

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 30/2023

SETTLEMENT OF DISPUTE

BETWEEN

STERLING ASSET MANAGEMENT LIMITED

AND

MR. DWAYNE HUNTER

AWARD

I.D.T. DIVISION

MR. ERROL MILLER, J.P.	-	CHAIRMAN
MR. LESLIE HALL, J.P.	-	MEMBER
MRS. CHELSIE SHELLIE-VERNON	-	MEMBER

OCTOBER 31, 2025

Dispute No.: IDT 30/2023

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**STERLING ASSET MANAGEMENT LIMITED
(THE COMPANY)**

AND

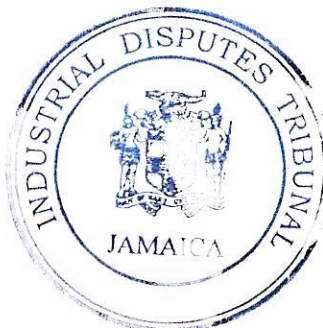
**MR. DWAYNE HUNTER
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated, December 18, 2023, the Honourable Minister of Labour and Social Security in accordance with Section 11 (1) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein: -

The Terms of Reference were as follows:

“To determine and settle the dispute between Sterling Asset Management Limited on the one hand, and Dwayne Hunter on the other hand, over the termination of his employment”.



DIVISION:

The division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

Mr. Errol Miller, JP	-	Chairman
Mr. Leslie Hall, J.P.	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

Mr. Mikhail Jackson	-	Attorney-at-Law
Mr. Stephen Nelson	-	Attorney-at-Law

In attendance:

Mr. Charles Ross	-	President
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The **Aggrieved** was represented by:

Ms. Ayana Thomas	-	Attorney-at-Law
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In attendance:

Mr. Dwayne Hunter	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties which made oral submissions during eleven (11) sittings held February 27, 2024 to February 26, 2025.

BACKGROUND:

Sterling Asset Management Limited, hereinafter referred to as “SAM” or “the Company”, operates as a Financial Institution in Jamaica since 2001. Its areas of operations include regulated securities dealership, global securities trading, fund management and financial planning. Mr. Dwayne Hunter was offered employment at Sterling Asset Management Limited (SAM), on December 21, 2020 as Assistant Vice President of Personal Financial Planning. His employment

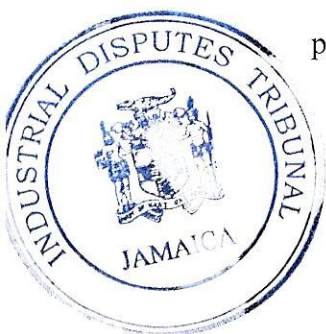
became effective on January 11, 2021. However, Mr. Hunter's employment was terminated by the said Company on July 12, 2021.

The matter of Mr. Hunter's termination was referred to the Ministry of Labour and Social Security as a dispute, but efforts to resolve the matter by the conciliatory services of the Ministry were unsuccessful.

By letter dated December 18, 2023, the dispute was referred by the Minister, to the Industrial Disputes Tribunal for settlement.

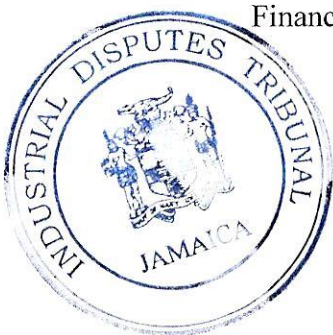
COMPANY'S CASE:

1. Before Mr. Mikhail Jackson, Attorney-at-Law, took conduct of the matter after the 3rd Sitting, SAM initially employed the services of Attorney-at-Law, Ms. Carlene Larmond, K.C. She stated in her opening remarks that the employer, SAM, was justified in the separation of Mr. Hunter's employment at the end of the probation period, as his performance was constantly below key performance targets.
2. The Company's first witness was Mrs. Sharon Carruthers, its Human Resources Management Consultant. She testified that she was engaged by SAM to assist in the retirement of two employees and to ensure a smooth transition in the process. She was also required to assist in filling the consequential vacancies. Her functions also involved the reviewing and updating of policies and developing and implementing performance plans.
3. Mrs. Carruthers stated that she attends the same Church as Mr. Dwayne Hunter and since she was aware that he was seeking employment, she told him of the vacancies at SAM and advised him to apply for consideration.
4. Mrs. Carruthers stated that she was involved in the recruitment, selection and on-boarding process of Mr. Hunter, along with Mrs. Toni-Ann Neita-Elliott, his immediate supervisor.



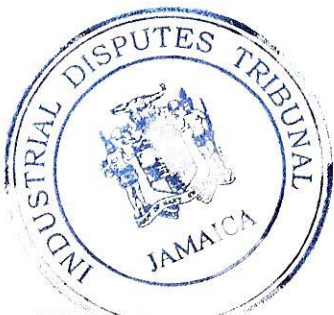
She said that she advised Mrs. Neita-Elliot that Mr. Hunter would require on the job training.

5. She further stated that a performance evaluation form was developed to be used in conducting Mr. Hunter's evaluation, since there was no such instrument at SAM prior to his employment. She indicated that Mrs. Neita-Elliot and other Senior Managers were involved in the development of the form. Under cross examination, she admitted that neither Mr. Hunter nor any other employee below the Senior Management level, had any input in the development of this evaluation form.
6. Mrs. Carruthers admitted that as Human Resources Management Consultant, she was not present when Mr. Hunter's employment was terminated, but that, Mrs. Neita-Elliot had informed her that his employment would not be confirmed. She further stated that the Finance Department was advised to prepare his pay, and that the staff and clients were also advised and suggested that, maybe they were notified of Mr. Hunter's dismissal before he was notified. She said that his tools and his access to other equipment were removed.
7. At the start of the 4th Sitting of July 15, 2024, SAM introduced two newly substituted Attorneys-at-Law, namely Mr. Mikhail Jackson and Mr. Stephen Nelson, instructed by Livingston Alexander and Levy, with Mr. Jackson being the lead Attorney. SAM's second witness was Mrs. Toni-Ann Neita-Elliot, Vice President Sales and Marketing at SAM and supervisor of Mr. Dwayne Hunter.
8. Mrs. Neita-Elliot said that she was appointed Vice President on December 1, 2020 and has since been leading the team for sales and marketing including Personal Financial Planning. She stated that Mr. Hunter joined the team on January 11, 2021, as Assistant Vice President, Personal Finance Planning, a post she previously held. With the addition of Mr. Hunter, she said that her team consisted of two Assistant Vice Presidents, Personal Financial Planning, and one Assistant Vice President, Marketing and Communication.



