

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 03-80349-CIV-HURLEY/LYNCH

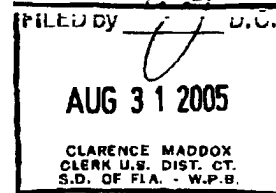
STRATEGIC CAPITAL RESOURCES, INC.

Plaintiff,

v.

CITRIN COOPERMAN & COMPANY, LLP,
HORTON & COMPANY, LLC and
EDWARD HORTON,

Defendants.



**MEMORANDUM OPINION CONTAINING
FINDINGS OF FACT & CONCLUSIONS OF LAW**

THIS CASE involves a dispute between an accounting firm, Citrin Cooperman & Co., LLP ("Citrin") and its client, Strategic Capital Resources, Inc. ("Strategic"). The issue is whether Citrin committed professional malpractice in accepting and conducting an audit or whether Strategic failed to cooperate in the audit and became so hostile and aggressive that Citrin's independence was called into question, justifying Citrin's withdrawal from the engagement. For the reasons detailed below, the court holds that plaintiff has failed to establish its claim of professional malpractice. In reaching this conclusion, the court holds that plaintiff failed to prove that defendants deviated from professional standards in: (1) determining whether to accept and undertake the audit; (2) planning and staffing the audit; (3) conducting initial and subsequent reviews; and (4) withdrawing from the engagement. This case came before the court upon a bench trial on the remaining claims set forth in plaintiff's amended complaint and defendant Citrin Cooperman & Company, LLP's counterclaims.¹

1. On May 19, 2005, the court granted summary judgment in favor of defendant Citrin on Count IV of Strategic's amended complaint (breach of fiduciary duty against Citrin). On July 18, 2005, the first day of trial, the court also granted summary judgment in favor of defendants Edward Horton and Horton & Company, LLC on Counts V and VI of Strategic's amended complaint (breach of fiduciary duty). Summary judgment was granted in favor of the defendants

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In accordance with Rule 52(a) of the Federal Rules of Civil Procedure, and based upon the testimony and evidence presented during the trial, the court makes the following:

FINDINGS OF FACT

I. Background Event Occuring Prior to June 2002

A. The Plaintiff

1. Plaintiff Strategic Capital Resources, Inc. ("Strategic") is a Delaware corporation organized in 1995. Its stock is publicly traded. Strategic is based in Boca Raton, Florida and provides specialized financing for major homebuilders and real estate developers. These arrangements take several forms including direct financing leases, operating leases, option agreements, and management agreements. (Pl.'s Ex. 132). As one example, the company purchases model homes in new developments and then leases them back to the developer during the construction phase of the project. Finally, the company sells the homes and splits the profit with the developer. The life blood of the company is its credit line with various lenders, all of whom require that the company obtain an annual financial audit. (7/19 Tr.).

2. As of May 3, 2002, David Miller served as Strategic's President, Chairman of the Board, and Chief Executive Officer. Cary Greenberg served as Strategic's Vice-President, Chief Financial Officer, and Treasurer. Strategic's Board of Directors consisted of Mr. Miller, Samuel G. Weiss, Ralph Wilson, and John H. Roach. Messrs. Weiss, Wilson, and Roach also served on Strategic's Audit Committee. (Defs.' Ex. 19; Pl.'s Ex. 235).

on these counts for the reasons expressed in the court's May 19, 2005 order. Strategic has contended that defendants Horton & Company and Mr. Horton breached an additional fiduciary duty owed to Strategic as its accountants as well as its independent auditors. The court, however, finds that Strategic's amended complaint failed to plead even a single fact or claim that adequately placed the defendants on notice that Strategic intended to proceed against the defendants for claims related to Mr. Horton's prior duties as Strategic's accountant. See Beni v. Ethicon, Inc., 269 F.3d 477, 481 (5th Cir. 2001). Thus, Strategic was precluded from presenting these claims during trial.

3. In 1996, Strategic retained defendant Horton & Company, LLC ("Horton"), a New Jersey limited liability company with its principal place of business in New Jersey, to serve as its independent auditor and accountant. (Def.'s Ex. 1; Am. Compl. at ¶ 4). Defendant Edward C. Horton ("Mr. Horton"), a resident of New Jersey, served as the managing director of Horton & Company. (Pl.'s Ex. 2; Am. Compl. at ¶ 4). In that capacity, Mr. Horton prepared Strategic's audits and advised it in connection with various filings made before the United States Securities and Exchange Commission ("SEC"). (Defs.' Ex. 1).

4. Between 1996 and 2002, Strategic borrowed large sums of money from Mr. Miller, his family, and entities controlled by him. (Defs.' Ex. 24, 32). As part of each of these transactions -- and at Mr. Miller's specific request -- Strategic issued warrants which had an exercise price equal to the market value of Strategic's stock at the time the warrant was issued. (Defs.' Ex. 60).

5. The actual warrant agreements contained conflicting provisions as to whether the amount of redeemable shares and the exercise price would be affected by a future split or a reverse split of Strategic's common stock. (Defs.' Ex. 5). Paragraph 1 of the warrant agreements stated that, regardless of a reverse split, warrant holders "shall have the right to purchase the same kind and amount of securities (number of shares) which the holder would have received if such event (i.e. a reverse stock split) had not taken place at the original exercise price." Id. Paragraph 8, however, stated that "[i]n the event that the Company shall at any time subdivide or combine into a greater or lesser number [sic]. . . of outstanding Shares of common stock, the number of Shares purchasable upon exercise of the Warrant . . . shall be proportionately decreased and the exercise Price proportionately increased." Id.

6. When Strategic was queried by Citrin during its audit, Mr. Miller stated that the warrant

agreements "precluded the shares underlying the warrants to be subject to any and all reverse stock splits or other changes in the Company's capitalization undertaken subsequent to the issuance of the warrants." Defs.' Ex. 39. In other words, he took the position that the warrants were anti-dilutive. Therefore, irrespective of whether the company received a reverse split, thereby reducing the number of outstanding shares, the Miller warrants, if exercised, would take him from an approximate 60% ownership of the company to about 99% ownership.

7. Prior to April 2002, Strategic had approximately 15,400,000 shares of common stock outstanding and approximately 7 million warrants outstanding that could be exercised and converted into common stock. (Defs.' Ex. 60).

