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Law Firm Can't Get Fees Under Oral Deal With Ex-Bank CEO

By **Bill Wichert**

Law360 (June 14, 2022, 3:30 PM EDT) -- The Basil Law Group PC cannot obtain \$400,000 in attorney fees under an oral agreement with the then-CEO of Noah Bank because that deal was superseded by a written agreement drafted by the law firm's managing partner, a New Jersey state appeals court said Tuesday.

The appellate panel upheld trial court rulings nixing the New York-based firm's fee bid, which was premised on the grounds that its termination as the bank's counsel in June 2019 violated former

Noah CEO Edward Shin's oral promise in October 2018 to continue to retain the Basil firm in exchange for its reducing attorney fees by \$400,000 in an underlying federal trademark dispute.

The written retainer agreement in February 2019 said it "'replaces all prior agreements'" between The Basil Law Group and Noah Bank, and stated that its "'written terms are not subject to any prior oral agreements or understandings,'" the three-judge panel said.

The firm's managing partner, Robert J. Basil, who drafted that agreement, is a "seasoned" lawyer who has performed "outside general counsel work" and spent more than 30 years practicing "as a commercial litigator," the panel noted.

"If he did not intend the 2019 agreement to supersede all prior agreements, he would have stated so," the panel said. "And if he intended to preserve the oral agreement he had with Shin, he also would have included that in the 2019 agreement."

Noah Bank agreed in January 2018 to pay a \$650,000 flat fee to The Basil Law Group to represent it in a trademark suit against a rival bank then known as NOA Bank, according to the appellate decision. After that case settled the following September "without

assistance of counsel," Shin asked Robert Basil to reduce the then-fee balance of \$550,000, the decision said.

The firm has said that Basil agreed to accept a total payment of \$250,000 in exchange for Shin's oral promise that the law firm would remain the bank's primary counsel for all litigation matters and be paid advisers to its board of directors, subject to certain conditions, according to the decision.

On Dec. 12, 2018, The Basil Law Group sent an updated invoice to the bank for its final fee payment in connection with the trademark case, which reflected that \$100,000 had been paid and that the bank owed an additional \$150,000, the decision said. Noah Bank paid the \$150,000 the next day, the decision said.

After the February 2019 retainer agreement had been executed, Shin stepped down as the bank's president and CEO about four months later in the wake of **criminal charges** against him, the decision said. Noah Bank was a purported victim of some of Shin's alleged misconduct, the decision said.

Robert Basil joined Shin's criminal defense team, according to the decision. Noah Bank decided to terminate the firm's representation of the bank after concluding it was a conflict of interest for Basil or

the firm to represent Shin and the bank at the same time, the decision said.

The Basil Law Group brought the instant action against the bank in October 2019, and the parties ultimately filed competing summary judgment bids.

The firm contended the bank violated Shin's oral agreement and demanded the \$400,000 owed under the original deal, while the bank said the 2019 agreement superseded any oral arrangement, court documents state.

In March 2021, Superior Court Judge Avis Bishop-Thompson sided with the bank, saying the terms of the 2019 agreement are "clear and unambiguous with specific integration terms that eliminated prior oral agreements." Judge Bishop-Thompson denied the bank's request for attorney fees but did not provide any reasoning.

On the law firm's appeal of the summary judgment rulings, the panel echoed the judge's conclusion about the 2019 agreement. That contract is "enforceable because it reflects the parties' intent and the purpose of the contract, which is that the 2019 agreement solely governed the attorney-client relationship," the panel said.

The panel noted that the original 2018 agreement and the oral agreement "were extinguished by accord and satisfaction." The accord was the deal to reduce the fees to \$250,000, and the satisfaction occurred when Noah Bank paid the outstanding \$150,000, the panel said.

"Because the oral agreement was a valid and fully performed accord and satisfaction contract, the 2018 agreement and oral agreement were no longer in effect," the panel said. "Therefore, the only contract governing plaintiff's legal representation of defendant was the 2019 agreement."

The panel remanded the matter for Judge Bishop-Thompson to consider the bank's fee application and spell out reasons for granting or denying it.

An attorney for Noah Bank, Mark A. Berman of Hartmann Doherty Rosa Berman & Bulbulia LLC, told Law360 on Tuesday, "Noah Bank is gratified that the Appellate Division agreed with us by rejecting Mr. Basil's appeal and granting our cross-appeal for a remand on attorney's fees."

Robert Basil declined to comment Tuesday.

Judges Heidi Willis Currier, Patrick DeAlmeida and Maritza Berdote Byrne sat on the panel for the Appellate Division.

The Basil Law Group is represented in-house by Robert J. Basil and David A. Cohen.

Noah Bank is represented by Mark A. Berman and Kelly A. Zampino of Hartmann Doherty Rosa Berman & Bulbulia LLC.

The case is The Basil Law Group PC v. Noah Bank, case number A-2198-20, in the Superior Court of New Jersey, Appellate Division.

--Editing by Jill Coffey.