About three months after Mr. Hunter joined, a Manager Personal and Finance Planning was recruited.

9. Mrs. Neita-Elliot's evidence was that she was a part of the panel that twice interviewed Mr. Hunter. She was also a member of the team present when Mr. Hunter was invited to a luncheon meeting and informed of the culture of the Company. The team learnt of the extent of his experience in client services at Victoria Mutual and that he had not worked for a year as that position was made redundant. She said that Mr. Hunter eventually had to undergo a psychometric test and made a presentation, at the end of which, he was offered the position, subject to a six-month probation.
10. Mrs. Neita-Elliot stated that with the assistance and guidance of Mrs. Carruthers, she was able to develop on-boarding and training plans and provide the tools that Mr. Hunter would need to perform his functions. He was also given a copy of the Key Performance Indicators (KPIs), jointly developed by herself and Mrs. Carruthers. He also received in February 2021, a copy of the Job Description, and the policies and functions of the position, to ensure that he would know his role and responsibilities, from which he would be assessed. She further pointed out that the strategic objective/ purpose of the Department was to add new money to the assets under management. This was the key responsibility of the Department and how it fitted into the overall strategy of the Company.
11. She said that for increased visibility of the team, members including Mr. Hunter, had to publish weekly articles showing their knowledge and leadership in the field and educating people in terms of financial knowledge. A schedule was established to indicate when each member's article would be due.
12. Mrs. Neita-Elliot, during examination in chief, was asked to explain an area of the Key Performance Indicators that said "*Sales quota per annum (assigned at the start of the financial year)*". She responded that "*Okay, so at the start of the year, the financial year,*



a sales target is established by the Company and that sales target is divided among the Personal Financial Planners and that's the sales quota that you are working towards. Sales means any new money that is brought in for your existing clients, or for new clients that you recruit."

13. As it relates to sales target for Mr. Hunter, here is Mrs. Neita-Elliot's response to questions in examination in chief:

Q: *And were sales targets set in respect of Mr. Hunter?*

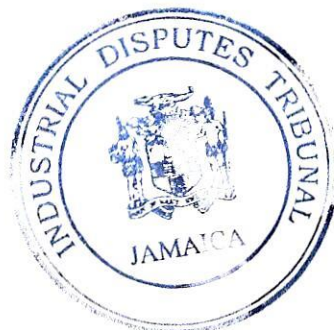
A: *Yes, targets were set.*

Q: *Continue.*

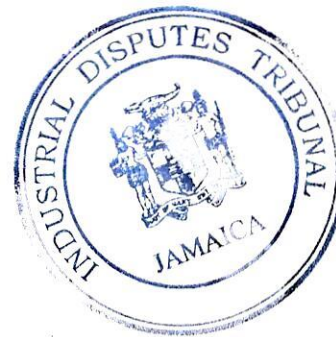
A: *We are also assessed in terms of the number of new clients or new accounts, as that can be different, you can open a new account for an existing client, that would also count towards the target of ten, and then as part of the probation period, all Personal Financial Planners are assigned a special project. The special project that was assigned to Mr. Hunter was to drive sales for Sterling Investment Limited which is actually, a product...."*

14. Later Mrs. Neita-Elliot stated that *"Mr. Hunter was not given any target for the first three months of his probation. This was to give him time to get familiar with the role and just basically get his feet wet before he was assessed against a target."*

15. Mrs. Neita-Elliot further testified that the Team kept abreast of their performance against targets when they received the Monthly Sales and Receipt Reports. These Reports were disseminated through email to each person. The Reports for the months of April to June 2021 showed that Mr. Hunter was consistently and significantly behind on his sales in relation to his targets. Reference was drawn to Exhibits 11, 12 and 13, as illustrated in the Table below:



Month	Target \$	Total Sales \$	Variance \$	Remarks
April	1,166,666.66	93,389.00	1,073,277.66	Exhibit 11
May	1,166,666.67	149,910.33	1,016,756.34	Exhibit 12
June	1,166,666.67	477,737.99	688,928.68	Exhibit 13
Total	3,500,000.00	721,037.32	2,778,962.68	

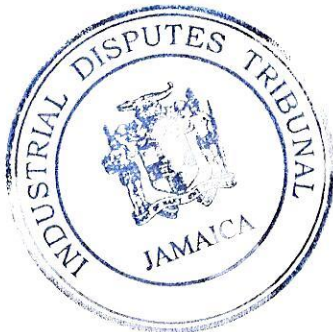


16. She gave evidence that, as part of the probation period, all Personal and Financial Planners were assigned a special project. The aim of the project is to foster professional development, to hone and develop their time management skills and priorities. This allows management to also see how these new employees perform on these projects. Mr. Hunter's special project during his probation period was to work alongside a newly appointed selling agent, Victoria Mutual. This was to help in the selling of a product that is still listed on the Jamaica Stock Exchange. He was tasked with helping to develop strategies to revitalize and sell that product. It was hoped that it would also help in his sales in terms of achieving his target. Unfortunately, he was not successful in bringing in any significant sales on the project.
17. On the point of probation, Mrs. Neita-Elliot's evidence was extensive. She said that the Company had a three months' probation period. However, the Company thought that it was insufficient time to prove a candidate's performance. Consequently, she stated that the six-month probation came into effect in November 2019, when another Assistant Vice President, Personal Financial Planning was hired. This longer probation period gives more time to court new clients, build relationship with existing and inherited clients and achieve their sales targets.
18. She stated that she managed Mr. Hunter's probation period in three ways. She had the responsibility to ensure that he was assigned a portfolio of clients, that he was assigned

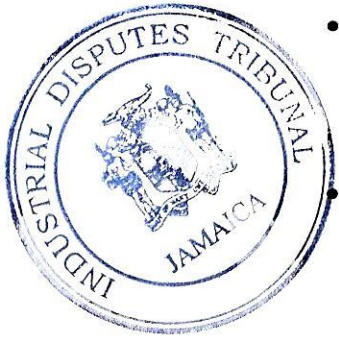
sales targets and having regular meetings with him. She further indicated that during the probation period, she conducted weekly meetings with the entire Sales and Marketing Team which were used as brainstorming sessions and involved discussions on anything relevant to their clients' portfolio.

