EXHIBIT B

6/4/2018 9:49 AM
Chris Daniel - District Clerk Harris County
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By: Nelson Cuero
Filed: 6/1/2018 4:56 PM

2018-36793 / Court: 151

CAUSE NO. _____

DR. SAEED ROHIFARD *Plaintiff*	§	**IN THE DISTRICT COURT OF**
V.	§	**HARRIS COUNTY, TEXAS**
BREWER & PRITCHARD, P.C. **J. MARK BREWER, individually and** **A. BLAIRE HICKMAN, individually** *Defendants*	§	**_____ JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE COURT JUDGE OF SAID COURT:

COMES NOW, Dr. Saeed Rohifard, Plaintiff in the above-entitled matter, complainting of Defendants Brewer & Pritchard, P.C., J. Mark Brewer, individually and A. Blaire Hickman, individually, and would respectfully show as follows:

I
DISCOVERY CONTROL PLAN

Based upon this Petition, this case should be controlled by a discovery control plan Level 3 pursuant to the Texas Rules of Civil Procedure, Rule 190.4.

II
RULE 47 STATEMENT OF RELIEF

In accordance with Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief in excess of $1,000,000. This is not an expedited action.

III
PARTIES

Plaintiff, Dr. Saeed Rohifard is an individual residing in Harris County, Texas.

Defendant, Brewer & Pritchard, P.C. is a professional corporation, formed in the State of Texas and doing business as a law firm in Harris County, Texas. The company may be served

with citation by serving J. Mark Brewer at his principal place of business, Brewer & Pritchard, P.C., 800 Bering Drive, Suite 201 A, Houston, Texas 77057 or wherever he may be found.

Defendant, J. Mark Brewer is an attorney licensed to practice law in the State of Texas and can be served with citation at his principal place of business, Brewer & Pritchard, P.C., 800 Bering Drive, Suite 201 A, Houston, Texas 77057 or wherever he may be found.

Defendant, A. Blaire Hickman is an attorney licensed to practice law in the State of Texas and can be served with citation at her principal place of business, Brewer & Pritchard, P.C., 800 Bering Drive, Suite 201 A, Houston, Texas 77057 or wherever he may be found.

IV
JURISDICTION AND VENUE

This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Texas and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

This Court has personal jurisdiction over each Defendant because the acts and/or omissions complained of herein occurred in Texas, each Defendant does business in Texas and/or committed a tort, in whole or in part in Texas.

Venue is properly laid in Harris County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas and/or because Defendants reside in or have a principle office in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), (2) and (3).

V
FACTUAL BACKGROUND

This is a case of gross breach of fiduciary duty, breach of contract and statutory violations arising out of an underlying qui tam case. In short, the lawyer defendants breached

their agreement with their client and subordinated his interests by paying themselves a 70% contingency fee when the agreement entitled the lawyers to only 40%. It has long been held that "[t]here are few business relations of life involving a higher trust and confidence than those of attorney and client, or generally speaking one more honorably and faithfully discharged, few more anxiously guarded by the law or governed by sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence thus reposed shall not be used to the detriment of prejudice to the rights of the party bestowing it." *Stockton v. Ford*, 52 U.S. 232, 247 (1850). The attorney's fees that Defendants swindled from Plaintiff are unconscionable as a matter of law and this Court should order these fees and all others paid to Defendants returned to Plaintiff in the name or morality and justice.

Dr. Saeed Rohifard ("Dr. Rohi" or "Plaintiff") hired Brewer & Pritchard, P.C. ("BP"), J. Mark Brewer ("Brewer") and A. Blaire Hickman ("Hickman") (collectively, "Defendants") to prosecute a qui tam claim against ABC Dental, Dr. Iraj Jabbary, Dr. Kauser Bari and others who were culpable or responsible for Medicaid fraud under the Texas False Claims Act, in addition to breach of contract (the "underlying case"). Pursuant to the attorney/client agreement ("Agreement"), Dr. Rohi and Defendants agreed that Defendants would be compensated on a contingency fee basis. Specifically, the Agreement provided the following:

> If Counsel is successful, he will receive as his fee a percentage of the Gross Recovery (as that term is defined below), according to the following schedule:
>
> (a) 40% of all sums collected from and after 30 days before the first trial setting of Client's claims.
>
> (b) 45% of all sums collected from and after the case is called to trial.

