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4th Circ. Hands Saveri Firm Win In \$1.2M Legal Fees Battle

By **Hailey Konnath**

Law360 (January 15, 2019, 6:47 PM EST) -- Former Lief Cabraser Heimann & Bernstein LLP attorney Joseph Saveri's firm doesn't have to pay another plaintiffs firm a \$1.2 million referral fee out of his score from settlements in titanium dioxide price-fixing litigation, the Fourth Circuit ruled Monday, finding he'd never agreed to shell out the sum.

Criden & Love PA collected \$900,000 in fees from Lief Cabraser for its work bringing the firm antitrust plaintiff Isaac Industries Inc. and was seeking to take another bonus from Saveri, who wound up being named lead attorney in the multidistrict litigation after he left Lief Cabraser to start his own law firm, court records show.

But the Fourth Circuit found that, while the Criden firm had asked Saveri to agree to a referral fee, the lead attorney had never agreed to pay it, according to Monday's decision. Both the Joseph Saveri Law Firm Inc. and Criden & Love could have clarified their relationship and whether Saveri should pay up for the referral when he took on Isaac's co-plaintiff, East Coast Colorants LLC, after he left Lief Cabraser, but neither did, the appeals panel wrote.

"It is not the job of the court to do this for them," the panel wrote. "In the absence of any sign that Saveri accepted the terms offered by Criden & Love, we must leave the negotiation where we found it. As such, we see nothing more than an offer that was never accepted."

The drama began unfolding in 2010, when the Criden firm heard Saveri had plans to file a class action in Maryland that claimed titanium dioxide producers were colluding to rig prices. Criden connected the lawyer with Isaac Industries, a buyer of the pigment, on the condition that it would garner some of the attorneys' fees when all was said and done.

But then Saveri left Lief Cabraser and picked up Isaac's co-plaintiff, which does business as Breen Color Concentrates. The Criden firm reached out to Saveri, saying it still expected him to pay a referral fee, according to court filings. Saveri didn't respond to Criden's requests to be paid and never signed a deal.

Saveri was eventually appointed co-lead counsel in the litigation, which brought in \$163.5 million in settlements, \$10 million of which went to Saveri for his attorneys' fees. Lief Cabraser paid Criden \$900,000 for referring its client to that firm for the case, but Criden claimed it should've come away with some of Saveri's fees, too, according to filings in the case.

Criden launched arbitration proceedings to try to get the money from the Saveri firm, prompting Saveri to sue in California federal court in 2014 in a bid to end the dispute.

The case eventually wound up in **Maryland federal court** after the Ninth Circuit found California had no jurisdiction over Saveri's Florida-based firm.

However, the Fourth Circuit found Monday that Criden's contract claims contradict "a bedrock of principle law — so simple it barely needs stating — that a contract cannot be formed by offer alone."

And, the panel said, Saveri's move for co-lead counsel on the titanium dioxide suit doesn't count as implied acceptance of Criden's offer, as Criden had alleged. If anything, the panel decided, that move "implied rejection" of Criden's offer because Saveri was representing a client with no connection to Criden or Lieff Cabraser at the time.

Criden's unjust enrichment claim also falls short, the panel ruled, as Saveri earned his fees representing a client lacking any connection to Criden.

"We are pleased with the court of appeals decision and are glad that this matter is finally over," Saveri's attorney, James P. Ulwick of Kramon & Graham PA, told Law360 on Tuesday.

Counsel for Criden wasn't immediately available for comment Tuesday.

U.S. Circuit Judges J. Harvie Wilkinson III, Diana Gribbon Motz and Allyson Kay Duncan sat on the panel for the Fourth Circuit.

Saveri is represented by James P. Ulwick of Kramon & Graham PA and Robert H. Bunzel of Bartko Zankel Bunzel & Miller.

Criden is represented by Kevin Bruce Love of Criden & Love PA and Scott H. Phillips of Semmes Bowen & Semmes.

The case is Joseph Saveri Law Firm Inc. et al. v. Michael E. Criden PA, case number 17-2090, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Eric Kroh. Editing by Breda Lund.