

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No.: 27-CV-14-12877

James L. Mandel, an individual,

Plaintiff,

**ORDER GRANTING
MOTION FOR
SUMMARY JUDGMENT**

vs.

Multiband Corporation, a Minnesota
corporation, and Ron B. Hill, an individual,

Defendants.

This matter came on before the undersigned Judge of District Court on April 10, 2015, in Courtroom 657, Hennepin County Government Center, 300 South 6th Street, Minneapolis, Minnesota, on Defendants' motion for summary judgment.

Mark J. Briol, Esq, William G. Carpenter, Esq. and Joseph A. Pull, Esq., Briol & Associates, PLLC, appeared for Plaintiff James L. Mandel ("Mandel").

Thomas C. Mahlum, Esq. and Seth A. Nielsen, Esq., Robins Kaplan LLP, appeared for Multiband Corporation, a Minnesota corporation ("Multiband") and Ron B. Hill ("Hill")(collectively, "Defendants").

Based upon all of the files, records and proceedings herein, together with the arguments of counsel, this Court enters the following:

ORDER

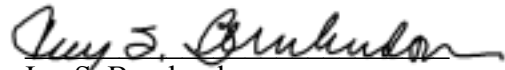
1. Defendants' motion for summary judgment is **granted**.
2. This case is dismissed with prejudice and on the merits.
3. Defendants' motion to exclude Plaintiff's experts is mooted.

4. The attached memorandum of law is incorporated herein.
5. The scheduling conference set for August 3, 2015, and trial in this matter are both struck from the Court's calendar.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: July 9, 2015


Ivy S. Bernhardson
Judge of District Court

MEMORANDUM OF LAW

Undisputed Facts

Multiband is one of three home service providers for DirecTV and provides DirecTV installation, service and upgrades for residential customers across the country. Multiband's primary customer and revenue source is DirecTV.

On August 30, 2013, Goodman Networks Incorporated, a Texas corporation ("Goodman") acquired Multiband, which became a wholly-owned subsidiary of Goodman.

Plaintiff Mandel had been the Chief Executive Officer of Multiband since 1998, and remained the Chief Executive Officer of Multiband after its acquisition by Goodman.

As part of the acquisition, Mandel and Multiband executed a new employment agreement, effective August 30, 2013 (the "Employment Agreement").

At the heart of this case is the termination for cause provision of the Employment Agreement, Section 5(c), which was the stated basis for Mandel's termination on July 1, 2014, by the Goodman Board of Directors, which has five members, three of whom are independent, outside directors. Mandel's termination was ratified by the Multiband subsidiary board of directors in a unanimous written consent dated July 1, 2014. The Multiband board is comprised solely of three Goodman employees. Ron Hill, CEO of Goodman, and John Goodman ("Mr. Goodman"), the executive chairman of Goodman, are on both boards.

On June 13, 2014, Hill received an e-mail inquiry from Scott Dunfrund of Houlihan Lokey, an investment banking firm, regarding a potential acquisition of Multiband. Mandel was not mentioned in the e-mail. Mr. Goodman also received the e-mail inquiry.

Hill and Mr. Goodman discussed considering the inquiry and possible transaction. Hill suspected that Mandel was behind the inquiry.

Shortly thereafter, Hill received a voicemail and e-mail from Anthony Guagliano of the Gores Group, another investment banking firm, asking to speak with him about Multiband. Guagliano did not reference Mandel.

