

Misstatements by the Defendant and by the Court and at Trial

All the following excerpts from the noted documents are about Newton's proposed agreement, no part of which was ever enacted or used as a contract, in which Newton asks for a "count" of listings, but Newton's suggested language was misconstrued in an attempt to show that Newton was asking for the accuracy of listings. This misconstrued and obfuscated information was given to the Court and the Court relied on this obfuscated information to form their Opinions and Orders.

From the Affidavit of Gwen Langkilde
In opposition to a Motion for Summary Judgment

June 22, 2018

5. John Newton's proposed contract sought a requirement that ASTCA produce all of its listings "within plus or minus 10% accuracy" and within a specified deadline of "no later than 180 days prior to the target publication date". See Exhibit A, Attachment A, Responsibilities of ASTCA.

The above is an untrue statement. My proposal did not ask for "all of its listings". Rather it only asked for a count of the listings. Precisely "ASTCA shall announce to PPC a count of all listings" is exactly what is written in [Newton's proposed contract](#). This section of the proposal goes on to say, "The purpose of this count is to facilitate planning of the book size and quantities required". This has nothing to do with individual listings. It is only asking for a quantity of listings, nothing more than that. The 10% accuracy has to do with the count, not the listings.

From [Memorandum in Opposition](#) to Plaintiff's Motion for Summary Judgment

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The [Proposed Agreement](#) included a requirement that ASTCA produce all of its listings "within plus or minus 10% accuracy, "in refutation, Langkilde said, "ASTCA would not guarantee the accuracy of its listings or the timeframe within which the listings would be provided."

These statements are untrue. Newton was not asking for the accuracy of listings, he was only for the accuracy of the count.

From Langkilde Deposition

12/23/23

Q. So yes, here in Section 1 of Attachment A that ASTCA will announce its listings within plus or minus ten percent accuracy no later than 180 days prior to targeting publication date and you've marked that on here what appears to be your notes; can you elaborate on what you meant by those notations?

A. Well, specifically that and I explained this to Newton that we would not be able to agree to a specific accuracy number; what ASTCA would be able to provide was what ASTCA had in its data base.

The above question is an intentional fabrication of the fact that Newton wrote in his [proposal](#). Newton was not asking “ASTCA will announce its listings within plus or minus ten percent accuracy”. The true statement from Newton’s proposal was “ASTCA shall announce to PPC a count of all listings”. The difference between these two statements is the word “count”, which clearly means that Newton wanted only a count of listings.

The answer above is a deliberate obfuscation of the facts. Langkilde is making it seem as if Newton was asking for the accuracy of listings when he was only asking for the accuracy of the count of listings. There is a huge difference between these two statements.

Then the Court relied on this fabrication of the facts to form its opinion as evidenced in the [Opinion and Order](#), page 3 and again in the [Order Denying a new trial](#), footnote 3.

From the Opinion and Order of the Court

June 27, 2023

On Page 3

“Newton wrote a draft contract outlining the terms and responsibilities he believed the parties should have under the new agreement. See [Exhibit 34](#). Two of the proposed terms were for ASTCA to (1) provide him subscriber listings accurate to within plus-or-minus ten (10) percent, and (2) have a count of the subscriber listings announced to him no later than 180 days before the projected publication date. Id.”

This statement misstates what was actually written in Exhibit 34 and draws a very different conclusion of what might have been the Court’s Opinion if the writer had actually read Exhibit 34. This is a clear case of the Court making a bad judgment. One cannot help but wonder if there is an underlying motive for such a serious misinterpretation.

From the Order Denying Motion for New Trial

September 19, 2023

[footnote 3] “We opted to accept the version of facts as given by ASTCA’s in-house counsel Gwen Tauilili-Langkilde’s testimony, which effectively showed the MOU to embody a very deliberate refutation or rejection of Newton’s detailed proposal of ASTCA’s obligations as outlined in [Plaintiff’s Exhibit 34](#).”

A version of the facts? What kind of irrational statement is that? Comparing Gwen Tauilili-Langkilde’s testimony to the real facts as shown in [Exhibit 34](#), will reveal the real facts, without doubt.