence that Siddiqui accessed even a single one of those emails in the post-release period, that any "Confidential Information" from those emails made its way into Caldera's 2018 bid for AEL, or that Siddiqui or Cernich relied upon them in any way.

During the hearing, Apollo attempted to predicate its claim on a few specific examples of alleged use of Confidential Information, but none of these has merit. First, Apollo relied on an April 2013 regulatory presentation to the Iowa Insurance Department in connection with an acquisition of Aviva. Leaving aside the question of just how confidential regulatory filings made five years earlier could be, the evidence showed that it was Deutsche Bank that transmitted them rather than Siddiqui.[12] Furthermore, the 2013 transaction was a highly publicized transaction which received considerable regulatory scrutiny including testimony at public hearings. Second, Apollo pointed to certain "cost of funds" information, but the evidence showed that various different "costs of funds" used by Athene had

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[10] There is no specific claim for damages resulting from this claim or the claims relating to the failure to destroy or return Apollo documents and the execution of a false attestation. Instead, injunctive relief is sought.

[11] It is somewhat mystifying that Apollo objected so strenuously to Caldera's making a bid for Athene in light of its having agreed to lift the non-compete.

[12] Subsequently, Deutsche Bank recognized that certain information that it had transmitted was incorrect and sent correct and publicly available information to the investor.

been disclosed publicly by Athene itself. Third, Apollo pointed to the use of "Athene precedent" in the form of a revolving credit agreement, but that agreement had been disclosed publicly in an SEC filing.

Apollo also points to Dang's accessing of the Apollo files relating to the AEL acquisition and emailing them to an unidentified address. While these actions are reprehensible, there is no actual evidence that Siddiqui had any involvement either with the decision to access the information or disclosed or used it in any way. If he had done so, presumably that would have been uncovered in the course of the forensic examination, but no such evidence was introduced at the arbitration hearing.

3. Apollo's Claim against Dang for Aiding and Abetting Siddiqui's Breach of Fiduciary Duty

Apollo has asserted a claim against Dang for aiding and abetting Siddiqui's breach of fiduciary duty. To prevail on such a claim requires proof of the existence of a primary violation, actual knowledge of the violation on the part of the aider and abettor and substantial assistance. *See, e.g., Kirschner v. Bennett,* 648 F. Supp.2d 525, 533 (S.D.N.Y. 2009). Each of these elements has been satisfied.

Siddiqui had fiduciary duties at Apollo throughout 2016 and at least until he tendered his resignation in March of 2017. During that time period, Siddiqui did far more than legitimate planning for his next professional venture. There is considerable evidence that in that time frame, he collected and transmitted Apollo's and Athene's Confidential Information, that he solicited investors in an attempt to persuade them to invest in Caldera rather than Apollo or Athene, that he competed with Apollo and Athene for acquisition targets, and that he remained on Athene Board of Directors for the purpose of protecting his own personal interests. Dang knew a considerable amount about Siddiqui's activities.

Dang substantially assisted in Siddiqui's breach by providing considerable assistance to Siddiqui in drafting models and decks for Caldera. He helped conceal Siddiqui's involvement by modifying documents. He prepared documents used to solicit investors, and he was involved actively in Caldera's attempts to acquire a company that Athene also was seeking to acquire. He also failed to report Siddiqui's disloyalty to Apollo management.

4. Liability for Dang's Breach of Fiduciary Duty

There is no question that Dang owed Apollo a duty of loyalty and that he was prohibited from acting in any manner inconsistent with his agency or trust and was at all times bound to exercise the utmost faith and loyalty in the performance of his duties.[13] Dang violated this duty in a number of respects for the period from July 27, 2016 though his October 26, 2018 resignation. Dang's actions were not merely preliminary steps taken in contemplation of his next job. On the contrary, his actions were both comprehensive and taken in ways that were adverse to Apollo. Dang spent a very material amount of time in 2016 on Caldera's day to day operations and increased his commitment to a more significant level in 2017. Many of these actions were taken during normal weekday working hours. Dang actively

[13] Dang was an Apollo employee in addition to being a limited partner in certain Apollo carry vehicles. Thus any suggestion that any duties he owed were confined to what is specified in the limited partnership agreements is incorrect.

solicited Apollo and Athene investors to invest in Caldera to the detriment of Apollo and Athene, and he helped prepare Caldera bids for acquisition for Athene and Apollo. In circumstances such as this, the courts do not hesitate to impose liability on the wrongdoer. *See, e.g., Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC*, 813 F. Supp. 2d 489, 521-522 (S.D.N.Y. 2011). Thus, Dang is liable for breach of fiduciary duty.[14]

