



Compulife Software Inc. v. Newman

The Simplified Retelling of *Compulife Software Inc. v. Newman*, 959 F.3d 1288 (11th Cir. 2020) — *Warning: This gets pretty dense (and difficult) pretty quickly.*



- Beware of the “Rothman Way”
 - Is it really the “easier route?”
 - Do all signs really point in that direction?
 - Are your enemies hiding in the trees waiting to pounce?
 - Will your trial judge rule (incorrectly) and then retire?
 - Will your district judge be too busy to bother with your case?
- Thank you Jim Matulis and Sam Lewis

What do we want from this CLE?

- Legal Issues on appeal overview?
 - Copyright Law:
 - Factual copying vs legal copying
 - Burdens
 - Filtration
 - Quantity/quality based on copyrighted work
 - Detailed findings required under Rule 52
 - Trade Secret Law:
 - Improper means
 - Misappropriation by use
 - Misappropriation of the whole
- Procedure and Practice overview?
 - Discovery in the age of “truthiness”
 - Confronting witnesses with multiple personality disorder
 - Hard cases make judges do strange things
 - How to cross examine by zoom?

Overview

- Procedural History
 - First Case: Compulife Software v. Rutstein (filed 5/23/2016)
 - Second Case: Compulife Software v. Newman (filed 12/2/2016)
 - Third Case: Compulife Software v. NAAIP members, et al. (filed 12/2/2016)
 - Fourth Case: Compulife Software v. One Resource Group (filed 4/21/2017)
- Trials and Appeal
 - First Trial: 10/3-7/2017
 - Evidentiary Hearing after Trial: 1/24/2018
 - Decision from First Trial: 3/12/2018
 - 11th Circuit's Reversal: 6/18/2020
 - Second Trial: 11/16/2020

- First Trial: Magistrate Judge James Hopkins



Hon. James M. Hopkins
United States Magistrate Judge
Southern District of Florida

Prior to assuming the bench Judge Hopkins was an Assistant United States Attorney in the Southern District of Florida and a Special Assistant United States Attorney in the Southern District of New York. He specialized in fraud and public corruption cases. He convicted a Palm Beach County jeweler and his lawyer/money launderer in a \$90 million scheme to defraud Jack Nicklaus, Greg Norman and others and launder the proceeds through the Isle of Man, England, Luxembourg, France, the Bahamas and South America. He was responsible for the freezing of \$20 million in Paris, the first time the French authorities froze and repatriated fraud proceeds at the request of the United States. He also successfully prosecuted a long-time Broward County Democratic Chairman and Presidential appointee to the Fannie Mae board, as well as the lawyer that served as the middle man for his bribes. Earlier in his career Judge Hopkins was Inspector General of the New York City Department of Environmental Protection, an Assistant Commissioner in charge of twelve Inspector General Offices, and a New York State Special Assistant Attorney General prosecuting police and judicial corruption. Judge Hopkins has a bachelor's degree in Mathematics from Fordham University, where he was a computer programmer in the early 1970s.

Kevin C. Newsom, Circuit Judge



A native of Birmingham, Alabama, Newsom earned his bachelor's degree, summa cum laude, from Samford University in 1994. He graduated first in his class from Samford University. Newsom earned his J.D. from Harvard Law School, magna cum laude, in 1997. During a period of his legal studies, Newsom was articles editor of the Harvard Law Review.

Magistrate Judge Bruce E. Reinhardt



Prior to taking the bench, he was in private practice for 10 years, both as a solo practitioner and as the co-chair of the white collar crime practice group of a national firm. His practice focused on white collar criminal defense and complex civil litigation. From 1996-2008, he was an Assistant U.S. Attorney in West Palm Beach. From 1988-1996, he was a Trial Attorney in the Public Integrity Section of the U.S. Department of Justice., having entered the Department as part of the Attorney General's Honors Program. He began his legal career as the law clerk to the Honorable Norma L. Shapiro on the U.S. District Court for the Eastern District of Pennsylvania. Judge Reinhardt earned a degree in civil engineering cum laude from Princeton University in 1984 and a J.D. cum laude in 1987 from the University of Pennsylvania Law School.

