



STOKES WAGNER Wins Rare Misclassification Case Beverly Hills Hotel Sommelier Deemed “Learned Professional”

LOS ANGELES, CA (8/8/16)

In a two-week arbitration before retired Judge Luis Cardenas, the Stokes Wagner team successfully defeated the claims of Nino O’Brien, former sommelier at the legendary Polo Lounge at the Beverly Hills Hotel. Mr. O’Brien claimed he was improperly classified as a manager since the start of his employment in 2008 and, therefore, was owed \$216,743.57 for unpaid overtime, missed meal and rest breaks, and liquidated damages.

Mr. O’Brien’s misclassification claim was the second lawsuit filed by him and his counsel, Rob Hennig and Brandon Ruiz of the Hennig Ruiz Law Firm, against the Beverly Hills Hotel. Mr. O’Brien first sued the Beverly Hills Hotel for harassment and discrimination. On the eve of that trial, Mr. O’Brien filed a second complaint against the Beverly Hills Hotel for misclassification and retaliation. In Mr. O’Brien’s first case, a Los Angeles jury returned a complete defense verdict in favor of the Beverly Hills Hotel following a five-week trial in August of 2014. The Beverly Hills Hotel is represented in both cases by the Stokes Wagner team, including Arch Stokes, Peter Marez, Diana Dowell, Shirley Gauvin, and paralegal Eleanor McCloskey.

More than a year after losing his first case against the Hotel, Mr. O’Brien’s misclassification claim was arbitrated in front of Judge Cardenas. O’Brien made three claims against The Beverly Hills Hotel – failure to pay overtime, failure to provide lawful meal and rest breaks, and unfair competition under California Business and Professions Code section 17200. Mr. O’Brien claimed that most of his work time was spent selling wines to guests, that he had no ultimate authority to select or purchase wines. Bolstered by expert testimony from a former Deputy Labor Commissioner, Mr. O’Brien sought to portray himself as a glorified salesman and nothing more.

The Stokes Wagner team countered that Mr. O’Brien boasted of close to twenty years of studying wine, most of it self-directed, and he had two sommelier certifications. In his tenure as Sommelier at the Polo Lounge, Mr. O’Brien quadrupled the number of wines on the Polo Lounge’s wine list and received numerous awards, including awards from the Wine Spectator. The arbitration exhibits included scores of emails between O’Brien and wine makers and distributors. Perhaps the most noteworthy exhibit was a bottle of



the rare cult wine classic – *Screaming Eagle* – several vintages of which Mr. O’Brien was responsible for having on the Polo Lounge wine list.

Although the Learned Professional exemption is typically applied to professions such as doctor or lawyer, the Stokes Wagner team argued that it should be applied to Mr. O’Brien who, despite not having an advanced formal degree, pursued an extensive study of wine spanning over seventeen years, and successfully obtained Sommelier certifications. Although he may have spent more than half of his time selling, the arbitrator found this does not undermine the exemption. Selling is part of the job of Sommelier, which satisfies the requirement of the Learned Professional exemption. Acknowledging O’Brien’s unquestioned knowledge and talent in the field of wine selection and sales, Judge Cardenas remarked that “It almost seems insulting to Mr. O’Brien to consider him as anything but a learned professional.”

One of the Dorchester Collection hotels, the *Beverly Hills Hotel* is a Five Star/Five Diamond luxury hotel property located in Beverly Hills, California.

Stokes Wagner specializes in the representation of hospitality and restaurant clients in labor and employment matters throughout the nation.

Please contact Peter Marez of Stokes Wagner at 619-237-0909/pmarez@stokeswagner.com for all inquiries.

Case Information:

Case Title: Nino O’Brien v. Sajahtera, Inc. dba The Beverly Hills Hotel

Case Number: 1200049587

Forum: Judicial Arbitration and Mediation Services

Nature of Suit: Failure to Pay Overtime; Failure to Provide Meal/Rest Breaks;
Unfair Competition

Judge: Hon. Luis Cardenas (Ret.)

Date Filed: April 22, 2014

Law Firms: Arch Stokes, Peter Marez, Diana Dowell, Shirley Gauvin and paralegal Eleanor McCloskey, Stokes Wagner, ALC (Respondent); Rob Henning, Brandon Ruiz, Hennig Ruiz Law Firm (Claimant)