The Settlement Agreement relieves Siddiqui and Caldera for any liability for aiding and abetting this breach by Dang for the period through February 21, 2018. Subsequent to that date, however, Siddiqui and Caldera substantially assisted Dang in his breach by soliciting Dang's services for work on Caldera, including providing him in early May 2018 with Siddiqui's credentials to the AEL data room so that Dang, while still an Apollo employee, could work on the AEL transaction on Caldera's behalf and continuing to conceal Dang's involvement in Caldera from Apollo and other outside parties who could blow the whistle to Apollo on Dang. Therefore, Siddiqui and Caldera are liable for aiding and abetting Dang's breach of fiduciary duty from February 22, 2018 through his October resignation.

5. Liability for Dang's Breach of Contract

Dang breached his limited partnership agreements in a number of respects. As an initial matter,, he was not allowed to participate in certain competitive business including an "alternative asset manager." Dang's active involvement with Caldera breached that portion of the agreement. As Siddiqui recognized, Caldera was intended to invest in alternative investments. The documents describing its formation speak of "alt investing by Newco as a core tenant." Investor decks for Caldera highlighted Caldera's expertise in this area. In a practical business sense, there is little doubt that Apollo and Caldera were competing. Indeed, in its damages claim Apollo places considerable reliance on the harm to it should Caldera acquire AEL. This demonstrates the point. Email exchanges between Dang and Siddiqui further buttress this argument.

The limited partnership agreements and Dang's Unit Award Agreements also prohibit the solicitation of Apollo investors and the disclosure of use of Apollo's Confidential Information. The evidence established that Dang violated each of these provisions.

Thus, Dang is liable for breach of contract.

Siddiqui and Caldera are alleged to have tortiously interfered with the contracts between Dang and Apollo. There are several elements to a claim for tortious interference. One of those is that respondents intentionally induce the third party to breach. In this case, the proof of this element is insufficient. The unrebutted evidence establishes that Dang made his own decision to pursue conversations with Cernich and Siddiqui, that Dang energetically sought to become involved in that business and that he did so well prior to the Release Date.[15] Nothing changed after the date of the

[14] Dang's conduct in breach of his fiduciary duties go well beyond the breaches of contract that are discussed below. Thus, the cases on which Dang relies for the proposition that tort claims should be dismissed where they arise from the same conduct as breach of contract claims are not dispositive here.

[15] While one could be suspicious of Cernich's and Siddiqui's conduct in this regard, there is no evidence to substantiate that suspicion.

Settlement Agreement until well after the time that Dang resigned from Apollo. During this period, Dang was not paid by Caldera or Siddiqui, although Siddiqui did purchase a laptop computer for Dang to use when working on Caldera matters, but that is an insufficient basis on which to predicate liability for tortious interference. Thus, Siddiqui and Caldera are not liable for tortious interference with contract.

6. Dang's Liability as a Faithless Servant

Dang's original employment agreement with Apollo is governed by New York law, and he never executed another one. The New York courts apply the faithless servant doctrine to conduct such as Dang engaged in this case. Under even the version of the faithless servant doctrine that is most favorable to an employee, the faithless servant doctrine applies upon a showing (1) that the employee's disloyal activity was related to the performance of his duties, and (2) that the disloyalty permeated the employee's service is a most material and substantial part. *See, e.g., Morgan Stanley v. Skowron,* 989 F. Supp. 2d 356, 361(S.D.N.Y. 2013). Under the facts of this case, Dang is liable as a faithless servant.[16]

7. Unfair Competition Claim against Dang

Apollo claims that Dang is liable for unfair completion under the circumstances of this case. The cases on which Apollo relies in support of this claim are not analogous to this case. They involve manufacturing methods, designs and pricing information for customers using building maintenance services and have no applicability to the facts and circumstances of this case. Dang is not liable on this claim.

8. Claims of Common Law Fraud against Dang

The elements of a common law fraud claim against Dang have been satisfied. To state a claim for common law fraud, a claimant must establish misrepresentation or concealment of material fact, falsity, scienter by the wrongdoer, justifiable reliance on the deception, and resulting injury.

Dang made misrepresentations to Apollo during the course of his employment. He made repeated and false certifications of his compliance with Apollo Code of Ethics. He also certified falsely that he had not engaged in any outside business activities. His extensive and time-consuming work for Caldera makes clear that his representations were false. This conduct was clearly deliberate. Given that Dang did not reveal the true facts, Apollo continued to employ him under false pretenses. As an entity that required annual certifications on these subjects Apollo reasonably relied on their truthfulness. The testimony of Apollo's Chief Compliance Officer made clear the importance to Apollo of compliance with these requirements.

