

Law Firm Prevails in Pursuit of Attorney Fees, But at What Cost?

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Introduction

In *Storino, Ramello & Durkin v. Rackow*, 45 N.E.3d 307 (Ill. App. 1 Dist. 2015), a law firm prevailed in seeking nearly \$110,000 in attorney fees from its former clients under a contingency fee agreement that rewarded the firm based on how much was saved in special assessments the Village of Bensenville had sought to impose. Despite the law firm's win against its former clients, the opportunity cost and resources spent litigating the interpretation and application of the contingency fee agreement likely rendered the firm's victory bittersweet.

Thanks But No Thanks

In November 2006, the Village of Bensenville filed a petition seeking to impose a special assessment on approximately 450 properties for improvements. Several months later, Anita and Mario Rackow (mother and son) entered into separate written contingency fee agreements with Storino, Ramello & Durkin (SRD) for representation in the special assessment lawsuit. The Rackows agreed that "[a]t the time of recovery," they would pay SRD "[o]ne fourth (1/4) of whatever savings may be realized as a result of the objections to the Petition." The agreement included illustrations of the calculation of savings, as well as a statement by the attorneys that they would not be entitled to a fee unless there was a reduction in the amount of the "proposed assessment." The Rackows also agreed to pay SRD for all expenses.

After settlement negotiations between SRD and the Village, in September 2010 (nearly four years after the Village sought the assessment), the Village agreed to dismiss its petition. The Rackows then refused to pay SRD for attorney fees and costs. SRD responded by filing complaints against its clients for breach of contract.

SRD argued it fully performed under the contingent fee agreement and was entitled to nearly \$110,000 in attorney fees. Its founding partner claimed the special assessment lawsuit was dismissed as a result of his firm's efforts. The Rackows, however, argued the lawsuit was ended by the Village itself, not as the result of anything the law firm did. The trial court agreed with the law firm and granted it summary judgment.

Taking It to the Next Level

On appeal, the Rackows argued the terms of the fee agreement were ambiguous, and that they never bore any financial burden imposed by the Village from which a “savings” could be “realized.” They believed SRD should not have been able to rely on “savings” generated by the Village’s decision not to assess the proposed levy. SRD argued the agreement was not ambiguous, and that it contained specific terms, including examples, addressing when and how the firm would be compensated for its representation. A “recovery” occurred for the Rackows when they realized a savings as a result of SRD’s objections to the Village’s petition. The firm further argued the special assessment lawsuit was dismissed under an agreement reached by SRD with the attorneys representing the Village, and that the lawyers’ performance directly contributed to the dismissal.

In resolving the appeal, the court noted that the founding partner’s affidavit was uncontested. With nothing to contradict his statement that SRD’s negotiations with the Village led to the favorable outcome, the court agreed with SRD that the Rackows had realized a “savings.” As such, the Rackows owed their attorneys for the representation under the terms of the parties’ contingent fee agreement.

Conclusion and Takeaway

Though the law firm prevailed in this instance, this case is a reminder to all attorneys providing services on a contingency fee basis to discuss compensation with their clients in depth until there is confidence that the agreement makes sense to everyone involved.

In this case, despite the favorable outcome for the firm, significant money and time had to be spent obtaining it. Perhaps more communication, and more clarity, at the beginning of the engagement could have made a difference. Getting paid is what keeps firms afloat; misunderstandings (or a mismatch in expectations) about compensation increase the odds of a fee dispute later.

By Jasna Dubo

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