

ESOP Firm Asks 11th Circ. To OK \$1.5M Win For Unpaid Bill

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Law360 (April 6, 2023, 2:57 PM EDT) — A financial advisory firm specializing in employee stock ownership deals urged the Eleventh Circuit to affirm its \$1.5 million jury verdict in a suit alleging an online firearms marketplace failed to pay its bill for the company's services, arguing that a voided contract doesn't defeat its claims.

Tenor Capital Partners **said Wednesday** that the appellate panel should uphold its win against GunBroker.com LLC on an unjust enrichment claim. The court should reject the company's arguments that it didn't have to pay Tenor for its services to identify a financing source for an ESOP transaction because it wasn't properly registered as an investment adviser with the U.S. Securities and Exchange Commission, the firm said.

The firm said the contract GunBroker is attempting to rely on, which the lower court found to be void in a **November 2021 ruling** because Tenor was acting as an unregistered adviser, doesn't disqualify its claims. The services it provided to GunBroker — finding a lender — did not constitute securities-related investment advice, according to the firm.

"The arguments made in GunBroker's appeal are simply its latest efforts to avoid paying Tenor for the valuable services Tenor provided to GunBroker, and GunBroker accepted," Tenor said.

GunBroker initially sued Tenor in February 2020, alleging it violated securities laws and its fiduciary duty when it gave advice about selling securities and the value of securities as an unregistered agent. After GunBroker and its former CEO Steve Urvan cut off its deal with Tenor and forwent an ESOP deal, the firm invoiced the company after GunBroker secured a \$65 million financing deal with a lender that the firm had identified. The online retailer said it was under no obligation to pay the bill, prompting Tenor's counterclaim.

Tenor said in its filing Wednesday that its unjust enrichment claim brought to trial did not concern any securities-related advice that would have disqualified its claim under the contract that the lower court found to be void.

"There was literally nothing about the services at issue at trial — i.e., finding a lender ready, willing and able to provide \$65 million in financing to GunBroker — that remotely constituted investment advisory or other securities advice or otherwise implicated the securities laws," Tenor said.

Because the services Tenor provided were not illegal, the lower court correctly applied a standard set in a 2020 Georgia federal court ruling, *Five Star Athlete Management Inc. v. Davis*, which asked whether a

plaintiff "requires any aid from the illegal transaction to establish his case," Tenor said.

Tenor did not support its claim with the void contract or investment advisory services, so the lower court rightly found that it could sue for the value of the legal portion of the services, the firm said.

The firm's filing comes in response to GunBroker's appeal of the \$1.5 million verdict. In a **February filing**, the online retailer said that the lower court shouldn't have let Tenor take its unjust enrichment claim to trial based on the defunct contract, and that it would be illogical to find that any of Tenor's financial advice was separate from its role as an investment adviser.

GunBroker also asked the appellate panel to revive its Georgia Securities Act and breach of fiduciary duty claims against Tenor that were tossed at summary judgment.

Attorney **Richard L. Robbins**, who represents Tenor, told Law360 on Thursday that he fully expects to prevail at the Eleventh Circuit.

"We were disappointed, but not surprised, that GunBroker and Mr. Urvan did not accept the court's decisions or the jury verdict and is still refusing to pay what Tenor is owed," Robbins said.

Representatives for GunBroker did not immediately respond to requests for comment.

GunBroker is represented by John H. Goselin II of Litchfield Cavo LLP and Jeffrey P. Lutz of Culhane Meadows PLLC.

Tenor is represented by **Richard L. Robbins, Jeremy U. Littlefield and Matthew T. Parrish** of Robbins Alloy Belinfante Littlefield LLC.

The case is Tenor Capital Partners LLC v. GunBroker.com LLC, case number 22-13911, in the U.S. Court of Appeals for the Eleventh Circuit.

-Additional reporting by Rosie Manins. Editing by Neil Cohen.