19. Specifically, as it relates to Mr. Hunter, she stated that she had one-and-one monthly meetings throughout the probation period which were held on or around the anniversary date of his hire. Because of the pandemic, the team was on rotation with half of them working from Office weekly, while the other half worked remotely. She arranged that both she and Mr. Hunter were on the same schedule, so as to allow for the one-and-one, face-to-face meetings. During such meetings, she would check to see how he thought his orientation was going. She said:

"We spoke about the voice lessons, his prospect list, his client list, but basically my approach in those meetings were -- my approach in general, my management approach is to give positive feedback. So I used those meetings to praise what was going well for him, his efforts that were going well and for the things that weren't going well I offered suggestions and strategies. For example the sales were not going well so I would focus on offering suggestions and strategies that could help him improve his sales, based on my previous experience in the role".



20. Mrs. Neita-Elliot, in answering a question on how they prepared for the ending of Mr. Hunter's probation, said she chose Monday July 12, 2021, as the day to end his probation. However, the reference date on which the probation would have officially ended was on July 11, 2021, that is the Sunday before. The Monday was an opportune time for the face-to-face, because of the rotation schedule of the team. Once the date was selected, the calendar reminder was sent to Mr. Hunter.
21. She said she then went about completing the probation assessment form and despite the form being new to her, it included familiar contents that were discussed in the monthly meetings. The form also included:



- Some qualities and competencies which they believed were crucial for the role.
- The weight assigned to each key performance indicator which determined what aspects were most critical for the role. It was her function in the assessment to assign him scores out of the maximum allowable score.

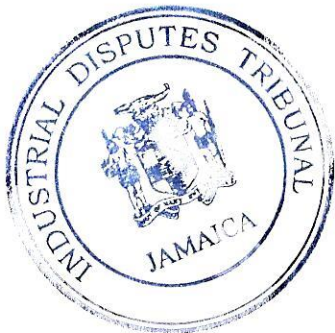
She added that because Mr. Hunter's application for Dealer's license was done before the deadline date of February 28, 2021, he received full score.

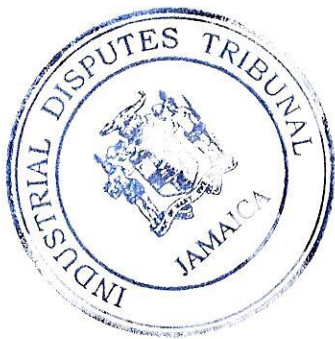
22. She said that the score for the Key Performance Indicator for sales was 60 out of a total of 100. As at June 30, Mr. Hunter was 79.4 percent behind the sales target, which means he achieved 21 percent of the target. She further stated that for the special project and voice training, no scores were given for these in the assessment. The reason, she argued, was because these were for self-development.
23. Mrs. Neita-Elliot gave further evidence that once she had completed the Performance Appraisal Form, she shared the results with management who decided that since the core function of the role was sales, which was his primary weakness, he would not be offered permanent appointment to the position.
24. Mrs. Neita-Elliot gave evidence that July 12, 2021, was the last monthly meeting she had with Mr. Hunter. She said the meeting was specifically held about 4pm, near to the close of business. She said that not many people would be around when they are imparting negative results to a person, and which could save the embarrassment when they had to pick up their things to leave.
25. In the meeting she conveyed the decision of SAM's Senior Management, not to confirm his appointment following his probation. She said that she shared the contents of the completed assessment form with Mr. Hunter. She also gave him an envelope from the President of SAM, confirming the decision. She said that Mr. Hunter expressed his disappointment at the outcome and she allowed him to vent.

26. Mrs. Neita-Elliot said that the following day, July 13, 2021, the Company emailed the clients that were assigned to Mr Hunter, advising them that SAM was unable to offer him permanent employment after the completion of his probation period. She said further that in an effort to protect Mr. Hunter's reputation, the email was very specific about the reason for not offering him permanent employment since as a Financial Institution, the Company did not want any wrong assumption to be drawn about his termination.

27. The Company contends that:

- a. Mr. Hunter's stay with SAM, was subject to his letter of employment; a condition of which was that he was required to serve a probation period of six months. During the probation period, his performance and suitability for the post would be assessed and either party can terminate the relationship without prior notice. SAM provided guidance and support for Mr. Hunter throughout the probationary period allowing him to demonstrate his suitability for the assigned role. After he was assigned sales targets in the latter part of the probation period, he was kept abreast of his performance like all other team members through monthly Sales and Receipt Reports. Because his sales were not going well, his supervisor offered assistance during the one-on-one meetings by suggestions and strategies drawn from her experience.
- b. SAM, conducted a fair and reasonable assessment of Mr. Hunter's performance and recognized that, in addition to his other weaknesses, he failed to achieve even a quarter of his sales target.
- c. Mr. Hunter was well aware of the importance of sales in his assigned role and the equal importance of achieving the sale targets. He was aware that he was going through a trial period and needed to impress SAM, so as to secure permanency. Therefore, the Company should not be faulted for deciding not to confirm him in the role of Assistant Vice President, Personal Finance Planning, as he had not attained the level required by SAM, despite the assistance and efforts of his supervisor.





- d. Mr. Hunter's argument relating to COVID 19 as a possible reason for his non-confirmation was a 'red herring'. If Mr. Hunter felt the COVID 19 argument was a reasonable ground to stand on, then he should have called as witness the ex-SAM employee who told him that the reason he was not confirmed was because he did not take the COVID 19 vaccine.
- e. That through his supervisor, a fair and objective assessment of Mr. Hunter's performance over the probation period, was conducted. Although Mr. Hunter was not involved in the formulation of the document used, it codified the standards to which he was being held accountable and which are in his contract of employment, Key Performance Indicators and in his Job Description.
- f. That the claim for unjustifiable dismissal by Mr. Hunter should not be upheld. The non-confirmation to his assigned job was done within the probationary period, after he was fairly and reasonably assessed. Within the period, he was given a reasonable opportunity to demonstrate his suitability for the role along with ample guidance and supervisory support and he failed to impress.