9. Claims against Dang under the Computer Fraud and Abuse Act

The Computer Fraud and Abuse Act (the "CFAA") enables an aggrieved party to assert a claim against one who "knowingly and with intent to defraud, accesses a protected computer without

[16] While Dang argues that Delaware law should apply and that there is no such doctrine under Delaware law, the courts have held that arbitrators have the ability to apply the equivalent of the faithless servant doctrine in cases in which Delaware law applies.

authorization, or exceeds authorized access, and by means of such conduct further the intended fraud and obtains anything of value." 18 U.S.C. Sec. 1030(a)(4). In this case, however, Dang had authorized access to the information on an Apollo server. Apollo's argument is that Dang had no business need to access those files. The Second Circuit has held, however, that the CFAA only applies to circumstances where an employee goes beyond the parameters of his access rights, but not to the situation where an employee who already has authorized access to the computer files, nevertheless obtains those files for an improper purpose. *United States v. Valle,* 807 F.3d 508, 526 (2d Cir. 2015).

10. Other Claims against Dang

The Amended Statement of Claim in action against Dang, Siddiqui, and Caldera also asserted separate claims of unjust enrichment, misappropriation of trade secrets, conversion, and tortioius interference with prospective business relations. These claims were not pursued during the arbitration hearing and were not the subject of Claimants' post-hearing briefing or proposed findings of fact and conclusions of law. They are deemed to have been abandoned.

11. The Claim of Siddiqui and Caldera Relating to the Bermuda Action

The counterclaim asserted by Siddiqui and Caldera relating to the Bermuda action is predicated on the provision of the Settlement Agreement in which Apollo agreed that it "shall not take any action to encourage or support" Athene in asserting any action relating to the facts alleged in the first arbitration. Notwithstanding the suspicions of Siddiqui and Caldera on this subject, the proof adduced at the hearing was that Marc Beilinson, the chair of the independent directors of Athene, took this action on his own and that the Special Committee of the Athene Board authorized this action. Beilanson testified that he had not been instructed by Rowan or anyone else to do anything concerning the Bermuda litigation. The forwarding of letters to Beilinson by counsel for Apollo is insufficient to prove that Apollo gave encouragement or support to the filing of a lawsuit. Therefore, this claim for breach of contract is denied.

D. Injunctive Relief and Damages

Apollo sees both injunctive relief and damages as remedies for the claims that it asserts against Siddiqui, Caldera and Dang. The appropriateness of such relief and the measure of the damages to be awarded against each of the Respondents is addressed in turn below.

1. Injunctive Relief

As noted above, Apollo sought injunctive relief preventing Siddiqui and Caldera from seeking to acquire AEL. For the reasons set forth more completely in the March 18, 2019 Order that is attached as Exhibit A, that form of relief was denied as inconsistent with the waiver of the covenant not to compete in the February 21 Settlement Agreement.

In addition, Apollo seeks several other forms of injunctive relief. Each of these is considered in turn below.

As an initial matter, Apollo has demonstrated its entitlement to an Order enjoining Respondents from disclosing or using any Apollo Confidential Information in any way and requiring them to destroy any such information in their possession, custody and control. Siddiqui in effect conceded the propriety of such an Order in his post-hearing submissions and agreed that it should extend to any Athene documents as well. Respondents shall conduct a thorough search to ensure that any individuals or entities with whom they shared Apollo's Confidential Information – including, but not limited to, their professional, legal and actuarial advisors -- also destroy or return all of Apollo's Confidential Information.

In order to enforce this provision, Respondents are required to appoint a forensic examiner to oversee their compliance with this portion of the Order and perform to the extent necessary the removal of any electronically-stored information. Respondents shall bear the full costs of such an examiner, and both Siddiqui and Caldera are directed to submit an attestation to Apollo that details that both that there has been complete compliance with this portion of the Order and describes that steps that have been taken to insure compliance with it.

Apollo also seeks the appointment of a corporate compliance consultant to supervise the identification and destruction of Apollo's Confidential Information and verify compliance with it. This request is denied. There has been no showing that the ongoing appointment of such an individual is necessary or appropriate particularly given the absence of evidence, as described above, the Siddiqui and Caldera have continued to use or disclose Apollo Confidential Information subsequent to the execution of the February 21, 2019 Settlement Agreement.