District Judge Robin L. Rosenberg



Rosenberg received a Bachelor of Arts degree in 1983 from Princeton University. She received a Master of Arts degree and Juris Doctor in 1989 from Duke University and Duke University School of Law. She began her legal career as a law clerk to Judge James C. Paine of the United States District Court for the Southern District of Florida from 1989 to 1990. She served as a Trial Attorney in the Civil Rights Division of the United States Department of Justice from 1990 to 1994. While on leave from that position, she worked at a non profit organization in the Czech Republic from 1993 to 1994. She was an associate at the law firm of Foley & Lardner from 1994 to 1995. She served as an Assistant City Attorney for the City of West Palm Beach, Florida, from 1995 to 1997. She was a partner at Holland & Knight LLP, from 1997 to 1999. She served as Vice President and General Counsel at the Slim Fast Foods Company from 1999 to 2001. She was a partner at the law firm of Rosenberg & McAuliffe, PL, from 2001 to 2006, and concurrently managed ARC Mediation, a full service dispute resolution firm, from 2002 to 2006. From 2007–2014, she was a Circuit Court Judge in the Fifteenth Judicial Circuit.

Compulife Software



Robert Barney, Founder and CEO

- Founded in 1982
- life insurance comparison and quotation software
 - www.compulife.com
 - www.term4sale.com
- PC version
- internet engine version
 - Both use click through agreements with strong © and ts protection language

April 2017, Ft. Wayne, Indiana





Create Your Stunning Website with Quote Engines in Seconds. It's Easy. It's Free.

NAAIP's technology is 100% free, forever.

No credit card needed.

Signup for Website/Account

by way of



OR

with email

Email Address

Password

Show

SIGN UP

Ultra Easy to Actualize.

NAAIP has revolutionized web site building for the insurance industry. One option is to spend thousands on an inferior product. Or a do-it-yourself template that is not insurance specific. We have created the perfect solution for your business.

Meet the Team?

8/23/2015 About Us | NAAIP Staff Short Biograp

INTERNET ARCHIVE
WayBackMachine
2 captures
20 Jul 14 - 23 Aug 14

http://www.naaip.org/about

eContracting Registration / eContracting Login

PLAIN
9:16-cv-
Exhib

LIST OF CARRIERS | BUY DOMAIN | SELL LIFE INSURANCE IN 4 MINUTES | LEADS / MAILINGS

NAAIP - Meet the Team



David Gordon - Founder/Presi

David founded and is president of NAAIP, the Nati Professionals. He graduated from Massachusetts I Computer Science. During his studies he was a me

As president, David favors a hands-on approach to clients, he also supervises the tech office in India to implement them to the highest possible standard. conference call for more details about him and his



Jack Hudson - Content Manag

Jack graduated from the University of Bath (UK) with He has worked for NAAIP since 2010.

Jack is responsible for all the content that features marketing for their services. He leads a team of writ insurance market to help NAAIP maintain its online



Nitin Patel - Chief Developer

Nitin joined NAAIP in 2010 after a brief career in Eur firm. He graduated in 2006 with a master's degree in Technology.

Nitin is currently working in NAAIP's Indian tech off responsibilities include ensuring David Gordon's pl a focus on client usability and managing the curren

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5/28/2015

WELCOME newest agent Abdul Rahim Dababhy of Sagard, TX - 4,9e

eContracting Registration / eContracting

LIST OF CARRIERS | BUY DOMAIN | SELL LIFE INSURANCE IN 4 MINUTES

NAAIP - Meet the Team

LIST OF CARRIERS | BUY DOMAIN | SELL LIFE INSURANCE IN 4 MINUTES | LEADS / MAILINGS



Nathaniel Goldwasser - President

Nathaniel graduated from the University of London (UK) with a degree in Economics in 1985. Steven founded NAAIP immediately finishing his degree. Nathaniel's father Jack Goldwasser is the Royal Mercantile Insurance Company of London. An insurer the grandfather, Moses Goldwasser founded in 1948.



