

EXHIBIT 14

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JAMS ARBITRATION
BEFORE
ALEXANDER L. BRAINERD, ESQ. (ARBITRATOR)
---000---
OTO ANALYTICS INC.,
d/b/a WOMPLY,
Claimant,
Ref. No. 1210038203
vs.
BENWORTH CAPITAL PARTNERS LLC,
Respondent.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME IV
Thursday, March 23, 2023

Stenographically Reported by: Ashley Soevyn,
CSR No. 12019
Job No. 5807507

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OTO ANALYTICS INC.,
d/b/a WOMPLY,
Claimant,
Ref. No. 1210038203
vs.
BENWORTH CAPITAL PARTNERS LLC,
Respondent.

Arbitration proceedings taken on behalf
of the parties, located at JAMS, Two Embarcadero
Center, Suite 1500, San Francisco, California
beginning at 9:32 a.m. and ending at 4:07 p.m. on
Thursday, March 23, 2023, before ASHLEY SOEVYN,
Certified Shorthand Reporter No. 12019.

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Ashley Soevyn, CSR No. 12019

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P R O C E E D I N G S

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ARBITRATOR BRAINERD: Let's go back on the record.

Mr. Cheney just advised me that he can fill out the blanks on this, but two or three members of his team have contracted COVID, and apparently none of them, I guess, were in this room. So that's a good thing. And so the most exposure anybody would have had to them, from your side of the fence, would have been, I guess, you know, a casual walk-by in the hallway or something.

But in view of this, and I didn't do it this time. As Ashley knows, in the last case I was in, we had tested every day. So I am going to change my order for everybody to test every day, at least for the next few days, just so we make sure nobody is packing COVID.

And if you want to wear a mask, which I may do, I don't whether I will or not. I mean, I am in danger group, as they say in the trade. So feel free to mask up if you want. I mean, it's your own judgment as to what you want to do.

But I do want everybody to affirm that they will test every day.

1 A According to this data, yes.

2 Q Do you know whether, in Womply's internal
3 data, Benworth had the lowest average loan amount?

4 A I don't know off the top of my head.

5 Q If Benworth had the lowest average loan
6 amount, that means they were most likely to have
7 more loans in which the loan processing fee would be
8 less than the amounts due to Womply under the April
9 agreement?

10 A Maybe.

11 Q So just using common sense, funding
12 35,000 loans in one week, is that something you
13 expect somebody can do with a manual review of
14 loans?

15 A If they had sufficient resources, sure.

16 MR. PIEDRA: We can take this down.

17 BY MR. PIEDRA:

18 Q You agree that Fast Lane was designed to
19 exclude any user applications that did not meet the
20 requirement of the PPP program, correct?

21 A No, I don't agree with that.

22 Q I will refer you --

23 MR. PIEDRA: Do you have his depo there?
24 Is that Volume II? Does that include Volume II?

25 THE WITNESS: It appears to be Volume I.

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1 BY MR. PIEDRA:

2 Q Referring you to page 215 of that
3 deposition.

4 (Reporter clarification.)

5 BY MR. PIEDRA:

6 Q Sure. You recall your deposition being
7 taken in this case on September 9th, 2022,
8 correct?

9 A Yes.

10 Q Okay. And on page 215 of that
11 deposition, on line 5 -- well, on line 1, you were
12 asked:

13 (As read):

14 "Womply is saying to Benworth through
15 this contract," what is written in a I,
16 Roman numeral II, "how is Womply able
17 to make that representation to
18 Benworth?"

19 Your answer on line 5:

20 (As read):

21 "Well, to the extent we're filtering
22 applications based on information that
23 users then put into this system, our
24 system was designed to exclude any user
25 applications that obviously didn't meet

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1 the requirements for the program."