Hill authorized an internal investigation by Goodman's legal department that involved hiring a consultant to search Mandel's company e-mail account. The internal investigation revealed that Mandel had been working with a number of investment bankers, unbeknownst to Hill or any officer or director of either Multiband or Goodman, to seek third-party offers to buy Multiband from Goodman. Mandel's correspondence obtained during the investigation included the following e-mail communications:

- (i) On May 30, 2014, Mandel sent Robin Engelson of the Sapphire Financial Group a current pro-forma for Multiband under the heading "Project Phoenix," including expense reduction estimates.
- (ii) On June 3, 2014, Mandel sent Engelson a project "teaser" titled "More Than [sic] a Service Company."
- (iii) The teaser disclosed confidential Multiband financial information, including past and forecasted revenue and EBITDA (earnings before interest, taxes, depreciation and amortization).
- (iv) On June 3, 2014, after sending Engelson the "teaser," Mandel wrote to her stating: "I think this is a Hail Mary but I'm willing to go after it quickly, if possible. We would need to get a non-binding offer out very, very quickly."
- (v) On June 11, 2014, Mandel sent contact information for Dave Baker of DirecTV to Anthony Guagliano of the Gores Group, and stated that "I believe that he will be the appropriate resource for your line of questioning."
- (vi) On June 12, 2014, Mandel sent Scott Dunfrund of Houlihan Lokey the same teaser sent to Engelson.

Multiband did not have nondisclosure agreements with some of the investment bankers, such as Dunfrund of Houlihan Lokey, whom were sent the teaser.

Hill decided he needed to take the matter to the Goodman Board of Directors.

On June 30, 2014, Hill and Mr. Goodman spoke to Dave Baker of DirecTV and learned that Baker had been contacted by and had recently met with the Gores Group about DirecTV's Owned and Operated business. Baker told Hill and Mr. Goodman that he suspected Mandel was behind the meeting.

The Goodman Board members received the legal department's Investigative Report late June 30, 2014, and met (telephonically) early on July 1, 2014. At that time, the Goodman Board authorized Mandel's termination for cause. Thirty-five pages of Mandel's communications were attached to the Investigative Report. The Multiband Board (comprised of Mr. Goodman, Hill, and Cari Shyiak, the COO of Goodman) signed a unanimous consent ratifying the termination of Mandel for cause.

Mandel was furnished with a letter hand delivered to him and dated July 1, 2014, advising of his termination and detailing the reasons why.

"Termination for Cause" under the Employment Agreement reduces the compensation and benefits owed the Employee. Mandel alleges he was wrongfully terminated for Cause and that Defendants defamed him in the process. Mandel asserts that he was terminated as part of a planned ongoing restructuring, and that he was terminated to save money by being fired for Cause under the Employment Agreement in order to avoid paying the higher severance due him for a "without cause" termination.

Two of the outside Goodman Board members testified at deposition that they were not aware of any potential restructuring as of July 1, 2014; that, accordingly, any such restructuring did not factor into their decision to terminate Mandel, and explained exactly why they agreed to the swift action to terminate Mandel for cause.

Mandel also argues that the internal investigation was flawed, and that an outside investigation should have been commenced through a Board committee and that the “wrong” board of directors authorized his termination.

Summary Judgment Standard

Summary judgment is appropriate when “ the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. A genuine issue of fact exists when “reasonable persons might draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff’s claim. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

In deciding a motion for summary judgment, the Court may only consider evidence that would be admissible at trial. *Hopkins v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991); *see* Minn. R. Civ. P. 56.05 (“opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence. . .”).

Minnesota Rule of Civil Procedure 33.02 provides that interrogatory answers may be used to the extent permitted by the Minnesota Rules of Evidence.

Based on the analysis that follows, the Court believes that no reasonable jury, considering the record as a whole, could find that Mandel was not terminated for Cause as defined in the Employment Agreement; that he has no claim for a 2013 or 2014 Bonus or

the loss of his stock option grant; and because he was terminated for Cause on the vote of an independent board of directors using their business judgment, and based on undisputed articulable facts and circumstances, the qualified privilege attaches to such decision and he has no claim for defamation.