David Gordon - Marketing Manager

David was there from the beginning at NAAIP, the National Assoc Accredited Business Professionals. He graduated from Massachu Institute of Technology with a bachelor's degree in Computer Sci During his studies he was a member of the Alpha Phi Omega frat

As marketing manager, David favors a hands-on approach to his addition to dealing directly with agents, he also supervises the se in Israel to ensure that they realize his visions fully and implement the highest possible standard. You can come to David's Monday: Thursday conference call for more details about him and his con



Avi Eisentein - Chief Developer

Avi joined NAAIP in 2009 after a brief career in Geneva, Switzerland software engineer for a United Nations affiliated organization. Av graduated Institute of

Need Help ?
in office as the leadin
developing, responsiveness, ensuring NAAIP's
integrated as effectively as possible with a focus on client usabi
jects.

Online - Click here to get help.



Shlomo Schwartz - 2nd Developer

Shlomo joined NAAIP as 2nd Developer in 2010, after graduating v degree in Software Engineering at the Technion Institute of Techni Haifa, Israel.

He currently works out of NAAIP's offices in Tel Aviv, where he ens NAAIP's systems run smoothly for the several thousand clients the NAAIP's services, as well as assisting the tech office with client-lacn issues.



Benjamin Lipshitz - Chief Designer

www.naaip.org/about

Benjamin graduated from the Royal Institute of Technology in Stockholm, Sweden.

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5/28/2015

WELCOME newest agent Mario Dauria of South Jordan, UT - 5,698 free websites since Jan 1, 2014

eContracting Registration / eContracting Login

LIST OF CARRIERS | BUY DOMAIN | SELL LIFE INSURANCE IN 4 MINUTES / TERMIFE - ONLINE | LEADS / MAILINGS / DATA | CONFERENCE CALL

NAAIP - Meet the Team



Nathaniel Goldwasser - President

Nathaniel graduated from the University of London (UK) with a bachelor's degree in Economics in 1985. Steven founded NAAIP immediately after finishing his degree. Nathaniel's father Jack Goldwasser is the CEO of the Royal Mercantile Insurance Company of London. An insurer that his grandfather, Moses Goldwasser founded in 1948.



Nate Golden - Marketing Manager

Nate was there from the beginning at NAAIP, the National Association of Accredited Insurance Professionals. He graduated university with a Bachelor's Degree from New York University in Business Administration and lo and behold found himself selling Medicare HMOs and supplements. During his studies he was a member of the Alpha Phi Omega fraternity.

As marketing manager, Nate favors a hands-on approach to his work. In addition to dealing directly with agents, he also supervises the tech office in Israel to ensure that they realize his visions fully and implement them to the highest possible standard. You can come to Nate's Monday to Thursday conference call for more details about him and his company.



Avi Eisentein - Chief Developer

Avi joined NAAIP in 2009 after a brief career in Geneva, Switzerland as a software engineer for a United Nations affiliated organization. Avi graduated in 2007 with a master's degree in Computer Science at Technion Institute of Technology in Haifa, Israel.

Avi is currently working in NAAIP's Tel Aviv tech office as the leading projects developer. His responsibilities include ensuring NAAIP's plans are implemented as effectively as possible with a focus on client usability and

Sign Up for Website

It's free and always will be.

First Name:

Last Name:

Username:

URL:

Important: Your domain replacing naaip.org/**** is an important sales tool. Contact us for details.

Password:

Email:

Street Address:

City:

State:

Zip Code:

Office Phone:

Mobile:

Fax:

I agree to receive periodic email updates from NAAIP.

PLAINTIFF'S EXHIBIT

9:16-cv-80808 & 9:15-cv-81942

Exhibit 4-100

What do we want?

Quote engines!

The screenshot shows a web browser window with the URL www.naaip.org/nate/compare-life#. The page features a navigation bar with a newsletter subscription link, a link to 'Affordable Health Care Act Expertise', and a contact number: (800)770-0492. A profile for 'Joe Agent, Licensed Insurance Agent' is displayed on the left. The main content area includes a headline 'Protect Your Family for Less! Compare Life Insurance Policies from Top Rated Companies!' and a 'Comparison Results' table. Below this is a table of insurance policies with columns for Company Name, Rating, Monthly, Annual, Product Name, Health Category, and Apply. A red oval highlights the 'T-20/20 - 20 Year TermkR' policy from Savings Bank Life Insurance Co of MA.