8. On April 8, 2002, Strategic's Board of Directors, then consisting of four members,² and shareholders representing a majority of the shares of Strategic's common stock outstanding adopted an amendment to Strategic's certificate of incorporation to effectuate a two-hundred for one reverse stock split. (Defs.' Ex. 25). As a result of the split, Strategic had approximately 77,000 common shares outstanding. (Defs.' Ex. 60). Since the warrants were not subject to the reverse split, 7 million warrants remained outstanding that could all be exercised by the warrant-holders for approximately 1/200th of Strategic's new price per share. Id. This meant that Strategic's warrant holders -- which for the most part consisted of Mr. Miller, his family, and Mr. Wilson, another board member -- could take control of 99% of the company's common stock as a result of the reverse split. Mr. Horton attended this board meeting via telephone, but was not on the phone at the time that the board members approved the reverse split. (Defs.' Ex. 17; 8/1 Tr.). Though the court received

2. Two members had resigned shortly before the meeting leaving a four-member board. Messrs. Miller and Wilson, who were warrant holders, abstained. Thus, the decision to enact a reverse stock split was adopted by two members of the board.

testimony during the trial that Mr. Horton gave his approval to the reverse split during this meeting, the court finds that this testimony is neither credible nor worthy of belief. The court does find, however, that the greater weight of the evidence establishes that Mr. Horton knew of the reverse split and of Strategic's warrants in the April-June 2002 time frame.

B. The Defendants

9. On October 26, 2001, Mr. Horton sent Strategic an announcement indicating “that effective October 15, 2001, the firm of Horton & Company, LLC merged with the firm of Citrin Cooperman & Company, LLP.” (Pl. 's Ex. 5). Defendant Citrin Cooperman & Company, LLP (“Citrin”) is a New York limited liability partnership with its principal place of business in New York. (Am. Compl. at ¶ 3).

10. After Mr. Horton joined Citrin, he persuaded Strategic to retain Citrin as its independent auditor by assuring Strategic that Citrin could provide equal or better support and resources to Strategic than Horton & Company. (7/18 Tr.). Accordingly, on June 26, 2002, Strategic agreed to continue its relationship with Mr. Horton by retaining Citrin as its independent auditor. (Pl. 's Ex. 11).

11. Citrin did not disclose the following items to Strategic prior to commencing its audit of Strategic's financial statements: 1) On July 2, 2002, Mr. Horton had been temporarily suspended from practicing before the SEC (Pl. 's Ex. 112); 2) In May 2002, Citrin decided that it would no longer audit public company clients, including Strategic (7/20 Tr.); and 3) Despite an announcement that “the firm of Horton & Company, LLC merged with the firm of Citrin Cooperman & Company, LLP.,” in reality, Citrin “admitted Edward C. Horton as a partner in the Firm on October 1, 2001, and the former firm of Horton & Company, LLC was dissolved and ceased to operate after such

admission.” (Pl.’s Ex. 98).

12. Although Mr. Horton attended the initial planning session for the audit, Citrin assigned Lawrence Adelstein to serve as the audit partner. The court finds that Mr. Adelstein was fully qualified to serve as an audit partner for Strategic’s audit and did in fact perform his responsibilities consistent with professional standards.

13. Prior to joining Citrin, Mr. Horton had consulted with the SEC on Strategic’s behalf regarding the SEC’s preference for recording and presenting Strategic’s revenue from its direct financing of leases. (7/22 Tr.). Mr. Horton had informed Strategic that it was appropriate to record the lease revenue on a gross-basis as opposed to a net-basis. (7/22 Tr.).

II. Strategic’s Retention of Citrin as its Independent Auditor

14. On June 26, 2002, Strategic retained Citrin to “audit the consolidated balance sheet of Strategic Capital Resources, Inc. and subsidiaries as of June 30, 2002, and the related consolidated statements of operations, stockholders’ equity, and cash flows for the year then ended.” (Pl.’s Ex. 11). Citrin’s engagement letter signed by Mr. Miller specifically stated that Citrin “will request written representations from your attorneys as a part of the engagement.” *Id.* The letter additionally provided that “[i]f, for any reason, [Citrin is] unable to complete the audits or [is] unable to form or ha[s] not formed an opinion, [Citrin] may decline to express an opinion or to issue a report as result of this engagement.” *Id.* Finally, the letter also specifically provided that Citrin’s “fees for these services will not exceed \$30,000 . . . If significant additional time is necessary, [Citrin] will discuss it with [Strategic] and arrive at a new fee estimate before [Citrin] incur[s] the additional costs.” *Id.*

15. On July 3, 2002, Citrin held a planning meeting and issued a planning memorandum in which Mr. Horton and Matthew Haywood, Citrin’s audit manager, clearly indicated their

understanding that Strategic's "Board of Directors [had] voted to authorize a 200 for 1 reverse stock split on outstanding common shares." (Pl.'s Ex. 15). They were also aware of the outstanding warrants with the anti-dilutive provision. Mr. Haywood understood that Strategic's reverse split "[w]as an issue that would need to be dealt with." (Haywood Dep. at 33). Nevertheless, Mr. Haywood did not personally attempt to address any issues relating to Strategic's reverse split because he did not feel comfortable handling such a complicated matter. (Haywood Dep. at 85-86). Mr. Haywood simply informed Mr. Horton and Mr. Adelstein that he "needed assistance from the resources of Citrin Cooperman" to resolve this matter. Id.

16. Mr. Horton testified that, at the planning meeting, Sylvia Zozulia, Citrin's supervisor in charge of fieldwork, was designated as Citrin's point-person to compile all of the information from Strategic that was necessary to examine the interaction between Strategic's reverse split and its warrants so that this information could adequately be reviewed by Citrin's senior auditing partners. (8/1 Tr.). Mr. Horton testified that he had relied upon the board's assurances that the legality of the transaction was not a concern and, thus, decided not to further address this issue with Strategic at that earlier date. Id. The court finds this testimony credible and worthy of belief.

17. Moreover, Mr. Horton also testified that he had attended a June 2002 meeting of Strategic's audit committee in which he had asked Strategic's management whether they had addressed the legalities of the reverse split prior to approving the transaction. (8/1 Tr.). The court finds this testimony credible and worthy of belief.

18. Citrin's planning memorandum reflected Citrin's understanding that "[t]he 10K must be filed with the SEC no later than 90 days after year-end, which is September 28, 2002." Id.

19. As of August 27, 2005, a checklist prepared by Citrin indicated that Citrin had no

disagreements with Strategic's management regarding Strategic's financial statements. (Pl.'s Ex. 27). Furthermore, by September 5, 2002, Citrin completed another checklist in which it stated that "all important audit procedures" had been completed. (Pl.'s Ex. 28). Thus, as of September 5, 2002, Strategic had no knowledge that anyone at Citrin had any major concerns regarding the legality of Strategic's reverse split which might prevent Citrin from issuing its audit.