Mandel's Actions and for Cause Termination

Section 21 of the Employment Agreement provides that it shall be “construed and enforced under and be governed in all respects by the laws of the State of Minnesota.” To withstand summary judgment, a plaintiff making a breach-of-contract claim bears the burden of showing a (1) valid contract; (2) performance of conditions precedent; (3) breach; and (4) damages flowing from the breach. *Lyon Fin. Svcs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014); *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. Ct. App. 2004). If a valid employment agreement provides for specific termination procedures, a discharged employee may sustain an action for breach if they are not followed and that failure causes damages. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627, 631 (Minn. 1983) (“Had the procedural disciplinary steps been honored, Mettille might have corrected his deficiencies to the bank’s satisfaction and have kept his job. . . . there was evidence that the loan file deficiencies were rather easily correctable and that Mettille was amenable to correction.”).

The construction of a contract, like the construction of a statute, is a question of law, unless the contract is ambiguous. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 324 (Minn. 2004). Additionally, where contractual provisions are susceptible of variant interpretations not dependent upon resolution of controverted

extrinsic evidence,¹ the issue is one of law for the court to resolve. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975). In interpreting contract provisions, courts give effect to the parties' intention by placing themselves in the position of the parties at the time of contracting and considering the language of the agreement as a whole in light of the surrounding circumstances. *Id.*

The Minnesota Supreme Court has not read an implied covenant of good faith into (at-will) employment contracts. *See Hunt v. IBM Mid Am. Empl. Fed. Credit Union*, 384 N.W.2d 853, 858-59 (Minn. 1986) (explaining the policy reasons why the Court rejected the implication of a covenant of good faith in terminations). The explicit terms of the Employment Agreement therefore provide the scope of obligations thereunder.

If a term, such as “for Cause,” is defined within the agreement itself, that meaning governs. *Bolander v. Bolander*, 703 N.W.2d 529, 543-44 (Minn. 2005). If the employment agreement does not define a term, the Court may look to relevant common-law understandings of the term for guidance. *See Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002).

In this case, the Employment Agreement defines “for Cause” termination and establishes who determines whether those substantive conditions have been met and how procedurally it makes that determination. The Notice of for Cause Termination delivered to Mandel identifies Section 5(c)(ii) of the Employment Agreement as the relevant provision. That section reads as follows:

(c) By the Company for Cause. The Company may terminate the Employee's employment hereunder for Cause at any time upon written notice to the Employee setting forth in reasonable detail the nature of such

¹ The parties have not identified any extrinsic evidence as relevant to the interpretation of the contract provision at issue in this case.

Cause. The following, as determined by the Chairman in its reasonable judgment, shall constitute Cause for termination:

(ii) Commission by the Employee of ~~ana~~ [sic] material act of dishonesty or fraud upon, or willful misconduct toward, the Company or any of its Affiliates or misappropriation of material Company property or corporate opportunities; as reasonably determined by the Board of Directors of the Company;

Section 5(c)(ii) of the Employment Agreement identifies the factfinder as the “Board of Directors of the Company.”² With respect to the substantive condition of termination for Cause, the Employment Agreement does not define the terms “material act of dishonesty or fraud,” “willful misconduct,” “misappropriation of material Company property,” or “misappropriation of . . . corporate opportunities.” Nor, with respect to the procedural condition, does it define “reasonably.” Accordingly, the Court examines common-law understandings of these terms in corporate and employment contexts, in arriving at the conclusion that Mandel’s claim for breach of the Employment Agreement fails as a matter of law because the conditions for such a termination were met and he was not materially damaged by any procedural irregularity, if there was one.

Substantive Condition

In order to have terminated Mandel for Cause, the Board would have had to have sufficient evidence, under the circumstances, to conclude that Mandel had committed a “material act of dishonesty or fraud,” “willful misconduct,” “misappropriation of material Company property,” or “misappropriation of . . . corporate opportunities.”³

In the employment context,

² The “Company” is identified at the outset of the Employment Agreement as Multiband Corporation.

