

<p>Philadelphia, Pennsylvania 19107 Telephone: 215-238-1701</p>	<p>ASOCIACION DE LICENCIADOS DE FILADELFIA Servicio De Referencia E Informacion Legal Filadelfia, Pennsylvania 19107 (215) 238-1701</p>
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Attorney for Plaintiffs

ORI C. FEIBUSH and	:	COUNTY PHILADELPHIA
FRIENDS OF ORI FEIBUSH	:	COURT OF COMMON PLEAS
2054 South Street	:	
Philadelphia, PA 19146	:	
	:	
Plaintiff,	:	NO.
	:	
v.	:	CIVIL ACTION
ED NESMITH	:	
2448 Tasker Avenue	:	
Philadelphia, PA 19145	:	
Defendant.	:	

COMPLAINT

Plaintiffs, Ori C. Feibush and Friends of Ori Feibush, bring this complaint against Defendant, Ed Nesmith, as follows:

Parties

1. Plaintiff, Ori C. Feibush (“Feibush”), is an adult individual and resident of the Commonwealth of Pennsylvania with a place of business located at 2054 South Street, Philadelphia, PA 19146.

2. Plaintiff, Friends of Ori Feibush, is a Candidate’s Political Committee organized under the laws of the Commonwealth of Pennsylvania with a place of business located at 1944 South Street, Philadelphia, PA 19146.

3. Defendant, Ed Nesmith (“Nesmith”), is an adult individual and resident of the Commonwealth of Pennsylvania with a place of business located at 2448 Tasker Street, Philadelphia, PA 19145.

Background

4. In or about November 2013, Ori Feibush announced his intention to run for election to Philadelphia City Council as a member of the Democratic party challenging the incumbent, Kenyatta Johnson, who is also a member of the Democratic party.

5. In order to receive campaign contributions and make expenditures, Feibush established Friends of Ori Feibush, a Candidate’s Political Committee, as defined in 25 P.S. § 3241.

6. Nesmith is the Democrat Ward Leader for Philadelphia’s Second Ward, a political operative, and a veteran of many Philadelphia election campaigns.

7. In or about August 2014, Nesmith pledged his support to Feibush in his challenge to the incumbent and agreed to assist Feibush in his election campaign.

8. In mid-April 2015, Feibush and Nesmith entered into an agreement (the “Agreement”) whereby Nesmith agreed to provide Feibush with certain services prior to and on primary Election Day that would further Feibush’s campaign efforts.

9. Prior to primary Election Day, Nesmith stated he would need to incur expenses to perform his services under the Agreement and required that they be paid for in advance.

10. The expenses that Nesmith stated he would incur were payment for at least five workers from each division for a total of 320 Election Day workers, rental charges for fifteen large vans, payment for four drivers for the vans, payment for six Election Day “coordinators,” gas, food

for 331 people, and “walking around money.” A copy of Nesmith’s list of anticipated expenses appears as Exhibit “A.”

11. The anticipated expenses totaled \$57,834.

12. Moreover, under the Agreement, Nesmith demanded that Feibush sign a \$50,000 promissory note (the “Note”) to cover potential additional Election Day expenses. A copy of the Note is attached at Exhibit “B.” It is believed that Nesmith has a fully executed copy of the Note.

13. Finally, under the Agreement, Feibush agreed to pay \$2,000 per week for four weeks to cover expenses for cookouts and coffee clutches.

14. This was to be a total expenditure of \$8,000.

15. Considering these three items together, Feibush agreed to pay Nesmith up to a total of \$115,834 under the Agreement.

16. However, Nesmith scheduled no cookouts or coffee clutches during the term of the Agreement so Feibush made no payments for those items.

17. Prior to Election Day on May 19th, 2015, at Nesmith’s direction, Friends of Ori Feibush paid \$86,000 to Nesmith’s political action committee C.O.P.S. This amount includes the full amount of \$57,834 for anticipated election expenses, and \$28,166 toward the Note for unanticipated election expenses.

18. After Election Day, Feibush made additional payments totaling \$20,000 before it became clear that Nesmith had not performed his duties under the Agreement and had spent little of the money Feibush and/or Friends of Ori Feibush paid him, if any, in support of the Feibush campaign.

19. It also became apparent that Nesmith had not performed duties to assist in electing Feibush and had not incurred the expenses he claimed he would be required to incur.

20. Following the election, Feibush demanded that Nesmith provide evidence that he actually incurred the expenses he alleged he would incur on primary Election Day and/or additional expenses that would have been covered by the Promissory Note.

