

Ga. Financial Firm Wins \$1.5M In GunBroker.com Fee Trial

By **Rosie Manins** ·

Law360 (May 23, 2022, 5:42 PM EDT) — A federal jury has awarded \$1.5 million to a Georgia financial advisory firm in its dispute with an online gun broker over unpaid fees for an \$180 million enterprise valuation the firm provided to the retailer in 2018.

The jury returned its verdict in the Northern District of Georgia on Friday, agreeing with Tenor Capital Partners LLC that its services to GunBroker.com LLC had benefited the web-based firearms marketplace and that it hadn't been properly compensated.

Tenor was denied its request for more than \$534,000 in attorney fees and litigation costs under Georgia law on the basis that GunBroker had acted in bad faith. The firm's claim against GunBroker for unjust enrichment was the only claim in the case that survived a comprehensive summary judgment ruling in November.

Counsel for Tenor told Law360 that the firm is extremely pleased with the verdict, considering it had only asked for about \$975,000. Richard L. Robbins of Robbins Alloy Belinfante Littlefield LLC, an attorney for Tenor, said the jurors deliberated for less than two hours before announcing their verdict late Friday afternoon.

"I've never had a jury verdict before where the jury awards you more than you were asking," Robbins said Monday. "So that was gratifying. They came in well above what we asked for, which to me says it all."

Robbins said it is difficult to get attorney fees under Georgia law for bad faith, and so he wasn't surprised that the jury did not award it. He said he hopes GunBroker doesn't drag the case out by appealing.

Tenor's dispute with GunBroker began in early 2019 when the online retailer abruptly ended their relationship shortly after Tenor had provided its initial \$180 million enterprise valuation. GunBroker was considering an employee stock ownership plan, but it cut ties with Tenor after learning that the firm had not registered as an investment adviser with the U.S. Securities and Exchange Commission.

GunBroker had paid Tenor \$12,500 for its initial work on the valuation but refused to pay any more, case filings show. The online marketplace sought help from others in its pursuit of an employee stock ownership plan, but it abandoned the effort after a trustee never offered more than \$120 million for the available stock.

In May 2019, GunBroker instead closed on a \$65 million financing agreement with MGG Investment Group LP, which it had been introduced to by a third party acting on behalf of Tenor. Upon learning of the transaction, Tenor invoiced GunBroker for about \$1 million in relation to its valuation work.

GunBroker sued Tenor in February 2020, seeking to rescind their agreement and retrieve monetary damages. Tenor answered with counterclaims.

U.S. District Judge Thomas W. Thrash Jr. dealt with each of the parties' claims in his summary judgment ruling, finding only Tenor's unjust enrichment claim and associated request for attorney fees should proceed to trial.

Judge Thrash found in GunBroker's favor on its rescission claim, holding that the retailer did not have to provide notice to Tenor and return any benefits received under their agreement before suing. But the judge said GunBroker couldn't claim monetary damages under the Investment Advisers Act.

The judge held that Tenor was an investment adviser for the purposes of the act, and that the firm was not liable under Georgia's securities act. He ruled in Tenor's favor on GunBroker's claims of fraud, negligent misrepresentation, breach of fiduciary duty, recoupment and breach of contract.

Judge Thrash granted summary judgment in GunBroker's favor on Tenor's claims of fraud, contract breach and punitive damages.

In an order Monday, Judge Thrash denied GunBroker's motions for directed verdicts on Tenor's unjust enrichment and attorney fee claims.

Robbins said it is rare for a defendant to win a case on a counterclaim, though the same thing happened in a separate case he tried before the COVID-19 pandemic. He said it is particularly satisfying, given that Tenor tried to settle the dispute before GunBroker sued.

"We weren't looking for litigation," Robbins said. "Businesspeople have to know that if they accept services, you're going to have to pay for it. I think it's a good morality and legal lesson."

Counsel for GunBroker did not immediately respond to questions about the case Monday.

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

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

The case is Tenor Capital Partners LLC v. GunBroker.com LLC, case number 1:20-cv-00613, in the U.S. District Court for the Northern District of Georgia.

Read more at: <https://www.law360.com/georgia/articles/1496017/ga-financial-firm-wins-1-5m-in-gunbroker-com-fee-trial?copied=1>