

## No equitable path back to equity stake

### Ex-SNR partner's \$125K award was adequate remedy

BY DAVID THOMAS *Law Bulletin staff writer*



Justice David Ellis

A \$125,000 verdict for breach of contract prevents a former SNR partner from pursuing a rescission case against his former firm, a state appeals panel ruled last week.

The 1st District Appellate Court found the jury award constituted an adequate legal remedy for former Sonnenschein Nath & Rosenthal LLP lawyer Donald P. Horwitz, who asserted he was owed more compensation after he entered into a “special partnership agreement” with the firm in exchange for surrendering his equity stake.

Following the jury trial in Cook County Circuit Court’s Law Division, Horwitz pursued an equitable rescission claim through the court’s Chancery Division.

But the 1st District panel found that, because a jury calculated and awarded Horwitz the difference between what it found he was owed and what he was paid, his rescission claim — an equitable remedy to be used when no other remedy was available — was barred.

The panel acknowledged Horwitz may not like the fact that he was getting only \$125,000 to be made whole in the jury’s eyes.

“An adequate legal remedy should not be confused with the best or maximum remedy,” Justice David W. Ellis wrote. “Equitable principles do not intervene to give a plaintiff the best possible outcome or merely to add another weapon to a plaintiff’s arsenal. They enter the picture if and only if the legal remedy cannot make a plaintiff whole.”

The dispute has run for 12 years between Horwitz, a former general counsel for McDonald's who has since retired, and his old firm, which now operates as Dentons US LLP after a series of mergers.

Horwitz began working at SNR in 1990, eventually becoming an equity partner. By the end of the decade, to improve its financial numbers, SNR asked Horwitz and a group of other equity partners with lower production rates to leave the firm or surrender their equity stakes.

Horwitz signed away his equity stake in 2000 and became a special partner at SNR the following year, with pay partially based on his contributions to the firm.

Horwitz expected to receive around \$1 million as a bonus for his work at the end of 2001. But the firm paid him only \$71,000 — “a pittance compared to what he expected to receive,” Ellis wrote.

After he complained his bonus was too low, SNR kicked in an extra \$10,000. Horwitz wrote a memo complaining about the situation, concluding it with the statement, “It appears I made a grave mistake in agreeing to retire five years early without a firm and detailed understanding of how I would be compensated during my years of early retirement.”

Horwitz sued the firm in August 2006, alleging breach of contract and unjust enrichment. He also sought to rescind his special partner agreement, effectively regaining his equity stake.

In March 2013, SNR demanded a jury trial on the breach-of-contract claim, arguing a jury's findings would later factor into the other claims.

The trial was conducted in April 2014 before Circuit Judge James P. McCarthy. The jury found SNR should have paid Horwitz \$373,000 under the terms of the contract, but he only received \$248,000. As a result, it awarded Horwitz the difference: \$125,000.

Horwitz did not appeal or challenge the verdict with post-trial motions. Once the case was transferred back to the Chancery Division, SNR argued the jury award was an adequate legal remedy, barring Horwitz's equitable rescission claim.

Circuit Judge Moshe Jacobius rejected the firm's arguments.

Walter Jones Jr., a shareholder at Pugh Jones & Johnson P.C. who represented SNR, said Horwitz pursued his equitable rescission claim because had he returned to equity partner status, the firm may have owed him millions of dollars.

Following a bench trial in June 2016, Jacobius rejected Horwitz's rescission claim.

Jacobius found Horwitz waited too long to challenge his contract. He also found his damages claim was speculative because it was impossible to know what Horwitz could have received as an equity partner and whether he could have lasted six years and several partner review cycles.

The 1st District panel also found Horwitz was barred from pursuing his equitable rescission claim, but because the jury award was an adequate legal remedy for his claims.

“In the jury’s mind, it made Horwitz whole. Not in Horwitz’s mind, to be sure. But he did not appeal that judgment, nor did he seek a new trial or an additur. And the completeness of the legal remedy surely cannot depend on whether the plaintiff is happy with what the jury awarded him,” Ellis wrote.

Horwitz hasn’t been authorized to practice law since 2010, according to the Illinois Attorney Registration & Disciplinary Commission. His attorney, Steven H. Gistenson of Dykema Gossett PLLC, declined to comment.

Justices Eileen M. O’Neill Burke and Margaret Stanton McBride concurred with the opinion.

The case is *Donald P. Horwitz v. Sonnenschein Nath & Rosenthal*, 2018 IL App (1st) 161909.