³ The standard for sufficiency of the evidence, which is a question of law for the court, is whether “the evidence is so overwhelming on one side that reasonable minds cannot differ as to the proper outcome,” or where a factfinder could not reasonably make the required findings. *See, e.g., George v. Estate of Baker*, 724 N.W.2d 1, 6-7 (Minn. 2006).

[t]he term “misconduct” is limited to conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed “misconduct.”

Ress v. Abbot N.W. Hosp., Inc., 448 N.W.2d 519, 523-24 (Minn. 1989).

Mandel was the Chief Executive Officer of a multimillion-dollar subsidiary, and his superior officers in the parent company Goodman had every right to expect that he would fully comport with the fiduciary duties imposed on him as an officer of a Minnesota corporation, in addition to complying with its own Code of Business Conduct & Ethics and the parties’ Employment Agreement.

The Employment Agreement sets forth the scope of Mandel’s capacity. Section 3(b) provides that Mandel “shall perform such duties and responsibilities, consistent with the position of CEO on behalf of the Company and its Affiliates as may reasonably be designated from time to time by the Chairman.”

Mandel does not challenge the authenticity of the documents attached to the Investigative Report, nor does he challenge the veracity of the facts underlying the Report’s findings with respect to his actions.⁴

An officer of a Minnesota corporation “shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would

⁴ The record indicates that Hill misidentified Terheggen as an investment banker and that the people who contacted him did not say that they had heard Multiband was for sale, but that they had interested buyers. Neilsen Aff. Ex. 5 Tr. p. 207-09.

exercise under similar circumstances.” Minn. Stat. § 302A.361. “Good faith” is defined in the Minnesota Business Corporation Act as “honesty in fact in the conduct of the act or transaction concerned.” Minn. Stat. § 302A.011 subdiv. 13.

It is illegal for any officer or director of a corporation to impair his duty of undivided loyalty to a corporation by exercising his official duties for the benefit of any individual or group other than the corporation itself. *Viiliainen v. Am. Finnish Workers Soc.*, 53 N.W.2d 112, 116 (Minn. 1952). Goodman’s Code of Business Conduct & Ethics, which by its terms bound Mandel as an officer of a Goodman subsidiary, prohibited any influences that might divide loyalty in business dealings, providing that an employee must disclose any transaction or relationship that could constitute or result in a conflict of interest and listing the following factors that may be considered in evaluating a conflict of interest:

- Whether it may interfere with the employee’s job performance, responsibilities, or morale;
- Whether the employee has access to confidential information;
- Whether it may interfere with the job performance, responsibilities or morale of others within the organization;
- Any potential adverse or beneficial impact on our business;
- Any potential adverse or beneficial impact on our relationships with our customers or suppliers or other service providers;
- Whether it would enhance or support a competitor’s position;
- The extent to which it would result in financial or other benefit (direct or indirect) to the employee;
- The extent to which it would result in financial or other benefit (direct or indirect) to one of our customers, suppliers or other service providers; and
- The extent to which it would appear improper to an outside observer.

In the employment context, “dishonesty” often means theft or lying during an investigation, submitting false orders or invoices, or falsifying timesheets or employment applications. *See, e.g., Icenhower v. Total Automotive, Inc.*, 845 N.W.2d 849, 856 (Minn. Ct. App. 2014), *Frank v. Heartland Automotive Svcs.*, 743 N.W.2d 626, 630-31 (Minn. Ct.

App. 2008). These are merely examples, however, and are not exhaustive. Where a fiduciary relationship exists, silence may constitute fraud. *Richfield Bank & Trust Co. v. Sjogren*, 244 N.W.2d 648, 650 (Minn. 1976).

