

BEING FIRST IS NOT ENOUGH: COURTS REJECT RECRUITERS' FEE CLAIMS

By *Linda Singer Roth*



In two recent but unrelated cases decided in New York State Supreme Court, legal recruiters were unable to collect fees they claimed were owed to them.

In *Mark Bruce International, Inc. v. Blank Rome, LLP*, it was undisputed that in October 2005 Mark Bruce first proposed a merger between Blank Rome and Healy & Baillie, a 28-lawyer firm specializing in maritime law. It was also undisputed that Blank Rome agreed, in an email communication, to pay Mark Bruce a “reasonably determined” merger fee if the deal went through. But soon after the initial proposal, Blank Rome informed Mark Bruce that it was not interested in the suggested merger.

Almost immediately, however, the same deal was proposed to Blank Rome again – this time by another recruiter, Major, Lindsey and Africa. While Blank Rome initially rejected Major, Lindsey’s proposal as it had rejected the Mark Bruce proposal, the firm eventually changed its mind and a merger between Blank Rome and Healy & Baillie was announced in September 2006. In connection with the merger, Blank Rome paid Major, Lindsey a \$729,931 fee, but refused to pay Mark Bruce.

In deciding to dismiss Mark Bruce’s claim, the Court found that under the statute of frauds, a contract to pay compensation for services rendered in negotiating a business opportunity had to be in writing, and the written contract had to contain all essential contract terms including terms regarding the payment of fees. The Court ruled that the email referencing only a “reasonably determined” fee was not

sufficient to satisfy the statute of frauds or make the contract between Blank Rome and Mark Bruce enforceable.

In *Sivin-Tobin Associates v. Akin Gump Strauss Hauer & Feld*, New York headhunter Eric Sivin claimed he was entitled to a fee because he first introduced Akin Gump to Korea specialist Chang-Joo Kim, who joined the firm’s New York office in April 2006. But the Court held that even if Sivin was first to submit Kim’s resumé to Akin Gump, that fact alone did not make him the “procuring cause” of the placement.

The Court also focused on the fact that Sivin sent Kim’s resumé unsolicited to Akin Gump’s New York office, while another headhunter from Boston Executive Search Associates sent the resumé to the Washington, D.C.-based head of Akin Gump’s Korea practice, who met with Kim shortly after receiving the resumé. Akin Gump credited Boston Executive Search with the placement and paid it \$227,500. The Court further noted that given Sivin’s relative inactivity, he had no reasonable expectation of payment.

About Linda Singer Roth, Counsel

Linda focuses her practice on commercial litigation. She has handled numerous matters involving breach of contract, unfair competition, misappropriation of trade secrets and fraud, and often works on cases related to the staffing industry. Linda can be reached at lroth@tarterkrinsky.com.