Company Name	Rating	Monthly	Annual	Product Name	Health Category	Apply
Protective Life Insurance Company	A+	\$110	\$1,290	Custom Choice No Lapse UL - 20 Year	Select Preferred Non-Tobacco	App Request
Lincoln National Life Insurance Company	A+	\$111	\$1,275	LifeElement (R) Level Term 20 (2014)	Preferred Plus N	Request
Banner Life Insurance Company	A+	\$114	\$1,308	OPTerm 20 - 20 Year		
American General Life Insurance Company	A	\$114	\$1,324	Select-a-Term - 20 Year (Nov 2015)		
Savings Bank Life Insurance Co of MA	A+	\$115	\$1,329	T-20/20 - 20 Year TermkR	Preferred Plus Non-Tobacco	Request

Why do we want
them?

To sell insurance
policies!

9/4/2016 Case 9:16-cv-81942-RLR Document 70-4 Filed 03/28/17 Entered on FLSD Docket 03/28/2017 Page 3 of 5

Latest News

Forward &

Mask to this URL (so that your site looks good on a smart phone):

<http://www.naaip.org/agenturls/myinsureguy.com>

Important: Forwarding and masking should change the forwarded site to:

<http://www.naaip.org/agenturls/username.com/> - For **username** put your **username** - i.e: Do not forward to

<http://naaip.org/nate> - Forward to **<http://www.naaip.org/agenturls/nate.com/>** - This new technique will cause your site to look better on a smart phone. NAAIP has brilliant programmers going through every line of code!

9-1-2016: All term life rates on your NAAIP quoter were updated. Agents have access to Ipipeline if you go through econtracting. Ipipeline is the gold standard of life quote engines. NAAIP will be updating the term quote engine periodically.

Important to change your site password every once in a while.

You may notice error message in this back office - NAAIP's brilliant programmers are going thru the messages one by one.

New programmers made the life quoter real fast. A big congrats to our new graphic designer for improved header images and NAAIP agent website on larger screens!

And what happens when NAAIP agents sell policies?

NAAIP makes override commissions!

AFFILIATION AGREEMENT

This Affiliation Agreement ("Agreement") is made effective March 24, 2014 by One Resource Group Corporation ("ORG") and American Web Designers, Ltd ("Major Account").

RECITALS

A. ORG is a "wholesaler" of life insurance and ancillary products with its principal place of business located in Indiana.

B. Major Account has substantial business relationships with insurance agents via 100%

5 A. Yes. They allow the referral to go through One
 6 Resource Group, but they can't act on behalf of
 7 One Resource Group.
 8 Q. Well, I understand I think -- I'm trying to
 9 understand when you say you can't act on behalf of
 10 One Resource Group, but for American Web Designers,
 11 there are many agents who wouldn't be producing
 12 business for ORG Corp; right?
 13 A. Correct. But a lot of agents already work with us
 14 already, so a lot of those we had relationships and
 15 they said, hey, I like this free website, so then
 16 we would move them from, for example, an
 17 independent agent to an NAAIP agent.

1.08 PM
 03/13/17

One Resource Group Corporation
 Paid and Pending Vendor Balance Detail
 As of March 13, 2017

PLAINTIFF'S EXHIBIT
 4
 4-16-17

Date	Num	Amount	Balance
16624835 HOLD-DD- American Web Designers			
04/21/2014		-49.00	-49.00
05/01/2014		-85.00	-134.00
06/01/2014		-49.00	-183.00
06/27/2014	OR_06_27_14	13.26	-169.74
07/01/2014		-49.00	-218.74
07/04/2014	OR_07_04_14	63.37	-155.37
07/11/2014	OR_07_11_14	6.85	-162.22
07/18/2014	OR_07_18_14	68.74	-93.48
07/25/2014	OR_07_25_14	66.74	-26.74
08/01/2014		-49.00	-75.74
08/01/2014	OR_08_01_14	115.70	39.96
08/08/2014	EFT	-93.48	0.00
08/15/2014	OR_08_15_14	197.13	197.13
08/22/2014	EFT	-197.13	0.00
08/22/2014	OR_08_22_14	144.73	144.73
08/28/2014	EFT	-144.73	0.00
08/29/2014	OR_08_29_14	24.57	24.57
08/29/2014		-49.00	-24.43
09/01/2014		-32.51	-56.94
09/12/2014	OR_09_12_14	256.45	199.51
09/19/2014	EFT	-199.51	0.00
09/19/2014	OR_09_19_14	43.03	43.03
09/26/2014	OR_09_26_14	75.51	118.54
10/01/2014		-49.00	69.54
10/03/2014	EFT	-118.54	-49.00
10/03/2014	OR_10_03_14	346.06	297.06
10/10/2014	EFT	297.06	0.00