AGGRIEVED'S CASE:

- 28. Mr. Dwayne Hunter, the Aggrieved, being his only witness, declared that he worked at SAM in the position of Assistant Vice President, Financial Planning from January 11, 2021 to July 12, 2021. He said for six months he was on probation.
- 29. Mr. Hunter stated that he received no internal job training, however, he was given the opportunity to go to different departments and sit with the different department heads to know what each department does and how it tied into the big picture. He also went through the Procedural Manual. He had one external session in voice training. Likewise, he had a session of golf training about two weeks before his service was terminated. There was no training in any of his core responsibilities of sales and marketing or bringing in new clients.

He said he received a Job Description from his supervisor in February 2021, which had no sales target and that he received no sales target for 2021.

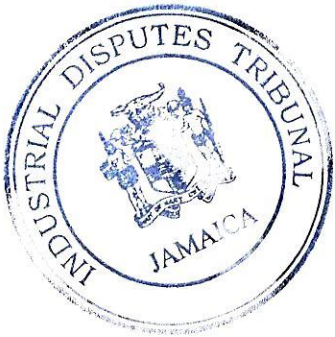
30. Under examination in chief, the following conversation took place:

Q: *Did you enquire about a Sales Target?*

A: *Yes, I did.*

Q: *What was told to you; what if anything was told to you when you enquired about the Sales Target?*

A: *I enquired specifically about the Sales Target in April, and in conversations it was explained to me that the target was still being put together, so nothing was provided. So just to help myself I reached out to my then Supervisor and asked if she was able to provide me with the target for the Company for last year so I would have something as a gauge for myself.*



31. Mr. Hunter indicated that in a WhatsApp message (Exhibit 14) dated April 11, 2021, he had a follow up request with his supervisor for the 2020 sales target to be used as a gauge. This, he said, he used as gauge up until July 2021. He further stated that at no time during his tenure at SAM, was he given in writing or by WhatsApp or told his sales target for 2021. He further stated that nothing came up indicating sales target on the two WhatsApp platforms to which he had access.

32. In his testimony, Mr. Hunter stated that the regular meetings and other communication with his supervisor for the entire probation period dealt mostly with updating on activities of the department and strategies. The monthly meetings in particular were, *“really more a ‘touch point’, checking in just to see if there are any issues, any matter of concern, to provide feedback--.”*

33. Still continuing on monthly meetings, the following conversation took place in examination in chief:

Q: *In those monthly meetings was it ever brought to your attention after April ... between April and July... was any Sales Target brought to your attention in those monthly meetings?*

A: *No*

Q: *In those monthly meetings was it ever said to you by your immediate Supervisor that you are below your Sales Target?*

A: *No*

Q: *Was there anything put to you in writing by your immediate Supervisor or any other member of the Senior Management that you are below your Sales Target, or any areas of concern?*

A: *No, there was never – nothing was ever put to me in writing, nothing said to me verbally regarding any issues or concerns regarding Sales.*

Q: *Was there any issue that was put to you whether orally in those meetings or in writing regarding anything concerning your performance?*

A: *Nothing concerning my performance.*

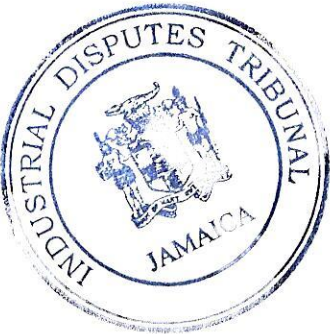
34. He said that at no time did his supervisor inform him (i.e. reprimand him) that he was not at any particular sales events, achieving his sales targets or that he was failing in other areas.

35. Mr. Hunter, in examination in chief, was asked about 'Special Project'. Below is the question and his reply:

Q: *So, when did you first hear of this term 'Special Project'?*

A: *I am hearing of this term... I saw it first in the Company's Brief and then I kept hearing the term here [referring to the Sitting of the Tribunal].*

36. Mr. Hunter testified that he was not advised that he had to do a 'special project' when he joined SAM in January 2021. He said he was not given Sterling Investment Portfolio as a



‘special project’. He was asked in February, or thereabout, to lead the sales for Sterling Investment Limited because the person under whose portfolio Sterling Investment Limited fell, had resigned. He continued by saying that the responsibilities relating to Sterling Investment Limited were much more than just driving sales. It included quite a bit of administrative work and managing relationship of existing shareholders. He further stated that the responsibilities of Sterling Investment Limited, made significant demands on his time in dealing with his role as Assistant Vice President Personal Financial Planning.

37. He stated that sometime in May 2021, he participated in a photo shoot and that his picture was placed on the Company’s website as part of the team. His biography, written by his Supervisor, was also placed on the website and that, at around the same time, the Company provided him with business cards.

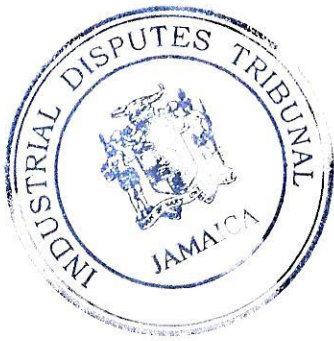
38. Mr. Hunter stated that when he joined SAM, it was during the height of the COVID 19 pandemic. He said that the pandemic affected his ability to access investment opportunities from clients, as it seems that persons were shying away from taking any types of risk. Mr. Hunter’s evidence is that he had reservations about vaccination and had not been vaccinated. He said that his Supervisor, Mrs. Neita-Elliott was fully aware of his position, as they had numerous discussions on the topic.

39. Mr. Hunter, in his evidence, said that during the height of the pandemic, he recalled that Mrs. Neita-Elliott was encouraging persons to get vaccinated. He said that he believes the reason for the termination of his employment was because he was not vaccinated against the COVID 19 pandemic. He supported his theory in the following exchange during his examination in chief:

Q: Now, since you joined at the height of the pandemic, do you recall your immediate Supervisor, Mrs. Elliott, encouraging persons, such as yourself, to get vaccinated?

A: Yes, I do, it was clearly encouraged by my Supervisor. In fact, I can remember a WhatsApp message on the 12th of July, in the





Sales and Marketing WhatsApp group that we had then, and where she stated that, you know, Charles really wants everyone to get vaccinated, and Charles there, she would have been speaking about Charles Ross. And even after that, there were other conversations, other messages. I remember sometime in June she sent me a message stating that there were having management discussions and they were trying to chart the way forward once everyone is vaccinated in the Company.