Apollo also seeks an order extending the period during which Dang may not solicit any Apollo investors to a 12-month date following the issuance of this Arbitration Award and the period of the non-compete from the April 26, 2019 date on which it expires to a date six months from the issuance of this Award. These forms of relief are made up out of whole cloth. There has been no showing that Dang violated the non-solicitation provisions since he resigned from Apollo, and there is no evidence to suggest that he is involved in such efforts at this time. As for the request that Dang be barred from working for Caldera, it bears noting that Apollo never sought a preliminary injunction preventing Dang from working there during the pendency of this arbitration. The limited partnership agreements specify when those periods should run, and Apollo points to no provisions in them which provide a vehicle for extending them under the circumstances of this case. There is also no basis for the imposition of a constructive trust over any payments Dang receives from Caldera.[17]

Dang makes a further argument that the arbitration provisions of his limited partnership agreements and his Unit Award Agreement limit the authority of the undersigned to issue injunctive relief. This argument is wrong. The agreements at issue provide that all disputes, other than injunctive relief, will be settled "exclusively" by arbitration. With respect to arbitration, the agreements state that the parties "may commence litigation in court to obtain injunctive relief in aid of arbitration, to compel arbitration, or to confirm or vacate an award," but this is not a limitation on the authority on the

[17] It is not clear whether this is a request for injunctive relief or for damages, but the lack of a basis for awarding it as a form of relief in these proceedings is apparent in any event.

undersigned to award injunctive relief. It is merely a limited expansion of the forums in which the parties may seek redress for particular harms.

2. Damages

During the course of these proceedings, Apollo has made the claim more than once that it is entitled to a $300 million award of damages. That amount was stated as damages in Apollo's Statement of Claims, and Apollo's expert witness claimed just it was just a coincidence that his calculation of damages was exactly the same.

Apollo's post-hearing submissions seem to have abandoned, as it should, the argument that they are entitled to an award of such an amount. As an initial matter, it seems clear that none of the actions that Siddiqui and Caldera have taken have prevented Athene from acquiring AEL if it genuinely wished to do so. The problem is that Athene could not justify offering a price for AEL in May of 2018 that exceeded the then-prevailing market price, and there is no evidence that this has changed. Indeed, the evidence showed that acquiring AEL at the level that would have been necessary would have impaired the value of Athene itself.[18] Therefore, there is no evidence that Apollo suffered any damages from a failure on its part to acquire AEL. Leaving aside for the moment Apollo's failure to prove that Caldera used its Confidential Information in its bid for AEL there is no evidence Apollo was damaged by the existence of any bid by Caldera. Even Apollo's expert witness could not distinguish between damage to Apollo as opposed to damage to Athene. There is no basis for the suggestion that Apollo makes that it is entitled to some form of royalty-based damages based on future profits that Caldera might make. Such an argument runs afoul of the decision by the New York Court of Appeals in *E.J. Brooks Co. v. Cambridge Sec. Seals,* 31 N.Y.3d 441 (2018). As the Court recognized in that case, damages must correspond to the amount the plaintiff would have made except for the defendant's wrong, not the profits or revenues actually received or earned by the defendant. *Id.* at 449. Furthermore, the dollar and percentage amounts identified by Apollo are completely speculative.

In contrast to the direct claims against Siddiqui for breach of contract, Apollo has proven that it is entitled to an award of damages for its claims against Dang.

During the period from July 27, 2016 (when Dang first began working with Siddiqui) and his October 26, 2018 resignation date, the evidence established that he was paid $2,033, 707.41 in salary, bonus and carry. He was paid $152,260.27 between February 22, 2018 and October 26, 2018. There is no question that Apollo received valuable service from Dang as an employee. His sizeable annual bonuses, very positive performance reviews and his admission as a limited partner in two Apollo funds demonstrate this. It is equally true, however, that throughout this time, he breached his fiduciary duty to Apollo and engaged in conduct that constitutes fraud and satisfies the prerequisites for application of the faithless servant doctrine. Although Apollo argues that all his compensation should be forfeited, the courts have recognized that, in circumstances like this, all compensation should not be forfeited. *See CARGO Group, Inc. v. Maconcachy,* 718 F. 3d 72, 82 (2d Cir. 2013). Based upon a careful weighing by the

[18] There is also no evidence that engaging in a significant reinsurance transaction with Athene was or is a realistic possibility.

undersigned of the facts and circumstances present here, approximately half the compensation received should be forfeited. Apollo should be awarded damages on this claim of $1,000,000. This same $1,000,000 amount represents the damages that Apollo sustained for breach of fiduciary duty and fraud and as a result Dang's liability for aiding and abetting Siddiqui's breach of fiduciary duty. Given that Siddiqui and Caldera are liable for aiding and abetting Dang's breach of fiduciary duty, they are also responsible for their portion of the damages following the execution of the February 21, 2018 Settlement Agreement. It follows, therefore, that Siddiqui and Caldera are jointly and severally liable for $75,000. In the exercise of discretion no pre-judgment interest is awarded on these damages amounts.

