IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Entwistle v. Davis & Davis Personal and Professional Development Seminars Ltd., 2004 NSSM 7
Claim No.: SCCH 224308

BETWEEN:

Name: **John and Joanne Entwistle** Claimants

- and -

Name: **Davis & Davis Personal and Professional Development Seminars Limited** Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on October 3, 2006. This decision replaces the previously distributed decision.

Counsel:
Claimants: Nicolle A. Snow
Defendant: Self Represented

D E C I S I O N

[1] This matter was heard on August 16, 2004. Both of the Claimants gave evidence and were represented by Ms. Nicolle A. Snow, barrister and solicitor.

[2] The Claimants' claim is phrased in terms of negligent misrepresentation and she relies on and refers to the Supreme Court of Canada case of *Queen v. Cognos*, [1993] 1 S.C.R.87.

[3] The Defendant states that the "claimants were solid clients for a period of ten months, enjoying repeat business and paid for services rendered", followed by a counterclaim for $40,000.00 based on the allegation of an unpaid balance plus lost revenues due to a alleged breach of contract on behalf of the Claimants.

[4] At the outset Ms. Laurie Davis who spoke on behalf of the Defendant and was the sole witness for the Defendant, referred to there being a $40,000.00 counterclaim and that she intended to pursue this in Supreme Court. I indicated at that time that in my view we should proceed with the claim and deal with the counterclaim argument once all of the evidence was in.

[5] I think the counterclaim (based on the alleged lost revenues due to an alleged breach of contract on behalf of the Claimants), and any procedural implications thereof can be dealt with summarily. After hearing all of the evidence, I am satisfied and find as a fact that there is absolutely no basis for that claim; Ms. Davis acknowledged in her evidence that this counterclaim for lost revenue would necessarily require a finding that Ms. Joanne Entwistle was obligated to stay for a year after her one year training. The question then is, where could such an obligation emanate from? Based on all of the evidence, there is no source for any such obligation whatsoever.

[6] A counterclaim of this magnitude could potentially be an issue if it were *bona fide* and was the subject of an existing Supreme Court action. However, it is not the subject of an existing Supreme Court action. As well, based on all of the evidence, I am satisfied that it is a frivolous allegation and devoid of *bona fides*. In my view, where the counterclaim is obviously frivolous, there is no need to adjourn the matter to give the Defendant an opportunity to file a counterclaim in the Supreme Court.

[7] Turning to the claim itself, the Claimants are father and daughter. John Entwistle is an 80 year old retired serviceman and RCMP officer originally from England. He worked for the RCMP for 31 years and was previously was in the Royal Air Force. He has been a widower for the last few years.

[8] His daughter, Joanne Entwistle, is 44 years old. She is a single woman and is currently unemployed. Joanne is visually impaired and indicated in her evidence that she is "legally blind". She testified that she has 5% vision in one eye and 3% in the other.

[9] Both John and Joanne Entwistle participated in a program called "PEP". PEP training is provided by the Defendant company. In the materials provided to the Court, PEP is described as follows:

> *"PEP™ (Personally Empowered People") is a powerful process designed for individuals who are willing and ready to make changes. The program embraces healing, empowerment training, goal setting, behavioral changes, and lifestyle skill development all happening at the same time."*

[10] In the same document (the PEP Coach Certification Program document), it refers to the author, Laurie Davis, stating:

> *"Laurie Davis is a pioneer. After 35 years of teaching and training others she has successfully honed the art of facilitation. What does that mean? It means she had developed a communication system that allows for complicated intellectual psychological theory, to be presented in a format that is hands on, simplistic to internalize. The information can be implemented and used to support individuals, who need and want to change attitudes and behaviors, that are not in their best interest."*

[11] Apparently there are two at least types of PEP training that can be taken. Mr. John Entwistle took the basic course and Ms. Joanne Entwistle took the Coach Certification Program. Mr. Entwistle was introduced to the program at a dinner party at Ms. Davis' home in Bedford. At this dinner party he met Ms. Davis' sister, Debbie Anthony. Ms. Anthony is 51 years old and apparently she and Mr. Entwistle developed a personal relationship. Following the dinner party he enrolled in the course.

[12] Mr. Entwistle introduced the PEP program to Joanne Entwistle. In her case it was to be a Coach Certification Program. Ms. Entwistle testified through her evidence and through an Affidavit which was tendered that she was told, by Ms. Davis, that the program would afford an employment opportunity after she concluded the course. All of the clientele would be provided by the Defendant once the one year training course (which was

$10,000.00) was concluded. I would note at this stage that the written material that the Coach Certification Program under the heading "Contractual Elements" states that the Defendant will provide "accessibility to new and existing clients". It was not entirely clear in the evidence whether this full document was read to Ms. Entwistle at the time she entered into the program.