Chairman: Did you say you got a WhatsApp message on the 12th of July?

A: The 12th of April

Chairman: Okay.

Ms. Thomas: I think you had said July.

A: Sorry, the 12th April, 2021.

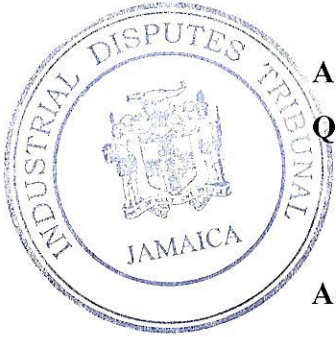
40. He also said that on April 12, 2021, he received a WhatsApp message from his supervisor stating that, *“it seems like I may be the only one not vaccinated after today.”*

41. Mr. Hunter also stated that after the termination of his services from SAM, he was contacted by a former, well connected Assistant Vice President of SAM, who informed him that his termination had nothing to do with poor performance, or not meeting sales targets as was explained to him on the date of his termination, but that his service was terminated because he was not vaccinated.

42. Mr. Hunter stated that he was not aware of the Probation Performance Assessment Form, which was used to evaluate his performance during the probation. He said that he only saw it when the completed form was handed to him on the afternoon of July 12, 2021, at the meeting regarding the termination of his service.

43. He was asked about the Probation Assessment Form during examination in chief:

Q: *Yes, was it explained to you that there was a maximum score that you had to attain for the Probation Performance Assessment?*



A: *No, nothing was explained, I was just given the Form with a decision already made.*

Q: *Were you ever made aware of a maximum, or a pass mark that you had to attain for the Performance Probation Assessment?*

A: *No.*

Q: *Is it fair to say that even to this day you really don't know whether objectively, you had passed or failed the Probation Performance Assessment?*

A: *That would be an accurate statement.*

44. Mr. Hunter's evidence is that on Monday July 12, 2021, he went to work as usual. On that morning the Revenue Gathering Team had its normal meeting where they examined information about the market and what to expect for the coming week. His supervisor, Mrs. Neita-Elliot was not at that meeting. He then contacted some of his existing and prospective clients and performed other normal work activities during the day. He said he was aware that his probation period was completed on July 11, 2021. About 3:00 pm, nearing the close of business, he had a meeting with Mrs. Neita-Elliot. He said he went into the meeting on a high because he had just had a discussion with a prospective client. However, in the meeting the wind was knocked out of him when she told him that his employment was not confirmed, primarily because he had not met his sales target.

45. Mr. Hunter said *"I remember she said to me, that this was the first time she is dealing with someone that is not being confirmed in a position because of not meeting their Sales Target.... I said to her... I asked her the question... my exact words were: 'Being this was said to me for the very first time, can I be provided with an extension, even another three months extension,' and her response to me was that she had suggested that but it was not accepted..."*

46. Mr. Hunter continued by saying that he was given the completed Performance Assessment Form, which he was seeing for the first time and also the termination letter which was

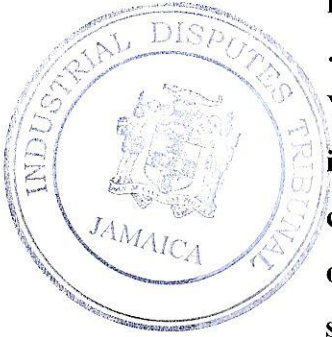
already signed. He concluded that this meeting with his supervisor was only called to convey to him the decision of his termination from SAM.

47. Mr. Hunter stated that the following restraining clause of the letter of termination restricts and significantly limits the possibility of him making a living for the next five years in the area which he has most experience:

During the term of employment and for a five (5) year period immediately following termination of employment for whatever reason, no information in respect of the Company's operations should be disclosed to or discussed with anyone, relatives included, outside of the Company, except with the expressed permission of the President.

.....

You agree that you will not, following termination of employment directly or indirectly, either individually or as an employee, agent, partner, shareholder, consultant or in any other capacity, canvas, contact, or solicit any customers of Sterling Asset Management for the purpose of selling products or services similar to or competitive with those offered or sold to such customers on behalf of Sterling during the term of your employment with Sterling.

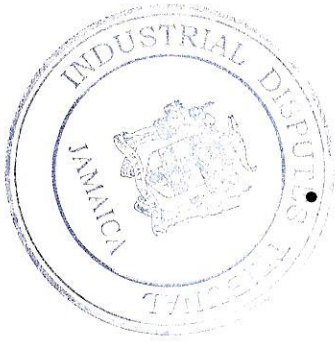


48. He argued that this area of wealth management is not wide-spread and investors do invest in more than one company. He said that this confidential clause restrained him from performing and securing a livelihood.

49. Given the above, Mr. Hunter contends that his probationary period rightly and legally ended on July 11, 2021 and during that period, he was not written to or spoken to about any poor performance or not meeting sales targets. He was present at work on July 12, 2021 and he performed his usual functions for the entire work day. It was only at the end of the first day after the completion of his probationary period, that he was told that he had not satisfied the requirements of the probation period and would not be confirmed.

50. Mr. Hunter contends that:

- He was never aware that a Performance Evaluation Form was being developed to evaluate his performance, neither did he know of the requirements or the weight placed on the factors nor were any discussions or consultation held with him on his performance. The evaluation was completed solely by his Supervisor, independent of his input.
- Since his employment was terminated after the completion of the six-months probationary period, due process should have taken place. He should have been given the chance to be heard in an impartial hearing, with a representative of his choice, and the opportunity to state his story, as stipulated by the Labour Code.
- At no time during his stay at SAM was he provided with sales targets, except for the 2020 example that he requested from his supervisor to be used as a guide and which he received in April 2021
- That neither the Key Performance Indicators, the Job Description nor the sales requirements, indicated any specific weights or achievement levels to be considered as satisfactory or pass level, to guide and evaluate employee's performance.
- He was not aware of any special project during the probation period, as it was not in his Job Description or any other written document. He became aware of the term "Special Project", after reading the Company's Brief at the Tribunal. However, what he knows was that he was asked to assist with sales in Sterling Investment Limited due to the resignation of the portfolio's holder. The Sterling Investment Limited assignment involved a great deal of administration which detracted from the time he had to do his regular functions as AVP.
- If he was not performing, why was he provided with business cards in the fifth month of his contract, why was his profile and picture placed on the Company's website?
- Not taking the vaccination, could have been the reason for his termination. His action was not in line with the Company's plans as it charts its way forward.