III. Citrin's review of Strategic's Financial Statements

20. It is customary for auditors performing an audit on a publically-traded corporation to divide their work into the following components: 1) a field team consisting of accounting staff and an audit manager compiles the company's financial statements and independently verifies the numbers presented on the company's financial statements; 2) an audit partner then examines the work of the field team and ensures that the company's underlying documentation supports the financial statements drafted by the field team; 3) a review partner then double checks the company's financial statements and identifies the existence of any remaining issues of significance that must be resolved prior to issuing the client's financial statements to the SEC; and finally 4) a quality control partner reviews the financial statements to detect any final errors. (7/15 Tr.) Each of these steps involves review of the company's financial statements by persons with increasing levels of expertise and experience. *Id.*

21. In this case, the court finds that Citrin adequately staffed Strategic's audit with competent and experienced field staff and review personnel.

22. Accordingly, on September 5, 2005, Citrin certified that all important audit fieldwork had been completed and that the only remaining steps in the process involved the required review of Strategic's financial statements by Lawrence Adelstein, Citrin's audit partner; Jules Blackman, Citrin's review partner; and Mark Schniebolk, Citrin's quality control partner. (Pl.'s Ex. 28).

23. Mr. Adelstein began his review of Strategic's financial statements around September 17, 2002. (7/21 Tr.). He believed that his review and Mr. Blackman's subsequent review could be completed prior to the September 28, 2002 deadline. Id. As of September 17, 2002, however, Mr. Adelstein was still awaiting an updated warrant schedule and copies of Strategic's warrants in order to complete his review of Strategic's financials. Id. Nevertheless, Mr. Adelstein's review did not surface any concerns regarding the propriety of Strategic's reverse split.

24. On September 24, 2002, Jules Blackman, Citrin's review partner, began his review of Strategic's financial statements prior to Mr. Adelstein's completion of his review. (7/15 Tr.). The time constraints present in Strategic's audit required Mr. Blackman and Mr. Adelstein to review simultaneously Strategic's financial statements. Id. During this process, Mr. Blackman identified three issues that he felt required resolution prior to Citrin's completion of the audit. (7/15 Tr.). These issues included: 1) whether Strategic's revenue from direct financing of leases should be recorded on a net-basis as opposed to a gross-basis; 2) whether Strategic's warrants needed to be valued on its financial statements according to the Black-Scholes option valuation method; and 3) whether Strategic's reverse split constituted an illegal act when taking into account the effect of the interaction between Strategic's reverse split and its previously outstanding anti-dilutive warrants. Id.

25. Mr. Blackman's major concern was the reverse stock split and its potential illegality. He had never before seen a transaction where a corporate board had authorized a reverse split that substantially transferred the corporation's equity to board members who held the anti-dilutive warrants. (7/15 Tr.). He testified that he had seen over a hundred warrant situations and they all had contained language indicating that the warrants would track any future change in the stock structure. He also consulted with others in his field and found that no one had encountered a situation like this.

Thus, he was concerned that this represented a potential illegality which, in turn, would trigger certain obligations for the accounting firm.

26. On September 25, 2002, Mr. Blackman contacted Mr. Adelstein and Mark Schniebolk, Citrin's director of quality control, regarding these issues and all agreed to call Mr. Miller to determine whether the warrants were intended to be classified as anti-dilutive. (7/15 Tr.; 7/21 Tr.). Given the conflicting language in the warrant agreements, this represented an effort to obtain an authoritative statement from the company as to which of the two provisions would govern, i.e., were they or were they not anti-dilutive.

27. Mr. Miller confirmed that Strategic had intended that its warrants would not be affected by a future reverse split and, thus, that the warrants were anti-dilutive. (7/15 Tr.). Mr. Miller testified at trial that he had intended that the warrants would contain anti-dilutive provisions because he had been previously involved in a corporation where the holders of anti-dilutive warrants exercised those warrants to his detriment. (7/9 Tr.).

28. On September 26, 2002, Messrs. Blackman and Adelstein informed Mr. Miller that they would need clarification from Strategic's attorney that the reverse split was a legal transaction. (Defs.' Ex. 86). Meanwhile, Citrin was also awaiting complete and accurate warrant schedules from Strategic in order to determine how many warrants were outstanding and what accounting treatment was required for the warrants. (Defs.' Ex. 65).

29. Mr. Miller became agitated that Citrin was questioning the propriety of Strategic's reverse split only days before the audit was due. Aside from anxiety caused by the approaching deadline, Mr. Miller was frustrated that Citrin seemed to be reevaluating issues that Mr. Miller felt had been vetted by Mr. Horton. (Defs.' Ex. 86). Furthermore, Mr. Miller was perplexed and angry that Citrin was

raising accounting issues regarding Strategic's presentation of its direct financing of leases that Mr. Horton had discussed and resolved with the SEC during prior years. *Id.* Mr. Miller viewed all of this as nitpicking and revisiting issues that had long been resolved to the SEC's satisfaction.

30. Citrin, however, saw the matter quite differently. On September 27, 2002, Mr. Schniebolk called the hotline for the American Institute of Certified Public Accountants ("AICPA") and Jeffrey Brinn CPA, a trusted colleague, to discuss the accounting treatment and impact of Strategic's reverse split. Both telephone calls reinforced Mr. Schniebolk's concerns that there were legal ramifications to Strategic's reverse split that needed to be addressed by legal counsel prior to completing an independent audit of Strategic's financial statement. (Defs.' Ex. 61).

IV. The Deterioration of Citrin's Relationship as Strategic's Independent Auditor

31. On September 30, 2002, Andrew Telsey, Strategic's corporate counsel, faxed a letter to Mr. Schniebolk stating that "[p]ursuant to our prior telephone conversations and conversations with our respective client, [Strategic], it is now apparent that our client will need to file an extension with the SEC on Form 12b-25 in order to insure that our client is not considered delinquent in its obligations to timely file its reports . . ." (Pl.'s Ex. 58). Mr. Telsey's letter asked Citrin to provide a letter stating the specific reasons why Strategic could not file its audit with the SEC on the original due date.