2 Do you see that?

3 A Yes, I do.

4 Q And that was your testimony back in
5 September 9th, 2022?

6 A Yeah, I'm not sure what that is in
7 relation to the question, but that was my testimony.

8 Q You would agree that Womply employed
9 technology to reduce top-of-the-funnel fraud,
10 correct?

11 A Not just top of the funnel. We provided
12 lenders with a ton of technology to try to reduce
13 fraud throughout the entire life cycle of the loan,
14 from the top of the funnel all the way through the
15 moment when loan was funded and in some cases even
16 after the loan was funded.

17 Q You did this to increase the quality of
18 the PPP applications that were coming to the lenders
19 through Fast Lane, correct?

20 A That was partially why we did it. We
21 also did it as one of the services that we were
22 providing through our technology to lenders after
23 those referrals were made to lenders.

24 Q And you provided that data output from
25 those technologies to the lenders, correct?

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1 A We provided a subset of that data to
2 lenders, that's right.

3 Q Let me take you, going back to the --
4 your direct examination exhibit notebook, Tab 3,
5 which is JX 370.

6 A Yup, I'm there.

7 Q Specifically page 16 of that exhibit.

8 A Yup, I'm there.

9 Q We talked a little bit about this on your
10 direct examination.

11 Here, Mr. Capoccia's selfie verification
12 failed, correct?

13 A Yes.

14 Q And I recall you gave the reasons for the
15 failure. Mr. Capoccia thinks it's because of his
16 beard, but you think it's because of the pictures in
17 background, something like that, correct?

18 A Yeah, I'm simply pointing out the red
19 circle with the line through it that says, "Multiple
20 faces." And I'm more familiar with the technology
21 than Cory is.

22 Q Good.

23 So at this point in the process, when
24 Mr. Capoccia's selfie fails, that loan has not yet
25 been referred to a lender, correct?

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1 ARBITRATOR BRAINERD: Well, let's take
2 these matters one at a time. What was the first
3 request that you made?

4 MR. PIEDRA: The first request was to
5 admit the select subcommittee's report.

6 ARBITRATOR BRAINERD: Well, I still
7 maintain that the subcommittee report is hearsay,
8 and therefore, not admissible, I think.

9 But if you want to brief the issue and
10 submit a brief to me in that regard, you are free to
11 do so as long as Womply's attorneys have a chance to
12 submit a reply brief.

13 Again, I will say this, I've said it many
14 times, the subcommittee report is clearly hearsay.
15 It's the classic example of hearsay.

16 First of all, I'm being asked to receive
17 it, I presume, for truth of the content in it, so --
18 and it's been made out of court. Not only has it
19 been made out of court, there's been an
20 investigation conducted by a group of people who
21 received whatever evidence they received and made
22 whatever judgments they made.

23 I have no idea what the process was; I
24 don't have no idea of the basis for their decisions;
25 I have no idea whether their decision are based on

1 any reliable fact or law.

2 It is hearsay, clearly and unequivocally
3 hearsay, and if you want to tell me otherwise,
4 that's fine. But if you want to submit a brief to
5 me that suggests that this is a document, even
6 though it's rank hearsay that should come before me
7 for some particular reason, you are free to do so.

8 But right now, I am not going to receive
9 that document based upon fact, because I have stated
10 many times and I've stated emphatically today, I
11 consider the document to be classic hearsay and I am
12 not going to receive it.

13 That said, you are free to brief it, and
14 if you want to, fine. I would suggest if you want
15 to, that you and counsel from Womply discuss a
16 briefing schedule. I think probably the most
17 efficient way would be to have, you know,
18 simultaneous briefs submitted to me, and I will
19 consider whatever law you submit and whatever
20 argument you want to make and I will make a ruling.
21 But on record before me right now, I will not
22 receive the subcommittee report.

23 So what is the next issue?

24 MR. PIEDRA: The next issue, because you
25 specifically stated -- you basically asked for this

1 letter, which we didn't have. And no one mentioned
2 this letter.

3 You said, "Is the SBA investigating, and
4 when will that investigation be complete?"

5 I think now we know.

6 You said you would have continued the
7 proceedings if you had known this information on
8 official SBA letterhead, and it wasn't provided to
9 you.