21. However, despite repeated demands, Nesmith refused.

22. Instead he replied to Feibush's requests for invoices and receipts with bizarre emails.

23. In an email dated August 12, 2015, Nesmith stated to Feibush:

“Nesmith, didn't rent know (sic) van or Ed Nesmith did rent know (sic) van, What happen (sic) to turkey & toys!!
PEACE OUT
P.S.
Nesmith will provide invoice (sic) for his service (sic), but you gave Nesmith Check,
So I will be paying taxes as always.”

A copy of Nesmith's August 12, 2015 email is attached at Exhibit “C.”

24. In another email dated August 12, 2015, Nesmith replied to a Feibush email and stated:

“Stop emailing me Ok
If I have Receipts I (sic), I wouldn't give them to you ANYWAY!!!!!!!!!!
THEY NOT (sic) YOURS, understand!!!!!!!!!!!!!!!!!!!!”

See Exhibit “C.”

25. In another August 12, 2015 email Nesmith replied:

“Lincoln free the slave, MASTER!,!!!”

See Exhibit “C.”

26. Finally, in yet another August 12, 2015 Nesmith stated:

“Master, master, master it coming!!!”

See Exhibit “C.”

27. Nesmith owes Feibush and/or Friends of Feibush \$106,000.

COUNT I
Breach of Contract

28. Feibush and Friends of Ori Feibush incorporate by reference the allegations in the preceding paragraphs.

29. Under the Agreement, Nesmith agreed to perform services for Feibush and/or Friends of Ori Feibush.

30. Under the Agreement, Feibush agreed to reimburse Nesmith for expenses Nesmith incurred.

31. Nesmith breached the Agreement for failing to perform the services required of him under the Agreement, failing to act in good faith under the Agreement, and accepting payment for expenses that he did not incur.

32. As a result of Nesmith's breach, Feibush and Friends of Feibush have been damaged.

WHEREFORE, Plaintiffs, Ori Feibush and Friends of Ori Feibush, demand judgment in their favor and against Defendant, Ed Nesmith, in an amount in excess of \$50,000, costs incurred, and any other relief that is appropriate.

COUNT II
Unjust Enrichment

33. Feibush and Friends of Ori Feibush incorporate by reference the allegations in the preceding paragraphs.

34. Nesmith accepted money from Feibush and Friends of Feibush for labor and services that he did not perform.

35. Nesmith has benefited from the money he received from Feibush and Friends of Feibush.

36. It would be unjust for Nesmith to retain the money he received for Feibush and Friends of Feibush when he did not perform the service for which he demanded payment.

WHEREFORE, Plaintiffs, Ori Feibush and Friends of Ori Feibush, demand judgment in their favor and against Defendant, Ed Nesmith, in an amount in excess of \$50,000, costs incurred, and any other relief that is appropriate.

COUNT III Conversion

37. Feibush and Friends of Ori Feibush incorporate by reference the allegations in the preceding paragraphs.

38. Nesmith has retained money from Feibush and Friends of Ori Feibush without their consent.

39. Feibush and Friends of Ori Feibush have demanded Nesmith return the money to them.

40. Feibush and Friends of Ori Feibush have been damaged by Nesmith intentional conversion of the money tendered to him for the expenses he never incurred.

WHEREFORE, Plaintiffs, Ori Feibush and Friends of Ori Feibush, demand judgment in their favor and against Defendant, Ed Nesmith, in an amount in excess of \$50,000, costs incurred, and any other relief that is appropriate.

COUNT IV
Fraud

41. Feibush and Friends of Ori Feibush incorporate by reference the allegations in the preceding paragraphs.

42. Nesmith misrepresented to Feibush and Friends of Feibush that he would incur the expenses he stated he would incur for primary Election Day activities.

43. Nesmith representations about the expenses were knowingly false when he made them.

44. Nesmith intended for Feibush and Friends of Ori Feibush to rely on his statements regarding primary Election Day expenses in order to induce them for paying for the expenses.

45. Feibush and Friends of Ori Feibush justifiably relied on Nesmith statements that he would in fact incur the expenses.

46. Nesmith's actions are extreme and outrageous.

47. Nesmith should be punished to deter other from engaging in similar conduct.

48. Feibush and Friends of Ori Feibush have been damaged by Nesmith's fraud.

WHEREFORE, Plaintiffs, Ori Feibush and Friends of Ori Feibush, demand judgment in their favor and against Defendant, Ed Nesmith, in an amount in excess of \$50,000, punitive damages, costs incurred, and any other relief that is appropriate.