The underlying case was not called to trial. Therefore, Defendants were entitled to no more than 40% of all sums collected under the terms of the Agreement.

The qui tam case settled for an amount that, under the terms of the Agreement, would entitle Defendants to no more than $960,400.00 in attorney's fees. However, Defendants breached the Agreement and placed their interests ahead of Dr. Rohi's and took for themselves approximately $1,681,000.00 in attorney's fees. This amounted to more than 70% of the total settlement and was not only a breach of the Agreement, the fee was unconscionable and unethical as a matter of law. *See Curtis v. Comm'n for Lawyer Discipline*, 20 S.W.3d 227, 233 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

VI
STATEMENT OF CLAIMS

Therefore, it has become necessary to bring this suit to collect a legal debt of money damages owing to Plaintiff due to the Defendants' conduct. Specifically, Defendants' actions constitute breach of the duty of fair dealing/breach of fiduciary duty, breach of contract, violations of the Texas Deceptive Trade and Practices Act (DTPA), violations of section 32.45 of the Texas Penal Code (Misapplication of Fiduciary Property), violations of the Texas Theft Liability Act and money had and received.

A. BREACH OF DUTY OF FAIR DEALING AND BREACH OF FIDUCIARY DUTY

Defendants owed Dr. Rohi fiduciary and other duties as a matter of law by virtue of the attorney/client relationship, including the following:

- Duty of loyalty and utmost good faith;
- Duty of candor;
- Duty to refrain from self-dealing, which extends to dealings with persons whose interests are closely identified with those of the fiduciary;

- Duty to act with integrity of the strictest kind;
- Duty of fair, honest dealing;
- Duty of full disclosure; that is, a duty not to conceal matters that might influence a fiduciary to act in a manner prejudicial to the principal;
- Duty to represent Plaintiff with undivided loyalty;
- Duty to act with absolute perfect candor, openness, honesty, and without any concealment or deception;
- Duty to timely inform Plaintiff of any conflict of interest;
- Duty to make a full and fair disclosure of every facet regarding the attorney/client relationship;
- Duty to inform Plaintiff of the pros, cons, advantages, disadvantages and implications of modifying an attorney/client agreement.
- Duty to fully and fairly provide information requested by Plaintiff regarding billings and expenses in order for Plaintiff to make fully informed decisions regarding potential settlements.

Dr. Rohi will show that Defendants herein intentionally breached one, some or all of the above fiduciary duties. These breaches of fiduciary duty proximately caused damages to Plaintiff and/or an improper benefit to Defendants.

B. BREACH OF CONTRACT

Defendants are liable to Dr. Rohi because they breached the Agreement by fee churning. Specifically, Defendants intentionally over charged Plaintiff and refuse to comply with the contract as agreed. These breaches were material and Dr. Rohi's injuries were a natural, probable, and foreseeable consequence of Defendants' breaches. Since Defendants breached their contract with Dr. Rohi, Defendants are not entitled to any fee whatsoever. *See Kelly v. Murphy*, 630 S.W.2d 759, 761-762 (Tex. App. – Houston [1st Dist.] 1982, writ ref'd n.r.e.) ("an attorney who has himself breached the contract may not recover for services performed

thereunder, whether on a contract basis or in quantum meruit."); *see also Royden v. Ardoin*, 160 Tex. 338, 331 S.W.2d 206 (1960).