32. Accordingly, Citrin sent a letter to the SEC stating that they were "not able to complete [their] audit of [Strategic's] financial statements for the year ended June 30, 2002 as [they] were awaiting documentation and other evidential matter from [Strategic] in order to substantiate the accounting treatment for various transactions during the year and their effect on [Strategic's] financial statements." (Pl.'s Ex. 59). The court finds that even though this letter was not factually precise, it

was nevertheless sent as a standard form letter intended to elicit an automatic extension from the SEC. The court additionally finds that this letter was not sent to accuse Strategic of being completely responsible for any delay in filing the audited financial statement.

33. Mr. Miller, however, upon receiving Citrin's letter to the SEC, sent his own letter to the SEC. This letter informed the SEC about all of the complications Strategic was having with Citrin. (Defs.' Ex. 86). At the same time, Mr. Miller also sent a letter to Mr. Schniebolk stating that he was "totally and completely shocked by the contents of [Citrin's] letter." (Pl.'s Ex. 60). Mr. Miller asked Citrin to immediately provide Strategic with "a detailed list of whatever documentation or evidential matter that [Citrin was] missing." *Id.*

34. Mr. Adelstein then sent Mr. Miller a letter containing fourteen items that "remain for us to complete our audit of your financial statements at June 30, 2002." (Pl.'s Ex. 62).

35. On October 1, 2002, Mr. Miller sent a letter responding to seven of Citrin's requests and stating that the other seven requests were Citrin's responsibility. (Pl.'s Ex. 64).

36. Additionally, on October 1, 2002, Mr. Adelstein sent a letter to Mr. Miller indicating that Citrin disagreed with the letter that Mr. Miller sent to the SEC and that "[d]ue to your insinuations regarding the reasons for the delay, and our need to further research and review these open items prior to filing, it may be appropriate for us to reconsider our relationship as your independent auditors." (Pl.'s Ex. 65).

37. Despite various contentious communications arising from the time constraints that existed in this matter, the court finds that both parties nevertheless worked diligently and in good-faith between October 1, 2002 and October 8, 2002 to try to resolve the remaining issues regarding the completion of Strategic's audit. (Defs.' Ex 86).

38. For instance, on October 4, 2002, Citrin retained Howard Berkower, a securities attorney, at its own expense, to determine how Citrin could fulfill its legal responsibilities under AICPA Section 317 and SEC Section 10A. (7/20 Tr.). As Mark Schniebolck testified, Citrin retained Mr. Berkower because "we believed that we did need a legal opinion and in furtherance of that we actually went out and asked our own counsel to come in and get involved because, frankly, we didn't know what we didn't know. And we needed to have a legal expert tell us what legal threshold the opinion from the company's outside counsel had to consider in order for us to be able to as auditors rely on that legal opinion." (7/21 Tr.). The court finds Mr. Schniebolck's testimony to be credible and worthy of belief. It indicates the seriousness and good faith by which Citrin attempted to fulfill its obligation to determine whether it was dealing with a potential illegal act or merely an unusual corporate decision.

39. On October 9, 2002, Howard Berkower, Citrin's attorney, contacted Andrew Telsky, Strategic's corporate counsel. Mr. Berkower requested that Mr. Telsky issue a formal legal opinion regarding whether Strategic intended its warrants to be anti-dilutive and whether the reverse stock split constituted a permissible, legal decision. (Defs.' Ex. 86; 7/20 Tr.). At the conclusion of their conversation, Mr. Telsky and Mr. Berkower agreed as to the substance of the requested legal opinion. (7/21 Tr.; Defs.' Ex. 82).

40. After this telephone call, however, Mr. Miller sent sarcastic letters to Mark Schniebolck expressing his frustration and anger. A faxed note to Mr. Schniebolck stated that "I strongly urge you to check with your Gynecologist, since you are always late, you may be pregnant." (Pl.'s Ex. 80). Another letter to Citrin asked if there were "any other issues independence, dependent, drug related, serial killer related issues, child molestation, animal abuse issues that we should be aware of . . . [Mr

Miller stated that he] is a Jewish person. Do you wish to confirm that I was circumcised and the mohel was legitimate?" Id. At the same time, Mr Miller told Citrin that "the implications of not filing a timely and accurate 10k are absolutely horrific." Id. What Mr. Miller was referring to was the fact that the failure to complete a timely audit would constitute a technical default under Strategic's agreements with its lenders. (Pl.'s Ex. 92). This fact, more than anything else, explains Mr. Miller's mindset during this crucial time.

41. On October 10, 2002, Citrin -- through Mr. Berkower -- sent a letter to Mr. Miller seeking a more expansive legal opinion than that discussed on October 9, 2002. (Pl.'s Ex. 88). In addition to the items requested on October 9, 2002, Mr. Berkower also asked for an opinion letter which stated that "[u]pon due investigation, [Strategic's] Board of Directors and other fiduciaries of the Company complied with its fiduciary duties owed to its stockholders including its duty of care, loyalty and duty to act in good faith." Id. While the court is troubled by the subjective nature of this request, it finds Mr. Berkower's testimony at trial to be credible, i.e., that he was seeking an objective restatement of the steps and processes taken by the board prior to the adoption of the reverse stock split.

42. On the same day, Mr. Miller contacted Mr. Telsey regarding Mr. Berkower's expanded request. (7/18 Tr.). Mr. Telsey informed Mr. Miller that he could not fully comply with Citrin's request, as he did not feel comfortable opining on what he believed were subjective determinations regarding fiduciary duty. Id. Furthermore, Mr. Telsey stated that even if he was comfortable issuing such an opinion in theory, he could not issue such an opinion during the small window of time remaining to complete Strategic's audit. Id.

43. Nevertheless, Mr. Telsey had already prepared a draft legal opinion on October 10, 2002

that addressed only the topics discussed in the October 9, 2002 telephone conversation. (Pl.'s Ex. 90). Mr. Telsey never sent this draft opinion letter to Mr. Berkower. (7/18 Tr.).

44. Instead of contacting Citrin to determine if a compromise could be reached regarding a mutually acceptable legal opinion, Mr. Miller sent a letter to Citrin on October 11, 2002, stating that **"WE ARE NOT FIRING YOU AT THIS TIME."** (Pl.'s Ex. 94). The letter also stated that despite Citrin's requests "a) we will not alter legal documents; b) we will not file false and/or misleading 8K's or press releases; c) we will not request that our outside counsel issue legal opinions that are not usual and customary; [and] d) we will not coerce our outside counsel to issue a legal opinion that they are not [sic] uncomfortable with." Id. Finally, the letter threatened that Strategic "will engage an additional auditing firm by 10/16/02 unless we file our 10K for Fiscal 2002 on 10/15/02." Id.