The National Association of Accredited Insurance Professionals

PLAINTIFF'S EXHIBIT

9:16-cv-80808 & 9:15-cv-81942

Exhibit # 1



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

FILED

APR 19 2012

Docketed by

IN THE MATTER OF:

DAVID BRIAN RUTSTEIN

CASE NO.: 115256-11

(b) Respondent shall be immediately and permanently removed, pursuant to

Section 624.310, Florida Statutes, from all of his positions with, and shall otherwise be

CONSENT ORDER

THIS CAUSE came on for consideration and final agency action. Upon con- sideration of the record, including the Settlement Stipulation for Consent Order dated March 2, 2011, and being otherwise fully advised in the premises, the Chief Financial Officer finds:

1. The Chief Financial Officer, as agency head of the Florida Department of Financial Services ("Department"), has jurisdiction over the subject matter of this proceeding.

2. The entry of this Consent Order and compliance herewith by DAVID BRIAN RUTSTEIN ("Respondent"), License I.D. #A229037, shall conclude the a proceeding of Case No. 115256-11-AG before the Department.

IT IS THEREFORE ORDERED:

Respondent shall be immediately and permanently removed and permanently barred from any and all direct or indirect participation in and/or affiliation with, any entity which is licensed or regulated under the Florida Insurance Code, and any individual or entity which is otherwise involved in the business or transaction of insurance. Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by any insurance agent or agency or adjuster or adjusting firm.



CL014

YouTube

Search



David Gordon? Or David Rutstein?

Latest from NAAIP



NAAIP Live: Tuesday 12 Noon ET, 4/27/2021 - Lead Systems for Insurance Agents & Advisors

12 views · Streamed 1 month ago



Dial (888)532-9320 to interact with the moderator. Monday to Thursday Noon, Saturday & Sunday 2pm ET 6 days per week.

New



This Website Is About David Rutstein (aka David Gordon)

and His Continuing Involvement in The Insurance Industry
including his websites:
"NAAIP" National Association of Accredited Insurance Professionals
and beyondquotes.com

by Robert L. (Bob) Barney
President, Compulife Software, Inc. (888) 798-3488

Eleventh Circuit Vacates Insurance Database Hacking Case

There has been a welcome development in this ongoing story, which you can read about here:

[Eleventh Circuit Decision](#)

Within the first line of the article is a link to the Eleventh Circuit's opinion:

[Eleventh Circuit Opinion](#)

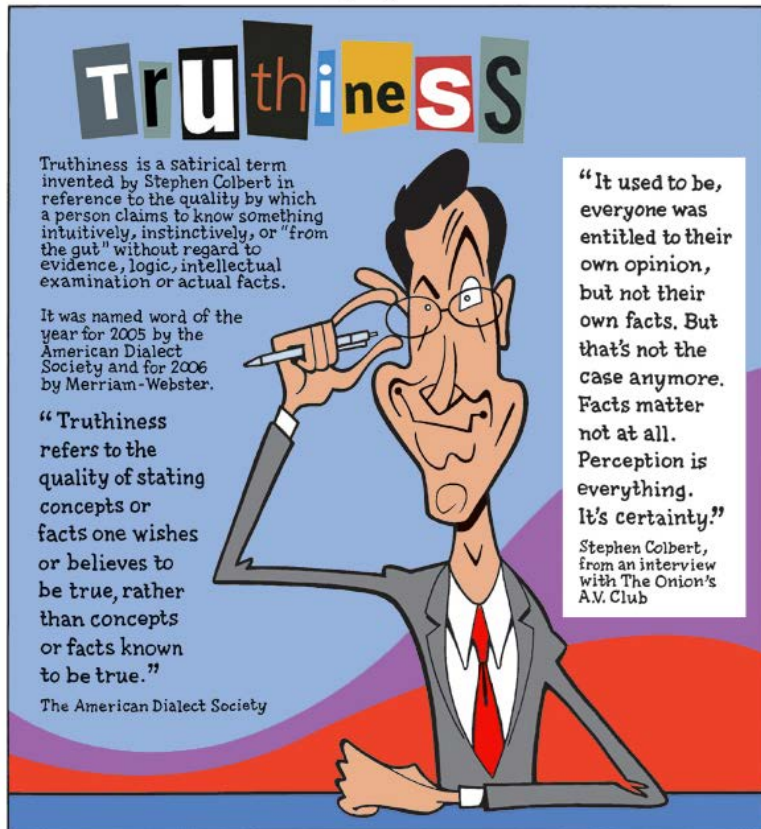
David Rutsein Loses Insurance Licenses

The following numbered paragraphs are taken from this court decision's finding of facts:

