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Unregistered Finder Able to Enforce Vaguely Worded Finders' Fee Agreement

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In *NTV Management, Inc. vs. Lightship Global Ventures, LLC*, the Massachusetts Supreme Judicial Court overturned a lower court's conclusion holding a finder's fee agreement unenforceable because it was void under Massachusetts and Federal securities laws as the finder was not registered as a broker-dealer. The finder's fee agreement in question, like many such agreements, provided that the finder (NTV Management, Inc.) was to be paid a commission in connection with its sourcing of capital from investors and/or lenders needed for Lightship Global Ventures, LLC to acquire Salary.com. The agreement also provided that under certain conditions if Lightship did not use the sources of capital introduced by NTV in acquiring Salary.com, NTV would be paid an advisory fee of \$330,000 rather than a commission. After Lightship terminated its agreement with NTV, it consummated the acquisition of Salary.com using a source of capital not introduced to it by NTV. Ultimately, Lightship took the position that NTV was owed neither a commission nor an advisory fee in connection with its acquisition of Salary.com and NTV brought suit seeking payment of the commission or, alternatively, payment of the advisory fee.

Following a jury trial, the jury delivered a verdict in favor of NTV awarding it damages in the amount of the advisory fee and awarded treble damages under G.L. c. 93A. In response to post-trial motions, the trial judge vacated the jury award concluding that the finder's fee agreement was invalid and unenforceable because NTV was required but failed to register as a broker-dealer.

Under Massachusetts law, a person who is "engaged in the business of effecting transactions in securities for the account of others or for his own account" is required to be registered as a broker-dealer (Federal law is similar). If such a person or entity is not registered, it may not enforce a contract in violation of the securities laws. In deciding whether to enforce NTV's agreement with Lightship, the SJC looked to see whether the agreement on its face triggered an obligation for NTV to register as a broker-dealer. To do so, the SJC applied a two part analysis – determining "(1) whether the instrument that is the subject of the transaction is a 'security,' and, if so, (2) whether the conduct required by the contract amounts to 'effecting transactions.'" Finding that the language of NTV's



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agreement with Lightship was broad and indeterminate as to the specific form of transaction that such sourcing of capital would take, the SJC found that “the contract, on its face, did not require NTV to ‘effect’ transactions in ‘securities.’”

While the decision was doubtless a relief for the finder in this case, it is not advisable to act as a finder without closely examining the applicable securities laws. Doing so can lead not only to the compensation agreement being voided (as it almost was here) but can also result in serious sanctions from securities regulatory authorities. Rich May’s investment management practice group routinely helps clients navigate these issues.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney [Theodore Lund](#).