45. Upon receiving this letter, Mr. Adelstein concluded that Citrin's relationship with Strategic had become so hostile and adversarial that it was no longer possible to issue an independent audit of Strategic's financial statements. (7/21 Tr.).

46. Accordingly, on October 11, 2002, Citrin sent a letter to Mr. Miller stating that Strategic's "allegations, accusations and recent course of conduct toward our Firm have been contentious and adversarial to the point that has caused us to conclude that our independence has been irrevocably impaired. For that reason we hereby resign from this engagement, effective immediately." (Pl.'s Ex. 96).

V. The Aftermath of Citrin's Resignation

47. Mr. Berkower testified during the trial that, while he would not have accepted Mr. Telsey's draft opinion letter, he would have been willing to compromise on the form of the opinion letter provided that Mr. Telsey had contacted him and engaged in a principled discussion as to the

bona fides of the reverse split. (7/20 Tr.). Mr. Berkower simply sought a discussion by Mr. Telsey as to the processes engaged in by Strategic's board prior to its approval of the reverse split. Mr. Berkower also testified that he fully expected Mr. Telsey to contact him regarding his request as opposed to simply declining to issue any type of opinion letter. Id. The court finds that this testimony is credible and worthy of belief.

48. The court also received testimony from Mr. Miller and Mr. Telsey stating that someone at Citrin told them that they would accept nothing less than an opinion letter that strictly complied with Mr. Berkower's request. (7/20 Tr.; Telsey Dep.). The court finds this testimony to be neither credible nor worthy of belief.

49. Additionally, the court also heard testimony from Mr. Telsey indicating his belief that Citrin was actively seeking to withdraw as Strategic's auditor and, thus, demanded an opinion letter as a ploy to force Strategic to terminate Citrin's services. The court rejects this testimony and finds it unworthy of belief. Citrin acted in good-faith at all times in attempting to complete Strategic's audit in a timely fashion. Citrin's concern about a potential illegality was reasonable and justified.

50. Upon Citrin's resignation, Strategic hired Weinberg & Company ("Weinberg") to complete its audit. (Pl.'s Ex. 177). Strategic instructed Weinberg to discuss all of Citrin's disputed issues with the Securities and Exchange Commission. Id.

51. Weinberg ultimately did not have to address the legality of Strategic's reverse split because Strategic rescinded the anti-dilution provision in the warrants in December 2002. (7/15/ Tr.). In addition, Weinberg ultimately agreed with Citrin's final conclusions as to the valuation of Strategic's warrants and the presentation of Strategic's revenue from its direct financing of leases. Id.

52. Strategic ultimately paid Weinberg \$121,650 to fully and properly complete the audit of all of Strategic's financial statements. (Pl.'s Ex. 294).

53. Strategic did not suffer any other damages as a result of Citrin's resignation. At trial, Strategic sought damages for accounting malpractice allegedly committed by Mr. Horton prior to Citrin's engagement to audit Strategic's 2002 financial statements. Since these separate and additional claims against Mr. Horton were not pled in Strategic's complaint, Strategic is barred from seeking these damages as part of this proceeding.

54. Conversely, Citrin contends that it incurred over \$100,000 of additional expenses in attempting to complete Strategic's audit in a timely fashion. (7/22 Tr.). Citrin, however, never met with Strategic to arrive at a new fee estimate prior to incurring these costs as required by the engagement letter Citrin drafted and Strategic executed.

55. Finally, Citrin also contends that it is owed \$20,000 that was agreed upon in the engagement letter. The engagement letter drafted by Citrin states that "\$10,000 [is owed] upon completion of Form 10-k and the final payment of \$10,000, 30 days thereafter." (Pl.'s Ex. 11). In this case, Strategic contends that since Citrin never completed Strategic's Form 10-K, the event triggering Strategic's payment of \$20,000 to Citrin never occurred. Citrin, however, contends that the completion of the Form 10-K was not a condition precedent to payment; rather, it was simply intended as an estimated date at which time the additional \$20,000 became due and owing for Citrin's auditing services. Citrin is correct. It did the work and it is entitled to payment.

Based on the foregoing findings of fact, the court reaches the following:

CONCLUSIONS OF LAW

I. Introduction

1. The issue for the court's determination in this case is whether the defendants committed professional malpractice by disengaging from the audit of Strategic's financial statements and/or by raising concerns regarding the legality of Strategic's reverse split in an untimely fashion during the pendency of the audit.
2. Professional malpractice claims are causes of action in tort. Indemnity Ins. Co. of North America v. American Aviation, Inc., 344 F.3d 1136, 1141 (11th Cir. 2003).
3. In diversity actions asserting tort claims, a federal court is required to apply the substantive law of the forum state. Gossard v. Adia Servs., 120 F.3d 1229, 1231 (11th Cir. 1997). In this case, the parties agree that the court must apply Florida law in resolving the plaintiff's malpractice claims.
4. In all Florida professional malpractice cases, "[t]o establish a cause of action for negligence the plaintiff must show that the defendant owed a duty of care to the plaintiff, that the defendant breached that duty, that the breach proximately caused plaintiff's injury, and that damages are owed." Ewing v Sellinger, 758 So. 2d 1196, 1197 (Fla. 4th DCA 2000) (citations omitted).
5. Florida courts have recognized that "[t]here are few reported cases in Florida which address accountant malpractice." Coopers & Lybrand v. Tr. of the Archdiocese of Miami et al., 536 So. 2d 278, 281 (Fla. 3d DCA 1988).
6. As the parties themselves have conceded, there are no Florida cases that specifically address the duty of care owed by an independent auditor to the company it is engaged to audit. This court lacks the authority to certify unanswered questions of Florida law to the Florida Supreme Court. See Fla. R. App. P. 9.150.
7. Therefore, as the Eleventh Circuit recognized in State Farm Fire and Casualty Co. v. Steinberg, 393 F.3d 1226, 1231 (11th Cir. 2004), "[i]n the absence of definitive guidance from the

Florida Supreme Court, we follow relevant decisions of Florida's intermediate appellate courts." Furthermore, "[i]n the absence of precedents from Florida's intermediate appellate courts, however, we may consider the case law of other jurisdictions that have examined similar cases." *Id.* "Our objective is to determine the issues at state law as we believe the Florida Supreme Court would." *Id.* When there is a "paucity of Florida cases on point, the resolution of [a case] requires substantial reliance on cases decided in other jurisdictions." *Id.*

II. Duty of Care Owed by an Independent Auditor

8. Courts in other jurisdictions have recognized that "[a]n accountant owes a duty to the client to render services with the degree of skill and competence exercised by members of the accounting profession and in accordance with accepted professional standards." *Hydroculture, Inc. v. Coopers & Lybrand*, 174 Ariz. 277, 281, 848 P.2d 856 (1992).