[FINDINGS OF FACT AND CONCLUSIONS OF LAW; March 12, 2018](#)

Discovery in the Age of Truthiness

WIKI WORLD[®] by Greg Williams



Text excerpted from the Wikipedia article *Truthiness*. 22 Jan 2007

DEFENDANTS BINYOMIN RUTSTEIN AND DAVID RUTSTEIN'S CERTIFICATION AS TO DISCOVERY PURSUANT TO COURT ORDER

Defendants, BINYOMIN RUTSTEIN and DAVID RUTSTEIN, file this their certification that they have provided all known information for Moses Newman and Aaron Levy and that they have provided each and every document responsive to Plaintiff's Request for Production and are not in possession of any additional responsive documents. Further, should Defendants locate any additional responsive documents they are not presently in possession of, Defendants shall produce those to Plaintiff forthwith.

This certification is executed personally by Defendants under the penalty of perjury.


BINYOMIN RUTSTEIN


DAVID RUTSTEIN

The address and contact information comes from David Rutstein - Binyomin has no idea where they live.

Binyomin Rutstein has received a few thousand of dollars of override commissions from a few insurance companies- he will gather that

Aaron Levy lives at 113 Agripas Street, apt 20 - Jerusalem Israel - email aaron@naaip.org +972-54-739-3487

Moses Newman lives at Ilanot Lane 5 Maoz Tzion, Israel - email moses@naaip.org +972 54-802-5204

Binyomin has no information on anything related to NAAIP software or website. David has no information related to NAAIP software or website.

And depositions...

3 Defense calls David Rutstein.

4 DAVID RUTSTEIN

5 DIRECT EXAMINATION

6 BY MS. FRIEDMAN:

7 Q. Mr. Rutstein, why did you lie at your deposition and say
8 you had no involvement with naaip.org back in November of 2015?

9 A. It was not smart. It was dumb. It was -- I apologize.

10 THE COURT: That's not responsive.

Summary judgment tried...

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION

CASE NO.: 09:16-CIV-81942

COMPULIFE SOFTWARE, INC.,

Plaintiff,

vs.

MOSES NEWMAN, AARON LEVY,
DAVID RUTSTEIN a/k/a DAVID
GORDON a/k/a BOB GORDON
a/k/a NATE GOLDEN and BINYOMIN
RUTSTEIN a/k/a BEN RUTSTEIN,

Defendants.

DECLARATION OF DAVID RUTSTEIN

I, DAVID RUTSTEIN, declare and say as follows:

1. I am a Defendant in this action.
2. I was a licensed insurance broker until April of 2012.
3. In or about 2010, I assisted Aaron Levy with the creation of www.naaip.org which

offered free web sites to insurance agents for all different types of insurance and offered embedded quote engines.

8. At no time was I ever advised that the data feed was coming from a third party.

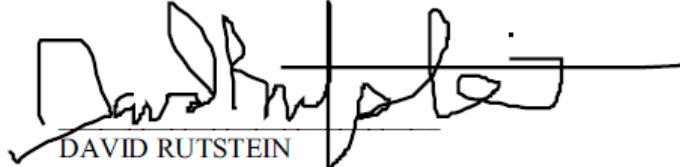
9. At no time did I ever enter into a licensing agreement or any agreement restricting use of the data feed.

10. In April of 2012, my insurance license was revoked and Aaron took over control of www.naaip.org and www.beyondquotes.com. At that time, I requested that Aaron update the website registrations.

