

At I.A.S. Part 61 of the Commercial Division, New York County, Supreme Court of the State of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007 on the 23rd day of April 2019.

PRESENT: Honorable Barry R. Ostrager, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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CYPRESS GROUP HOLDINGS, INC.,

Plaintiff.

vs.

JUDGMENT

Index Number: 653408/2015

ONEX CORPORATION; CYPRESS MANAGER
LLC; GARY HARGER; MARY ELLEN
HARGER; DAVID J. MANSELL; DAVID R.
HIRSCH; BRATTLE STREET
INVESTMENTS, L.P.; STEVEN KOTLER;
1170821 ONTARIO INC.; 1170809 ONTARIO
INC.; 1170812 ONTARIO INC.; 1170698
ONTARIO INC.; KYZALEA COMPANY;
CYPRESS EXECUTIVE INVESTCO II LTD.;
1320976 ONTARIO INC.; ONEX CYPRESS
PARTNERS II LLC; 3062601 NOVA SCOTIA
COMPANY; AMERICAN FARM
INVESTMENT CORPORATION; 1301449
ONTARIO INC.; 1352536 ONTARIO INC.;
1352537 ONTARIO INC.; 1376653 ONTARIO
INC.; 1170819 ONTARIO INC.; EHON
CANADIAN HOLDINGS LTD (FORMERLY
EHON CANADIAN INVESTMENTS LTD.);
JOHN TROIANO; and ERIC ROSEN.

Defendants.
-----X

The issues in this action have come to be heard at I.A.S. Part 61 of the Commercial Division, New York County, Supreme Court of the State of New York, at the Courthouse located at 60 Centre Street, New York, New York 10007 before Justice Barry R. Ostrager, without a jury.

Plaintiff, Cypress Group Holdings, Inc. ("Plaintiff"), having an address at 12926 Gran Bay Parkway West, Suite 200, Jacksonville, Florida 32258, appeared by Evan S. Fensterstock, Esq. of Fensterstock, P.C., having offices at 200 Vesey Street, 24th Floor, New York, New York 10281, Plaintiff's counsel, and defendants appeared by Aaron F. Miner, Esq. among others of Arnold & Porter Kaye Scholer LLP, having offices at 250 West 55th Street, New York, New York 10019, defendants' counsel. The issues were tried without a jury from March 11, 2019 to March 14, 2019, both sides presented their proof, their respective counsel were heard, both sides submitted proposed findings of fact and conclusions of law on March 25, 2019, the court rendered a Decision and Order After Trial on March 28, 2019 ("March 28 Order"), the court issued a Notice on April 5, 2019, and the court rendered an amendment to the March 28 Order on April 5, 2019, in favor of Plaintiff and against certain defendants to be identified in this judgment on plaintiff's Policy Fee Breach claims in an amount to be calculated by the parties in accordance with the March 28 Order, awarding Plaintiff on its Third Addendum Breach claims \$2,000,000 plus pre-judgment interest at the statutory rate of 9% per annum from June 24, 2014 to March 28, 2019 (which the parties calculated as equaling \$857,096), awarding Plaintiff \$1,250,000 in attorneys' fees as of March 28, 2019, and directing the parties to settle a judgment reflecting the March 28 Order; and

WHEREAS, the parties conferred to compute the sums in addition to \$601,000 due to Plaintiff on the Policy Fee Breach claims, and the parties calculated the Policy Fee Breach damages to equal a total of \$871,431, comprised of \$614,014 on plaintiff's Policy Fee Breach claims and \$257,417 in pre-judgment interest. The \$614,014 was comprised of \$943,270 (principal overcharge) plus \$146,455 in debt financing costs calculated at the lowest rate of plaintiff's financing costs (11.6% plus 3-month Treasury bill) from July 14, 2014 until November 20, 2015, \$13,479 for vendor fees, and \$10,810 in legal fees, minus a \$500,000 threshold amount. The

\$257,417 in pre-judgment interest was comprised of calculating \$589,725 at the statutory rate of 9% per annum from July 14, 2014 to March 28, 2019 (which the parties calculated as equaling \$249,817) and the remainder \$24,289 at the statutory rate of 9% per annum from October 6, 2015 to March 28, 2019 (which the parties calculated as equaling \$7,600); it is,

ADJUDGED: That for the reasons stated in the Court's Decision and Order After Trial dated March 28, 2019, as amended by the Court's Order dated April 5, 2019, and the Court Notice dated April 5, 2019, judgment is entered in favor of Plaintiff as against defendants Onex Corporation, having a principal place of business at 161 Bay Street, Toronto, Ontario M5J 2S1, Canada and an additional place of business at 712 Fifth Avenue #40, New York, New York 10019, Cypress Manager LLC, having an address at Cypress Manager LLC, C/O Ladder Capital, Attn: Alan Fishman, 345 Park Ave., 8th Floor, New York, New York 10154, and Gary Harger, having addresses at 422 Eagle Pass Drive, Ponte Vedra, Florida 32081 and 87 Shore Drive North, Bristol, New Hampshire 03222 ("Defendants"), jointly and severally, in the total amount of \$4,978,527, comprised of \$2,614,014 on Plaintiff's Policy Fee Breach and Third Addendum Breach claims, \$1,114,513 in pre-judgment interest through March 28, 2019, and \$1,250,000 in attorneys' fees through March 28, 2019. The claims against all other defendants are dismissed. Plaintiff shall have execution against the Defendants, jointly and severally, for the total amount of \$4,978,527. X

ENTERED
Barry R. Ostrager
Barry R. Ostrager, J.S.C.
New York County
BARRY R. OSTRAGER
JSC

Judgment entered this 9th day of MAY, 2019

FILED

MAY - 9 2019

COUNTY CLERK'S OFFICE
NEW YORK

Mittent Kingling
CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 653408/2015

Cypress Group Holdings, Inc.

Plaintiff

VS

Onex Corporation, Cypress Manager Llc, Gary Harger, Mary Ellen Harger, David J. Mansell, David R. Hirsch, Brattle Street Investments, L.P., Steven Kotler, 1170821 Ontario Inc., 1170809 Ontario Inc., 1170812 Ontario Inc., 1170698 Ontario Inc., Kyzalea Company, Cypress Executive Investco Ii Ltd., 1320976 Ontario Inc., Onex Cypress Partners Ii Llc, 3062601 Nova Scotia Company, American Farm Investment Corporation, 1301449 Ontario Inc., 1352536 Ontario Inc., 1352537 Ontario Inc., 1376653 Ontario Inc., 1170819 Ontario Inc., Ehon Canadian Holdings Ltd (Formerly Ehon Canadian Investments Ltd.), John Troiano, Eric Rosen

Defendants

JUDGMENT

Attorneys for Plaintiff

Evan Steele Fensterstock
Firm Name: Fensterstock, P.C.
200 Vesey Street, 24th Floor
New York, NY 10281

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**FILED AND
DOCKETED**

MAY - 9 2019
AT 10:50 A.M.
N.Y., CO. CLK'S OFFICE