

IN THE CIRCUIT COURT OF COOK, ILLINOIS  
 COUNTY DEPARTMENT, LAW DIVISION

<b>JERZY SZYMANSKI,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No.</b>
	)	
<b>v.</b>	)	<b>Calendar</b>
	)	
<b>MATTHEW G. GAROUFALIS and</b>	)	<b>Judge</b>
<b>MALCOLM D. HERZOG,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

COMPLAINT AT LAW

NOW COMES THE PLAINTIFF JERZY SZYMANSKI (“Szymanski”), by and through his attorneys, FUKSA KHORSHID, LLC, and for his Complaint at Law against Matthew G. Garoufalis (“Garoufalis”) and Malcolm D. Herzog (“Herzog”) (collectively, “Defendants”), states as follows:

**FACTS COMMON TO ALL COUNTS**

1. Jerzy Szymanski (“Szymanski”) is an individual residing in Cook County, Palos Park, Illinois.
2. Matthew G. Garoufalis (“Garoufalis”) is an individual residing, on information and belief, in DuPage County, Naperville, Illinois.
3. Malcolm D. Herzog (“Herzog”) is an individual residing, on information and belief, in Cook County, Palos Park, Illinois.
4. On March 16, 2012, Garoufalis organized an entity named “Advanced Neurological Diagnostics, LLC” (hereafter, “Advanced”) and listed Szymanski, Garoufalis, and Herzog as its managers.

5. Advanced was a medical clinic created for the purpose of performing certain medical testing with a principal place of business at 5241 South Cicero, Chicago, IL 60632.
6. An operating agreement was prepared for Advanced, but, on information and belief, the operating agreement was never executed.
7. On or about April 16, 2012, Szymanski agreed that he would loan the sum of \$100,000.00 to Advanced and Garoufalis and Herzog would be personally liable for repayment of the loan; Szymanski, Garoufalis, and Herzog signed a handwritten agreement (the "Agreement") to this effect attached hereto as **Exhibit A**.
8. Szymanski loaned the \$100,000 to Advanced pursuant to the Agreement.
9. During and throughout the operation of Advanced, Garoufalis and Herzog primarily conducted the management and financial affairs of Advanced.
10. A few months after its creation, Advanced's business operations began to slow down for reasons that were then not entirely known to Szymanski.
11. Szymanski inquired about the slowdown in business and was told by Garoufalis and Herzog that the business was running out of money such that it would no longer be able to sustain its operations.
12. Szymanski requested specific financial details in this regard but was never provided them by either Garoufalis or Herzog.
13. Upon information and belief, Advanced billed insurance companies over \$300,000.00 for services it performed for which no accounting has been provided.
14. By the fall of 2012, Advanced ceased its operations entirely.

**COUNT I-BREACH OF CONTRACT**

15. Szymanski re-alleges paragraphs 1-14 of this Counterclaim as if fully set forth herein.

16. On or about January 31, 2013, Szymanski demanded repayment of the \$100,000.00 loan from Garoufalis and Herzog. A copy of the demand is attached hereto as **Exhibit B.**

17. Garoufalis and Herzog failed to respond the demand.

18. The Counter-defendants failure to repay the loan to date constitutes a breach of the Agreement.

19. Szymanski has been damaged in that he has not been repaid the amounts owed to him pursuant to the Agreement.

**WHEREFORE**, Szymanski respectfully requests that this Court enter judgment against Garoufalis and Herzog, jointly and severally, in the amount of \$100,000.00, plus pre- and post-judgment interest, costs, and any other relief this Court deems equitable and just.

**COUNT II-BREACH OF FIDUCIARY DUTY**

20. Szymanski re-alleges paragraphs 1-14 of this Counterclaim as if fully set forth herein.

21. During or around the time that Advanced began to cease its operations, Szymanski learned, through a medical technician that performed services in the past for Szymanski, Garoufalis, and Herzog, that Garoufalis, Herzog and another individual were also operating a company named "Precision Diagnostics, LLC" (hereafter, "Precision").

