

DAILY REPORT

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Jury Awards \$1M to Lawyer Stiffed on Legal Fee After IRS Whistleblower Case Settled

The plaintiff was to receive 20% of any settlement from the whistleblower case, but his client instead said he'd get "zero" of the \$4.9 million award.

BY GREG LAND

A federal jury awarded nearly \$1 million in damages to a lawyer who claimed his client, a friend for decades and the relator in an Internal Revenue Service whistleblower case, stiffed him out of his share of the proceeds from the case.

Because the jury found the defendant, also a lawyer, engaged in bad faith and was stubbornly litigious, there will be further litigation regarding an award of attorney fees, said the plaintiff's lead attorney, Kevin Ward.

The litigation was unfortunate because his client, Paul Roman, had been close friends for decades with the defendant, North Carolina tax lawyer Gregory Bryant, before the dispute shattered the relationship.

"They were so close, Paul Roman used to be referred to as the 'fourth brother' in the Bryant family," said Ward, who tried the case with Schulten Ward Turner & Weiss partner J. Zachary Zimmerman and associate Megan Naioti.

Bryant is represented by Womble Bond Dickinson partner R. Dal

Burton, who did not immediately respond to a query Tuesday.

According to Ward and court filings, Bryant was an attorney and certified public accountant at Cherry Bekaert when, around 2011, he became aware that a client, Atlanta-based software supplier Ebix, may have engaged in potentially unlawful conduct.

Ward said the underlying fraud involved about \$98 million Ebix was trying to bring into the United States without taxes through a "complex scheme of buying and selling stocks."

Bryant was not willing to sign off on the scheme, Ward said, and ultimately decided to leave the company. He went on to found the Bryant International Law and Tax Group in Raleigh.

Bryant asked Roman to help him file a whistleblower complaint with the IRS in 2012. Roman sought out the help of attorney Page Pate, who was experienced with such cases and had co-counseled with Roman on other matters.



L-R: Zachary Zimmerman, Megan Naioti, paralegal Stephanie Pippin and Kevin Ward.

The three signed a representation agreement in which Bryant agreed to a 30% contingency fee of any award that might be forthcoming, with 20% going to Roman and 10% to Pate, now a partner with Pate, Johnson & Church.

The agreement included a stipulation that any money the IRS paid would be signed over to Roman and placed in his escrow account, according to the complaint and an attached copy of the agreement.

Ward said that proviso was added as a safeguard because any whistleblower award is signed over directly to the relator, "and this is not the first time whistleblowers have refused to

pay their lawyers when the money comes in.”

The IRS recovered about \$21 million from Ebix in 2017, and awarded Bryant nearly \$5 million.

According to plaintiff’s filings, Bryant “almost immediately” sought to reduce Pate’s share to 5%, and refused to pay Roman at all.

Pate was ultimately paid his 10%, but Bryant was adamant Roman was getting nothing.

An August 2017 email from Bryant to Roman said, “Paul I am not sure what is wrong with you so I will make it clear. Page is getting paid [\$]491,000 and you are getting zero. He represented me and you did nothing but give me bad advice which, thankfully, I disregarded. When I asked for you help you ridiculed (sic) and told me to discuss it with Page.”

Roman sued Bryant later that year in Georgia’s Northern District for claims that included breach of contract, unjust enrichment and constructive trust.

Bryant filed multiple counterclaims, asserting there was never a valid representation agreement, and that there was an “alternate agreement” between Bryant and Roman under which—rather than payment—Bryant would build a house on property Roman owned in the Bahamas, and they would co-own it.

The representation agreement was purely for appearances “so Pate would not insist on a higher percentage,” according to defense filings.

Ward said the defense raised numerous arguments as to why Roman should not be paid.

“We went from excuse to excuse,” Ward said.

“Their first argument was that there was no contract: ‘Paul Roman was never my lawyer,’ ” he said.

When Judge Thomas Thrash Jr. ordered that the contract be produced, the argument was “Oh yeah, there was a contract but it was a sham,” Ward said.

“Then they said, ‘If there was a contract, Paul Roman breached it,’ ” Ward said.

Ward said there were some discussions about settling and failed mediation before the case went to trial Nov. 4.

At trial, the defense called on Georgia State University College of Law Professor Clark Cunningham, who teaches law and ethics.

“He testified that he believed Mr. Roman did no work, and that it violated the contract to take 20% of the award, that it was too high for no risk,” Ward said.

“The problem was that professor Cunningham completely negated the hundreds of hours Paul spent on this case,” he said.

Roman testified that he and Bryant frequently discussed the case, “to the point where it became all-pervasive; it infected every aspect of their relationship,” Ward said.

As to the risk of handling such a case, Ward said he presented data showing that more than 90% are dismissed by the courts, and only 2% to 4% result in a payment to the relator.

“You can expect to spend five or 10 years on one of these cases,” he said. “It’s a very risky venture for the lawyer.”

Ward said the argument about the alternative contract fell flat.

“This argument that there was going to be a house in the Bahamas they’d share as joint tenants was absolute nonsense,” he said. “Greg Bryant has a [master of laws] degree, he’s a CPA. This alleged oral contract had no specificity as to when the house would be built, its size,

how much it would cost. By his own admission at trial it violated the statute of frauds.”

Pate also testified that he was satisfied with the agreement, although “it might have been a little more work than he expected in the beginning,” Ward said.

Reached by phone, Pate said that was an accurate reflection of his testimony.

In closing, Ward said Burton asked the jury for a defense verdict or “maybe a few thousand dollars” to represent the seven or so hours Cunningham opined he had worked on the case.

“He said, ‘Maybe as high as \$125,000, but in no event should Mr. Roman get more than Mr. Pate.’”

“My argument was, ‘Mr. Bryant is in the business of finding tax loopholes for people, and now he’s trying to get out of paying his contracted fee,’ ” Ward said. “And the jury agreed completely.”

On Nov. 8, the jury awarded Roman \$989,076, precisely what Ward asked for in his closing argument.

In a conversation afterward, he said the jurors were displeased by Bryant’s assertions that Roman was not, and had never been, his lawyer. The jurors also did not like that Cunningham testified Roman did no work on the case, Ward said.

“Mr. Bryant testified that Paul Roman was not his attorney for one second; that angered the jury,” Ward said.

Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta.