

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

SPEROS A. BATISTATOS,

Plaintiff,

v.

LAKE COUNTY CONVENTION AND
VISITORS BUREAU d/b/a SOUTH
SHORE CONVENTION AND VISITORS
AUTHORITY; THE CITY OF
HAMMOND; LEFT OF CENTER MEDIA,
LLC; THOMAS M. MCDERMOTT, JR., in
his official and individual capacity; KEVIN C
SMITH, in his official and individual capacity
BRENT BRASHIER, in his official and
individual capacity; MATTHEW MALONEY
in his official and individual capacity, ANDREW
E. QUNELL, in his official and individual
capacity; THOMAS P. DABERTIN, in his
official and individual capacity; and MATTHEW
M. SCHUFFERT, in his official and individual
capacity,

Defendants.

LAKE COUNTY CONVENTION AND
VISITORS BUREAU d/b/a SOUTH
SHORE CONVENTION AND VISITORS
AUTHORITY,

Counterclaimant,

v.

SPEROS A. BATISTATOS,

Counter-Defendant.

Cause No. 2:22-cv-254-JVB-JEM

**SOUTH SHORE CONVENTION AND VISITORS AUTHORITY'S COUNTERCLAIM
AGAINST SPEROS BATISTATOS
FOR FRAUD AND UNJUST ENRICHMENT**

The Lake County Convention and Visitor's Bureau d/b/a South Shore Convention and Visitors Authority (the "SSCVA") herein asserts its Counterclaim against Counter-Defendant Speros Batistatos ("Batistatos") for fraud and unjust enrichment. The SSCVA pleads the following:

Factual Allegations

1. Batistatos started his employment with the SSCVA, at that time called the Lake County Convention and Visitors Bureau, in 2005.

2. Batistatos's 2005 employment agreement provided Batistatos "[f]our (4) weeks vacation prorated annually with pay and the dates of his vacation are subject to the approval of the Chairman of the [SSCVA]."

3. The employment agreement for Batistatos's subsequent term beginning in 2009 included a substantially identical provision.

4. Per the SSCVA Employee Handbook and/or Batistatos's employment agreement, the Chairman of the SSCVA Board was to approve Vacation Days identified by Batistatos.

5. Batistatos was also able to accrue other benefits based on the terms included in the SSCVA Employee Handbook. These benefits, Personal Days and Floating Holidays, are other excused absences from work. The terms of his 2016 employment agreement did not permit Batistatos to sell back or otherwise receive compensation for unused Personal Days and Floating Holidays.

6. The Employee Handbook addressed the number of Personal Days and Floating Holidays Batistatos would earn each year and how many of each he could accrue. Benefits unused

by Batistatos were not supposed to roll over from year to year without approval from the Chairman of the Board of the SSCVA. Batistatos only properly received such approval in the years 2011 and 2013.

7. Batistatos was aware that he did not receive the requisite permissions to roll over his time off benefits subsequent to 2013.

8. Effective in 2014, the SSCVA passed Resolution No: 2013-11-17, in which the SSCVA could “buy back” unused Vacation Days from its employees for payments of deferred compensation contributions. Previously, payments for accrued, unused Vacation Days only occurred at the termination of employment with the SSCVA. Under the SSCVA’s buy back policy, Batistatos was eligible to receive a 100% match of unused Vacations Days in the form of deferred compensation.

9. Batistatos’s 2016 employment agreement provided: “SPEROS A. BATISTATOS shall be provided twenty-five (25) days of vacation prorated annually with pay, with the dates of vacation subject to the approval of the Chairman of the [SSCVA]. SPEROS A. BATISTATOS shall be allowed to accumulate unused vacation days which will ‘rollover’ without limit into the following calendar year(s). SPEROS A. BATISTATOS shall be allowed to cash out unused vacation days on an annual basis for the specific purpose of funding his Variable Annuity Life Insurance Company (VALIC) annuity. The above listed cash out for the funding of his VALIC annuity shall not exceed forty five (45) days per calendar year. No other vacation day cash out shall be allowed absent SPEROS A. BATISTASTOS'S severance/termination from the [SSCVA]...”

10. Batistatos’s 2016 employment agreement enabled Batistatos to make money by selling more Vacation Days than he would earn each year. He was able to do this because he had,

according to him and records based on his own reporting, accrued a large reservoir of unused Vacation Days over his prior years of employment at the SSCVA.

11. The more Vacation Days Batistatos sold (i.e., cashed in), the more money Batistatos received. Batistatos sought to maximize the amount of Vacation Days he sold (i.e., cashed in).

