Verdicts & Settlements

Shareholders dispute alliance with an outside sales rep

CEO had signed four 'exclusive' agreements without any disclosure

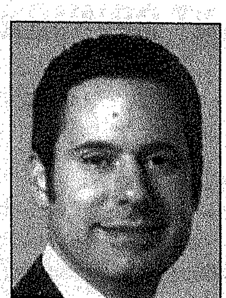
$1,021,831

This multifaceted business dispute arose out of the plaintiff shareholders' efforts to regain control of a closely held corporation. This came after defendant corporation president and CEO created an alliance with an outside sales representative and attempted to freeze plaintiffs out of their own business.

Co-defendants were an outside sales representative company that was in league with the president/CEO; and the former CFO of the plaintiff corporation.

Plaintiffs became suspicious after learning at a board meeting that the president/CEO had entered into an "exclusive" sales representative agreement with his son's sales company, without disclosure to the board of directors or company attorneys. The sales agreement guaranteed the sales company significant commissions tied to the corporation's total gross revenues, without any performance requirements and even on business procured by the plaintiff corporation's own sales force.

Upon further investigation, plaintiffs discovered that the arrangement had been in place for over four years and that the president/CEO had signed four different "exclusive" sales agreements without any disclosure to the board of directors or anyone else.



WILLIAMSON

The shareholders increased their scrutiny of management and brought in an outside consultant to gather information. In response, the president of the sales company threatened to exercise a "change of control" provision in the sales agreement that purportedly allowed the sales company to terminate the relationship and collect millions in commissions for up to two years.

Plaintiffs' counsel said the corporation's president/CEO colluded with the president of the sales company, and attempted to force the shareholders to either abandon any efforts to control of the corporation and give the president/CEO a lifetime employment contract, or sell the corporation to the president/CEO and the president of the sales company. Instead of selling, plaintiffs terminated the president/CEO's employment.

Faced with the potential post-termination commission liability estimated at $2 million, plaintiffs filed suit against the former president/CEO and the outside sales company, asserting breach of fiduciary duties, fraud, civil conspiracy, and a shareholder oppression under MCL 450.1489, based on the defendants' assertion that they were in control of the corporation prior to the president/CEO's termination.

Type of action: Breach of fiduciary duty, fraud, shareholder oppression

Injuries alleged: Lost profits, damage to shareholding interest

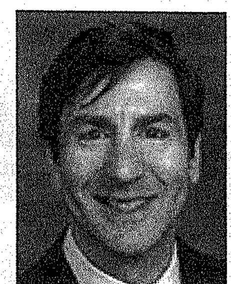
Name of case: *Confidential*

Court/Case no./Date: Confidential, confidential, October 2016

Settlement amount: $1,021,831

Most helpful experts: Rodney Crawford, economics, Detroit; Kurt Vaaler, financial investigation, Detroit

Attorneys for plaintiff: Ian M. Williamson, Gerard V. Mantese, Sara K. MacWilliams



MANTESE

Thereafter, plaintiff corporation stopped paying post-termination sales commissions. Defendant sales company then filed a counterclaim for millions of dollars in commissions, statutory penalties and attorney fees under the Sales Representative Commission Act.

Over the course of the litigation, the parties continually fought over venue, as the defendants sought to move the case to arbitration pursuant to a broad arbitration clause in the sales agreement. Through extensive motion practice, the plaintiff corporation successfully avoided the arbitration provision by arguing that the sales agreement was "unusual" and therefore not within the president's power to sign. Thereafter, the Court of Appeals denied the sales company's application for leave to appeal.

MACWILLIAMS

After 18 months of litigation and with trial approaching, the defendants agreed to settlements that will net the plaintiffs at least $1,021,831. In addition, the plaintiff corporation avoided paying substantial post-termination commissions in the seven figures.

Ian M. Williamson, Gerard V. Mantese and Sara K. MacWilliams, counsel for plaintiffs, provided case information.