Misappropriation of a company's property occurs when fiduciaries or other employees deal with company property for their own benefit. *See, e.g., Minn. Loan & Trust Co. v. Peteler Car Co.*, 156 N.W. 255, 258 (Minn. 1916). Under Minnesota common law, misappropriation of business opportunity occurs when the business opportunity in question is of sufficient importance and is so closely related to the existing or prospective activity of the corporation as to warrant judicial sanctions against its personal acquisition by a managing officer or director of the corporation; and in the acquisition, the officer in question violated his fiduciary duties of loyalty, good faith, and fair dealing toward the corporation. *Miller v. Miller*, 222 N.W.2d 71, 81-82 (Minn. 1974). Goodman's Code of Business Conduct & Ethics related the two principles, providing in its "Business (Corporate) Activities" section that

[i]n carrying out their duties and responsibilities, employees, officers and directors should endeavor to advance the legitimate interests of the Company when the opportunity to do so arises. Employees, officers and directors should avoid, for example: . . .[u]sing Company property or information, or their position as employees, officers or directors, for personal gain.

The section of the Code of Business Conduct & Ethics titled "Proprietary and Confidential Information" further provided that

Employees, officers and directors must maintain the confidentiality of all information so entrusted to them, except when disclosure is authorized or legally mandated. Confidential or proprietary information includes, among other things, any non-public information concerning Goodman Networks, including its businesses, financial performance, results or prospects, and any nonpublic information provided by a third party with the expectation that

the information will be kept confidential and used solely for the business purpose for which it was conveyed.

With the law regarding the duties of corporate officers and the business's code of business conduct as a backdrop, a reasonable factfinder could conclude that Mandel was engaged in a pattern of dishonest behavior and disloyalty toward his corporate superiors and his own Multiband business. In fact, in this case, it would have been unreasonable for a corporate board to conclude otherwise.

Multiband had only recently been purchased by Goodman—in August 2013. Mandel's "Hail Mary" sale efforts began nine months later, with no consultation with Goodman lawyers, his boss, the Chairman of Multiband, or anyone else at Goodman. When senior corporate officers of a corporation learn that a senior officer of a wholly-owned subsidiary is engaged in efforts to find buyers for a recently acquired business without their knowledge and consent and gives outsiders internal, unvetted, and non-public financial information, and it also appears that officer wants to be a part of the separated business going forward,⁵ and he refers interested parties to speak privately to the biggest customer of the business, that company has a serious management and leadership control issue requiring immediate action to obtain secure control of the situation and ensure the stability of the business, which may clearly be at risk. No reasonable board of directors, fully understanding its fiduciary role, could countenance such behavior by a senior corporate officer.

Mandel's immediate termination for Cause was vital to ensuring the credibility and stability of the Goodman and Multiband businesses and their leaders. This decision fully comports with the Goodman Board's fiduciary obligations.

⁵ As evidenced by Mandel's June 3, 2014, email to Robin Engelson stating, "We would need to get a nonbinding offer out very, very quickly."

Procedural Condition and Good Faith

The Court also reads the term “reasonably” in the context of corporate board decisionmaking. Section 302A.251, subdivision 1, of the Minnesota Statutes sets the standard for corporate decisionmaking as follows: “A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.” In so doing,

a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by: (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; [or] (2) counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person’s professional or expert competence . . .

Id., subdiv. 2(a)(1)-(2).

The Court therefore interprets the term “reasonably” as the parties used it in the Employment Agreement to incorporate aspects of good faith and due care. The Court addresses each in turn, concluding that neither procedural aspect was breached, and if it was, it did not cause Mandel damages.

Section 302A.011, subdivision 13, of the Minnesota Statutes defines “good faith” in corporate law as “honesty in fact in the conduct of the act or transaction concerned.” Mandel argues that Hill and Goodman had an ulterior motive for terminating him cheaply as part of a restructuring of Multiband, but the record lacks evidence that any of the three independent members of the Goodman, Inc. Board knew about any restructuring discussions or concerns, or that any business restructuring was discussed at the meeting

when they voted to terminate Mandel for cause. In short, the record lacks any evidence that any proposed restructuring was a basis for that Board's decision.

