



## INSIDE THIS ISSUE

- 1 The Best Way to Avoid a Breach of Contract Lawsuit
- 1 Why Federal Law Won't Help Your Bullying Case in New York
- 2 Why One Broker's Claim for Commissions Based on "Custom" Failed in NY
- 3 Check Out Our New Website!
- 4 What Happens When a Manufacturer Ignores a Recall Order

### End of Year/New Year Perspective

As we near the end of every calendar year, like many others, it is my custom and practice to reflect on the year that passed, and to see how I can improve - both professionally, and much more importantly, in my personal life. Not surprisingly, what I found is that the two are highly interconnected, and part of one organic whole.

One critical area in which I struggle mightily is work-life balance. While technological advances are certainly wonderful, they are truly a double-edged sword: how often am I with my family, but not fully or truly engaged, because my mind is elsewhere (read: work)?

I know I'm not alone in this. From some important studies I've read, it seems that people who improve their work-life balance tend to see dramatic improvements in not only their personal lives, but in their professional lives as well. I hope to put this theory to the test.

## The Best Way to Avoid a Breach of Contract Lawsuit

Much has been written and said about [the different types of breach of contract cases](#) and [how to prove a breach of contract claim under New York law](#).

But what are some ways to **avoid** being sued for breach of contract in the first instance?

Here's one radical (yet simple) idea:

***When you've messed up, admit it, apologize, and then fix it.***

And that's exactly what a contractor who just did some work for me did. When the patio his workers had laid for me had puddles of water forming on it in the rain, he came back (when he said he would), took one look and said: "This isn't right. I have to fix this."

A few days later, he did just that.

Here's the bonus: not only did he avoid a potential claim (not that I intended to sue him), but he has now lined up at least two more potential jobs based upon the glowing recommendation my wife and I gave him, particularly because he not only did good work, but he acted with integrity.

## Why Federal Law Won't Help Your Bullying Case in New York

Just over a year ago, I wrote about [whether a school can be held liable for bullying under New York law](#). At the time, I noted my skepticism about the prospects of success for a bullying claim that was predicated on a violation of the victim's constitutional rights. And now, in an article that recently appeared in the New York Law Journal, Illann Maazel, Esq. published an excellent article discussing that particular issue in depth.

In his article entitled *Bullying, Schools and the Constitution*, Maazel notes that the Due Process Clause actually affords very little, if any, protection to victims of bullying. Indeed, one Supreme Court justice has

Continued on page 3

We strongly encourage the readers of our monthly newsletter to provide feedback about issues they would like to see addressed in our future publications.

To do so, please contact us through our website, [www.JonathanCooperLaw.com](http://www.JonathanCooperLaw.com) or via e-mail at [jmcooper@jmcooperlaw.com](mailto:jmcooper@jmcooperlaw.com)

## Why One Broker's Claim for Commissions Based on "Custom" Failed in NY

It should be obvious; But, based on the conduct I've recently seen by some companies facing threats of litigation, the following point deserves some attention:

*The mere fact that a brokerage or consulting firm that formerly worked for you claims entitlement to a commission on a deal that you subsequently close doesn't automatically mean they're right.*

Fortunately, a Federal Court in New York recently re-affirmed this rule in *Obex Securities, LLC v. Healthzone Limited*. In that [breach of contract](#) case, the plaintiff's agreement with the defendant company provided that it was entitled to receive a 9% commission, or "placement fee," for amounts invested in Healthzone by companies it was introduced to by plaintiff.

Although no such companies invested in the defendant - at least directly - a significant amount of money was ultimately invested in Healthzone.

Here's the tricky part: the company that arranged this investment (but not making the investment) was Westminster. And Obex had introduced Healthzone to Westminster.

Nevertheless, in granting Healthzone summary judgment and dismissing the breach of contract claim, the Court opined as follows:

"While Obex contends that it is customary in the financial services industry to award placement fees on investments obtained through indirect introductions, such alleged custom is irrelevant where there is an unambiguous contractual provision. It is undisputed here that: (1) Westminster never invested any money in Healthzone, and (2) Obex never introduced any entity other than Westminster to Healthzone. Therefore, under the Agreement, Obex has no claim for placement fees on any of the capital that was later invested in Healthzone by Westminster's clients. Moreover, because the Agreement was non-exclusive, Obex cannot argue that Healthzone acted unlawfully or in bad-faith by retaining Westminster as a second broker-dealer to secure investing clients."

