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Candi Scott

No. 00-00619

**THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.**

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

**G. David Westfall, Christina Westfall, and
Stefani Podvin,**

Counter-Defendants

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

FINAL JUDGMENT

On **April 8, 2002**, this cause came on to be heard. Plaintiff, **The Law Office of G. David Westfall, P.C.** (the "Plaintiff"), appeared in person by representative and by attorney of record and announced ready for trial and the defendant, **Udo Birnbaum**, appeared in person, pro se, and announced ready for trial and the counter-defendant, G. David Westfall, appeared in person by representative and by attorney of record and announced ready for trial. **All other parties to this lawsuit having been dismissed previously by summary judgment** rulings of the Court. A jury having been previously demanded, a jury consisting of 12 qualified jurors was duly impaneled and the case proceeded to trial.

After three days of testimony and evidence in the jury portion of these proceedings, the Court submitted questions of fact in the case to the Jury. The questions submitted to the Jury and the Jury's responses were as follows:

156/228
EXHIBIT A

QUESTION NO. 1

What sum of money, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its damages, if any, that resulted from Defendant, Udo Birnbaum's, failure to comply with the agreement between the Plaintiff and the Defendant?

INSTRUCTION:

You are instructed that after the attorney-client relationship is terminated, a client or an attorney can have post termination obligations to each other, such as, the client is still obligated financially for the lawyer's time in wrapping up the relationship and the lawyer is still obligated to perform tasks for the client to prevent harm to the client during the termination process.

ANSWER:

Answer in dollars and cents:

ANSWER: \$15,817.60

QUESTION NO. 2

What is a reasonable fee for the necessary services of the Plaintiff's attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following:

- | | |
|--|-------------|
| A. For preparation and trial in this matter: | \$41,306.91 |
| B. For an appeal to the Court of Appeals, if necessary: | \$20,000.00 |
| C. For making or responding to a petition for review to the Supreme Court of Texas | \$5,000.00 |
| D. If petition for review is granted by the Supreme Court of Texas | \$10,000.00 |

QUESTION NO. 3

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any false, misleading, or deceptive act or practice that Udo Birnbaum relied on to his detriment and that was a producing cause of damages to Udo Birnbaum?

“Producing cause” means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

“False, misleading, or deceptive act” means any of the following:

Failing to disclose information about services that was known at the time of the transaction with the intention to induce Udo Birnbaum into a transaction he otherwise would not have entered into if the information had been disclosed; or

Answer: NO

QUESTION NO. 4

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any unconscionable action or course of action that was a producing cause of damages to Udo Birnbaum?

“Producing cause” means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

An unconscionable course of action is an act or practice that, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

Answer: NO

If your answer to Question 3 or Question 4 is "Yes", then answer Question 5. Otherwise do not answer Question 5.

QUESTION NO. 5
(Finding of "knowingly")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: [Not answered by reason of submission]

If your answer to Question 3 or Question 4 is "Yes", then answer Question 6. Otherwise do not answer Question 6.

QUESTION NO. 6
(Finding of "intentionally")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception. Specific intent may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: [Not answered by reason of submission]

If your answer to Question 3 or Question 4 is "Yes", then answer Question 7. Otherwise do not answer Question 7.

QUESTION NO. 7
(“Compensatory” damages)

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Udo Birnbaum for his damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents, if any, for each of the following:

The difference, if any, in the value of the services as received and the price Udo Birnbaum paid for them. The difference, if any, shall be determined at the time and place the services were done.

Answer: [Not answered by reason of submission]

Expense costs to Udo Birnbaum, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: [Not answered by reason of submission]

The reasonable value of Udo Birnbaum’s lost time, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: [Not answered by reason of submission]

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what a party’s ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

If your answer to Question 5 "Yes", then answer Question 8. Otherwise do not answer Question 8.

QUESTION NO. 8
(“Compensatory” damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.’s conduct was committed knowingly?

Answer in dollars and cents, if any.

Answer: [Not answered by reason of submission]

If your answer to Question 6 "Yes", then answer Question 9. Otherwise do not answer Question 9.

QUESTION NO. 9
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.’s conduct was committed intentionally?

Answer in dollars and cents, if any.

Answer: [Not answered by reason of submission]

The charge of the Court and the verdict of the jury are incorporated for all purposes by reference. Because it appears to the Court that the verdict of the jury was for the Plaintiff and against the Defendant, judgment should be rendered on the verdict in favor of the Plaintiff and against the Defendant.

It is therefore, **ORDERED, ADJUDGED and DECREED** that Plaintiff, G. David Westfall, P.C., be awarded damages as follows:

- A. Actual damages in the amount of \$15,817.60 plus pre-judgment interest up through the date of this Order which the Court finds to be \$2,156.15.
- B. Attorney's fees in the amount of \$41,306.91.
- C. An additional award of attorney's fees as follows:
1. \$20,000.00 in the event of an appeal to the Court of Appeals.
 2. \$5,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas.
 3. \$10,000.00 in the event of an application for writ of error is filed with the Supreme Court of Texas and the writ is granted.
- D. Taxable Court costs in the amount of \$926.80.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from April 11, 2002 until paid.

All costs of court expended or incurred in this cause are adjudged against Udo Birnbaum, Defendant/ Counter-Plaintiff. All writs and process for the enforcement and collection of this judgment or the costs of court may issue as necessary. **All other relief not expressly granted in this order is hereby denied.**

THIS JUDGMENT RENDERED ON **APRIL 11, 2002**, AND SIGNED THIS 30
day of July, 2002.


JUDGE PRESIDING