

In The News

Apartments Seller Wins Toss Of 'Bogus' Overpayment Suit

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Law360

A Houston company accused of inflating the occupancy rate of an apartment complex it sold has won dismissal and attorney fees in what it called a "bogus" suit from the buyer that claimed it overpaid by \$4 million.

Judge Dedra Davis on Tuesday dismissed with prejudice the Harris County District Court lawsuit filed against AK Interests Remington LP in October 2018 by California-based real estate company Nizinski Family LP. Judge Davis also ordered Nizinski to pay AK \$15,000 in attorney fees, about half of what AK requested after accusing Nizinski of discovery misconduct and gamesmanship.

On Nov. 5, AK asked for dismissal of the suit, telling the court Nizinski failed to respond to discovery requests and busted the deadline to designate an expert who could have backed up its \$4 million damages claim. It said Nizinski then made an "eleventh hour" attempt to drop its "frivolous" claims because it knew "an unfavorable ruling and judgment was forthcoming."

"Plaintiff's gamesmanship cannot be rewarded," AK told the court.

Nizinski on Monday opposed the request for dismissal and an award of legal fees, saying it was an improper death penalty sanction without appropriate ties to the alleged discovery misconduct.

The order against it came down a day after Nizinski's response, following a 2½-hour hearing before Judge Davis.

Sameer S. Karim of Munsch Hardt Kopf & Harr, P.C., who represents AK and its owner, Anwar Kajani, said his client was pleased the court ruled the way it did because it was important for Kajani to protect the reputation he has built in the Houston real estate community.

"I think the sticking point for the court was that every claim that they alleged they had, my clients provided information and reports ... that debunked every claim asserted," he said, explaining it was Nizinski's own documentation that allowed AK to prevail in the lawsuit.

Some of that documentation included a report from Nizinski's own independent consultant, which it hired during the due diligence period before the sale of the \$15.8 million, 260-unit apartment complex closed. That report clearly stated that all of the wiring in the building was aluminum — which was contrary to Nizinski's allegation in its lawsuit that it was duped into thinking all the wiring was copper, part of its justification for overpayment.

That same report showed that the occupancy rate of the building was actually 96%, higher than the 93% represented by AK. In its suit, Nizinski had alleged the occupancy rate was lower, and that some units were vacant or in such bad condition they were uninhabitable.

Counsel for Nizinski did not immediately return a message seeking comment Thursday.

Nizinski is represented by M. Kevin Powers of Porter & Powers LLC.

AK is represented by Sameer S. Karim and Justin K. Ratley of Munsch Hardt Kopf & Harr PC.

The case is Nizinski Family LP v. AK Interests Remington LP et al., case number 2018-74903, in the 270th District Court in Harris County, Texas.

The full article can also be viewed by clicking [here](#).

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