



HEADLINES

Daily Journal Verdict & Settlements

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Orange Superior Dept. 18 - Feb. 18, 2003

Hon. Cormac Carney

Topic: Contracts

Sub topic: Breach of Contract

Sub-sub topic: Fees

Settlement

\$474,366 (including judgment of \$323,591)

Attorneys

Plaintiff - David A. Robinson, Enterprise Counsel Group, ALC, Irvine

Plaintiff - Corey E. Taylor, Enterprise Counsel Group, ALC, Irvine

Defendant - Eugen C. Andres, Andres & Andres, Santa Ana. Represents Kirk S. McIntosh

Defendant - Herbert J. Patt, Andres & Andres, Santa Ana. Represents Kirk S. McIntosh

Defendant - Timothy J. Donahue, Donahue, McIntosh & Hammerton, Irvine. Represents in pro per and on behalf of Donahue, McIntosh & Hammerton

Facts

ACCORDING TO THE PLAINTIFF: The defendants were referred a substantial personal injury matter by plaintiff Orange County Bar Association's (OCBA) non-profit Lawyer Information Referral Service (LRIS). Briefly stated, in exchange for a 15 percent referral fee on all collected fees, the LRIS refers individuals in the community to lawyers who have subscribed to the LRIS service. After the matter was referred, and as a result of a routine public satisfaction survey, the OCBA learned that defendants had failed to report their engagement in the personal injury matter and had otherwise failed to pay the 15 percent fee due on a several other referred matters.

FACTS ACCORDING TO THE ATTORNEY FOR THE DEFENDANT MCINTOSH: The defendant Donahue was a subscriber to the Orange County Bar Association's Lawyer Information Referral Service

(LRIS). As a subscriber, a personal injury case was referred to him. Representation of the cousin (of the referred person) was undertaken. Donahue had agreed with LRIS to pay 15 percent to OCBA of the partnership attorneys' fees received, as a referral fee for those clients for which representation had been undertaken. Kirk McIntosh was not a signatory to the LRIS-Donahue agreement, though a beneficiary of the agreement through his role as an employee in Donahue, McIntosh & Hammerton. A dispute between Donahue and the OCBA arose as to whether the partnership was representing the person who had been referred to Donahue, the amount of the referral fee (if one was to be paid) and as to the timing of such payment. A portion of the fee in dispute had not been paid to the partnership at the time the dispute arose. The defendant McIntosh, once he understood the issues, retained attorneys to protect his partnership interest in the fee to be eventually paid the partnership and did not contest the OCBA claims. Within a month

of the intervention of the attorneys representing McIntosh, the claim reached settlement stage. Finally, settlement was delayed by the defendant Donahue, whose acts prejudiced both the defendant McIntosh and the OCBA. The bars attorneys delayed it.

Contentions

Plaintiff OCBA contended that, not only did defendants know that the underlying personal injury matter had been referred by the LRIS, but also, thereafter defendants actively concealed the fact on this referral in response to OCBA's standard update requests. The deposition of the referred client's cousin emphatically confirmed that the underlying personal injury matter had been referred to defendants by the LRIS. The defendants contended that the underlying plaintiff was not referred by the LRIS, but the plaintiff's cousin had been. Accordingly, no fees were due. As to other referred matters, the defendants contended that the non-payments and late payments were an oversight.

Damages

Plaintiff OCBA sought 15 percent of all attorney's fees earned in connection with the various referred matters, including the personal injury matter. The OCBA also sought interest on those amounts from the date of the defendants' receipt. The OCBA further sought interest on referral fees not timely paid by the defendants. Finally, the OCBA sought its attorneys' fees, pursuant to the LRIS rules, in having to bring the action.

Settlement Discussions

Shortly after this lawsuit was filed, the defendants paid the OCBA \$4,775. After the deposition of the underlying personal injury client's cousin, the defendants paid the OCBA another \$146,000. At the same time, defendants sought a prompt resolution of the remainder of the OCBA's claims. Following the OCBA's inspection of defendants' files, the defendants accepted a written settlement offer prepared by the OCBA's counsel.

Other Information

ACCORDING TO THE PLAINTIFF: Notwithstanding the foregoing, defendant Timothy Donahue later sought to impose additional terms and conditions on the settlement: e.g., Donahue demanded that the OCBA execute a confidentiality agreement. The OCBA refused and brought a motion to enforce the settlement pursuant to C.C.P. section 664.6. That motion was granted, and judgment for the full amount prayed for, plus prejudgment interest and attorney's fees, totaling \$323,591 was entered by the court. This judgment, together with defendants' prior payments of \$150,775, resulted in a total recovery of \$474,366 in favor of the OCBA.

ACCORDING TO DEFENDANT KIRK McINTOSH: The settlement agreed upon by OCBA and defendants left in abeyance the matter of attorneys' fees claimed by OCBA's attorneys. Eventually, a motion was made for \$105,000 in attorneys' fees, which McIntosh opposed. The court awarded \$87,599 in attorneys' fees.



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