- Therefore, the termination of his service from SAM was done without just cause and the principles of natural justice were not adhered to, rendering his dismissal unjustifiable.

TRIBUNAL'S RESPONSE:

51. The Tribunal noted that the reason stated for termination of Mr. Hunter's employment was **"not to continue your employment beyond your probationary period"**. However, the evidence presented to the Tribunal suggests that the real reason for the termination may be otherwise. The Tribunal, therefore, asked itself the following questions:

- Was the termination of Mr. Hunter's employment done during or after the probationary period?
- Was the termination of Mr. Hunter's employment fair and with regard for due process?
- Did the absence of Mr. Hunter being vaccinated during the COVID 19 pandemic, impact the decision to terminate his employment?
- Was the termination of Mr. Hunter's employment justified?



52. The first question is whether Mr. Hunter's employment was terminated during or after the Probation Period. In understanding Probation, reference is made to Section 3 (4) of the Employment (Termination and Redundancy Payments) Act, which states:

Where the contract of employment of any employee specifies a period, commencing on the date of commencement of the employment, as a probationary period, either party to the contract may, notwithstanding the provisions of subsections (1) and (2), terminate the contract without notice during the probationary period or, where the probationary period is more than ninety days, during the first ninety days thereof.

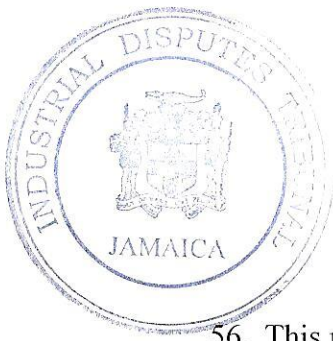
53. Therefore, the probationary period is that period of time which gives the employer time to assess the worth of the potential employee and to determine his suitability for confirmation of employment or, on the other hand, for the potential employee to determine the

suitability of the employment. The probationary period is normally ninety days but a contract of employment may include a provision for extension of the probation period beyond the ninety days, allowing the employer to further assess suitability beyond the initial period.

54. Good industrial relations practices, therefore, sees the probation period as a trial period. It requires management to monitor, evaluate and document in a systematic way, the progress of the potential employee during the probationary period. During the probationary period, the potential employee should be advised of his strengths and weaknesses, and where improvements may be required. As the probation period draws to its close, both parties should have a clear vision of the likely outcome for continued employment. The Act provides that either party may terminate the contract **within** the probation.

55. Mr. Hunter's letter of employment indicates that his employment became effective January 11, 2021, and that he had a probation period of six months as under:

"You will be required to serve a probationary period of six (6) months, during which time your performance and suitability for the position will be assessed. If your performance is satisfactory at the end of this period, you will be appointed a permanent member of staff. During this period, your employment may be terminated by either party without prior notice".



56. This probation period ended on Sunday July 11, 2021. The evidence is that Mr. Hunter's employment was terminated after the completion of the probationary period of six months on Monday July 12, 2021. Additionally, the Company allowed Mr. Hunter to work an entire eight-hour day after the probationary period ended, before terminating his service. The Company argued that because the probation ended on a Sunday, the appropriate date to terminate the probation would be on the Monday following, despite its letter to him saying **"during this period"**. The Company further argued that the Monday evening was chosen to carry out the termination as the Company did not want any undue embarrassment for Mr. Hunter, in the event other employees became aware of what was happening.

57. The Tribunal acknowledges that if an employee has not been performing during the probation period, the employer may terminate such employment at any time during the probationary period and in the case of Mr. Hunter, this could have taken place up to Friday July 9, 2021. However, we cannot agree that, having been evaluating the employee's performance during the probationary period, the Company must wait until the probation expires to terminate the contract. Having worked a complete day after the probation, Mr. Hunter must have concluded that he had successfully completed the probation. He said he was on a high when he was invited to meet with his Supervisor, only to be issued with a letter terminating his service. The Tribunal, therefore, accepts that Mr. Hunter's employment was terminated outside the completion of the probationary period.

58. The second question, the Tribunal asked itself **“Was the termination of Mr. Hunter's employment fair and with regard to due process?”** The Aggrieved argued that due process means that he should have been given the opportunity to be heard in an impartial hearing, with a representative of his choice, and given a chance to state his case as stipulated by the Labour Relations Code. However, the Tribunal is of the opinion that due process should only be required when an employee has breached the contract of employment whereby disciplinary action becomes necessary. There is no evidence that the Aggrieved was dismissed for disciplinary reasons. Paragraph 22 of the Labour Relations Code outlines a Disciplinary Procedure, but this is not applicable to dismissals related to performance. However, although **“Paragraph 22 of the Code is not applicable, the employer is still required to carry out a fair procedure before dismissal”**. (Extracted from Nestle Jamaica Ltd. and Marlon Parnell, IDT 58/2017). However, having exceeded his probationary period, Mr. Hunter was deprived of natural justice which requires that he receives a fair and unbiased hearing where he is given the opportunity to present his point of view and to respond to facts that would be relied on to terminate his services.



59. The letter of termination by the Company dated July 12, 2021(Exhibit 15) states that:

Your probation period with us at Sterling Asset Management is due to end on July 11, 2021. We have decided not to continue your employment beyond your probationary period. As a result, your employment will end on Monday July 12, 2021.

60. The Company provided no reason in its letter for the termination of Mr. Hunter's employment. However, it argued that Mr. Hunter's poor sales performance, which was highlighted in the performance evaluation report conducted by the Company, was the basis for the termination of his employment. But was this performance evaluation fairly conducted by the employer, as required by proper industrial relations practices?

61. The evidence presented to the Tribunal on the performance evaluation conducted by the Company, appeared to have been flawed. This performance evaluation instrument was developed during the employment of Mr. Hunter, as the Company had no prior instrument. This evaluation process excluded the participation of the employee, and he was neither aware nor had he seen this Performance Evaluation Form before the date of his termination. The cross examination of Mrs. Neita-Elliot clearly revealed the shortcoming of the Company:

Q: And you agree with me that prior to July 12, 2021, which is the date he was terminated, he was not provided with a copy of this new Probationary Assessment Form?

A: No, not the Form.

