

Employment Alert: New York's "Faithless Servant" Doctrine Allows Employer To Recoup \$7 Million for CEO's Salary and Bonus

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In a recent case that Mintz Levin successfully litigated, the Supreme Judicial Court of Massachusetts held that a chief executive officer fired for harassing female employees and misappropriating company funds must forfeit approximately \$7 million in salary and bonuses paid to him while employed by his former employer, pharmaceutical company Astra USA, Inc. Because Astra was incorporated in New York, this ruling has special significance for New York employers, as Massachusetts' highest court applied New York law to reach this result, which pertains to the remedies available against corporate officers who breach their fiduciary duty.

Summary of the Astra Decision and Its Importance to New York Employers

In the lower court proceedings before the Massachusetts Superior Court, a jury found Astra's former CEO, Lars Bildman, liable for fraud, conversion, waste of corporate assets, breach of fiduciary duty, and sexual harassment of Astra's employees. Despite this finding of liability, the lower court also ruled that Astra could not recover by forfeiture the compensation it paid to Bildman from 1990 through 1996, the period in which he was found to have breached his fiduciary duties to Astra. Following cross-appeals, Massachusetts' highest court reversed the lower court's judgment denying Astra the right to recover compensation it paid to Bildman during the period of his disloyalty.

In reversing the lower court's decision, the Massachusetts Supreme Judicial Court (the SJC) applied New York's "faithless servant" doctrine, which may require a disloyal employee to forfeit compensation, even if the employee otherwise performed valuable services to the employer during the period of disloyalty. In so holding, the SJC cited *Feiger v. Iral Jewelry, Ltd.*, 41 N.Y. 2d 928 (1977): "One who owes a duty of fidelity to a principal and who is faithless in the performance of his services is generally disentitled to recover his compensation, whether commissions or salary...Nor does it make any difference that the services were beneficial to the principal, or that the principal suffered no provable damage as a result of the breach of fidelity by the agent." In its analysis of New York forfeiture law, the SJC confirmed that New York law entitles AstraZeneca, Astra's successor who was represented by Mintz Levin, to recover sums paid to Bildman during the period of his disloyalty, even though the lower court tried the issue of Bildman's services and found that he had actually provided value equal to his salary and bonuses. The SJC also confirmed that New York law permits forfeiture for senior executives and

low-level employees alike, and that despite the “harshness” of New York forfeiture law, New York’s specific penalties should be applied to deter the corporate misconduct that the law seeks to discourage.

The SJC decision is a significant victory for AstraZeneca and confirms that New York employers have a potent remedy to redress disloyal employees.

If you have any questions regarding the subject covered in this Alert, or any related issue, please feel free to contact one of the attorneys listed below or any of Mintz Levin’s Employment, Labor and Benefits practice attorneys.

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