

Kaye Bender Rembaum Trounces Bankruptcy Trustee's Malpractice Claims

But the firm's leadership said it paid a steep price, as its malpractice insurance premium rose about 50 percent.

By **Samantha Joseph** | **UPDATED** Mar 24, 2018 at 09:21 PM



Robert Kaye.

Kaye Bender Rembaum defeated allegations by a bankruptcy trustee who [accused it of professional negligence](#) and other missteps in its work for a homeowners's association.

But it paid a steep price to do so, as its malpractice insurance premium rose about 50 percent.

The Pompano Beach-based firm succeeded on a motion to dismiss Chapter 11 trustee Margaret J. Smith's [second amended complaint](#) in adversary proceedings filed in the association's ongoing bankruptcy case. It won dismissal with prejudice on March 9 for claims of professional negligence, breach of contract and breach of fiduciary duty.

"We did nothing wrong," partner Robert L. Kaye said. "We do feel vindicated."

Kaye Bender Rembaum once represented Spanish Isles Property Owners Association Inc. in Saddlebrook, just west of Boca Raton.

The firm worked for Spanish Isles for about four years, beginning in 2010, serving as general counsel. But Kaye said it had to sue the association to collect more than \$80,000 owed for its work.

That debt collection action prompted the association to seek bankruptcy protection. And then the trustee, Smith, sued to hold Spanish Isles's former lawyers accountable for its financial troubles.

Smith sued Kaye Bender and Boca Raton-based Jay Steven Levine P.A. She claimed the firms allowed the association's governing documents to lapse, leaving Spanish Isles with no valid declaration and bylaws to direct its operations, enforce its rights, or levy liens for unpaid homeowner dues. Her complaints claim "constructively fraudulent transfers of estate property and ... professional negligence" against both firms, which allegedly overlooked the association's governing documents until after it was too late.

The association's documents date back to its incorporation in 1979 and needed to be renewed or preserved in 2009 under Florida law. Without valid documents, the nonprofit lacked legal authority to collect homeowner fees or govern itself under its bylaws. But it continued to assess about \$350 per home for annual revenue of about \$100,000, according to Smith.

The group hired Kaye Bender in April 2010 for an initial eight-month term that renewed automatically with an annual retainer each year until 2014.

Smith suggests the firm had an opportunity to preserve the documents when it reviewed them in September 2010, but took no action and instead chose to focus on other issues. Her eight-count complaint alleged professional negligence, breach of fiduciary duty, recovery of property, breach of contract and the implied covenant of good faith and fair dealing, disallowance of all claims, and three counts of avoidance of fraudulent transfers under federal law.

Kaye Bender fought the suit, and **won dismissal** before U.S. Bankruptcy Judge Erik P. Kimball. It relied on insurance coverage to pay about \$100,000 to date in legal fees, while its premiums soared about 50 percent, according to Kaye.

"Our reputation is very important," Kaye said. "We did the work, and we're entitled to be paid for it."

The firm's collection efforts continue against Spanish Isles. Plus, its litigation with Smith might continue. Kimball's ruling dismissed five of the trustee's claims without prejudice, leaving the door open for Smith to file a third amended complaint.

Meanwhile, Spanish Isles's other former law firm, Jay Steven Levine P.A., denied all allegations of wrongdoing. It agreed to settle the trustee's demands by remitting a \$20,000 lump-sum payment and waiving all claims against the association's estate for administrative fees and costs.