In addition, Apollo has the contractual right to reduce Dang's points to in his Apollo limited partnerships to zero. This occurs when, as here, a Limited Partner becomes a Retired Partner as the consequence of a contractually defined Bad Act. A Limited Partner becomes a Retired Partner when his employment by Apollo is terminated or when he resigns. The limited partnership agreements define a Bad Act as, among other things "commission of an intentional and material breach of a material provision" of the Apollo Code of Conduct, commission of "intentional misconduct" in the performance of his duties, and fraud. As demonstrated above, Dang committed multiple serious violations of the Code of Conduct, engaged in intentional misconduct and committed fraud. Dang had 0.675 vested points in Apollo VIII and 0.263 vested points in Apollo IX. These are all forfeited. This forfeiture represents an appropriate award of damages for Dang's breach of contract.[19]

The next question is whether punitive damages should be awarded against any of the Respondents in this arbitration. In the case of Dang, the $1,000,000 in damages awarded together with the loss of his limited partnership points and his obligation to return fees that have been advanced (more on that below) are sufficient to compensate Apollo for the harm that it suffered by reason of his conduct. Any additional payment by him would be a windfall to a company with very substantial resources and would be disproportionately harmful to him. It is worth noting in this regard that Dang is relatively junior and hopefully will learn from this experience. It is hard to see how the imposition of punitive damages against Dang would be in the public interest.

On the other hand, it is appropriate to impose punitive damages against Siddiqui who continued to involve Dang after the Settlement Agreement was signed and while he was still an Apollo employee. It is reasonable to impose punitive damages against him in the amount of $150,000, which approximates the amount that Apollo paid Dang after the signing of the Settlement Agreement. Apollo argues that additional punitive damages should be assessed in the form of requiring the forfeiture of all of Siddiqui's carried interests in Apollo funds. This would amount to a penalty approximating an additional $15,000,000. This is far too draconian a remedy in light of the conduct that transpired subsequent to February 21, 2018. Given that Siddiqui bears principal responsibility for this, he rather than Caldera as the corporate entity, should be responsible for this award. Siddiqui shall pay punitive damages of $150,000. No punitive damages award is assessed against Caldera.

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[19] There is no basis for Dang's argument that this is the equivalent of a liquidated damages provision and is therefore the exclusive remedy for the commission of a Bad Act. Rather, these provisions simply enumerate a consequence of the improper conduct.

E. Advancement of Fees

As noted above, the undersigned has issued orders requiring the advancement of fees incurred by Siddiqui and by Dang. Apollo asks that the undersigned direct the return of all advanced fees. For the reasons set forth below, that request is denied as to Siddiqui but granted as to Dang.

In the case of Siddiqui, the advancement of fees was limited to the Bermuda action. That action is still in its preliminary stages and there has been no "final adjudication" that that the actions of Siddiqui were made "in bad faith or with criminal intent." The Bermuda court will make its own determination based on the facts before and applicable law, and it would be improper for the undersigned to make judgments about that. Furthermore, the entire basis for imposing on an obligation to advance fees in that case is that it made allegations concerning pre-release conduct which are not of determinative significance in this arbitration.

In the case of Dang, however, the undersigned has made a determination that he acted "in bad faith" within the meaning of the indemnification clause. His repeated acts on behalf of Caldera and in contravention of the Apollo Code of Conduct and the terms of his limited partnership agreement more than satisfied that standard. That will become a "final adjudication" upon the confirmation of this Award. Dang is directed to return all advanced fees. To the extent that Dang asserted this claim for the advancement of fees as a separate counterclaim, that counterclaim is denied in its entirety.

F. Attorneys' Fees and Costs

In the case of Siddiqui and Caldera, there is no contractual basis for the award of attorneys' fees. Rather, such an award is said to be justified based on Respondents' "wanton and willful" misconduct. In this arbitration, however, in no sense can it be said that Apollo has prevailed on its claims against Siddiqui and Caldera. It has succeeded on some, and lost on others. The damages that have been awarded against Siddiqui and Caldera are a small fraction of the amount sought in the Statement of Claim. The award of Apollo's attorneys' fees and costs is not appropriate.

