

JANUARY 7, 2021

DAILY REPORT

A SMART READ FOR SMART READERS

An ALM Publication

Arbitrator Awards \$640K in Legal Malpractice Case Against Metro Atlanta Firm, Ex-Partner

The arbitration award said a former partner at what is now Stout Kaiser failed to inform his client about a \$1 million-plus default judgment and admitted to “hiding things from my client and other clients.”

BY GREG LAND

This story has been updated.

A legal malpractice arbitration award of more than \$640,000—including more than \$260,000 in attorney fees—has been submitted to a federal judge in Atlanta for confirmation.

The arbitration award deemed Dunwoody, Georgia firm Stout Kaiser—formerly known as Stout Kaiser Matteson Peake & Hendrick—and former partner Andrew Matteson jointly and severally liable for the damages suffered by a client whose case was allowed to go into default and was hit with a judgment of more than \$1 million in a trial he never knew about and which his lawyer didn’t attend.

“He didn’t even know about it until it was over; nobody showed up to defend the case,” said Schulten Ward Turner & Weiss partner David Turner. “The arbitrator found they had a good counterclaim case, but they never presented it.”

While the firm’s malpractice insurer did ultimately pony up \$250,000 to settle third-party claims, he said the most his client was ever offered was \$35,000.

That client, Ryan Froehlich, suffered enormously after he was notified of the judgment in the underlying case, said Turner, fearing he and his company, FS Comm, would go bankrupt.

“He thought he was ruined,” said Turner. “There was a judgment against him and his company for a million dollars or more. The other side was very insensitive to that.”

Matteson left Stout Kaiser in 2018 and set up his own practice, The Matteson Firm.

In an interview, Matteson took full responsibility for his handling of the case.

“During that time frame, I was going through a severe depression and wasn’t really in the right frame of mind,” he said. “I made mistakes



(Courtesy photo)

David Turner of Schulten Ward Turner & Weiss LLP.

in Mr. Froehlich’s case and deeply regret the harm I caused him. Mr. Froehlich is a very nice guy and didn’t deserve what happened to him.”

Matteson also emphasized that none of his former Stout Kaiser colleagues were to blame.

“None of my former partners at the firm had any responsibility,” he said.

Stout Kaiser is represented by Hawkins Parnell & Young senior partner Kathryn Whitlock, who said she could not comment on the case.

According to Turner and the arbitration award, the underlying

case involved a dispute between Froehlich and his Texas-based communications company and a Rome, Georgia affiliated company, FS Comm Georgia.

“It was sort of a corporate divorce between his company and these folks in Rome,” said Turner. “They had this satellite operation and decided they could just imitate what the home office operation was doing on their own.”

FS Georgia sued Froehlich and FS Comm in Floyd County Superior Court in late 2015 seeking damages for alleged violations of their joint venture agreement.

In 2016, Froehlich hired Matteson and his firm to defend the case, and the lawyer filed a motion to dismiss in February 2016 but failed to include an answer to the claims. FS Georgia filed a motion for default judgment for failure to answer the claims, the arbitration award said.

Matteson received the motion but did not file a motion to open default; nor did he inform Froehlich.

A few days later, Froehlich emailed Matteson asking “where everything stands,” but Matteson did not tell him about the default then or in response to subsequent “repeated emails asking for updates on his case.”

In December 2016, the trial judge denied Matteson’s motion to dismiss, and in March 2017 entered an order of default on the issues. He never told Froehlich, nor did he or any defense counsel attend the February damages-only jury trial, which ended with an award of more than \$704,000 against FS Comm and nearly \$415,000 against Froehlich

personally, including punitive damages of \$250,000 against each.

Even then, Matteson didn’t tell Froehlich; nor did he inform him when the trial judge dismissed his appeal. In 2018 he set up his own practice, The Matteson Firm.

Froehlich didn’t learn about the judgment until a collection was filed against him in Texas in 2019.

When he learned of the judgments, Froehlich began suffering panic attacks, was prescribed medication for depression and was “terrified about what was going to happen to his kids and his house. He “started drinking very heavily,” and his wife divorced him and was awarded primary custody of their three children.

Stout Kaiser’s unnamed insurer ultimately paid \$250,000 to satisfy the judgments against Froehlich and his company.

Froehlich’s engagement letter with Stout Kaiser included an arbitration clause, and he and his company filed an arbitration action with Henning Mediation and Arbitration Services.

Stout Kaiser’s insurer denied coverage for Matteson, so he represented himself, Turner said.

There were multiple mediation sessions before arbitrator Patricia Siuta last year, during one of which Matteson admitted that he was “hiding things from my client and other clients,” the arbitration award said.

“He told the truth and tried to make amends,” Turner said. “The other side insisted on litigating this. They claimed that, because they’d paid off the judgment creditors, [Froehlich] owed them.”

Siuta’s November order awarded FS Comm \$50,000 in damages, \$82,822 in attorney fees and \$28,057 in legal expenses; she awarded Froehlich \$280,000 in damages, \$173,223 in attorney fees and litigation expenses of \$28,057, for a total award of \$646,160.

She declined to award punitive damages.

On Dec. 31, Turner and Schulten Ward colleague Dean Fuchs filed a motion in the U.S District Court for the Northern District of Georgia seeking to have the award confirmed.

Matteson said he did not plan to challenge the award, and Turner said that he did not anticipate Stout Kaiser doing so.

“It’s very difficult to overcome an arbitration award in federal court,” he said.

“Pat Siuta is a very careful arbitrator, and she did a good job laying out the facts and the law in a very acrimonious case. It was very gratifying to win and to be able to help Mr. Froehlich. He’s been through a lot, and he’s a really nice guy.”

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