62. Mrs. Neita-Elliot was shown Exhibit 2, the Contract of Employment of Mr Hunter, and the following exchange took place during cross examination:

Q: Can you just peruse that document and let me know if there is anywhere in that contract of employment that you see an indication that there is going to be a weighting on the sales target?



- A: A weight?**
- Q: A weight on the sales target.**
- A: No, that's not coupled in the offer letter.**

63. Mr. Hunter's Job Description (Exhibit 3) was also brought to Mrs. Neita-Elliot's attention during cross examination as under:

- Q: Can you peruse that Job Description, ma'am, that Mr. Hunter signed for and see if there is anywhere in it that it says that any weight at all would be placed on sales, and did it specify the type of weight that would have been put on sales at the end of a probation period?**

- A: No, so the Job Description is not specific to the probation period, it's for throughout the employment and it just list the Key Performance indicator but no specific weightings.**



64. Exhibit 10, which contains the Key Performance Indicators, was then brought to Mrs. Neita-Elliot's attention during cross examination:

- Q: Can you see if there is any weighting, does it speak to any weighting on sales or any of the Key Performance Indicators as a matter of fact?**

- A: No, it does not speak to any weighting.**

- Q: And it is your evidence that the weighting of each Key Performance Indicator was not provided to Mr. Hunter until the day he was terminated which is July 12?**

- A: That's correct.**

65. The new Probationary Assessment Form (Exhibit 4) which the Company acknowledged that Mr. Hunter was unaware until the date of his termination, also had weights on the

different KPIs but Mr. Hunter was neither aware of the instrument nor the weights. The evidence of Mrs. Neita-Elliot under cross examination brought this out:



Q: Would you agree with me as well that this new Probation Performance Assessment Form place weightings on sale targets.

A: Yes, it has weightings on all the areas.

.....

Q: And Sales target is weighted at a maximum of 60 out of that 100?

A: That's correct.

(6th Sitting, October 23, 2024, page 4, line 6 to 11 and page 7, line 10 to 12)

.....

Q: You agree with me, ma'am, and I just want you to peruse that Probation Performance Assessment Form, that that form, ma'am, does not of itself have any explanation at all as to the maximum score one had to attain to pass the Probation Assessment?

A: No, there is no explanation of the weight it scores.

Q: No explanation of the maximum that you had to attain overall on that form to pass the assessment?

A: Oh, no.

Q: I am going to ask you, ma'am, at the time of Mr. Hunter's assessment using this Probation Performance Form did you have a maximum score that the employee had to attain in order to pass that Probation Assessment?

A: No, not at the time of this form.

Q: And by extension you would agree with me that no maximum score was communicated to Mr. Hunter that he had to attain in order to pass his assessment?

A: That's correct.

66. The evidence from Mrs. Neita-Elliot was very clear that the KPIs did not include any weighting and that Mr. Hunter was not aware of the Probation Performance Assessment Form, nor was he aware of the required weights the Company set on the different areas of his work and the maximum score required to pass the assessment. Further, he was unaware of the assessment the Company had done on his performance prior to the termination of his employment. Therefore, this could not be considered a fair assessment and should not have been the basis for the termination of Mr. Hunter's employment.

67. The third question that the Tribunal asked itself was **"Did the absence of Mr. Hunter being vaccinated during the COVID 19 pandemic, impact the decision to terminate his employment?"** The evidence is that Mr. Hunter was employed to SAM during the pandemic and the Company had put in place a rotation plan that allowed one half of the staff to report to the office while the other worked from home. Mr. Hunter, in his evidence, stated that he had not been vaccinated, as he had reservations for health reasons. He said that Mrs. Neita-Elliot was fully aware of his position as they had numerous discussions on the topic, Exhibits 18 and 19 being examples of those discussions.

68. Mr. Hunter, in his evidence, strongly indicated that he believes the reason for the termination of his employment was because he was not vaccinated against the COVID 19 pandemic. He supported his theory by citing:

- The encouragement provided by his Supervisor for him to get vaccinated.
- The fact that she indicated that "Charles" wants everyone to get vaccinated.
- Her advice that in management discussions, they were charting the way forward once everyone is vaccinated.

69. In a WhatsApp message on April 12, 2021, directed to him, his supervisor said, **"Are you going to try get your vaccine after your haircut? Sounds like you might be the only**



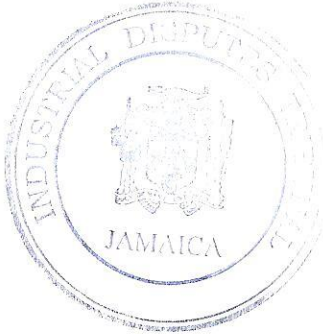
one left after today.” [Reference to Exhibit 18]. However, during cross examination, Mrs. Neita-Elliot, his Supervisor, responded to the vaccination issue as under:

Q: **Do you recall in your monthly meetings with him encouraging him to get vaccinated?**

A: **I don’t remember having any conversation about vaccination with any of my employees.**

Q: **You don’t recall?**

A: **No.**



70. The aggrieved further indicated that a former well connected Assistant Vice President of the Company, had informed him that his termination had nothing to do with poor performance, or not meeting sales targets, but that his service was terminated because he was not vaccinated against the COVID 19 pandemic.

71. The Company presented no evidence to the Tribunal to counter the evidence and arguments of the aggrieved. However, in its closing argument, the Company argued that if Mr. Hunter felt that not being vaccinated for COVID 19 was reasonable grounds pertaining to the termination of his employment, he should have called as a witness to the Tribunal, SAM’s ex-employee who told him that the termination of his employment was because of not being vaccinated.

72. The Tribunal is of the opinion that Mrs. Neita-Elliot’s WhatsApp message of June 7, 2021, (Exhibit 19), that “We are *discussing the way forward in management meeting once everyone is vaccinated,*” as well as her statement that, “**Charles really wants everyone to get vaccinated,**” could be seen as a veiled threat to persons who were not vaccinated.

73. The Tribunal does not believe that Mrs. Neita-Elliot was a truthful witness and may have perjured herself with respect to the discussions of the COVID 19, pandemic. Email

discussions in Exhibits 18 and 19 indicated that she conducted extensive discussions with Mr. Hunter on the vaccination issue including the effect it had on her sister. However, while the allegation has been proffered, the Tribunal is of the view that the evidence is not sufficiently conclusive that his termination was as a result of Mr. Hunter not being vaccinated during the pandemic, despite the fact that no reasonable ground was provided for the termination of his employment.