11. Aaron Levy is a real person residing at 113 Agripas Street, Apt. 20 in Jerusalem Israel. That same information was provided to Plaintiff on December 15, 2016.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: February 6, 2017


DAVID RUTSTEIN

...and denied

Case 9:16-cv-80808-RLR Document 123 Entered on FLSD Docket 06/29/2017 Page 1 of 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:16-CV-80808-ROSENBERG/BRANNON

COMPULIFE SOFTWARE, INC.,

Plaintiff,

v.

BINYOMIN RUTSTEIN *et al.*,

Defendants.

ORDER DENYING COMPULIFE'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE is before the Court on Compulife's Motion for Summary Judgment [DE 68]. The Court has carefully reviewed Compulife's Motion and all pertinent portions of the record. In addition, the Court held a hearing on June 28, 2017, and is otherwise fully advised in the premises. For the reasons set forth below, Compulife's Motion is **DENIED**.

not and has never been involved with the operations of NAAIP. *See* DE 99-5, Deposition of Binyomin Rutstein at 43:16–25. Binyomin Rutstein has had no involvement with BeyondQuotes since 2009. *See id.* at 119:1–120:5. David Rutstein transferred control of NAAIP and BeyondQuotes to Aaron Levy in April of 2012 and has had no involvement with either NAAIP or BeyondQuotes since then. *See* DE 99-3, Declaration of David Rutstein at ¶ 10; DE 99-4, Deposition of David Rustein at 19:11–21:11, 24:11–25:16, 29:9–15, 77:22–78:5, 80:3–19, 84:16–24. The email address david@naaip.org has never belonged to Binyomin Rutstein. DE 99-5, Deposition of Binyomin Rutstein at 96:8–97:1. The email address david@naaip.org belongs to Aaron Levy and, while David Rutstein had access to that email address in the past, David Rutstein has not used it since April of 2012. *See* DE 99-4, Deposition of David Rustein at 35:14–41:21, 64:11–65:10. Aaron Levy is a real person. *See* DE 99-3, Declaration of David Rutstein at ¶ 11. David Rutstein has never used the name “David Gordon” or any other alias. *See* DE 99-4, Deposition of David Rutstein at 52:16–53:8; DE 99-5, Deposition of Binyomin Rutstein at 47:5–

And at trial...

8 Q. In response to the first and second questions that were
9 asked of you on direct yesterday, do I understand correctly
10 that you are essentially recanting your deposition testimony?

11 A. For the most part.

12 Q. For the most part.

13 Are you recanting it in its entirety?

14 A. I don't have -- I don't have all the words in front of me,
15 but yesterday when --

16 Q. The question was just are you recanting it in its entirety.

17 A. I would not --

And this is getting weird...

24 THE COURT: Court reporter, were you able to pick up
25 what the defendant just said under his breath?

1 THE COURT REPORTER: I did not hear him.

2 THE COURT: If you are going to say something, say it
3 so it can be heard.

4 May the record reflect that the defendant at various
5 times has been what can best be described as muttering under
6 his breath, sometimes audible, sometimes barely audible,
7 oftentimes barely audible.

8 Go ahead.

9 MR. ROTHMAN: Thank you.

10 THE COURT: He is continuing to do it.

1 THE COURT: May the record reflect that the defendant
2 is continuing to mutter under his breath.

4 A. I don't -- if -- am I allowed to --

5 Q. It's a yes-or-no question.

6 THE COURT: Hold on a second.

7 Madam court reporter, were you able to hear what he
8 was muttering?

9 THE COURT REPORTER: Yes, Judge.

10 THE COURT: May the record reflect that the defendant
11 was muttering responses that were barely audible, but
12 apparently audible enough to be picked up by the court
13 reporter.

14 You may continue.

Showing up is easier on zoom...

11 THE COURT: The clock here says it's 10:14 a.m. and I
12 have been waiting here. Counselor, why weren't you here ready
13 to go at 10:00 o'clock?

14 MS. FRIEDMAN: Your Honor, I had an issue with one of
15 my children this morning that delayed me ten minutes and when I
16 got here, I ran to the bathroom. I walked into the courthouse
17 at 10:03 a.m. They checked me downstairs, because I carry two
18 phones. My belt and my shoes buzzed for, again, the fourth day
19 in a row, and they checked that. And by the time I got up here
20 I ran to the bathroom. I called your chambers and told them
21 that I was running ten minutes late because I anticipated the
22 ten-minute delay in getting up. I know how long it takes me to
23 get from the parking lot here, and I was running late.