ZIMOLONG, LLC

By: _____
Walter S. Zimolong
Attorney for Plaintiff

Date: October 28, 2015

VERIFICATION

I, Ori C. Feibush make this verification on my personal behalf and on behalf of Friends of Ori Feibush and that the facts contained in the foregoing are true and correct based upon my knowledge, information, and belief. I understand that statements herein are made subject to the penalties set forth in 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

VERIFICATION

I, Ori C. Feibush make this verification on my personal behalf and on behalf of Friends of Ori Feibush and that the facts contained in the foregoing are true and correct based upon my knowledge, information, and belief. I understand that statements herein are made subject to the penalties set forth in 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'O.C. Feibush', is written over a horizontal line.

EXHIBIT “A.”

36th Ward Election Day Expense	Cost		
41 Divisions			.....
205 People	100 X 205 =	20,500	.....
15 Seat Passenger Van Alamo	316.18 X 15 = 4,700	4,700	.....
5 Drivers	5 X 125 = 625	625	.....
4 Coordinators	4 X 250 = 1,000	1,000	.....
Gas	5 X 100 = 500.00	500	.....
Food for 429 people	214X 20 =	4,280	.....
Walking Around Money	2,845	2,845	.....
Administration Fee 15%		5,168	.....
	Total	39,618	.....

48 Ward Election Day Expense			
23 Divisions			
115 People	100 X 115 = 11,500	11,500	
2 Coordinators	2 X 250 = 500	500	
Food for 117 People	117 X 20 = 2,340	2,340	
Walking Around Money	1,500	1,500	
Administration Fee 15%		2376	
	Total	18,216	

EXHIBIT “B.”

Promissory Note

THIS PROMISSORY NOTE dated the _____ day of _____, 2015.

Ori Feibush
of
2054 S. 20th St.
Philadelphia, PA 19146
(The "Borrower")

hereby acknowledges receipt of \$50,000.00

-from-

Edward Nesmith
2448 Tasker St.
Philadelphia, PA 19146
(The "Lender")

1. Promise of Payment

For value received, the Borrower hereby promises to pay to the Lender at 2448 Tasker St., Phila., PA or at such other place, or to such other party, as the Lender may from time to time designate in writing, the principal sum of \$50,000.00.

2. Schedule of Payments

This note is due and payable as follows, to wit: four consecutive installments of \$12,500.00 payable pursuant to the following schedule:

1. May 29, 2015. First installment of \$12,500.00 due.
2. June 19, 2015. Second installment of \$12,500.00 due.
3. July 13, 2015. Third installment of \$12,500.00 due.
4. August 10, 2015. Fourth installment of \$12,500.00 due.

Upon payment in full of the balance owing on this Note, this Note shall be surrendered to the Borrower for cancellation.

3. Events of Acceleration

The occurrence of any of the following shall constitute an "Event of Acceleration" by Borrower under this Note:

- (a) Borrower's failure to pay any part of the principal or interest as and when due under this Note; or
- (b) Borrower's becoming insolvent or not paying its debts as they become due.

4. Acceleration

Upon the occurrence of an Event of Acceleration under this Note, and in addition to any other rights and remedies that Lender may have, Lender shall have the right, at its sole and exclusive option, to declare the unpaid principal balance and any accrued interest immediately due and payable. *Borrower further agrees that upon the occurrence of an event of acceleration, Borrower shall pay interest on the unpaid principle balance at a rate of 10 percent per day beginning on the day that the unpaid balance is declared immediately due by Lender.*

5. Subordination

The Borrower's obligations under this Promissory Note are subordinated to all indebtedness, if any, of Borrower, to any unrelated third party lender to the extent such indebtedness is outstanding on the date of this Note and such subordination is required under the loan documents providing for such indebtedness.

6. Waivers by Borrower

All parties to this Note including Maker and any sureties, endorsers, and guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

7. Expenses

In the event any payment under this Note is not paid when due, the Borrower agrees to pay, in addition to the principal and interest hereunder, reasonable attorneys' fees not exceeding a sum equal to 15% of the then outstanding balance owing on the Note, plus all other reasonable expenses incurred by Lender in exercising any of its rights and remedies upon default.

8. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

9. Successors

All of the foregoing is the promise of the Borrower and shall bind Borrower and Borrower's successors, heirs and assigns; provided, however, that Borrower may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the holder of this Note.

IN WITNESS WHEREOF, Borrower and Lender have executed this Promissory Note as of the day and year first above written.

Ori Feibush, Borrower

Edward Nesmith, Lender

On this.....day of, 20....., before me personally appeared the aforesaid borrower and lender, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of....., State of..... the day and year first above written.

.....

Notary Public

.....

My commission expires:

EXHIBIT “C.”