C. DECEPTIVE TRADE PRACTICES ACT (DTPA)

Dr. Rohi will show that the Defendants are liable under the DTPA because (i) Dr. Rohi was a consumer, (ii) the Defendants violated specific provisions of the DTPA, and (iii) the violations were a producing cause of the Dr. Rohi's injury. In this regard, Dr. Rohi will show that the Defendants' actions and course of action was unconscionable and was a producing cause of economic damages. Dr. Rohi will show that, although Defendants are lawyers, they are not excluded from liability under the DTPA because they made express misrepresentations of a material fact that cannot be characterized as advice, judgment, or opinion; they failed to disclose information in violation of Section 17.46(b)(24); and their actions and course of action were unconscionable and cannot be characterized as advice, judgment, or opinion and they violated Section 17.46(b)(26) of the DTPA. Dr. Rohi will show that the Defendants' conduct was tantamount to an unconscionable action or course of action and was an act or practice which, to Dr. Rohi's detriment, took advantage of the lack of knowledge, ability, experience or capacity of Dr. Rohi to a grossly unfair degree. The Defendants are liable under the DTPA because of Dr. Rohi's lack of knowledge in relation to the lawyer's knowledge of the technical issues that are inherent in the subject matter for which Defendants were hired. Dr. Rohi will show that the Defendants' conduct was committed knowingly and intentionally as those terms are defined by the DTPA. Accordingly, the Defendants are liable to Dr. Rohi for additional damages as provided by the DTPA, including treble damages and reasonable attorneys' fees necessary to bring this cause of action.

D. MISAPPLICATION OF FIDUCIARY PROPERTY

Defendants violated section 32.45 of the Texas Penal Code (Misapplication of Fiduciary Property). Pursuant to section 32.45, a violation occurs when a fiduciary intentionally, knowingly or recklessly misapplies property he holds as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held. Defendants owed a fiduciary duty to Dr. Rohi as a matter of law. Defendants intentionally, knowingly or recklessly misapplied the settlement proceeds from Plaintiff's qui tam case by charging Dr. Rohi more than the agreed upon contingency fee pursuant to the attorney/client agreement. Such conduct involved a substantial risk of loss to Dr. Rohi of the property, and in fact, such property was lost as Dr. Rohi has not received a portion of the settlement funds he should have received. Therefore, Defendants have violated section 32.45 of the Texas Penal Code and pursuant to Civil Practice and Remedies Code, Section 41.008 (c) the statutory caps for punitive and/or exemplary damages do not apply to this case.

E. VIOLATIONS OF THE THEFT LIABILITY ACT

Defendants' conduct, as described herein, further violates chapter 134 of the Texas Civil Practice and Remedies Code, also known as the Texas Theft Liability Act. Dr. Rohi was the owner of the property and/or entitled to ownership of the funds which were wrongfully obtained and held by Defendant either through the unlawful over billing and/or retaining settlement funds belonging to Dr. Rohi. Defendants intentionally and/or knowingly unlawfully appropriated Dr. Rohi's funds even though Defendants were fully aware that they were not entitled to the funds. Dr. Rohi did not consent to the appropriation and/or the consent was induced by coercion, deception or duress. Furthermore, Defendants had the intent to deprive Dr. Rohi of the unlawfully appropriated funds. As a proximate cause of Defendants' theft, Dr. Rohi sustained

damages. Thus, Defendants are subject to the Theft Liability Act for which this cause of action is bring brought.

F. MONEY HAD AND RECEIVED

Additionally, and/or in the alternative, settlement monies should be returned to Dr. Rohi under the equitable doctrine money had and received. Defendants are intentionally, wrongfully and maliciously holding money that, in equity and good conscious, belongs to Dr. Rohi. A suit for money had and received is appropriate to recover refunds or overcharges. Therefore, Dr. Rohi brings suit under the theory of money had and received to recover the money being intentionally withheld by Defendants.

VII
DAMAGES

Regarding the causes of action and conduct alleged above, Dr. Rohi has sustained pecuniary losses that were proximately caused by Defendants' conduct. Plaintiff hereby seeks the maximum allowable of actual damages that are within the jurisdictional limits of this court and exceed $1,000,000.

A. ACTUAL DAMAGES

Plaintiff seeks actual damages in the amount of the breach of contract.