24 THE COURT: It's the fourth day in a row. You should
25 anticipate that it's going to take you some time to get through

1 security. I haven't heard anything that is unanticipated and,
2 as I recall, you were approximately a half hour late the first
3 day of trial. Correct?

4 MS. FRIEDMAN: Yes. There were a number of accidents,
5 one of which Mr. Rothman's law clerk was involved in, on the
6 way up here.

7 THE COURT: This is in the wake of me yesterday
8 lecturing you on wasting everybody's time, and I would think
9 that the least you could do given your record in this case is
10 to be here on time today.

11 I postponed starting trial until 10:00 o'clock at your
12 request and you still can't make it here in time to start at
13 10:00 o'clock. You caused us a delay of some 14 minutes. It's
14 14 minutes of everybody's time.

W

BARNEY

BRUNER

KUHN

MIRACLE

McSWEENEY (TR)

STEINHARDT (TR)

WILSON (TR)

BACKGROUND; 4/8/15 EVENTS; INVESTIGATION Δs + METHODS;
STEINHARDT/McSWEENEY; NAAIP.ORG QUOTES STOP; THEN START AGAIN;
ORG CORP INVOLVED; SCRAPE; DAMAGE; QUOTES vs RATES

AUTHORED CODES; HTML ORIGINAL + CREATIVE; CODES
TAKEN @ BQ. + NAAIP.ORG ↔ MISC, @ SCRAPE; # HOURS
TO INVESTIGATE + FIX

IMPROPER MEANS - FALSE PRETENSES; DAMAGE:
① USERS LOST; ② LICENCE FEES LOST; ③ EXPENSE TO INVESTIGATE

EXPERT: VALIDITY OF ©; COPYING OF ©; TS PROTECTION
AND ACQUISITION USE

GAVE Δs UNWITTING ACCESS TO CL'S TS; VIOLATED
CL LICENSING AGRMT.

GAVE Δs UNWITTING ACCESS; WHEN Δs CUT OFF IT
STOPPED WORKING

PAID Δs SPLIT COMMISSIONS ON SALES
MADE USING CL'S IP

D. RUTSTEIN

B. RUTSTEIN

M. NEWMAN

A. LEVY

AWD - AMER. WEB
INS AGENCY

NAAIP

ONE RESOURCE GROUP

Expert Nancy Miracle...

Digital Miracles L.L.C.

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Company Structure and Philosophy

The world is a challenging environment -- successful software often incorporates many disparate technical elements -- programming, database design, hardware design and interface, graphic design, animation and, increasingly, sound and video. Successful design firms need to be able to provide design services in all these areas. Digital Miracles was founded in response to demonstrable market openings for systems design and analysis services that were not offered by others.

The business objective of the company is to provide customers with analysis, design, development and deployment services with a focus on unusual solutions, innovation and extremely fast execution.

Particular areas of expertise:

- Mobile Applications
- E-commerce and online sales systems
- Testing and certification systems
- Supply chain, shipping and distribution systems,
- Design for accessibility
- Design for manufacturability
- Software intellectual property design
- Software intellectual property development
- Software intellectual property analysis
- Software Patent Litigation Support
- Software Patent Infringement Analysis

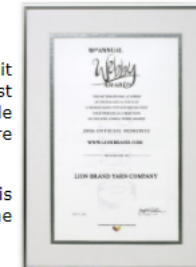
Digital Miracles is configured as a virtual company. Our staffing philosophy is to recruit high-performing and technically-adept senior designers and engineers who are happiest working in a very intense intellectual environment, who value the opportunity to work outside the conventional office and who are able to independently plan and execute complex software designs and analysis tasks. We do not accept members with less than 25 years experience.

It is the belief of the founders that this unusual structure and operational philosophy is validated by the fact that from the company's inception in 1998 to the current date, the company has grown consistently and has remained cash-positive.

Customer Awards and Comments



Wired Magazine
Top-Rated App in
"Hobby and Lifestyle"
category
Lion Brand App, 2013



Annual 'Webby'
Awards 2005, 2007
LionBrand.com



*Compulife
Software Inc. v.
Newman*

Joel B. Rothman

561-404-4335

Joel.rothman@sriplaw.com