10 MR. CHENEY: May I respond to that?

11 ARBITRATOR BRAINERD: I first want -- I
12 want to correct what I -- I mean, I'm not --
13 everybody has a recollection of what I said, but
14 here's the thing.

15 Ms. Seaborn was presented to me -- this
16 all came up in context of her proffered testimony.
17 Ms. Seaborn was offered to me as a witness who was
18 going to come in and possibly say one of two things:
19 One, that SBA had completed an investigation into
20 the legality of the Womply fees. Or two, such an
21 investigation was underway. And then there was some
22 reference to the fact that maybe you didn't exactly
23 know what she was going to say.

24 So on the basis of that, I asked you
25 specifically, because you were the people that were

1 offering this information to me, that -- I said if
2 you could provide me with reliable information from
3 the SBA, such as an order, such as some kind of
4 investigative notice or whatever they do over there,
5 I would give consideration to the possibility of
6 continuing the case, because I was not interested,
7 nor should I render what would be an advisory
8 opinion.

9 In other words, if the SBA had already
10 made a ruling on the legality of the fees, I or any
11 other judge would not want to spend, you know, three
12 weeks or two weeks, or whatever it's going to be, to
13 render an opinion which was essentially advisory.
14 So -- and I know we had sort of a free-falling,
15 sometimes heated discussions, for which I have
16 already apologized, but, regardless of that.

17 So I don't have your letter in front of
18 me, but you submitted a letter to me late on Friday
19 night, the 10th, in which you -- there was nothing
20 in that letter that told me anything, one way or
21 another, as to whether or not, in fact, the SBA was
22 doing one or the other, namely they had made a
23 determination regarding the legality of Womply's
24 fees or they were investigating.

25 So on that basis, I, on Friday --

1 whatever that date was, what is it, the 18th or
2 the 17th, I ordered this matter to go forward.
3 And so here we are.

4 And so that's all I can say. So I am not
5 criticizing anybody. I'm just saying this is the
6 record before me. So on that record, I said that I
7 would not continue this matter.

8 Now, referring to this letter, and, you
9 know, I'm seeing this for first time too, I don't
10 see any reference in here that there is any
11 investigation into the matter of the legality of
12 Womply's fees. So on the basis of this letter
13 alone, I would not continue the case.

14 But given your concern about timing,
15 we're here in March. We're going to finish this
16 hearing, I presume sometime next week, so it will be
17 in last week of March. We're going to have a
18 briefing schedule, right? I don't know how long it
19 will be; we will have to talk about that.

20 So this hearing and the briefing
21 surrounding it probably won't get to me before the
22 middle of April or the end of April. I have two
23 other opinions that I have to get out before I
24 address your opinions.

25 So as a matter of cold, hard fact, we

1 will probably be well into June before I'm in a
2 position to provide what would be, as we have
3 discussed before, an interim award.

4 So I think your concerns about timing
5 are -- I understand what your concerns are, but just
6 on a practical matter, I don't think we're probably
7 going to have to worry about that. So I think -- I
8 can't remember what the third matter was that you
9 addressed to me, but --

10 MR. PIEDRA: No, you've addressed them.
11 I have concerns about the facts.

12 First of all, I understand what you say,
13 that this doesn't specifically say fees. However,
14 it says, "compliance with SBA loan program
15 requirements," and it's based on the select
16 subcommittee's report, which specifically made
17 findings with respect to Womply's fees, and this was
18 withheld.

19 This shouldn't have been withheld, this
20 information shouldn't have been withheld when you
21 put our backs to the wall to come up with the letter
22 that we had no power to get.

23 ARBITRATOR BRAINERD: So I guess what I'm
24 asking you, Mr. Piedra, is are you making a motion
25 or what do you want me to do?

1 MR. PIEDRA: I think you've addressed it,
2 is to withhold any ruling until this investigation
3 is completed.

4 ARBITRATOR BRAINERD: Well, I haven't
5 ruled on it, yet. What I've said, as a practical
6 matter, we are going to be into June probably before
7 I get an award out.

