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New York Court Says Plaintiff Failed to Show Cause to Sanction Defendant When E-Mails Were Deleted in the Ordinary Course of Business

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Cuttino v. West Side Advisors, 2011 NY Slip Op 32009 (N.Y. Sup. Ct., 2011)

In a short order granting, in-part, plaintiff's request for summary judgment, New York Supreme Court Justice Joan Madden also denied that part of Plaintiff's motion for sanctions for spoliation of e-mails, which were deleted during the defendant's ordinary course of business.

Plaintiff, a portfolio manager at the defendant's investment firm, brought an action against his former employer to recover wages and other compensation, under both an alleged contract and the New York Labor Law. During discovery, the plaintiff demanded the defendant produce e-mails between two of the firm's employees, which, the plaintiff alleged, may have contained evidence relevant to the complaint . The e-mails, however, were deleted during the company's ordinary document retention and deletion process.

In deciding if there was sufficient basis to sanction the defendant for failure to preserve the e-mails, the Court cited *Ahroner v Israel Discount Bank of New York*, 79 AD3d 481, 482 (1st Dept. 2010). There the Court wrote:

> *On a motion for spoliation sanctions involving the destruction of electronic evidence, the party seeking sanctions must establish that (1) the party with control over the evidence had an obligation to preserve it at the time it was destroyed; (2) the records were destroyed with a culpable state of mind, and (3) the destroyed evidence was relevant to the moving party's claim or defense. A culpable state of mind, for purposes of a spoliation inference, includes ordinary negligence.*

Additionally, the *Ahroner* court held "if evidence is destroyed when the party in possession of the evidence had no reason to know that the evidence would be needed for future litigation, there is no spoliation."

Here, however, the Court concluded that the Plaintiff failed to show that the e-mails were destroyed while his claim was pending. Therefore, the Court found no reason to sanction the defendant for spoliation of e-mails deleted in the ordinary course of business.

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