

The Legal Intelligencer

Arbitration Appeal Withdrawal Clears Path for Defendants to Collect \$7.1M in Attorney Fees, Costs

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What You Need to Know

- Bankruptcy counsel for a Pennsylvania business' trustee agreed to withdraw an arbitration appeal that stood in the way of the defendants' collection of \$7.1 million in attorney fees and costs.
- The stipulation additionally waives the trustee's objections to the award's confirmation and reimburses an appeal fee the defense had fronted.
- Though the parties agreed not to pursue sanctions against each other, the defendants reserved the right to go after the trustee's litigation counsel.

The path to collecting \$7.1 million in fees and costs just got a lot easier for a trio of defendants.

Bankruptcy counsel for a Pennsylvania business' trustee agreed in a July 14 stipulation to withdraw an arbitration appeal that stood in the way of the defendants' collection of the money.

And the parties' terms leave defendants Camping World, NBCUniversal and Machete



Courtesy photos

Robert Ellison, left, and Eric Swibel, right, of Latham & Watkins.

Corp. in a better spot than if the plaintiff hadn't filed an appeal at all.

That's because Lynn Feldman, Chapter 7 trustee for Precise Graphix LLC, not only agreed to withdraw the appeal, but she also waived challenges to the award's confirmation in court.

According to Latham & Watkins partners Eric Swibel and Robert Ellison, who represent

Camping World, the waiver clears obstacles the defendants likely would have encountered if the arbitration process had gone forward normally.

“The stipulation paves the way for an unopposed confirmation of the award in Los Angeles Superior Court, which could have otherwise taken many months to resolve,” Swibel and Ellison said in an email.

Though the stipulation covers an arbitration taking place in California, it was entered under Precise Graphix’s Chapter 7 proceedings in the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. The agreement was brokered between the defendants’ attorneys and Feldman’s bankruptcy counsel with Duane Morris.

Feldman’s counsel in the arbitration, meanwhile, was not one of the lawyers to sign on to the agreement.

In fact, while the parties waived their rights to seek sanctions against each other, the defendants explicitly reserved their right to go after Feldman’s litigation counsel, Gerard Fox Law PC’s Gerard Fox. The agreement additionally included a course of action for the defendants to file the stipulation with the JAMS arbitrator in the event Fox “fails or refuses to do so.”

“The stipulation speaks for itself,” the Am Law 10 law firm partners said in the email. “Needless to say, Mr. Fox was not involved in negotiating it.”

Fox declined to comment, as did Duane Morris partner Lawrence Kotler.

Fox, who is not involved in the bankruptcy proceedings, represented Feldman in her \$30 million action against Camping World, NBCUniversal and Machete.

Feldman claimed Precise Graphix’s appearance on “The Profit”—an NBC reality show in which host and Camping World CEO Marcus Lemonis advised struggling small businesses—was to blame for its having to file for bankruptcy.

When the arbitrator, retired Judge Ann I. Jones, threw out all of Feldman’s claims and awarded the defendants a total of \$7.1 million in attorney fees and costs, Fox sought an appeal.

He did not, however, pay the administrative fees for the arbitration, leaving Camping World to front the \$3,500 required to keep proceedings moving. The July 14 stipulation comes less than 10 days after Camping World sought to recoup the fee in bankruptcy court.

The fee reimbursement was also included in the agreement.

Swibel and Ellison said they “think the stipulation speaks loud and clear about the appeal’s lack of merit.”

“We can’t speak for the estate,” they added, “but the trustee acknowledged in the stipulation that after reevaluating the appeal, she determined it was ‘in the best interest of the estate’ to drop it.”