In the case of Dang, the limited partnership agreements do provide for the award to the prevailing party of JAMS administrative fees, the arbitrator's fee and expenses. The award of such fees and expenses is not appropriate, however, under the circumstances of this arbitration. In this case, this arbitration was contested hotly for six months before Dang was even named as a Respondent and the vast majority of the relief sought, the issues in play and the testimony of the fact witnesses concerned matters other than Dang's specific actions. Furthermore, Apollo has prevailed against Dang on certain but not all of its claims and has not been awarded all of the relief it seeks. Under these circumstances, the award of attorneys' fees and costs against Dang would not be appropriate.

Relief Granted

1. Apollo's claim for breach of the contract against Siddiqui is granted in part and denied in part. Apollo's claim relating to the failure to return or destroy Apollo Confidential Information is granted. Apollo's claim relating to the making of a false attestation of compliance with the

provision of the Settlement Agreement requiring the return or destruction of Apollo Confidential Information is granted. Apollo's claim for breach of the Settlement Agreement by soliciting Dang to work on Caldera matters is granted. Apollo's claim for breach of the Settlement Agreement by the use and disclosure of Apollo Confidential Information is denied.

2. The claim of Siddiqui and Caldera against Apollo for breach of the Settlement Agreement is denied.
3. Apollo's claim against Dang for aiding and abetting Siddiqui's breach of fiduciary duty is granted.
4. Apollo's claim against Dang for breach of fiduciary duty is granted.
5. Apollo's claim against Siddiqui and Caldera for aiding and abetting Dang's breach of fiduciary duty is granted.
6. Apollo's claim against Dang for breach of contract is granted.
7. Apollo's claim against Siddiqui and Caldera for tortious interference with contract is denied.
8. Apollo's claim against Dang for breach of the faithless servant doctrine is granted.
9. Apollo's claim against Dang for unfair competition is denied.
10. Apollo's claim of common law fraud against Dang is granted.
11. Apollo's claim against Dang under the Computer Fraud and Abuse Act is denied.
12. Apollo is awarded injunctive relief enjoining Respondents from disclosing or using any Apollo Confidential Information and requiring them to destroy any such information in their possession, custody and control. Respondents are directed to appoint at their expense a forensic examiner to oversee compliance with this portion of the Award.
13. Apollo's claim that it has the right to reduce Dang's points in Apollo VIII and Apollo IX to zero is granted.
14. Apollo is awarded damages against Dang in the amount of $1,000,000.
15. Apollo is awarded compensatory damages against Siddiqui and Caldera in the amount of $75,000 and punitive damages against Siddiqui in the amount of $150,000.
16. The request of Apollo that Siddiqui be directed to return all fees advanced in the Bermuda action is denied without prejudice to its right to make such a claim in the appropriate forum following a final adjudication in that action.
17. The request of Apollo that Dang be directed to return all fees advanced in this action is granted in its entirety. Dang is directed to advance all such fees following the completion of judicial confirmation of this Award and any appeals thereof. Dang's counterclaim for the advancement of fees is denied in its entirety.
18. No costs or attorneys' fees are awarded to either side.

19. This Award resolves all issues submitted for decision in this proceeding. To the extent any claim is not mentioned specifically herein, it is denied.

Dated: New York, New York
April 26, 2019

Mark E. Segall, Arbitrator

I affirm that this Arbitration Award is true and accurate pursuant to CPLR Section 7507.

Mark E. Segall

Subscribed to before me this 26TH day of April 2019

Notary Public

DOUGLAS DUZANT
Notary Public, State of New York
No. 01DU6195337
Qualified in Queens County
Commission Expires 10/20/20 20

Exhibit A

JAMS EMPLOYMENT ARBITRATION TRIBUNAL

APOLLO GLOBAL MANAGEMENT, LLC,
APOLLO MANAGEMENT, L.P., APOLLO
CAPITAL MANAGEMENT VIII LLC, AND
APOLLO ADVISORS VIII, L.P.,

Claimants,

Reference Number 1425026462

against

IMRAN SIDDIQUI,

Respondent.

APOLLO GLOBAL MANAGEMENT, LLC,
APOLLO MANAGEMENT, L.P.,
APOLLO ADVISORS VIII, L.P.,
APOLLO ADVISORS IX, L.P.,

Claimants,

Against

MING DANG, IMRAN SIDDIQUI, AND
CALDERA HOLDINGS LTD.,

Respondents.

OPINION ON THE PROPRIETY OF INJUNCTIVE RELIEF

The purpose of this opinion is to address the power of the undersigned as arbitrator to issue an injunction preventing Respondents Imran Siddiqui ("Siddiqui") and Caldera Holdings Ltd. ("Caldera") from seeking to acquire American Equity Investment Life Holding Company ("AEL"). For the reasons set forth below, the undersigned concludes that the issuance of that broad a form of injunctive relief would be improper in light of Siddiqui's signed agreement with Apollo Global Management, L.P. and certain of its affiliated parties who are also claimants in these consolidated matters (collectively, "Apollo").

