

## Lawyer Seeking \$9.2M From Ex-Firm Fights Arbitration Bid

By **Michelle Casady**

Law360 (July 20, 2020, 9:38 PM EDT) -- A Houston lawyer who claims his former firm owes him \$9.2 million as a payout of his capital account argues new evidence supports his position that his case against Williams Hart Boundas Easterby LLP belongs in court rather than in arbitration.

Former partner Steven Kherkher on Friday told Harris County District Judge Rabeea Sultan Collier that his former colleagues made statements in a September conversation that "cast doubt on the veracity of the sworn affidavits" they filed with the court in February pushing for arbitration.

The firm in January asked to move the dispute to arbitration after Kherkher **sued the firm** and name partners John Eddie Williams and Jim Hart on Dec. 30, alleging he is owed millions.

In his Friday filing, Kherkher told Judge Collier — who partially denied the first arbitration request in February, finding some claims belonged in court — that he recorded a conversation between himself, Williams and Hart at the law firm's offices in September that directly contradicts the sworn affidavits the firm filed asking the court to reconsider arbitration.

The parties disagree about which agreement governs this dispute, with the law firm alleging that the clear terms of the partnership agreement Kherkher signed when he joined the firm require arbitration. While Kherkher argues the parties reached a distinct and separate oral agreement with no mandate to arbitrate when he announced intentions to leave the partnership that calls for the payout he now seeks.

Kherkher said the recording shows his former law partners knew that a new agreement had been entered into and knew it required the \$9.2 million payout, contradicting the later-filed sworn affidavits stating otherwise.

"Much of the evidence as to the controlling issues (whether the partnership agreement governs or whether the parties entered into a new agreement that governs) will come down to the testimony of the parties who were in the room at the time of the oral agreement," Kherkher told the court. "Clearly, it is the court that will decide whose testimony regarding those issues is worthy of belief ... Kherkher respectfully submits that exhibit A shows it is the testimony of the defendants — not that of Kherkher — that is unreliable and that the court should flatly reject."

Ayesha Najam of Gibbs & Bruns LLP, who represents Williams Hart, told Law360 on Monday that Kherkher's recording is "an underhanded betrayal of the relationship between two former partners who had worked together for decades."

"Mr. Kherkher's decision to secretly record his former partner while trying to goad him into backing up his story, we find no other word to describe it other than despicable," she said. "And it doesn't even support the merits of Mr. Kherkher's claim here ... If you read the transcript, Mr. Hart does not back him up at all."

According to court documents, the oral agreement was allegedly entered into by the parties during a February 2019 lunch meeting between Kherkher, Williams and Hart that was called after Kherkher announced his intentions to leave the partnership.

The meeting was called to convince Kherkher to stay on in some capacity. Kherkher has told the court that the partnership agreed to pay him the balance of his capital account, \$9.2 million, and he agreed to stay on in an of counsel role. The payments were to be made over a 48-month period, and Kherkher alleges the payments were initially made for several months "without issue."

Then in August, he alleges the partnership told him his capital balance had been reconciled and demanded \$200,000 in reimbursement for overpayments, which he argues constitutes a breach of the agreement.

Kherkher, who now practices at the law firm Kherkher Garcia LLP, did not return a message seeking comment Monday. Attorneys John Eddie Williams and Jim Hart were not immediately available to comment.

Williams Hart is represented by Ayesha Najam and Grant J. Harvey of Gibbs & Bruns LLP.

Kherkher is represented by himself and Eric A. Harley of Kherkher Garcia LLP and Dale Jefferson and Levon Hovnatanian of Martin Disiere Jefferson & Wisdom LLP.

The case is Kherkher v. Williams Hart Boundas Easterby LLP et al., case number 2019-90457, in the 113th District Court of Harris County, Texas.

--Editing by Jay Jackson Jr.