

Alleged Online Defamer Sanctioned In E-Complaint Tiff

By **Dan Packel**

Law360, Philadelphia (April 04, 2014, 6:35 PM ET) -- A Pennsylvania federal judge ruled Thursday that a woman accused of defaming a Pennsylvania financial advising firm in online comments had failed to preserve files related to the company's electronic servicing of the complaint, awarding sanctions to the plaintiffs.

U.S. District Judge Curtis Joyner ruled that defendant Krista Brennan — who created websites critical of the business practices of First Senior Financial Group LLC, founder Philip J. Cannella III and financial adviser Joann Small — had acted inappropriately by failing to protect a computer that had been slated for forensic examination.

"When looked at in its totality, Brennan's course of conduct rises above mere negligence and inadvertence to effectuating actual suppression of evidence," Judge Joyner said in the opinion.

Brennan, under the internet pseudonym Watchdog, created several websites including truthaboutcannella.com and truthaboutcannella.net, that she claimed revealed the truth about the company's activities, according to the opinion. But the company filed a John Doe complaint against Watchdog in March 2012, alleging that the contents of the sites were disparaging and defamatory.

The court granted the plaintiffs' motion to service a complaint via email in August of that year and then entered a default judgment against Watchdog in December 2012, according to the opinion.

Brennan identified herself in February 2013 when she filed a motion to vacate the default judgment, claiming that she had never received the complaint via email.

Judge Joyner then ordered Brennan to identify and preserve all computers that she used to access two email addresses connected to the websites, and submit them for a forensic examination — at the plaintiffs expense — that would help determine whether the complaint had been received.

But during the examination, the one computer identified was found to be devoid of any data created by Brennan, and it was determined that Windows 7 had been reinstalled on the machine, according to the opinion.

The plaintiffs then moved for sanctions against Brennan, contending that the evidence in the case surrounding the servicing of the complaint had been spoliated.

Brennan had argued that the computer belonged to her mother and it was frequently out of her control, especially when she headed out of state.

But Judge Joyner found that even though she did not own the computer, she was still responsible for protecting it and did not give up that obligation simply by giving up physical access to the machine.

The judge did not go as far as to conclude that Brennan had destroyed the data, but he did conclude in the opinion that because of her failure to look after the computer and to promptly deliver it for the examination that she had acted in bad faith.

As a consequence, Judge Joyner ordered Brennan to pay the costs of the forensic exam as well as the plaintiffs' attorneys fees associated with the motion for sanctions.

"The judge definitely found that she failed to preserve the computer, which is very clear in the order," said Sid Liebesman, a partner at Montgomery McCracken Walker & Rhoads LLP.

The plaintiffs also sought sanctions on Brennan's attorney Jonathan Cohen over several concerns, including an affidavit that Brennan signed but later admitted to not reading, but they were denied in Thursday's opinion.

Cohen declined to comment on the case on Friday.

The plaintiffs are represented by Sid Liebesman, Carrie Sarhangi and Stephen Pachman of Montgomery McCracken Walker & Rhoads LLP.

Brennan is represented by Jonathan Z. Cohen.

The case is First Senior Financial Group LLC et al v. Watchdog et al, case number 2:12-cv-01247 in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Emily Kokoll.