Van Receipts

21 messages

Ori Feibush <ori@ocfrealty.com> Wed, Aug 12, 2015 at 11:48 AM
 To: Ed Nesmith <ejnsacks@aol.com>, omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

All:

Please provide copies of receipts for rented vans from May 19, 2015. Your timely response is appreciated.

Ori

Sent from my iPhone

Ed Nesmith <ejnsacks@aol.com> Wed, Aug 12, 2015 at 12:02 PM
 To: Ori Feibush <ori@ocfrealty.com>
 Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Nesmith , didn't rent know Van or Ed Nesmith didn't rent know van, What happen to the turkey & toys!!

PEACE OUT

P.S

Nesmith will provide invoice for his service, but you gave Nesmith Check,

So I will be paying my taxes as always.

Sent from my iPhone

[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com> Wed, Aug 12, 2015 at 12:22 PM
 To: Ed Nesmith <ejnsacks@aol.com>
 Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Ok so Omar and Kevin, do you have the receipt? I am not understanding why producing one piece of paper is so difficult.

The three of you keep sending me to the next person. Whichever of you has the receipt please chime in.

Omar, Kevin?

Sent from my iPhone

[Quoted text hidden]

Ed Nesmith <ejnsacks@aol.com> Wed, Aug 12, 2015 at 12:33 PM
 To: Ori Feibush <ori@ocfrealty.com>
 Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Stop e - mailing me Ok

If I have the Receipts I, I wouldn't give them to you ANYWAY!!!!!!!!!!!!!!

THEY NOT YOURS, understand!!!!!!

Sent from my iPhone

[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Ed Nesmith <ejnsacks@aol.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>
Bcc: wally@zimolonglaw.com

Wed, Aug 12, 2015 at 12:36 PM

Stop emailing you? They are in fact mine. Producing them will save us all a lot of grief. If they don't exist why not?

This is not a complicated request, you are business people who don't have a receipt for purchase this big?

Omar, Kevin? When may I expect the receipt?

Sent from my iPhone
[Quoted text hidden]

Ed Nesmith <ejnsacks@aol.com>
To: Ori Feibush <ori@ocfrealty.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 12:44 PM

How about this , you not getting them,
Mr. Bad Man. Now bring the Grief !!!!

Sent from my iPhone
[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Ed Nesmith <ejnsacks@aol.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 12:47 PM

You guys want me to use you for demolition and framing and this is how you treat me?

Sent from my iPhone
[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Gregg Kravitz <greggkravitz@gmail.com>

Wed, Aug 12, 2015 at 12:48 PM

Sent from my iPhone

Begin forwarded message:

From: Ed Nesmith <ejnsacks@aol.com>
Date: August 12, 2015 at 12:44:32 PM EDT
To: Ori Feibush <ori@ocfrealty.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>
Subject: Re: Van Receipts

[Quoted text hidden]

Ed Nesmith <ejnsacks@aol.com>
To: Ori Feibush <ori@ocfrealty.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 12:51 PM

Who are you guys,? I haven't ask you for no work!

Case ID: 151003031

Sent from my iPhone
[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Ed Nesmith <ejnsacks@aol.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 12:59 PM

So Omar doesn't have your backing when he represents Nesmith and company?

Sent from my iPhone
[Quoted text hidden]

Edward <ejnsacks@aol.com>
To: Ori Feibush <ori@ocfrealty.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 1:07 PM

I didn't ask you for NOTHING, Cut the B.S

You know what you suppose to do? Lot of drama , Bad Man
OMAR and KEVIN is they own man, do you know what that mean,

Lincoln free the slave , MASTER!,!!!

Sent from my iPad
[Quoted text hidden]

Gregg Kravitz <greggkravitz@gmail.com>
To: Ori Feibush <ori@ocfrealty.com>

Wed, Aug 12, 2015 at 1:20 PM

Don't forget the ponchos.

—
Gregg Kravitz
215-353-7762 Cell

[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Edward <ejnsacks@aol.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 1:30 PM

Lincoln is my favorite President, now where's my receipt.

Sent from my iPhone
[Quoted text hidden]

Ed Nesmith <ejnsacks@aol.com>
To: Ori Feibush <ori@ocfrealty.com>
Cc: omar <omar@nesmithco.com>, Kevin Price <kprice152@comcast.net>

Wed, Aug 12, 2015 at 1:41 PM

Master , master , master it coming!!!

Sent from my iPhone
[Quoted text hidden]

Ori Feibush <ori@ocfrealty.com>
To: Ed Nesmith <ejnsacks@aol.com>

Fri, Aug 14, 2015 at 8:00 PM

Case ID: 151003031