9. Whether an independent auditor fulfilled its duty to the company that engaged its services "in accordance with acceptable professional standards is a question of standard of conduct, not of duty, and is therefore a question for the [finder of fact]." *Id.* at 282; *see also Maduff Mortgage Corp. v. Deloitte Haskins & Sells*, 98 Ore. App. 497, 502, 779 P.2d 1083 (1989) (holding that "[t]he amount of care, skill and diligence required to be used by the defendant in conducting an audit is a question of fact for the jury, just as it is in other fields for other professionals.")

10. In *Maduff Mortgage*, the Oregon Court of Appeals held that the professional standards enumerated by the American Institute of Certified Public Accountants ("AICPA") "are only evidentiary." *Maduff Mortgage*, 98 Ore. App. at 502. The court added that "[t]hey are principles and procedures developed by the accounting profession itself, not by the courts or the legislature. They

may be useful to a [fact finder] in determining the standard of care for an auditor, but they are not controlling." Id.

11. Accordingly, the issue for this court's determination is whether the defendants contravened accepted professional standards by disengaging from the audit of Strategic's financial statements and/or by failing to address the legality of Strategic's reverse split prior to September 25, 2002.

12. In order to reach a conclusion as to whether the defendants committed malpractice, the court must address each of the defendants' actions as Strategic's independent auditor to determine if any of the defendants' actions could be deemed as constituting conduct outside the bounds of the ordinary amount of care, skill, and diligence required of independent auditors.

13. As stated above, the court finds that plaintiff failed to prove that defendants deviated from professional standards in: (1) determining whether to accept and undertake the audit; (2) planning and staffing the audit; (3) conducting initial and subsequent reviews; and (4) withdrawing from the engagement. The court shall address each of these issues individually in the order enumerated above.

III. Analysis of Defendants' Actions as Strategic's Independent Auditor

A. Citrin did not Commit Malpractice by Failing to Resolve the Propriety of Strategic's Reverse Split Prior to Accepting the Engagement as Strategic's Independent Auditor

14. Strategic contends that Citrin committed malpractice by violating the standards enumerated in AICPA Section 310. (Pl.'s Ex. 294). Section 310 states that "an independent auditor may accept an engagement near or after the close of the fiscal year. In such instances, before accepting the engagement, he should ascertain whether circumstances are likely to permit an adequate

audit and expression of an unqualified opinion and, if they will not, he would discuss with the client the possible necessity for a qualified opinion or disclaimer of opinion.” *Id.* Accordingly, Strategic asserts that since Mr. Horton knew of Strategic’s reverse split at the time of the engagement, Citrin committed malpractice by failing to resolve this issue prior to accepting the engagement to audit Strategic’s financial statements.

15. The court concludes, as a matter of fact and law, that the plaintiff has failed to establish that Citrin deviated from accepted professional standards by accepting the engagement to audit Strategic’s financial statements prior to resolving the issues surrounding Strategic’s reverse split. As stated above, the court found Mr. Horton’s testimony to be credible that, during the June 2002 audit committee meeting, Mr. Horton asked Strategic’s board whether Strategic was concerned about the possibility of a legal action as a result of the reverse split. Mr. Horton was told that the legal issues surrounding the reverse split had been examined by Strategic’s legal counsel and that Strategic was not concerned. (8/1 Tr.)

16. Accordingly, the court finds that Citrin complied with its professional duty to address the possibility of an auditing concern regarding Strategic’s reverse split at the time Citrin was engaged to audit Strategic’s financial statements. Mr. Horton’s conversations with Strategic’s audit committee left Mr. Horton with the impression that the proper legal documentation would be available upon request during the audit to address any concerns regarding Strategic’s reverse split. Therefore, the court finds that Citrin did not commit malpractice by failing to completely resolve the reverse split issue with Strategic prior to accepting its engagement as Strategic’s independent auditor.

B. Citrin did not Commit Malpractice in its Planning and Staffing of Strategic’s Audit

17. As stated above, Citrin did not commit professional malpractice in its staffing of Strategic's audit. Citrin's auditing staff of Beatriz Ochoa, Sylvia Zozulia, and Matthew Haywood were experienced and competent field staff. Furthermore, Citrin's review partners -- Lawrence Adelstein, Jules Blackman, and Mark Schniebolk, were experienced and competent auditing review partners.

18. Furthermore, Citrin did not commit professional malpractice in its planning of Strategic's audit. All of Citrin's fieldwork had been completed by September 5, 2002. This left a sufficient amount of time for Citrin's review personnel to resolve any concerns regarding Strategic's reverse split prior to the extended SEC filing deadline of October 15, 2002. Had Strategic actually performed the legal due diligence Mr. Horton had inquired about during the June 2002 audit committee meeting, the court finds that Strategic's audit could have been completed.

C. Citrin did not Commit Malpractice by Requesting a Legal Opinion from Strategic as to the Legality of Strategic's Reverse Split

19. Under the standards enumerated by AICPA, Citrin had an obligation to determine whether Strategic's reverse split constituted an illegal act prior to releasing Strategic's financial statements to the SEC and to the general public. Pursuant to Section 317 of AICPA's auditing standards:

[w]hen the auditor becomes aware of information concerning a possible illegal act, the auditor should obtain an understanding of the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements. In doing so, the auditor should inquire of management at a level above those involved, if possible. If management does not provide satisfactory information that there has been no illegal act, the auditor should -- a. Consult with the client's legal counsel or other specialists about the application of relevant laws and regulation to the circumstances and the possible effects on the financial statements. Arrangements for such consultation with client's legal counsel should be made by the client.

(Defs'. Ex. 234).

20. Furthermore, pursuant to SEC regulations, all independent auditors performing audits of public companies are required to establish “procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein.” (Defs.’ Ex. 225).

21. Even Strategic’s subsequent independent auditor, James Torkyman, testified that he absolutely would have investigated the propriety of the reverse split with Strategic’s counsel had he been in Citrin’s position. (7/15 Tr.).

22. Accordingly, the court finds that Citrin’s concern about a potential illegality was reasonable and justified. Furthermore, Citrin did not contravene accepted professional standards by seeking a legal opinion from Strategic as to the legality of the reverse split.

