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Kaye Bender Rembaum Trounces Bankruptcy Trustee's Malpractice Claims

by Samantha Joseph

Kaye Bender Rembaum defeated allegations by a bankruptcy trustee who accused it of professional negligence and other missteps in its work for a homeowners' 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.

SEE KAYE, PAGE A6

Blue Road's Niche: Reviving Historic Hotels, Apartments in South Beach

by Lidia Dinkova



J. ALBERT DIAZ

Blue Road put about \$27 million into the Berkeley, which included a 10-story tower erected in place of a parking lot behind the hotel.

The front of the Iberostar Berkeley hotel in South Beach is the same as it was when the hotel was built in the 1940s.

The original Art Deco facade is there along with the terrazzo floor, which extends inside. If you look closely, some blemishes are visible from years of use.

"You see some spots where it really looks like from back in the day," said Marcelo Tenenbaum, who together with business partner Jorge Savloff bought the hotel in 2013.

Inside the Berkeley, which was designed by Art Deco architect Albert Anis, the space has been modernized. Some historic elements, like a column in the middle of the restaurant, remain. The windows are in the same place, but the panes are now hurricane-resistant.

The situation is similar at the other South Beach hotels Tenenbaum and Savloff own and run through their company, Bay Harbor Islands-based

SEE BLUE ROAD, PAGE A2

Tobacco Funding Fight Extinguished

by Christine Sexton

A smoldering controversy over Florida's landmark tobacco settlement and how money should be spent has been snuffed out.

Rep. Jeanette Nunez, a member of the Florida Constitution Revision Commission, said Thursday she will no longer push a proposed constitutional amendment that would have eliminated a requirement that the state set aside 30 percent of overall tobacco-education and prevention funding for an edgy advertising and marketing campaign.

"I don't ever want to call myself 'fat,' but I'm singing. I'm done," Nunez, R-Miami, told The News Service of Florida.

Nunez's remarks come after the commission, which has the power to place potential constitutional amendments on the November ballot, did not approve the proposal while meeting this week in Tallahassee.



MEREDITH GIDDINGS

State Rep. Jeanette Nunez said she sponsored the amendment because she doesn't think it's appropriate that the Constitution include required spending amounts for any program, including the anti-tobacco campaign.

Anti-smoking groups that have lobbied fiercely against the proposal, though, aren't letting their guard down.

"We don't want to assume anything with regard to the process they are following," Protect Tobacco Free Florida spokeswoman Heather Youmans said in a prepared statement.

The Constitution Revision Commission, which meets every 20 years, has unique authority to place proposed constitutional amendments directly on the ballot. The commission this week voted to move forward with 25 proposed amendments and send them to its "Style and Drafting" committee. That committee has key duties such as finding ways to consolidate proposals with similar themes and writing ballot summaries.

Proposals emerging from the committee then will go back to the full Constitution Revision Commission for final votes. They need support from 22 of the 37 members to go on the November ballot.

Commission rules make clear that the Style and Drafting Committee can

SEE TOBACCO, PAGE A2

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KAYE

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.



Kaye

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.

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