

PARTNERSHIP – BREACH OF FIDUCIARY DUTY

FACTS

Three dentists entered into a partnership agreement in 1995. The partnership owned all of the tangible assets to facilitate the practice of dentistry by all three dentists. The partnership owned the dental equipment, cabinets, computers, and supplies although each partner maintained individual ownership of his/her patient base and hired separate staff.

One of the three partners, Dr. H exited from the partnership in 1997 and the evidence showed that he abandoned his interest in the partnership when he left. Dr. D (Plaintiff) continued to practice at the partnership office with Dr. R (Defendant) until 2004, when the office lease expired. Dr. D had originally paid \$50,000 to purchase a 1/3 interest in the partnership in 1995. Shortly before the office lease expired, Dr. R was able to negotiate the lease renewal in his name only. When the original lease expired in June 2004, Dr. R served Dr. D with a 30-day notice to vacate the office. Dr. D had to move her practice to a new office and Dr. R did not compensate her for her partnership interest in the tangible assets that she left behind. Dr. R then placed his practice (including the partnership owned assets, i.e. the dental equipment and supplies which furnished the seven operatory office) on the market for sale for over \$1,000,000.

Dr. D sued for breach of fiduciary duty and punitive damages for Dr. R having kicked her out of the partnership office and failing to compensate her for the dental office she left behind. The case was tried before a jury. Dr. R claimed that the 1995 partnership was not really a partnership agreement, that Dr. D had previously given up her interest in the partnership, and Dr. R filed a cross complaint against Dr. D for fraud.

After a seven-day trial, the jury reached a verdict in favor of Dr. D. The jury found that Dr. R had breached the partnership agreement and that he breached the fiduciary duty owed to Dr. D since they were partners.

The jury awarded Dr. D \$81,000 in damages and made a finding that Dr. R acted in a conscious disregard for the rights of Dr. D. The jury found in favor of Dr. D as well and against Dr. R on his cross complaint for fraud. The court has retained jurisdiction for potential punitive damages against Dr. R.

LEARNING POINTS

1. The partners drafted their own partnership agreement – big mistake! The dentists should have had a partnership agreement drafted by an experienced attorney, which was customized to their practice situation. In some situations, it is preferable to have a Practice Association Agreement rather than a Partnership.
2. Respect the rights of those dentists you practice with and if you act in a conscious disregard for your partners' rights, judge or jury will make you pay!