D. Citrin did not Commit Malpractice in its Timing of a Request for a Legal Opinion from Strategic as to the Legality of Strategic’s Reverse Split

23. Strategic contends that even if Citrin was justified in asking Strategic to provide a legal opinion as to the legality of the reverse split, Citrin nevertheless committed malpractice by waiting until three days before Strategic’s audit was originally due before raising the first substantive concerns regarding the legality of Strategic’s reverse split.

24. Pursuant to AICPA and SEC regulations, independent auditors are required to institute “procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts.” (Defs.’ Ex. 225).

25. The court acknowledges that it would have been better for all concerned if Citrin had detected and confronted this issue earlier. The failure to do so, however, does not constitute

malpractice. The late date at which the issue was raised, however, led to the parties' heightened sensitivity and stress-level in attempting to reach a mutually acceptable resolution to this concern prior to the SEC filing deadline.

26. Nonetheless, Citrin had a legal obligation to institute a review process in which other more experienced and detached members of the firm would review the preliminary audit fieldwork to ensure that any illegal acts materially affecting Strategic's financial statements would be detected. The court finds that Citrin did not act in a negligent manner when its review process detected the very issues it was designed to detect. While Citrin might ideally have addressed Strategic's reverse split on an earlier date, its review process was designed to detect any oversights or questionable issues and to resolve them in a timely fashion.

27. Accordingly, the court concludes that Citrin's failure to substantively raise the legality of Strategic's reverse split on an earlier date did not constitute malpractice. Also, the court finds that despite the late date on which Citrin sought information about the legality of the reverse split, Citrin could nevertheless have completed Strategic's audit in a timely and proper fashion had Strategic not improperly escalated its dealings with Citrin into an adversarial context. Therefore, the court must now determine whether Citrin deviated from professional standards by withdrawing from the engagement and declining to issue an audited financial statement.

E. Citrin did not Commit Malpractice by Resigning as Strategic's Independent Auditor

28. Both sides acknowledge that their inability to agree upon an acceptable legal opinion provided the irreconcilable barrier that ultimately caused the non-completion of the audit. The parties

disagree, however, as to who should be held responsible for the parties' inability to formulate a mutually acceptable legal opinion

29. Strategic contends that Citrin's requested legal opinion was outside the acceptable bounds of opinions sought in the auditing profession since Citrin sought an overly expansive opinion that could not be issued by any competent attorney in the time frame necessary to timely file Strategic's annual report.

30. Citrin, on the other hand, contends that Strategic acted unreasonably in escalating the rhetoric between the parties and in refusing to negotiate as to the content of a mutually acceptable legal opinion.

31. First, the court agrees with Strategic's contention that, when literally read, Citrin's request for an opinion stating that "[u]pon due investigation, the Company's Board of Directors and other fiduciaries of the Company complied with its fiduciary duties owed to its Stockholders including its duty of care, loyalty and duty to act in good faith," (Pl.'s Ex. 88) called for more than Strategic's counsel could have reasonably provided. (7/19 Tr.; Pl.'s Ex. 88).

32. The court's conclusion is based upon the standards for legal opinions issued by the American Bar Association ("ABA"). The ABA standards specifically state that "[w]ith respect to a legal issue of known uncertainty or that poses obviously difficult and uncertain questions of professional judgment, a non-explained opinion should not be requested. The Opinion Recipient should either accept an explained opinion . . . or not require an opinion on the legal issue in question." American Bar Association, Third-Party Legal Opinion Report, Including the Legal Opinion Accord,

of the Section of Business Law, American Bar Association, 47 Bus. Law. 167, 227 (1991); (Pl.'s Ex. 269).

33. It is a well-established principle of corporate law that “the question of when director self-interest translates into board disloyalty is a fact-dominated question, the answer to which will necessarily vary from case to case.” Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 364 (Del. 1993). Accordingly, under the ABA standards for issuance of legal opinions, it is inappropriate to seek a definitive statement from a company’s attorney that its board members and fiduciaries complied with their duties of care and loyalty. (Sec Pl.’s Ex. 269).

34. Nevertheless, even though the court agrees that Citrin’s literal request was overbroad, the court also concludes that Strategic acted unreasonably in refusing to attempt to reach a mutually acceptable opinion letter with Citrin. The court has found Mr. Berkower’s testimony credible that what he was seeking and what he would have accepted was a restatement of the steps and processes taken by the board prior to the adoption of the reverse stick split.

35. Pursuant to the ABA standards for legal opinions, upon receiving a request for a legal opinion, the lawyer being asked to render the opinion has a duty to “respond thereto no less promptly than it does to any other aspect of the proposed documentation, either agreeing to render the requested legal opinion, offering a valid justification for delaying its response, or suggesting a specific counterproposal.” American Bar Association, Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law, American Bar Association, 47 Bus. Law. 167, 227 (1991); (Pl.’s Ex. 269). Even if an attorney disagrees with the scope of the proposed opinion sought by the opinion-seeker, it is nonetheless “inappropriate for the Opinion Giver simply to refuse to

negotiate with respect to the legal issues to be covered by the Opinion or the form in which the Opinion is expressed." Id.

36. In this case, Mr. Telsey never attempted to negotiate with Mr. Berkower in an effort to reach a mutually acceptable opinion letter. Instead, the next communication Citrin received from Strategic was a letter stating that "**WE ARE NOT FIRING YOU AT THIS TIME.**" (Pl.'s Ex. 94). The letter also stated that despite Citrin's requests "a) we will not alter legal documents; b) we will not file false and/or misleading 8K's or press releases; c) we will not request that our outside counsel issue legal opinions that are not usual and customary; [and] d) we will not coerce our outside counsel to issue a legal opinion that they are not [sic] uncomfortable with." Id. Finally, the letter threatened that Strategic "will engage an additional auditing firm by 10/16/02 unless we file our 10K for Fiscal 2002 on 10/15/02." Id.

37. As indicated above, the court found Mr. Berkower credible in his testimony that a mutually acceptable opinion letter could have been reached had Strategic complied with its duty to negotiate with respect to the legal issues to be covered by the opinion. Mr. Berkower testified that his request was intended solely to engage Strategic in a conversation as to the procedures and analysis Strategic's board undertook prior to approving the reverse split. Accordingly, the court concludes that Strategic's failure to negotiate with Citrin served as the predominant and proximate cause of the parties' failure to reach an agreement as to a mutually acceptable opinion letter that would have allowed Strategic's audit to be completed without any incident to Strategic. It also served as a second and independent ground for Citrin's withdrawal.

