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Four Law Partners Win Back Capital Outlays to Winston

BY ANTHONY LIN

FOUR former partners at Whitman, Breed, Abbott & Morgan who declined to participate in their firm's 2000 merger with Chicago's Winston & Strawn are entitled to the return of their capital contributions from Winston & Strawn, a Manhattan appellate court has ruled.

The ruling by the Appellate Division, First Department, in *Evans v. Winston & Strawn*, reverses an October decision by Manhattan Supreme Court Justice Karla Moskowitz, who found that the four intellectual property partners — Barry Evans, Gregor N. Neff, George B. Snyder and William J. Spatz — were subject to an amendment to the Whitman Breed partnership agreement.

That amendment, approved by a vote of Whitman Breed partners on Aug. 21, 2000, one day before the four partners withdrew and one week before the merger with Winston & Strawn was consummated, changed partners' right to returned capital from repayment in full to repayment on a pro rata basis.

According to Jeffrey A. Jannuzzo, the lawyer for the four partners, repayment on a pro rata basis would have meant the partners, who claim they are owed nearly \$700,000, would receive nothing, owing to the firm's valuation of its assets and the structure of the merger agreement.

The four partners had argued that the amendment, which stated it applied to all partners as of Aug. 11, 2000, actually became effective Sept. 1, the date of the merger with Winston & Strawn. The appellate court agreed.

"Contrary to the [trial] court's finding, the unamended Partnership Agreement was still in effect when plaintiffs withdrew from [Whitman Breed] on August 21 or 22, 2000," wrote the unanimous panel, which included Justices Peter Tom, Angela M. Mazzarelli, Luis A. Gonzalez, Joseph P. Sullivan and Milton B. Williams.

The four partners' capital was to be returned in five annual

payments beginning Nov. 21, 2000. The court approved the three payments totaling \$419,690 plus interest to Messrs. Evans, Neff, Snyder and Spatz, all of whom are now partners with New York's Kramer Levin Naftalis & Frankel.

Mr. Jannuzzo hailed the appellate court's decision.

"It goes back to what we've been saying," said Mr. Jannuzzo. "Our rights were contained in the partnership agreement we signed, not the one they tried to inflict on us."

The two firms' 2000 merger generated controversy when

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Winston & Strawn decided not to invite many Whitman Breed partners to join the combined firm and de-equitized a number of other partners. Messrs. Evans, Neff, Snyder and Spatz, who had joined Whitman Breed in 1997 from the now-defunct intellectual property boutique Curtis, Morris & Safford, were all asked to participate in the merger but declined due to client conflicts.

Winston & Strawn was represented by Charles A. Stillman of Stillman & Friedman. He did not return a call seeking comment.

Any appeal would need to await a determination on the four partners' outstanding claims for unpaid compensation for 2000. Mr. Jannuzzo said the partners are seeking a little more than \$1 million for the eight months prior to their August 2000 withdrawal.

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