22. According to the Illinois Secretary of State, the articles of organization of

ELECTRONICALLY FILED  
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2015-L-002496  
PAGE 3 of 6

Precision were filed on July 30, 2012 and its managers were listed as being Matthew Garoufalis, Malcolm Herzog, and Carmen Harper.

23. Upon information and belief, Precision was in the same or similar type of business as Advanced, namely, the performance of certain medical testing.

24. Upon information and belief, shortly after Advanced was formed, Garoufalis and Herzog neglected Advanced and devoted all of their time and efforts to Precision.

25. Upon information and belief, Garoufalis and Herzog diverted funds, patients, and employees from Advanced to Precision.

26. Garoufalis and Herzog never told Szymanski about Precision before Szymanski found out about its existence on his own.

27. As managers of Advanced, Garoufalis and Herzog owed certain fiduciary duties to Szymanski.

28. Specifically, pursuant to the Limited Liability Company Act of Illinois, Garoufalis and Herzog owed Szymanski a duty:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(2) to act fairly when a member deals with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

805 ILCS 180/15-3(b).

29. Garoufalis and Herzog breached the foregoing duties to Szymanski by (i) failing

ELECTRONICALLY FILED  
3/11/2015 11:55 AM  
2015-L-002496  
PAGE 4 of 6

to account and hold as trustees sums of money generated by Advanced in that they diverted funds and failed to provide the details regarding certain revenues and expenses; (ii) not acting fairly when they referred patients and employees to a competing business; and (iii) forming a company that was competing directly with Advanced prior to the dissolution of Advanced.

30. Szymanski was damaged by the breaches of fiduciary duties by Garoufalis and Herzog in that he has not been repaid the \$100,000.00 loan to Advanced, he lost profits and income that would have been generated but for the actions of Garoufalis and Herzog, and he lost the ability to perform services for Advanced.

31. The actions of Garoufalis and Herzog were intentional, willful, and wanton, and were performed with malice toward Szymanski.

32. Punitive damages are necessary to punish Counter-defendants for their conduct and to deter them from committing similar transgressions in the future.

**WHEREFORE**, Szymanski respectfully requests that this Court enter judgment against Garoufalis and Herzog, jointly and severally, for actual and punitive damages of an amount in excess of \$500,000.00, subject to prove-up, costs, and any other relief this Court deems equitable and just.

### **COUNT III-TORTIOUS INTERFERENCE**

33. Szymanski re-alleges paragraphs 1-14 of this Counterclaim as if fully set forth herein.

34. By becoming a member and performing his services for Advanced, Szymanski had a reasonable expectation of continuing or entering into a valid business relationship with the customers/patients of Advanced.

ELECTRONICALLY FILED  
3/11/2015 11:55 AM  
2015-L-002496  
PAGE 6 of 6

35. Garoufalis and Herzog knew that Szymanski had such an expectancy because they were owners of Advanced and were aware of the purpose of forming Advanced.

36. Nevertheless, Garoufalis and Herzog purposefully interfered in preventing Szymanski's expectancy from continuing or ripening into a valid business relationship because they knew that due to their actions, Advanced would not be able to continue performing services for its patients.

37. Szymanski was damaged by the breaches of fiduciary duties by Garoufalis and Herzog in that he has not been repaid the \$100,000.00 loan to Advanced, he lost profits and income that would have been generated but for the actions of Garoufalis and Herzog, and he lost the ability to perform services for Advanced.

38. Garoufalis and Herzog acted willfully or with such gross negligence as to indicate a wanton disregard of the rights of Szymanski.

**WHEREFORE**, Szymanski respectfully requests that this Court enter judgment against Garoufalis and Herzog, jointly and severally, for actual and punitive damages of an amount in excess of \$500,000.00, subject to prove-up, costs, and any other relief this Court deems equitable and just.

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Respectfully Submitted,  
FUKSA KHORSHID, LLC

/s/ Lucas M. Fuksa

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*Attorney for Plaintiff*