38. It is a well recognized principle within the auditing industry that "AICPA's Code of Conduct calls for member-accountants to be independent in fact *and appearance* when providing auditing and other attestation services." Plummer v. American Institute of Certified Public Accounting, 97 F.2d 220, 226 (7th Cir. 1996).

39. In this case, Strategic issued a direct threat to Citrin that "**WE ARE NOT FIRING YOU AT THIS TIME.**" (Pl.'s Ex. 94). Furthermore, Strategic also threatened that it would "engage an additional auditing firm by 10/16/02 unless we file our 10K for Fiscal 2002 on 10/15/02." Id.

40. Under AICPA's Code of Professional Conduct, "[i]f [an auditor] believes that the circumstances would lead a reasonable person having knowledge of the facts to conclude that the actual or intended litigation poses an unacceptable threat to independence, the [auditor] should either (a) disengage himself or herself; or (b) disclaim an opinion because of lack of independence." (Def.'s Ex. 223).

41. In this case, the court concludes that a reasonable independent auditor in Citrin's position would have construed Mr. Miller's letter as a threat that negative repercussions would have occurred toward Citrin if Strategic's audit was not completed by October 15, 2002. Given that Citrin had a legal obligation not to issue Strategic's audit until it had confirmed the legality of Strategic's reverse split, the court concludes that Citrin acted reasonably in resigning from the audit given Strategic's actions in turning the audit into an adversarial rather than a cooperative relationship.

42. The court recognizes that Strategic's officers were understandably under a great deal of stress in trying to complete the audit by October 15, 2002. Nevertheless, the court concludes that the evidence establishes that the audit could have been completed in a timely manner without any

negative repercussions for Strategic had Strategic attempted to reach an amicable resolution as to the opinion letter rather than summarily resorting to threats and inflammatory letters.

43. Accordingly, the court concludes as a matter of law that the defendants did not contravene accepted professional standards by disengaging from the audit of Strategic's financial statements once Strategic's actions compromised defendants' ability to properly fulfill their duties as Strategic's independent auditor.

IV. Citrin's Counterclaims in Connection with its Additional Services Rendered

44. Citrin contends that it is entitled to recovery of over \$150,000 in damages on the theories of breach of contract, quantum meruit, and unjust enrichment..

45. It is well-settled that parties in a lawsuit "may not maintain an action for quantum meruit for services [they] performed while performing under an express contract between the parties." Harris v. Schickedanz Bros.-Riviera Ltd., 746 So. 2d 1152, 1155 (Fla. 4th DCA 1999). Furthermore, under Florida law, "upon a showing that an express contract exists . . . [an] unjust enrichment or promissory estoppel count fails." Williams v. Bear Stearns & Co., 725 So. 2d 397, 400 (Fla. 5th DCA 1998).

46. In this case, the parties entered into an express agreement stating that "fees for these services will not exceed \$30,000 . . . If significant additional time is necessary, [Citrin] will discuss it with [Strategic] and arrive at a new fee estimate before [Citrin] incur[s] the additional costs." (Pl.'s Ex. 11).

47. Since the evidence overwhelmingly establishes that Citrin did not discuss arriving at a new fee estimate with Strategic prior to incurring additional costs, Citrin's breach of contract, quantum meruit, and unjust enrichment claims fail as a matter of law.

48. Finally, Citrin has an account stated counterclaim for \$20,000 plus pre-judgment and post-judgment interest based upon Strategic's failure to pay the amount stipulated in the engagement letter. The court finds this claim to be meritorious as a matter of law.

49. Under Florida law "[f]or an account stated to exist as a matter of law, there must be an *agreement between the parties* that a certain balance is correct and due and an express or implicit promise to pay this balance." Merrill-Stevens Dry Dock Co. v. Cornice Exp., 400 So. 2d 1286, 1287 (Fla. 3d DCA 1981) (emphasis added) (citations omitted).

50. Citrin's engagement letter drafted by Citrin states that "\$10,000 [is owed] upon completion of Form 10-k and the final payment of \$10,000, 30 days thereafter." (Pl.'s Ex. 11). In this case, the court heard expert testimony stating that it is improper in the auditing profession for payment to be conditioned upon the completion of audited financial statements. (7/22 Tr.). These types of agreements create doubt as to the independence of the auditors assigned to the engagement. The court found this testimony to be credible and worthy of belief.

51. Therefore, Citrin contends that the language as to the timing of the \$20,000 payment was included simply to provide an estimated date upon which Strategic's balance for Citrin's services rendered would become due and owing.

52. It is a settled principle of contract law that "[i]n situations such as this where a contract provision is subject to two interpretations one of which will render the contract illegal and one which

will sustain the validity of the contract, the Court will adopt the latter if it is reasonable.” Thermice Corp v. Vistaon Corp., 528 F. Supp. 1275, 1285 (D.C. Pa. 1981) (citing Cordova Associates, Inc. v. Dayton Rubber Co., 280 F.2d 858, 861 (6th Cir. 1961)).

53. Therefore, the court agrees with Citrin’s contention that the language of the engagement letter was intended to provide an estimated date of payment for services rendered and not to establish a condition precedent to payment of the final \$20,000.

54. Accordingly, the court finds that Citrin performed the services it was required to perform under the contract and, thus, is entitled to receive the final \$20,000 that Strategic contracted to pay for the audit of its fiscal year 2002 financial statements.

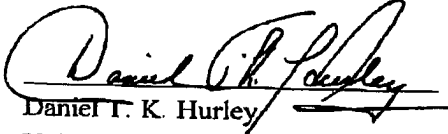
DECRETAL PROVISIONS.

Pursuant to the provisions of Fed. R. Civ. P. 58, a separate final judgment shall be entered to provide for the following:

1. Plaintiff Strategic Capital Resources, Inc. shall take nothing by this action against any defendant and shall go hence without day.
2. Defendant Citrin Cooperman & Company, LLP shall have judgment against the plaintiff Strategic Capital Resources, Inc., in the sum of twenty thousand dollars, \$20,000, for which let execution issue.
3. The court shall retain jurisdiction over this action and the parties to determine and assess costs and attorney’s fees, if appropriate.

Memorandum Opinion Containing Findings of Fact and Conclusions of Law
Strategic Capital Resources, Inc. v. Citrin Cooperman & Company, LLP., et al
Case No: 03-80349-CIV-HURLEY/LYNCH

DONE and **SIGNED** in chambers at West Palm Beach, Florida this 31st day of August,
2005.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record