74. The fourth question the Tribunal asked itself is **“Was the termination of Mr. Hunter’s employment from SAM, justified”?** SAM argued that:

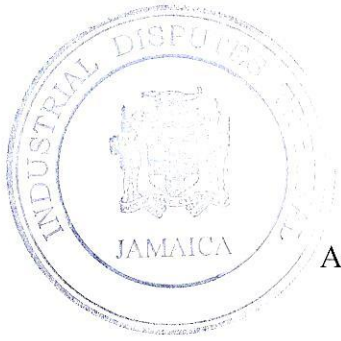
- a. It provided guidance and support for Mr. Hunter throughout the probationary period for him to demonstrate his suitability for the assigned role.
- b. He was assigned sales targets in the latter part of the probation period, and he was kept abreast of his performance by being sent monthly Sales and Receipt Reports like all other team members as shown in Exhibits 11, 12 and 13.
- c. Because his sales were not going well, his supervisor offered assistance through suggestions and strategies drawn from her experience during the one-on-one meetings, as she previously occupied the position held by Mr. Hunter.

75. The Company stated that Mr. Hunter agreed in cross examination, that at no time did he receive positive feedback from his Supervisor indicating that he was meeting his sales target. This, the Company contends, was clearly because he was not meeting his sales targets.

76. Although the Company said that the weight on sales was 60% of the value of KPIs it also stated that the actual sales targets were not available to Mr. Hunter until the fourth month of his six months’ probation. This was brought out by Mrs. Neita-Elliot under cross examination:

Q: **Now Ma’am, you agree on your case- - let me put it another way. You agree that on the case of the Company, no sales target was**





communicated to Mr. Hunter in the first three months of the probation period?

A: Yes, he wasn't assigned a target for the first three months.

Q: And I am going to put it to you, ma'am that in fact after the first three months no sales target was provided to him even then, you can agree or disagree?

A: Based on the last session we had it did seem that it was somewhere in April that he would have received the targets so that would have been in the fourth month.

77. However, Mr. Hunter denied receiving any sales targets during the probationary period and stated that he requested from his Supervisor, the previous year's sales target, which he used as a guide for his sales (Exhibit 14 dated April 11, 2021). This request, Mrs. Neita-Elliot had not denied. The Tribunal has not seen any evidence indicating that Mr. Hunter was assigned sales targets. He said he had not received any, despite sales targets being recorded in Exhibits 11, 12, and 13 Sales Reports which he denied ever seeing in that format.

78. The Company placed a lot of emphasis on the information contained in Exhibits 11, 12, and 13 as proof of Mr. Hunter's poor sales performance. These, the Company stated, were reports on Mr. Hunter's sales against target. But there is no evidence, whether through these reports or otherwise, which stated the required level of sales that should be considered as poor, reasonable, good or excellent. The evidence presented by Mrs. Neita-Elliot under cross examination, is clear:

Q: I am going to ask you, ma'am, at the time of Mr. Hunter's assessment using this Probation Performance Form did you have a maximum score

that the employee had to attain in order to pass the Probation Assessment?

A: No, not at the time of this form.

Q: And by extension you would agree with me that no maximum score was communicated to Mr. Hunter that he had to attain in order to pass his assessment.

A: That's correct.

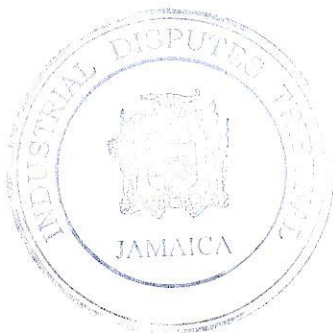
79. There is no evidence whether by way of letters, minutes of meetings, emails or WhatsApp messages that, throughout the probation period, Mr. Hunter's performance, including his sales, was poor. This is supported by the evidence of Mrs. Neita-Elliot during cross examination:

Q: So, did you ever write to Mr. Hunter prior to the termination meeting to indicate that his performance was below par, that his performance was poor and that you needed to have a meeting with him and his representative?

A: Nothing in writing, no.

Q: Did you ever send any written emails to Mr. Hunter warning him about being below his sales target?

A: Not that I can recall, I wouldn't have sent any emails directly.



80. The tools which he could use to measure his performance were not made available to him by the Company. Neither was he warned at any time for poor performance nor was consideration given to extending his probation period allowing for more time to evaluate his performance. In fact, Mrs. Neita-Elliot stated in her evidence, that she had prior discussion with the President regarding the prospect of extending Mr. Hunter's probation (as opposed to termination) but it was denied.

FINDINGS:

81. The Tribunal deduced from the evidence presented that:

- a. The termination of Mr. Hunter's employment was done after the completion of the probationary period.
- b. Not enough evidence was presented to determine whether or not Mr. Hunter's employment was terminated because he was not vaccinated during the COVID 19 pandemic.
- c. The termination of Mr. Hunter's employment was not due to a lack of due process, but natural justice was absent. There was a flawed appraisal system which contributed to the termination of his employment and not poor performance. Therefore, the termination of his employment was unjustifiable.
- d. Mr. Hunter had the opportunity to mitigate his loss as a result of his employment in 2022.

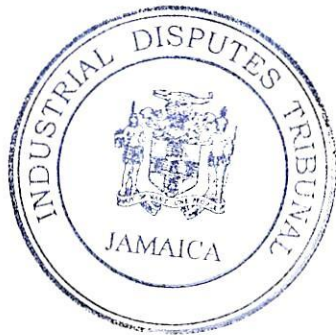
82. Given the foregoing, the Tribunal finds that the termination of Mr. Dwayne Hunter's employment by Sterling Asset Management Ltd. was unjustified.



AWARD:

83. In accordance with Section 12 (5) (c)(ii) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Sterling Asset Management Limited pays Mr. Dwayne Hunter the sum of Three Million Seven Hundred Thousand Dollars (\$3.7M) as compensation for the unjustifiable termination of his employment.

DATED THIS 31st DAY OF OCTOBER 2025.



Mr. Errol Miller, JP
Chairman

Mr. Leslie Hall, JP
Member

Mrs. Chelsie Shellie-Vernon
Member

Witness:

Mrs. Nicola Smith Marriott
Secretary to the Division