Flex-N-Gate chief's suits against advisers proceeding

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URBANA – Suits by Flex-N-Gate Corp. President Shahid Khan and his wife, Ann, against several financial advisers are proceeding at both the appellate and circuit court levels.

The Khans filed suit against several financial advisers last July, claiming the advisers misled the Khans about tax-advantaged investment strategies.

The two suits, filed in Champaign County Circuit Court, claim the advisers knew federal authorities were investigating similar strategies as illegal tax shelters. But the advisers continued to represent their strategies as legal ways to minimize state and federal tax liability.

The suits – one 79 pages, the other 127 pages – say the Khans lost "significant" sums from pursuing those strategies, but the amounts were not specified. They seek both actual and punitive damages.

The cases are being heard by Champaign County Circuit Judge Jeffrey Ford. A motion to compel arbitration in the case has been granted, but the Khans' attorneys have appealed that order to the 4th District Appellate Court.

In the meantime, other motions in the cases are scheduled to be heard in circuit court March 23.

The two suits were filed six months after Forbes magazine ran a short story about a tax dispute the IRS had with the Khans. The dispute involved tax shelters used to shelter $250 million in income over five years.

In a January 2009 interview with The News-Gazette, Shahid Khan blasted the Forbes story as a "hatchet job" that misrepresented facts. He said he and his wife quickly and fully paid the amount in dispute – which he said totaled about $68 million. He said he hoped to get all the money back from the government through litigation.

Named as defendants in one suit are Chicago-based BDO Seidman LLP and two of its employees, Paul Shanbrom and Michael Collins. Also named are Gramercy Advisors LLC of Greenwich, Conn., and three related firms, plus employees Jay A. Johnston and Marc Helie. Rounding out the defendants in that suit are the Los Angeles law firm DeCastro, West, Chedorow, Glickfield and Nass and the Financial Strategies Group of Memphis, Tenn.

Counts alleged include breach of fiduciary duty, negligence and professional malpractice, negligent misrepresentation, fraud, breach of contract, and civil conspiracy.

In that suit, the Khans said the advisers used investments in "distressed debt" to minimize tax liability for the 2002 and 2003 tax years. The suit purports the Khans were "unknowledgeable and unsophisticated about tax matters and tax-advantaged investment strategies."

The suit said BDO Seidman's fees were based on the size of the distressed-debt strategy, and that BDO's Tax Solutions Group made increasingly big profits from peddling those strategies.

The strategy involved contributing "distressed debts" from a foreign contributor to a U.S. partnership, which in turn gives those to a lower-tier partnership.

According to the suit, Khan's dealings with BDO Seidman dated from 1993 when the company performed audit services for Chromecraft, a company owned in part by Shahid Khan.

In 1999, Khan was negotiating to buy a Canadian company, owned by Japanese investors, that made plastic car bumpers. The sellers wanted to be paid in yen, the suit said.

Khan was referred to Shanbrom, who introduced him to a tax-advantaged strategy that involved buying and selling digital options on foreign currency.

In 2002, Khan bought and sold options on yen, paying a premium of $70 million for options purchased and $69.5 million for options sold.

The Khans said in the suit that they "lost a significant amount of money" carrying out the 2002 distressed debt strategy. In 2008, the IRS disallowed that and determined the Khans owed substantial back taxes, interest and penalties.

The second suit names as defendants BDO Seidman, Shanbrom and Collins, as well as Deutsche Bank, two related firms and employee David Parse. Also cited as defendants are Gramercy Advisors, Johnston and Helie, plus Equilibrium Currency Trading of New York, employee Samyak Veera and Grant Thornton LLP of Chicago.

Counts alleged in that suit include breach of fiduciary duty, negligence and professional malpractice, negligent misrepresentation, breach of contract, and civil conspiracy.

That suit seeks damages arising from investment strategies used for federal and state tax returns in 1999 to 2001 – including a digital options strategy and a strategy known as "COINS" (Currency Option Investment Strategy).

That suit claims that Collins, Shanbrom, Khan and an estate planning adviser met in September 1999 in Michigan. Khan was told that by buying Japanese yen and hedging his risk using a digital options strategy, he had a good chance of doubling his money. If he lost money, he would receive a substantial tax loss, the suit stated.

But in 2000, such strategies had been deemed an illegal and abusive tax shelter, the suit contends.

The suit said the Khans lost a significant amount of money carrying out the COINS strategy and claims Shahid Khan was "a victim of corporate greed."

The Khans are represented in the case by Champaign attorney William Brinkmann as well as by law firms in Geneva, Ill., and Dallas, Texas. A call placed last week to lead attorney David Deary in Texas was not returned.

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