

Roger Kahn seeks \$7M in lawsuit

Bizarre' facts in suit by two-time congressional hopeful against his former attorney and accountant, his lawyer says

Liquor magnate and two-time Democratic congressional candidate Roger Kahn has sued his former attorney and accountant for \$7 million, claiming they are responsible for a 2008 federal court verdict that cost him more than \$6 million.

Kahn's suit, filed March 4 in Fulton County Superior Court, is against Elliot Cohen of Cohen Pollock Merlin & Small, and Jeffrey Kaplin, managing partner with Atlanta accounting firm Rosenthal & Kaplin. Kahn claims mistakes by Cohen and Kaplin led to the federal action, which was brought against Kahn by his niece, Cathy Kahn McSweeney.

"The facts are as bizarre as you can imagine," said **Robbins Firm** partner **Richard L. Robbins**, who represents Kahn. "It starts off with his niece stealing money from him, then he tries to let her pay it back and finds himself in this situation."

The suit pitting Kahn against Cohen, who represented Kahn in his personal and business dealings for years, comes after failed attempts to resolve the dispute out of court, said Robbins.

"There were efforts, but obviously they were not successful," he said.

Cohen, who retired from the practice of law in 2004, and the firm he founded are represented by McKenna Long & Aldridge partners David L. Balser and Lawrence A. Slovensky.

Other than to note that they "obviously disagree" with the allegations in the suit, Slovensky said he could not comment on the case.

Kaplin did not respond to requests for comment left on his office voicemail, and Slovensky said he did not know who was representing him.

The roots of dispute reach back decades as Kahn ran Empire Distributors, which had been started by his late father, Max Kahn.

In 1993, Roger Kahn hired his niece to work as his personal assistant. Known then as Cathy Kahn Slechta, she had been orphaned at the age of 2 when her parents were killed in Florida hotel fire and looked upon Kahn as a "surrogate father," according to her complaint in the federal case.

In 1994, Kahn discovered that Slechta had written herself checks from accounts belonging to him and Empire totaling \$287,640, the federal suit said. Rather than pursue legal action, Kahn offered to allow his niece to make restitution by agreeing to give him a share of the inheritance from Max Kahn's will.

At issue was Slechta's one-ninth interest in "over 5,000 acres of real property in Florida known as the Swallow Hopkins Land Trust," which in 1996 was conveyed to Kahn.

At that time, Cohen and Kahn were co-executors of Max Kahn's estate, and they valued the land at \$126,473.

But in 2004, Slechta complained in federal court that she had been deceived as to the value of the land trust and other assets placed in a separate trust set up by Cohen to handle her affairs. Cohen and Kaplin were appointed co-trustees of that trust.

That suit said that Kahn and Cohen "knew or should have known that the future distributions from [Slechta's] Swallow Hopkins interest would far exceed the total amount of plaintiff's debts to defendant Roger Kahn and Empire Distributors."

The suit said Kahn had realized more than \$2.4 million from the land trust proceeds by 2005. It also accused Kahn, Cohen and his law firm of breach of fiduciary duty, fraud, conspiracy, unjust enrichment, conversion and negligence. Cohen and the firm also were accused of malpractice, and Kahn was accused of violating federal and state racketeering statutes.

After being denied a summary judgment bid, Cohen and his firm reached a confidential settlement with the plaintiffs in 2006. Kahn elected to go to trial.

In September 2008, a federal jury awarded nothing to Slechta but ordered Kahn to pay her five children \$1.9 million in damages on the fraud charges and \$1.7 million in attorney fees.

In 2009, the 11th U.S. Circuit Court of Appeals turned aside Kahn's efforts to reverse the verdict, and in January of this year the federal district court entered a "satisfaction of judgment" order.

In the new complaint, Kahn has asked the Fulton court to order Cohen, his firm and Kaplin essentially to reimburse him for the money he's had to pay Slechta, interest and \$3 million in attorney fees. This money comes "directly from the tortious acts of defendants," Kahn's suit says.

The complaint says that Cohen and Kaplin, as co-trustees of the trust set up to manage Slechta's inheritance for herself and her heirs, bore any responsibility for undervaluing Slechta's assets and approving their transfer to Kahn.

"Kahn, who is not an attorney and was not a trustee of the trust, simply wanted to be repaid the money stolen from him," it says. "He relied on Cohen and [the firm], who also represented Kahn and served as trustee of his personal trust, to arrange the repayment in an efficient and legal manner that would leave the affair of his niece's thefts behind him."

"Cohen, Kaplin, and [Cohen Pollock] negligently ignored the law of trusts in order to effect the Swallow Hopkins transaction," says the complaint. "Their negligence and other misconduct proximately caused the damages of the children plaintiffs, giving rise to Kahn's liability. But for their actions, Kahn would not have had any liability."

Robbins said that, while the underlying family dispute and legal history of the case are convoluted, the new action is relatively straightforward. Attached to the complaint is U.S. District Judge Harold L. Murphy's 62-

page order from 2006 denying Cohen and his firm's motion for summary judgment.

Robbins cited that order as bolstering his argument that the lawyer and accountant were more liable than Kahn for the damages Slechta's children suffered.

"But the interesting thing is that we don't have to relitigate those issues, whether he knew or should have known," said Robbins. "The federal court held that there were issues of fact concerning the numerous tort claims against Mr. Cohen and the firm."

Robbins said both he and his client had hoped to find another way to settle the dispute.

"I wish it could be resolved another way," he said. "I don't like being in this situation, suing another lawyer; Roger doesn't like it—they worked together for many years. But Roger's out \$7 million; that's a lot of money to leave on the table."

In 2000, Kahn was an unsuccessful candidate in a congressional race against Republican Rep. Bob Barr. In 2002, he lost to Republican Phil Gingrey in a bid to represent Georgia's newly-drawn 11th District.

The case is *Kahn v. Cohen*, No. 2011CV197394.