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Court tosses fee award, saying trustee overpaid for 'Rolls Royce' defense

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A California appeals court has snatched away \$5 million in fees from attorneys at three top firms in a dispute over the riches of a deceased shopping mall magnate.

The state's 4th District Court of Appeal ruled that the trial court erroneously "rubber stamped" requests for attorney fees by Loeb & Loeb, Jones Day and Greenberg Traurig. The law firms represented the former trustee of Daniel W. Donahue's estate. Donahue, who died in 2002, was chairman of Donahue Schriber Realty Group Inc., a Costa Mesa, Calif., real estate firm that owned numerous shopping centers in California and other western states.

Reversing the fee award on Feb. 24, the three-judge panel said that the firms' client, Patrick Donahue, had embarked on a "spare no expense strategy" by hiring the three firms at once. The panel, in remanding the case, ruled that although the client's strategy may have benefited him, it was questionable whether it benefited the Donahue trust.

"Did Patrick demand a Rolls Royce defense when a prudent trustee could have arrived at the same destination in a Buick, Chrysler or Taurus?" the court wrote.

The lawsuit underlying the fee dispute was brought by Daniel Donahue's wife, Michelle Donahue, who claimed that her brother-in-law Patrick Donahue as trustee had sold 40% of the trust's property for less than market value for a \$20 million loss. Following a 14-day bench trial, the court found that the property was properly sold. The appeals court affirmed the decision.

Regarding attorney fees that the firms amassed in defending Patrick Donahue, the appeals panel appeared skeptical. "[S]imultaneous representation by multiple law firms posed substantial risks of task padding, over-conferencing, attorney stacking and excessive research," the panel wrote.

The judges noted that after Loeb & Loeb was brought in to represent the trustee, one Jones Day associate alone billed \$1.5 million. The court noted that Scott Bertzyk, a Jones Day attorney who moved to Greenberg Traurig while the suit was pending, billed \$171,000 after Loeb & Loeb became lead counsel.

Representing Patrick Donahue at trial was Loeb & Loeb partner Adam Streisand, who said the appeals court "had many of the facts wrong."

He said that the outcome would serve as a disincentive for individuals to serve as trustees.

"Who would want to serve if he had to risk his entire livelihood by banking on a Buick defense? Only a fool," Streisand said.

Richard Bridgford, who represented Michelle Donahue at trial, said that the defense fees were excessive.

"I've never understood how it benefited the trust to have three law firms representing the former trustee against my firm," said Bridgford, a partner with Bridgford & Gleason in Aliso Viejo, Calif. Marjorie Fuller, with the Law Offices of Marjorie Fuller in Fullerton, Calif., represented Michelle Donahue in the fee dispute.

Writing the decision was Judge Richard M. Aronson. Also on the panel were William Rylaarsdam and Raymond Ikola.

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