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CLIENT CLAIMED ATTORNEY'S FEE WAS UNCONSCIONABLY HIGH

Mixed Verdict

Case Dong Dang Huynh and Trang Dai Phan v. Richard Haynes, Walter A. Boyd III, Haynes Boyd & Associates P.C., and Richard Haynes & Associates, P.C., No. 2009-80567

Court Harris County District Court, 11th, TX

Judge Michael Miller

Date 6/29/12

Plaintiff Attorneys **Matthew A. Nowak** (lead), Nowak & Stauch, Dallas, TX (Dong Dang Huynh, Trang Dai Phan)

Jorge L. Gomez, The Gomez Law Firm, Houston, TX (Dong Dang Huynh, Trang Dai Phan)

Trang Dai Phan, pro se (Trang Dai Phan)

Defense Attorneys **John W. Raley** (lead), Raley & Bowick, Houston, TX (Haynes Boyd & Associates, P.C., Richard Haynes, Richard Haynes & Associates, P.C.)

Robert M. Bowick, Raley & Bowick, Houston, TX (Haynes Boyd & Associates, P.C., Richard Haynes, Richard Haynes & Associates, P.C.)

Kenneth G. Norman, Jr., Baytown, TX (Walter A. Boyd III)

Facts & Allegations

On April 6, 2004, plaintiff Dong Dang Huynh, his nephew, and several other members of his extended family were indicted for having laundered several hundred thousand dollars through Huynh's remittance service and travel agency. Huynh hired Richard Haynes & Associates, P.C., in writing, to defend him for a flat fee of \$885,000. Huynh hired attorney Walter Boyd to defend his nephew.

Besides paying the flat fee, Huynh also paid money into a trust account to cover expenses.

On June 2, 2005, the nephew pleaded guilty and agreed to cooperate with the government.

On June 13, Haynes and Boyd formed Haynes, Boyd & Associates, P.C.

On August 24, in a new indictment, Huynh was charged with having laundered about \$24 million. The first indictment was dismissed.

Later, Huynh paid to Haynes the funds remaining in the trust account (about \$113,000), Huynh's proceeds from the sale of a strip center (about \$120,000), and his proceeds from the sale of a house (about \$250,000).

The partnership of Haynes, Boyd & Associates ended around May 2007.

Haynes represented Huynh at the trial, which took place in summer of 2008. A jury found Huynh guilty of money laundering, conspiracy to commit money laundering, and conspiracy to defraud the United States by failing to file currency transaction reports.

Huynh had a different attorney at the sentencing, which took place the following year. Huynh was sentenced to 24 years in prison.

Huynh and his wife sued Haynes; Richard Haynes & Associates; and Haynes, Boyd & Associates for breach of fiduciary duty, breach of contract, fraud, civil theft, and misappropriation of fiduciary funds. The plaintiffs sued Boyd for civil theft and breach of fiduciary duty.

The wife's claims were dismissed shortly before trial.

Huynh claimed that the \$885,000 fee was unconscionably high for the work performed on the first indictment; that that work lasted only a year and involved just a few hearings; that the defendants did not properly account for their time and expenses or keep Huynh informed about the criminal cases; and that the attorneys had a conflict of interest because of their partnership with each other.

Huynh also claimed that he was entitled to recover the payments made after dismissal of the first indictment. The written contract stated that it was for the first indictment and that it could not be modified except in writing. Also, the contract said that any funds left in the trust account would be returned to Huynh.

The defense denied the allegations and argued that the parties entered into a new oral agreement and not an improper oral modification of the written agreement.

Regarding the funds in the trust account, according to the defense, Huynh agreed that the funds should be used to pay for his defense on the second indictment and that a flat fee is earned simply by accepting the case.

According to the defendants, they did what they were supposed to do, in getting the first indictment dismissed and in defending Huynh on the second indictment.

The defense also asserted the statute of limitations.

The defense argued that the funds paid to Haynes from the trust account and the proceeds of the sale of the strip center and house were in exchange for Haynes' defending Huynh in the second indictment.

The defense also argued that Haynes obtained a favorable plea offer from the government, but that Huynh refused it, and that Huynh insisted on testifying at his criminal trial, against Haynes' recommendation.

Injuries/Damages

Huynh sought disgorgement of the funds he had paid, which totaled about \$1,368,000.

Result

The jury found that the firm of Haynes, Boyd and Associates breached its fiduciary duty with regard to a conflict of interest, and that Huynh should reasonably have discovered this breach by June 13, 2005. The jury was not given a damages question for this cause of action. Huynh sought disgorgement of fees, the amount of which was a question for the court.

The jury also found that the firm of Richard Hayes & Associates breached the April 19, 2004, agreement, and that Huynh reasonably should have discovered this breach by May 9, 2005. The jury found zero damages for this breach.

The jury found no breach of fiduciary duty or breach of contract by Hayne or Boyd; found no fraud, theft or liability for misapplication of funds by any defendant; and did not find malice of any defendant by clear and convincing evidence.

Trial Details

Trial Length: 8 days

Trial Deliberations: 5 hours

Jury Vote: 10-2

Plaintiff Expert(s) Charles Herring, Jr., J.D., legal ethics, Austin, TX

Defense Expert(s) Joel Androphy, J.D., legal ethics, Houston, TX

Post-Trial

The Court ordered that, for breach of fiduciary duty, the firm of Haynes, Boyd and Associates disgorge \$25,000 in fees. The court also awarded each of the four defendants \$25,000 in attorney fees as prevailing parties under the Texas Theft Liability Act.