---

*"The mere fact that a consulting firm lays claim to its commission on a deal that you that you later close doesn't automatically mean they're right."*

---

### Law Offices of Jonathan M. Cooper

#### Long Island

483 Chestnut Street  
Cedarhurst, NY 11516  
516.791.5700

#### New York City

135 West 29<sup>th</sup> Street  
Suite 801  
New York, NY 10001  
(By Appt. Only)

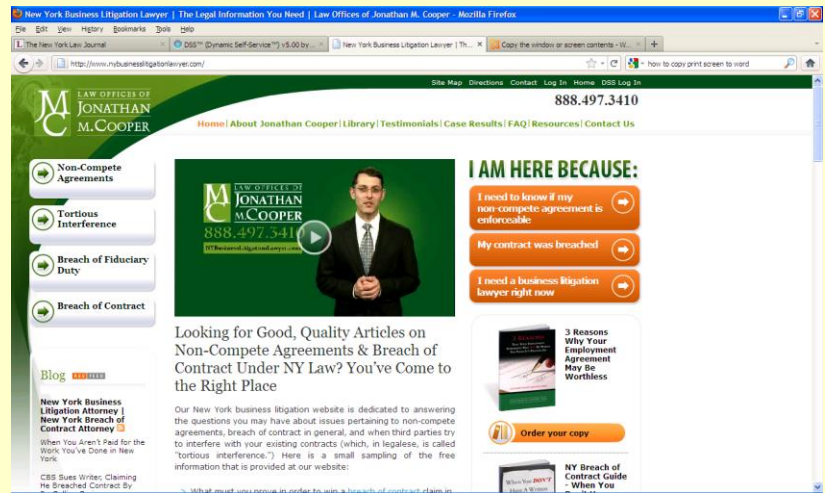
**We Appreciate Your  
Referrals!**

*This publication is intended to educate small businesses and individuals about general litigation matters, as well as personal injury and defective product issues. It is not intended to be legal advice, and does not constitute an attorney-client relationship until we have a written agreement. To discuss your particular issues or case, please contact the Law Offices of Jonathan Cooper at 516.791.5700.*

## Check Out Our New Website!

We are very excited to introduce our new website, which is dedicated business litigation issues, with a particular focus on non-compete agreements, breach of fiduciary duty, and breach of contract.

The site is designed to answer more of the questions we've been getting on these issues - so that New York consumers can be better educated about their legal issues - *even before they contact a lawyer.*



[www.NYBusinessLitigationLawyer.com](http://www.NYBusinessLitigationLawyer.com)

### *Why Federal Law Won't Help Your Bullying Case in New York* cont'd from page 1

stated that "[I]t is perhaps odd that the state's in loco parentis role permits schools to restrain the constitutional rights of children in the name of safety, without imposing any minimal constitutional duty to keep students safe."

In fact, Maazel asserts, "In many circuits, it is apparently constitutionally permissible for a public school teacher to do nothing while a child is beaten in class by another student on a daily basis, at least so long as the bullying is not motivated by race or another specific category strictly scrutinized under the Equal Protection Clause."

That is scary indeed.

Presently, the following appears to be the law in the Second Circuit (where New York is located): unless the victim is subjected to harassment due to his or her belonging to a constitutionally protected class, such as race, these claims will fail. The challenges to such a claim don't even end there; the plaintiff will have to show that

"[T]he defendant's indifference was such that the defendant intended the discrimination to occur.... [D]eliberate indifference can be found when the defendant's response to known discrimination is clearly unreasonable in light of the known circumstances." *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 140-41 (2d Cir. 1999).

---

*"In many jurisdictions, it is apparently constitutionally permissible for a public school teacher to do nothing while a child is beaten in class by another student on a daily basis - so long as the bullying is not motivated by race."*

---

**COMMUNICATION POLICY:** As a general rule, Mr. Cooper does not accept unscheduled phone calls. This policy affords Mr. Cooper the ability to pay closer and more focused attention to each case, resulting in more efficient and effective representation for his clients. Moreover, it avoids the endless and needless game of phone tag played by most businesses and law firms. To schedule a phone call or in-person appointment with Mr. Cooper, please call his office at 516.791.5700.

## What Happens When a Manufacturer Ignores a Recall Order

Have you ever wondered what would happen if a manufacturer dared to thumb its nose at the CPSC and a Federal judge and ignore a recall order?

Well, you don't need to wonder anymore.

Just last month, a Federal judge in New York issued a permanent injunction ordering Brooklyn Sleep Products Inc. and its president Francisco Chavez, to stop manufacturing, importing, renovating and selling mattresses until they provide evidence that their mattresses comply with federal flammability laws.

Here's the real kicker:

If the firm fails to comply with the judge's

order, ***it may be subject to penalties of \$1,000 per day.***

If you were wondering why the CPSC is making such a big deal about this manufacturer's admitted failure to test their mattresses for compliance with the Federal flammability requirements, consider the following:

According to the CPSC, nearly 1,000 people died in accidents that were associated with mattress fires over a 3-year period, from 2006 to 2008. Therefore, the CPSC enacted these flammability requirements, whose purpose is to slow the spread of a mattress fire, and thereby afford consumers more time to reach safety.



483 Chestnut Street Cedarhurst, New York 11516-2019

**Phone:**  
516.791.5700

**Fax:**  
516.791.8188

**E-mail:**  
[jcooper@JonathanCooperlaw.com](mailto:jcooper@JonathanCooperlaw.com)