8 At that point in time, if you so choose,
9 you can make a formal motion to me with respect to
10 the timing of anything that happens in this case,
11 and I think that's the best way to proceed. You can
12 do that whenever you want. All right?

13 MR. PIEDRA: Understood.

14 ARBITRATOR BRAINERD: Now, I had a long
15 colloquy with counsel on this side of the room.

16 What do you want to say?

17 MR. CHENEY: All I want to say is that
18 Mr. Piedra has represented a few times, that that --
19 the staff report by the select subcommittee of the
20 coronavirus crisis makes findings about Womply's
21 fees.

22 That is not accurate. The house report
23 does not concern Womply's fees in any way. And so
24 we agree that if the arbitrator is going to hear
25 this, it should be briefed.

1 ARBITRATOR BRAINERD: Just so I know
2 where we are -- I think we should break for lunch
3 after this. Just so I know, where are we? I mean,
4 there is nothing formally before me, so I am not
5 going to rule on this.

6 This document is in evidence, I have
7 taken it into evidence. We have all discussed our
8 respective positions as to the import of this
9 document. And I think I have given you two --
10 Mr. Piedra, I think I've given you two options.

11 One is with respect to the congressional
12 subcommittee report, if you disagree with my ruling,
13 you are more than welcome, you and your whole team
14 is more than welcome, I don't know who would
15 actually address this by a formal motion, but you
16 are welcome to test my ruling with some kind of
17 motion. And if you are going to do that, I will
18 just ask you to coordinate with counsel so we get a
19 briefing schedule that makes sense.

20 The other thing I suggested to you is
21 that, as we proceed with this case, and we haven't
22 even got to the end of evidence so we haven't even
23 talked about a briefing schedule. But as we proceed
24 through this case, if you find additional
25 information or a matter has come to your attention

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1 which you believe warrant a continuance of this case
2 or a deferral of this decision or whatever the
3 appropriate relief you might want to see, you again
4 are free to present that motion to me, and I will
5 obviously give it full consideration.

6 MR. PIEDRA: And what I would ask the
7 Court, because clearly it's lost on them, is that
8 you admonish Womply to do the same if and when they
9 receive any such communication from the SBA or
10 anyone else.

11 ARBITRATOR BRAINERD: Well, I will think
12 about that. I mean, you're the one that's urging
13 this matter to be deferred. They are not.

14 So I don't think anybody should hide any
15 relevant information from anybody. We are all -- so
16 this is a truth and justice seeking procedure. We
17 all agree with that. So all information that might
18 assist me or bear upon my decisions, I should have.
19 All right? That's the best -- I will leave it at
20 that. And I will trust that the lawyers -- you are
21 all fine lawyers, you have done a great job so far,
22 I will trust the lawyers will act accordingly.

23 Understood?

24 MR. CHENEY: Understood.

25 MR. ROBINSON: This is Dwayne Robinson

1 talking. I don't want to belabor this much longer,
2 but you said repeatedly the congressional report is
3 ranked hearsay. What we are suggesting is it has a
4 non-hearsay purpose, which is to provide context for
5 what the SBA is talking about in that letter, what
6 it is investigating.

7 Mr. Cheney told you -- it's incorrect
8 what Mr. Piedra told you about what the police
9 report says. Accept the evidence and read it for
10 yourself.

11 Thank you.

12 ARBITRATOR BRAINERD: I understand what
13 you're saying.

14 Again, what I suggest is, if that's the
15 basis for you wanting me to review the report, make
16 a motion, give me the law, and they can reply to it.
17 And if I agree with you, I will take the report for
18 that limited purpose. It's the best I can do.

19 I am leaving it up to you, initially, to
20 decide what you want to do. By "you," I'm pointing
21 over to respondent's side of the table, Mr. Piedra
22 and Mr. Robinson and the rest of the team, and you
23 can decide what you want to do.

24 MR. PIEDRA: Understood.

25 ARBITRATOR BRAINERD: Do we want --