

## Saiber Wins Appeal in Disability Employment Discrimination Case

January 22, 2013

On January 23, 2013, the Appellate Division affirmed the granting of summary judgment in favor of our client, *Alternative Investment Solutions, Inc.* in *Cornacchiulo v. Alternative Investment Solutions, Inc.*, Docket No. A-4871-10T2.

Plaintiff was employed by Alternative Investment Solutions, Inc. (“AIS”) as Senior Vice President of Product Development. After nine months on the job, Plaintiff was terminated for poor performance. Plaintiff filed an administrative charge alleging disability discrimination, in which Plaintiff elected to dual-file the charge with the Equal Employment Opportunity Commission (“EEOC”) as well as the New Jersey Department on Civil Rights (“NJDCR”). The EEOC and NJDCR have a worksharing agreement, by which one of the agencies will actually conduct an investigation of a dual-filed complaint and the other agency will usually abide by the results of an investigation conducted by the investigating agency.

Pursuant to this worksharing agreement, the EEOC investigated the matter and ultimately advised Plaintiff that it was unable to conclude that AIS violated any statutes. The NJDCR notified Plaintiff that he could seek an independent investigation if he could show good cause, but he never made such request. Instead, he filed a lawsuit in state court and belatedly tried to withdraw his NJDCR charge. Plaintiff’s failure to follow the procedures and to act in timely fashion with respect to his NJDCR complaint precluded his lawsuit.

On appeal, the Appellate Division rejected Plaintiff’s argument that the NJDCR should be compelled to conduct an independent investigation of his claim because Plaintiff failed to present any facts or law to support his contention that the worksharing agreement and that the decision of the EEOC did not comply with New Jersey law.

James H. Forte, Sean R. Kelly, and Melissa A. Provost wrote the successful briefs and were responsible for this matter.