

Defendant Demands Plaintiff to Pay Back Appeal Fees in \$7.1M Attorney Fee Dispute

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What You Need to Know

- A defendant who paid the fee for a plaintiff's arbitration appeal is seeking reimbursement in bankruptcy court.
- The appeal sought to undo a judgment against the plaintiff in a \$30 million action over its appearance on reality show 'The Profit.'
- The Am Law 10 firm lawyers for the defendant said Camping World was unwilling to allow plaintiffs counsel to delay the confirmation of a \$7.1 million attorney fee award.

When a plaintiff failed to pay for its appeal of an arbitration judgment rejecting its claims and hitting it with \$7.1 million in attorney fees and costs, a defendant footed the bill.

Now, that defendant is seeking repayment in a Pennsylvania bankruptcy court.

The \$3,500 reimbursement defendant Camping World Inc. is seeking is small compared to the millions at stake in the broader dispute, but the company's Am Law 10



Courtesy photos

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

attorneys said the compensation is a matter of principle.

"Given the arbitrator found no credible evidence to support his baseless claims, Camping World was unwilling to allow [plaintiff's counsel Gerard] Fox to prevent the confirmation of the \$7.1 million attorney fees award against his client by failing to pay the administrative fee for his client's appeal,"

Latham & Watkins partners Eric Swibel and Robert Ellison said in an email.

Camping World and fellow defendants NBCUniversal and Machete Corp. successfully fended off a \$30 million action brought by plaintiff Lynn Feldman, a trustee for Pennsylvania-based Precise Graphix Inc. The plaintiff 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 Chapter 7 bankruptcy.

Feldman, represented by Gerard Fox Law partner Gerard Fox, brought 14 claims, including allegations of fraud, breach of contract and conspiracy, against the defendants. Fox did not respond to a request for comment.

The plaintiff initially filed a public complaint in Los Angeles Superior Court in May 2022 but soon after moved the matter to JAMS for arbitration.

The case did not go well for Precise Graphix. The arbitrator, retired Judge Ann I. Jones, determined in a 57-page final award that all of the trustee's claims failed due to "the complete failure of competent, credible evidence supporting her allegations at the hearing."

And Jones further held that the defendants, as the prevailing parties, were entitled to \$7.1 million in attorney fees and costs.

But a day before the May 2023 arbitration award was set to be finalized, the plaintiff filed

an appeal, according to Camping World. The plaintiff did not, however, pay the administrative arbitration fee that would have allowed the proceedings to move forward, the defendant said.

"In other words," Camping World wrote in a June 5 bankruptcy court filing, "the trustee brought claims (which she touted publicly), lost on everyone, and then unilaterally put the entire arbitration on hold."

With the appeal stalled, the defendants had no pathway to pursue the attorney fee award. So Camping World advanced the fee on Feldman's behalf. Camping World said it made the payment to avoid "delaying disposition of the appeal and expected confirmation of the final award."

The trustee, however, has yet to reimburse that expense, Camping World claimed.

The company's June 5 filing asks the court to compel payment of the expense. Neither Feldman nor Precise Graphix had filed a response as of Monday afternoon. The case is assigned to U.S. Bankruptcy Judge Patricia Mayer of the Eastern District of Pennsylvania.

Lawrence Kotler, a partner at Duane Morris who represents Feldman in the bankruptcy, did not respond to a request for comment. Jeffrey Kurtzman of Kurtzman Steady, who represents Precise Graphix in the bankruptcy, declined to comment.

The appeal of the final award, including the attorney fees, remains pending.