A. Procedural Background

On May 3, 2018, Apollo commended arbitration against Siddiqui. According to the Statement of Claim, Siddiqui engaged in wrongful use and disclosure of Apollo's "Confidential Information" in violation of the Settlement Agreement and Mutual Release (the "Settlement Agreement") entered into with Apollo on February 21, 2018. The Settlement Agreement resolved an earlier JAMS arbitration for alleged breach of post-employment restrictive covenants filed by Apollo against Siddiqui, a former principal and senior partner of certain Apollo entities. The focus of that earlier arbitration was the alleged violation of certain non-compete provisions that were contained in Siddiqui's Limited Partnership Agreement with Apollo.

Under the Settlement Agreement, Siddiqui forfeited limited partnership interests that were worth nearly $15 million. In exchange, Apollo agreed to release Siddiqui from certain restrictive covenants "prohibiting Mr. Siddiqui from competing with Apollo or soliciting or interfering with investors". For a limited period of time Siddiqui was not permitted to have business relationships with nine enumerated entities, but that list did not include AEL. The Settlement Agreement provided specifically, however, that Siddiqui continued to be bound by his obligation not to disclose Apollo Confidential Information and also required him to return or destroy any such confidential information.

As originally drafted, the Statement of Claim filed against Siddiqui focused on his alleged "wrongful use and disclosure of Apollo's Confidential Information" in violation of the Settlement Agreement. In particular, the Statement of Claim targeted Siddiqui's actions in attempting to acquire AEL in competition with Athene Holding Ltd. ("Athene"), a company with whom Apollo had a strategic relationship, and in trying to obtain financing for such an acquisition. The Statement of Claim sought damages of $300,000,000 or more and sought a permanent injunction ordering that Siddiqui and his agents "comply with the restrictive Covenant governing use and disclosure of Apollo's Confidential Information incorporated into the Settlement Agreement . . . and further specifically barring them from directly or indirectly pursuing any transaction with AEL," which efforts Apollo claimed had been "tainted by the use and disclosure of Apollo's Confidential Information as defined by the restrictive covenant incorporated into the Settlement Agreement." In its pre-hearing brief, Apollo sought to expand the scope of the permanent injunctive relief by requesting, among other things, that the injunction prohibit Siddiqui, Dang and Caldera from "pursuing and/or acquiring AEL or any other company that Apollo or Athene had diligenced" during the time Siddiqui and Dang were at Apollo. It bears noting that Apollo never sought preliminary injunctive relief during the course of these proceedings.

On November 28, 2018, an additional arbitration was commenced against Dang, Siddiqui, and Caldera, which is a new company formed by Siddiqui and Stephen Cernich ("Cernich"). A Statement of Claim was filed and was superseded by an Amended Statement of Claim dated December 4, 2018. According to the Amended Statement of Claim, Dang violated his contractual and fiduciary duties by joining Siddiqui and his colleagues at Caldera by sharing Apollo's confidential information with them and aiding in their attempt to acquire AEL. Fourteen claims have been alleged against Dang and two against Siddiqui and Caldera for tortious interference and aiding and abetting a breach of fiduciary duty. According to a footnote in the Amended Statement of Claim, the claims brought against Siddiqui and

Caldera "are only for their misconduct that occurred on and after February 22, 2018", the date that Siddiqui settled the initial arbitration brought against him and was released for any alleged misconduct occurring prior to that date. This pleading asserted claims against Dang for the same $300,000,000 or more of damages but did not seek injunctive relief. The parties consented to the consolidation of the two separate arbitration proceedings.

The arbitration hearing in these matters had been scheduled to commence on February 8, 2019, but it was postponed because the parties were not ready for the holding of the complete hearing. The day was utilized, however, to hear the testimony of two Athene witnesses who had previously indicated their availability for that day. The full hearing was then scheduled for March 4-8, and March 11, 2019, and took place on those dates as scheduled. The hearing transcript consumed 1,800 pages of transcripts, and a number of witnesses testified live. On March 2, 2019, the parties made pre-hearing submissions, and on March 3, 2019 counsel for Siddiqui submitted a letter claiming, among other things, that the request for the injunction was "overbroad", "massively exceeds" Siddiqui's contractual obligations and "would essentially re-write" his obligations under the Settlement Agreement. The undersigned did not require a response to this letter at that time.

