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Novack and Macey's Successful Defense of Legal Malpractice Case Culminates in Unanimous Seventh Circuit Decision

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Steve Novack

John Haarlow

Novack and Macey LLP's client in this case was a national law firm (the "Law Firm"). The Law Firm's client was sued by a supposed creditor at a time when the client was in desperate financial straits. Because it had no funds to defend itself, the client decided not to appear. A default judgment was entered.

To try to collect on this uncollectible judgment, the creditor filed an involuntary bankruptcy against the client, and made a deal with the bankruptcy trustee to sue the Law Firm for malpractice for not defending its client. As part of the deal, the creditor agreed to advance certain costs of the malpractice case and the trustee agreed that the creditor would get the lion's share of any recovery.

From the get-go, Novack and Macey's lawyers sensed that there was something peculiar and wrong about the malpractice case. Among other things, they realized that to win, the trustee would have to prove that the creditor's case was bogus (such that no judgment should have been entered), but if he did so, he would then turn over the bulk of that recovery to that same creditor.

The Novack and Macey lawyers pointed this out to United States District Judge Virginia Kendall. Judge Kendall was initially persuaded enough by this argument to put a hold on the trustee's prosecution of the case to allow the Novack and Macey lawyers to proceed to discovery on what were termed the "unclean hands defenses," and to then present a motion for summary judgment, if appropriate.

That is just what happened. After substantial discovery on the defenses, Novack and Macey filed for summary judgment. After full briefing, Judge Kendall granted the motion and entered judgment in favor of the Law Firm. Then, on June 21, 2013, a unanimous Seventh Circuit panel affirmed the summary judgment in favor of the Law Firm.

In the panel's 33-page opinion, Circuit Judge David Hamilton wrote, "The story of Rumpelstiltskin is about turning straw into gold. The legal malpractice case at the heart of these appeals presents a modern attempt to turn metaphorical straw into real gold. The district court rejected the effort, as do we." The opinion concluded, "We hope this peculiar and misguided case has reached its end."

Steve Novack, who argued before the Seventh Circuit, told the *Chicago*

Daily Law Bulletin in an interview after the victory, "The Seventh Circuit not only affirmed summary judgment in favor of my client, but now has joined the district court in unanimously rejecting this case as one that should never have been filed in the first place." The national legal news source, *Law 360*, also covered the victory, quoting the court's conclusion that the claimants' actions "created the impression that the courts were being misused."

Novack and Macey LLP attorneys on the appeal in addition to Mr. Novack included John Haarlow, Jr. For more information about the case, contact Mr. Novack at (312) 419-6900 or snovack@novackmacey.com.

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