Mandel also argues that the termination decision was made too hastily and without more and independent investigation and that the report prepared by Goodman's legal department and presented to both Boards ("Investigative Report" or "Report") did not include his explanation for his actions. Mandel does not challenge the authenticity of the documents attached to the Investigative Report, nor does he challenge the veracity of the facts underlying the Report's findings with respect to his actions.⁶

The terms of the Employment Agreement do not specify what kind of investigation is required for a "for Cause" determination, and the Court will not write a requirement for such an independent investigation or opportunity for response into the parties' contract. *Cf. Hilligoss*, 649 N.W.2d at 145 (opportunity for response referenced in procedure for for-cause termination). Most importantly, Mandel has not brought to the Court's attention any exonerating evidence that an independent or more extensive investigation would have revealed. *See Mettille*, 333 N.W.2d at 631 ("Had the procedural disciplinary steps been honored, Mettille might have corrected his deficiencies to the bank's satisfaction and have kept his job. . . . there was evidence that the loan file deficiencies were rather easily correctable and that Mettille was amenable to correction."). Instead, uncontroverted evidence revealed through discovery in this case shows that Mandel contacted Baker, Senior Vice President of DirecTV, Multiband's largest client, to express concerns about the company and Goodman's management and to encourage him to influence Goodman to sell

⁶ The record indicates that Hill misidentified Terheggen as an investment banker and that the people who contacted him did not say that they had heard Multiband was for sale, but that they had interested buyers. *Neilsen Aff. Ex. 5 Tr. p. 207-09.*

Multiband, that he had an interest in the transaction at some point, and that he took steps to prevent Goodman from discovering his involvement in the process.⁷

Factfinder

Mandel argues that the factfinder identified in the Employment Agreement, Multiband's Board, did not engage in a reasonable process when it summarily ratified the Goodman Board's decision to terminate him for cause based on the Investigative Report. For many reasons, Mandel cannot show that he was damaged by the fact that the Goodman Board was the one that held a meeting, heard a presentation on the Investigative Report, and initiated the decision to terminate him for Cause. It was within the legal power of Goodman, as sole shareholder, to take action on behalf of the Multiband Board. Minn. Stat. § 302A.201 subdiv. 2(c). Two of the three directors (a majority) on Multiband's Board were also directors on Goodman's Board; Mandel could only have received better process with the addition of the three independent directors on Goodman's Board.

For the above reasons, the Court dismisses Mandel's breach of contract claim against Multiband.

Defamation Claim

Mandel also asserts a defamation claim. To establish this claim, he must prove that (i) the defamatory statement is communicated to someone other than the plaintiff; (ii) the statement is false; and (iii) the statement tends to harm the plaintiff's reputation and to lower plaintiff in the estimation of the community. *McKee v. Laurion*, 825 N.W.2d 725, 729-30 (Minn. 2013).

⁷ The Court did not consider any of this evidence in its analysis with respect to the substantive aspect of Mandel's termination for cause, as the Boards did not consider it.

A communication is subject to a qualified privilege defense if it is “made upon a proper occasion, from a proper motive, and [] based upon reasonable or probable cause.” *Lewis v. Equitable Life Assurance Soc’y*, 389 N.W.2d 876, 890 (Minn. 1986). “Statements made in the course of an employer’s investigation into employee misconduct are protected by the qualified privilege.” *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 923 (Minn. 2009). An employer’s communication to an employee of the reasons for discharge are also subject to qualified privilege. *Lewis*, 389 N.W.2d at 890.

The issue of whether a communication is privileged is a question of law for the court to decide. *Id.* The Court concludes that the statements made within Goodman and Multiband were made in the course of the investigation into Mandel’s misconduct and were made in good faith furtherance of that investigation and are thus privileged. For reasons addressed with respect to the breach-of-contract issue, the Court also concludes that Mandel’s termination letter is privileged.

