

The Professional Liability Law Blog

BRINGING PROFESSIONAL LIABILITY INFORMATION TO CALIFORNIA ATTORNEYS,
INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



Fair v. Bakhtiari: Attorney's Breach of Fiduciary Duty in Connection with Business Transaction with Client Results in Forfeiture of Fees

By Mark Hancock

July 5th, 2011

An attorney entered into business transactions with his clients, jointly creating and managing financial companies. In setting up the companies, the attorney did not disclose in writing the terms of the transactions, did not advise his clients in writing of their right to seek independent legal advice, and did not obtain his clients' written consent to terms of the transactions. The trial court ruled that the attorney violated Rule 3-300 of the California Rules of Professional Conduct and exercised undue influence by neglecting to take the above steps when doing business with the clients. After declaring the business agreements between the attorney and clients void and unenforceable, the trial court refused to allow the attorney to seek recovery of the fees owed to him for his work completed in the business transactions.

On appeal, the attorney contended that the clients suffered no damage because his work had resulted in great success for the companies he jointly created and managed with them. The attorney also argued that he was entitled to fees for the services he provided after setting up the companies.

In a published decision, the Court of Appeal ruled that the attorney was not entitled to seek recovery of fees for his prior services in the business transactions. The Court disregarded the fair and reasonable nature of the attorney's work, emphasizing the invalidity of the business agreements between the attorney and his clients. Although the attorney argued his failures constituted merely technical violations of professional conduct, the Court found the attorney's breach of fiduciary duty serious enough to warrant the denial of his recovery for past services performed. The Court refused to separate the work performed by the attorney after the companies were fully established, stating that the attorney's violations tainted the entire business agreement with his clients.

The decision is *Fair v. Bakhtiarari*, 195 Cal.App.4th 1135, First Appellate District, Division Two (May 24, 2011).