[13] Sometime in early August 2003 Ms. Entwistle became aware that Laurie Davis and her husband, Ron Davis, had been convicted under Securities legislation in Prince Edward Island. Further, Ms. Entwistle understood that the matter had gone through an appeal process, and Ms. Davis had ultimately spent 60 days in jail as a result. She also understood that Mr. Davis had served 30 days in jail. Ms. Entwistle was understandably concerned and at that stage decided to no longer participate in the program. She testified and refers in her Affidavit, to Ms. Davis and Mr. Davis picking her up at her apartment in Dartmouth and driving out to Mr. Entwistle's home in Enfield. Ms. Entwistle referred to this as a very emotional discussion between herself, her father and Ms. Davis. Apparently Mr. Ron Davis stayed in the car. Ms. Entwistle stated that they discussed Mr. Entwistle's feelings for Ms. Anthony and that he was very concerned about his relationship with her. The meeting lasted between an hour and one and a half hours. The meeting concluded with Mr. Entwistle issuing a cheque for $2,500.00 for phase one of Ms. Entwistle's training and $286.35 for phase one of his own training. Notwithstanding her concerns, Ms. Entwistle did take the training. Ms. Entwistle testified that at some point in 2004, she began to have doubts about whether or not there would indeed be an employment opportunity after the conclusion of the course. She became aware that she would be required to solicit her own clients and that the opportunity was only for her to have a business, not employment. This lead to her withdrawing from the program and she issued a letter dated April 13, 2004, to that effect. This was then followed by an "exit interview" and "exit document" dated April 29, 2004. In the exit document, item 2 states that:

> *"The purchase was made in July of 2003* ***for a business****, with payment plans in place to support the ease of payment for the client. Should the client choose not to continue with the training or open their doors for business has no bearing on the original purchase price of the business. Balance due is $2,500.00 plus 15% HST on the total of ten thousand, 1,500.00. Should the bill not be paid we will pursue payment using other means that are available to us." (Emphasis added)*

[14] This document was prepared by Ms. Laurie Davis and signed by Ronald G. Davis, President. It was also signed by Joanne Entwistle, "business owner" and John Entwistle, parent. At the end of the document it states:

> *"By signing this document I am acknowledging and understanding what is being communicated. I understand these are business decisions that have been made with regard to our 9.5 month relationship with Davis and Davis and my (Joanne's) decision to leave the programs. I may or may not be in agreement."*

[15] Ms. Entwistle testified that had she known that an employment opportunity would not have been available, she would not have entered into the program in the first place.

[16] Ms. Entwistle testified that in approximately the one year period prior to entering into the program she had sent out over 600 resumes seeking employment. It was in evidence that Ms. Davis was aware of the significant attempts for employment that Ms. Entwistle had been making prior to enrolling in the PEP certification program.

[17] Mr. Entwistle was told by the Defendant that his involvement in the program was terminated. This is confirmed in the exit document for the stated reason "...in order to support Joanne's decision whole heartedly".

[18] Ms. Davis' evidence indicated that she had understood matters between her company and the Entwistles were satisfactory and that she never suspected any problems. She did indicate that there were incidences of conflict with her sister when her sister lost interest

in Mr. Entwistle as a lover/boyfriend. She indicated that she had been advised by clients that John was undermining the program so she made the decision to terminate his involvement. With respect to the counterclaim she said it was based on 36 clients who would not be supported at $1,000.00 per client. As stated above, I find that there is absolutely no basis for the counterclaim and it forms no basis for this decision either as to the ultimate result or as to jurisdiction to proceed.

[19] Ms. Davis stated that the option was open to Ms. Entwistle as to whether she would chose the role of an employee or entrepreneur. She stated that at the time of departure in April of 2004 Ms. Entwistle had not made the decision and that there had never been a discussion about it. She testified that the indication she had in January 2004 was that Ms. Entwistle wished to pursue it as a business but that no final decision had been taken. She confirmed that she would have stated that there "would be work" and a steady income would result. She also agreed that she advised Ms. Entwistle that clients would be available to her. Finally, Ms. Davis confirmed that at no time did she sit down and tell Ms. Entwistle that she was purchasing a business.

[20] Ms. Davis also indicated that Davis and Davis had no employees. All 13 in the field work as "entrepreneurs". She also confirmed that in January 2004 the Defendant shifted to a business only certification program.

Findings

[21] I find on all of the evidence that it was represented to Joanne Entwistle that employment would be available to her after she concluded the PEP course.

[22] I find as a fact that there was no such opportunity.

[23] I do not accept the evidence of Ms. Davis in this regard. I state in this regard that wherever the evidence of Ms. Entwistle or Mr. Entwistle was different than that of Ms. Davis on a material point, I accept the evidence of John or Joanne Entwistle.

[24] I also note that the exit document refers only to the purchase being made for a business. Even had I considered Ms. Davis to be an otherwise credible witness, this written document would have provided compelling evidence that the true position was that it was only a business opportunity.

[25] I find as a fact that had Ms. Entwistle known that it was purely a business opportunity after the course was concluded that she would not have entered into the course and would not have paid the $7,500.00.

[26] I find that as a matter of law that the result is the same whether it is analyzed on the basis of tort law, i.e. *Queen v. Cognos* or on the basis of contract law with the promise of employment being a fundamental term and contractual representation which would form a collateral warranty and which has been breached.

[27] I further find that the amount of $286.35 should be returned to John Entwistle as that was money paid for the phase of the program that he was taking and from which he was terminated. In this regard, while I have doubts that there was legal justification to terminate his enrollment, even if there was, it seems to the money should still be paid as

it was an advance payment against a service which was not provided. If the Defendant company wished to keep advance payments made in those situations, there would have to be a term of the contract and such term would have to be an express term in my view.

[28] With respect to the claim for the coaching, I am not satisfied that the Claimants have demonstrated on a balance of probabilities the entitlement of Joanne Entwistle to that amount which was $840.00.

[29] Therefore, in the result I will award the return of the $7500.00 plus the $286.35 for a amount of $7,786.35 plus costs of $160.00 for the filing fee and $40.25 for the service fee.

Disposition

I order that the Defendant pay the Claimants

Debt:	$7,786.35
Costs:	200.25
	$7,986.60

DATED at Halifax, Halifax Regional Municipality, Nova Scotia on November , 2004.

Michael J. O'Hara
Adjudicator

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