At the conclusion of the hearing, counsel for Siddiqui renewed his request that the undersigned rule in a preliminary manner on the scope of an injunction that could be issued and a related request that counsel made in the March 3 letter that the undersigned rule that Apollo had proved the "fact of damages" with certainty. While the undersigned was unwilling to consider the latter issue in the absence of full briefing, the undersigned directed simultaneous submissions on the former issue in order to the parties some guidance as to the possible consequences for an acquisition of AEL by Siddiqui and Caldera of a Final Arbitration Award in this matter. The submissions were submitted as scheduled on March 14, 2019. Full briefing on the merits has been set, with the simultaneous submission of initial post-hearing briefs on March 25, 2019 and reply post-hearing briefs on April 1, 2019.

B. <u>Analysis of the Issue</u>

Much of the evidence adduced at this hearing is deeply troubling. Cernich described certain of Deng's actions as "stupid and sophomoric", and Siddiqui himself admitted that through the lense of today that certain documents "look bad" and that he would have been better off sitting "on the beach" for a while rather than taking certain actions when he did. Following the submission of post-hearing briefs the undersigned will engage in a careful review of the evidence, determine credibility, and make findings of fact and conclusions of law. That analysis will result in findings with respect to liability and an analysis of what, if any, damages should be awarded, and whether some form of injunctive relief should be imposed.

The scope of the injunctive relief that the undersigned has the power to award is limited by the language of the Settlement Agreement to which the parties agreed. As noted above, that Agreement specifically delineated the parties' agreement on the ability of Siddiqui to compete following its execution on February 21, 2018. While the agreement contains a continued confidentiality restriction and a return of documents provision, it does not prohibit Siddiqui (or any company with which he is

affiliated) from competing in any fashion, or from acquiring AEL. On the contrary, it expressly states that "any" covenant that would operate as a non-compete or a non-solicit is waived and no longer in effect. There is a limited set of exceptions relating to certain entities, but that list omits AEL.

The parties have engaged in an extensive analysis of the governing case law. Although Apollo has cited some cases in which an injunction includes a non-compete in order to protect trade secrets and confidential information, in none of those cases did the Court order such an injunction in the face of specific contractual provisions, such as those in this case, that specifically permit competition. The courts have recognized that relief cannot be granted that is broader than what is specified in the agreement between the parties. *See, e.g. Healthworld Corp. v. Gottlieb*, 12 A.D. 2d 278, 786 N.Y.S.2d 8 (1st Dept. 2004). This is not a question of whether the arbitrator has the authority to issue equitable relief, which the arbitrator does in fact have. Rather, the question is whether the granting of certain forms of relief are impermissible in light of the agreements signed by the parties. This is not a case where the parties have failed to address the issue of a right to compete. Rather, they entered into a Settlement Agreement where compliance with a written non-compete was waived in exchange for meaningful consideration.

This conclusion is also consistent with the JAMS Employment Arbitration Rules & Procedures that govern this arbitration. Rule 24 (c) provides: "The Arbitrator may grant any remedy or relief that is just and equitable **and within the scope of the Parties' agreement** [emphasis added]." In this case, the award of the permanent injunctive relief that Apollo seeks is not within the scope of the parties' agreement. On the contrary, it contradicts the agreement and exceeds it. Thus, by definition the undersigned lacks the power to grant relief barring Siddiqui and Caldera from "pursuing or acquiring AEL."[1]

Dated: New York, New York
March 18, 2019

Mark E. Segall, Arbitrator

[1] This ruling does not exclude the possibility that the undersigned could decide to impose appropriately tailored injunctive relief with respect to the use of confidential information, the return of information, the continued employment of Dang by Caldera, and other related issues. This ruling does not address the power of the undersigned to issue any such form of injunctive relief or the appropriateness of doing so.

SERVICE LIST

Case Name: Apollo Global Management, LLC, et al. vs. Siddiqui, Imran
Reference #: 1425026462
Panelist: Segall, Mark E.,

Hear Type: Arbitration
Case Type: Employment

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PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Apollo Global Management, LLC, et al. vs. Siddiqui, Imran
Reference No. 1425026462

I, Cathleya Fajardo, not a party to the within action, hereby declare that on April 29, 2019, I served the attached Final Arbitration Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at New York, NEW YORK, addressed as follows:

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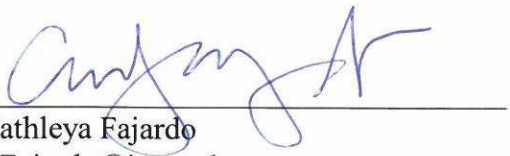
I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on April 29, 2019.



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