B. PUNITIVE DAMAGES

Dr. Rohi sues to recover punitive damages arising out of Defendants' intentional breach of fiduciary duty. Taking into consideration the nature of the wrong, the character of the conduct involved, the degree of culpability of Defendants, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and the net worth of Defendants. Additionally, Dr. Rohi will show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific

intent to substantially injure Dr. Rohi, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Dr. Rohi, and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Dr. Rohi. Moreover, pursuant to Civil Practice and Remedies Code, Section 41.008 (c) the statutory caps for punitive and/or exemplary damages do not apply to this case.

C. TREBLE DAMAGES

Due to Defendants' intentional and/or knowing violations of the DTPA, Plaintiff is entitled to treble damages for which Plaintiff seeks herein.

D. FEE FORFEITURE

Due to Defendants' intentional breach of fiduciary duty as outlined above, Dr. Rohi is entitled to the disgorgement of all attorney's fees paid to Defendants.

E. ATTORNEY'S FEES

Defendants' breach of contract and violation of the DTPA entitles Plaintiff to reasonable attorney's fees necessary to prosecute this action. Plaintiff seeks reasonable and necessary attorney's fees incurred to pursue this action to the maximum extent of the law.

VIII
CONDITIONS PRECEDENT

All conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure 54 or performance would be futile under the circumstances of this case.

IX
JURY DEMAND

Plaintiff desires to have a jury decide this case and makes this formal request pursuant to Texas Rule of Civil Procedure 216. This request is filed more than thirty days before this case has been scheduled for trial and all fees have been paid.

X
REQUEST FOR DISCLOSURE

Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

XI
NOTICE OF INTENT TO USE PRODUCED DOCUMENTS

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, each party is hereby given notice of Plaintiff's intent to use any and all documents produced by any and all parties at any pretrial hearing, deposition, proceeding, the trial of this matter, or any combination.

XII
PRAYER

WHEREFORE, Plaintiff prays that after trial herein, that judgment be entered against Defendants jointly and severally as prayed for, that costs of court be taxed against Defendants, that Plaintiff be given prejudgment as well as post judgment interest, and for such other and further relief, at law and in equity to which Plaintiff may show himself to be justly entitled, to which the Court believes Plaintiff to be deserving, and for which Plaintiff will ever pray.

Respectfully submitted,

THE KASSAB LAW FIRM

/s/ Lance Christopher Kassab
LANCE CHRISTOPHER KASSAB
Texas State Bar No. 00794070

lance@kassab.law
DAVID ERIC KASSAB
Texas State Bar No. 24071351
david@kassab.law
KIMBER WATSON ENIOLA
Texas State Bar No. 24099228
kimber@kassab.law
1214 Elgin Street
Houston, Texas 77004
Telephone: 713.522.7400
Facsimile: 713.522.7410

ATTORNEYS FOR PLAINTIFF

DELIVERED THIS 26 DAY
OF June 18.

CAUSE NO. 201836793

RECEIPT NO. 0.00 CIV
********** TR # 73502889

PLAINTIFF: ROHIFARD, SAEED (DR)
vs.
DEFENDANT: BREWER & PRITCHARD P C

In The 151st
Judicial District Court
of Harris County, Texas
151ST DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of Harris

TO: HICKMAN, A BLAIRE
BREWER & PRITCHARD P C
OR WHEREVER HE MAY BE FOUND
800 BERING DRIVE SUITE 201 A HOUSTON TX 77057
Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 1st day of June, 2018, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 11th day of June, 2018, under my hand and seal of said Court.

Issued at request of:
KASSAB, LANCE CHRISTOPHER
1214 ELGIN STREET
HOUSTON, TX 77004
Tel: (713) 522-7400
Bar No.: 794070

DISTRICT COURT OF HARRIS COUNTY TEXAS

Chris Daniel

CHRIS DANIEL, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)
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OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock ___.M., on the _____ day of _____, _____.

Executed at (address) _____ in

_____ County at _____ o'clock ___.M., on the _____ day of _____,

_____, by delivering to _____ defendant, in person, a

true copy of this Citation together with the accompanying _____ copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.
To certify which I affix my hand officially this _____ day of _____, _____.

FEE: $_____

_____

_____ of _____County, Texas

_____
Affiant

By _____
Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, _____.

_____
Notary Public

N.INT.CITR.P

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