12. If Batistatos used his Vacation Days (i.e., went on vacation or otherwise took time off), Batistatos was not entitled to cash them in for payment.

13. Batistatos enriched himself since 2014 by knowingly failing to designate time he spent away from work as “Vacation,” and receiving compensation from the SSCVA that he was not owed (and to which he was not entitled). Batistatos’s VALIC account was funded in matching amounts, and Batistatos was enriched at the SSCVA’s expense.

14. Batistatos avoided designating his time off as Vacation Days by inappropriately entering (or directing others to enter) the codes for other benefits—ones which he had not earned—on his time records.

15. Batistatos inappropriately reported his time spent not working for the SSCVA as Floating Holidays or Personal Days, rather than as Vacation Days. Because Vacation Days did not appear (or rarely appeared) on his time records, Batistatos continued to accumulate sellable Vacation Days despite, for all intents and purposes, going on vacation.

16. Batistatos claimed many more Floating Holidays and Personal Days in his time records than he was able to accrue based on the terms of the Employee Handbook.

17. Batistatos was aware that he had not properly earned the benefits he entered (or directed others to enter) on his time records. Batistatos knowingly and improperly utilized the codes for these benefits to prevent his bank of sellable Vacation Days from depleting.

18. For the purpose of making payments to Batistatos for his sale of unused Vacation Days, the SSCVA relied on the information Batistatos reported in his time records.

19. Based on the information reported by Batistatos in his time records, the SSCVA made payments to Batistatos and into Batistatos's VALIC annuity.

20. By his time records, Batistatos also claimed to be working on dates where he was not in the office or otherwise performing SSCVA duties. Such time out of the office should have been recorded as Vacation Days—which would have reduced the amount of Vacation Days Batistatos could sell back to the SSCVA for his personal benefit and gain.

21. After the end of his period of employment with the SSCVA in 2021, Batistatos received a payment for the reported remaining unused Vacation Days in his bank.

22. Between 2014 and 2021, Batistatos received over \$200,000 from the SSCVA in Vacation Day buy-backs that were accrued by his erroneous and deceptive reporting of time off.

23. In this same time period the SSCVA, relying on Batistatos's erroneous and deceptive time records, paid over \$200,000 into Batistatos's VALIC annuity in matching funds.

24. The SSCVA was damaged and deprived of hundreds of thousands of dollars by Batistatos's manipulation of vacation and other time off.

Count I - Fraud

25. Paragraphs 1 – 24 are incorporated by reference as if set forth fully herein.

26. Batistatos entered, or directed or caused to be entered, false information on his timesheets. Batistatos had not properly accrued claimed Personal Days and Floating Holidays recorded on his timesheets. Rightfully, the time Batistatos spent away from work should have depleted his bank of Vacation Days.

27. Batistatos knew that information he presented to the SSCVA on the timesheets was false.

28. Batistatos did not report Vacation Days because he intended to cash in “unused” Vacation Days to receive a financial benefit from the SSCVA.

29. Batistatos knowingly made false and misleading statements and created a false impression in others to extract financial benefits he did not earn.

30. In reliance on Batistatos’s timesheets and based upon the false information therein, the SSCVA made payments of money to Batistatos and his VALIC annuity.

31. Batistatos was wrongly enriched by hundreds of thousands of dollars in this scheme. The SSCVA was damaged in the same amount.

32. Batistatos’s false reports on his timesheets constituted fraud on the SSCVA and was illegal.

WHEREFORE, the SSCVA asks the Court to enter judgment against Batistatos and to enter an award of damages against Batistatos sufficient to compensate the SSCVA for the amount it has been harmed by Batistatos’s fraudulent buy-back scheme.

Count II – Unjust Enrichment

33. Paragraphs 1 – 32 are incorporated by reference as if set forth fully herein.

34. Batistatos reported to the SSCVA that he was working for the SSCVA on dates he was on vacation, and false information and unauthorized scheme conferred financial benefits on Batistatos.

35. Benefits were conferred on Batistatos under such circumstances that his retention of the benefits without payment would be unjust.

WHEREFORE, the SSCVA asks the Court to enter judgment against Batistatos and to enter an award of damages against Batistatos sufficient to address the money that Batistatos wrongfully caused to be diverted to him as a result of his buy-back scheme.

Respectfully submitted,

/s/ Kathleen M. Anderson

Kathleen M. Anderson (#16351-92)

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ATTORNEYS FOR SSCVA DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on September 9, 2024 the foregoing was served via the Court's electronic system on all parties of record.

/s/ Kathleen M. Anderson

Kathleen M. Anderson