To overcome this privilege, Mandel bears the burden to demonstrate actual malice by identifying facts that demonstrate Defendants acted with ill will or carelessly and wantonly for the purpose of harming him. *Bahr*, 766 N.W.2d at 920. Malice cannot be implied from the statement itself or from its falsity. *Lewis*, 389 N.W.2d at 890; *Bol v. Cole*, 561 N.W.2d 143, 150 (Minn. 1997). Instead, malice can be shown by extrinsic evidence of spite as well as by intrinsic evidence such as exaggerated language and the mode and extent of publication. *Bol*, 561 N.W.2d at 150. Summary judgment is appropriate when the evidence presented fails to raise any genuine issue of material fact as to malice. *Id.* at 150-51. As the Court has concluded for the reasons set forth above that Defendants acted prudently and reasonably in their role as corporate fiduciaries, it also concludes that

Mandel has failed to raise any genuine issue of material fact as to the malice of these statements.

With respect to the communications between Goodman and Hill and DirecTV employees Baker and Altomari that Mandel would be terminated for cause based on violations of his employment contract including misconduct and dishonesty, the Court concludes, for the reasons set forth above, that the statements were true. Truth is a complete defense to a defamation action. *McKee*, 825 N.W.2d at 730.

Unpaid Wages: 2013 Bonus and Value of Unvested Stock Option Grant

The Employment Agreement provides that, “[u]pon the giving of written notice of termination of the Employee’s employment hereunder for Cause, the Company shall have no further obligation to the Employee, other than for Final Compensation.” The Employment Agreement defines “Final Compensation” as

the Base Salary earned but not paid through the date of termination and . . . any business expenses incurred by the Employee but un-reimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within ninety (90) days of termination and such expenses are reimbursable under Company policy.

Because Final Compensation does not include bonuses or stock options, Mandel concedes that his claims for them are based on his breach of contract claim and the challenge of his termination for Cause. Because the Court has determined that Mandel was terminated for Cause, he is not entitled to the 2013 Bonus or stock options.

Furthermore, even if Mandel’s termination was not properly deemed for Cause, he would not have been entitled to a 2013 bonus or unvested stock options.

Section 4(b) of the Employment Agreement provides for the payment of a bonus according to the applicable Multiband bonus plan. The 2013 Multiband Short-term

Incentive Plan was adopted by the Multiband Board on February 20, 2013, and it established performance benchmarks based upon revenue and operating income. No bonus would be earned unless Multiband had 2013 revenues of at least \$319 million and operating income of \$20 million. Multiband's 2013 year-end consolidated financial statements reflect actual revenues of \$308,288,826 and operating income of \$4,391,250, meaning that no bonus was available. No evidence was presented that indicates that the authorized benchmarks for 2013 were modified in any way to reflect business changes that occurred subsequent to the setting of the benchmarks. Accordingly, there is no genuine issue of material fact regarding Mandel's claim for payment of the 2013 Bonus.

Section 4(d) of Employment Agreement provided that Mandel would be entitled to a stock option grant of 40,000 shares of Goodman common stock, vesting in one-third installments annually as compensation for all services performed under and during the three-year term of the Employment Agreement. Mandel was terminated two months before the first installment would have vested. Under the Employment Agreement, Mandel could be terminated at any time and had no right to expect continued employment. The only limitations on termination of his at-will employment were the conditions for deeming the termination "for Cause." *Cf. Mettille*, 333 N.W.2d at 630-31 (finding that the terms of the employment contract restricted the bank's right to terminate Mettille at will). The Goodman Stock Option Agreement explicitly provides that, "to the extent that the unexercised portion of the Stock Options relates to Optioned Shares which are not vested on the date of the Participant's Termination of Service, that portion of the Stock Option will be terminated on that date." The Employment Agreement contains no language giving Mandel any further rights to unvested stock options.

Declaratory Judgment

Mandel's claims for declaratory judgment also rely on his breach of contract claim and are thus also dismissed.

For the reasons set forth above, the Court grants Defendants' motion for summary judgment and dismisses Mandel's claims.

ISB