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Shell to Pay Punitive Damages

Jury awards $50 million in station sale dispute; Shell: verdict inconsistent with evidence

SAN FRANCISCO -- After a legal battle spanning two lawsuits and more than eight years, a Los Angeles Superior Court jury has awarded $50 million in punitive damages to the owner of a Riverside County, Calif., gas station. The current suit alleged that Equilon Enterprises (dba Shell Oil Products US) had intentionally concealed facts from Atallah during negotiations and an extended escrow for his purchase of a gas station in October 2003.

"We are obviously disappointed with the jury's verdict, which is inconsistent not only with the evidence, but also with the current state of California and federal law regarding punitive damages," Shell said in a statement provided to *CSP Daily News*. "We will be filing post-trial motions for the judge to review the award and are confident that it will be substantially reduced."

The verdict, handed down March 9, is expected to be reviewed by the trial judge within 45 days.

William Gwire, attorney with Gwire Law Offices, San Francisco, represented Elias Atallah in the case.

Atallah's purchase of the station was the culmination of the first legal action brought by him against Shell, a year-long legal battle in which Atallah, who had been operating the station as a franchisee for 10 years, sued Shell to enforce his right to buy the station under a federal law designed to protect franchisees. According to Gwire, just prior to the settlement of that action, Shell learned that both the plaintiff's station and another station Shell owned across the street were about to become the target of costly protections and safeguards being demanded by state agencies.

Atallah claimed that after agreeing to sell him the station, Shell executives and employees involved in the sale (and through an extended escrow) withheld critical information from him, including meetings that Shell representatives attended in which the agencies outlined their demands for extensive and expensive contingency plans, containment systems and indemnity agreements.

According to Gwire, Shell, meanwhile, had decided to sell the station across the street from Atallah's due to what he said the company itself described as an "unacceptable environmental risk."

Only after Atallah closed escrow on his station did he discover the problems that had been brewing and what he was in for, he said. He was never able to reopen the site as a gas station. In 2005, Atallah, through Gwire, filed a second lawsuit against Shell, this time for fraud.

In 2006, a Los Angeles Superior Court jury found Shell guilty of intentional fraud and concealment, awarding Atallah $1.65 million in compensatory damages, Gwire said, who added that the jury also found that Shell had acted with "oppression, malice or fraud", clearing the way for the jury to award punitive damages. At that time, however, the trial judge ruled the evidence being offered to establish Equilon's financial condition was insufficient, and refused to allow the punitive damage issue to go to the jury.

Shell appealed the $1.65 million compensatory damages verdict while Atallah appealed the judge's decision on the punitive damages matter. In late 2008, the California Court of Appeals upheld Atallah's $1.65 million compensatory damage verdict and also decided that the trial judge had been premature in dismissing the punitive damage claim. The appellate court ruled that Atallah could, in fact, seek punitive damages.

The case returned to the Los Angeles Superior Court to a new trial judge and a new jury to determine the amount, if any, of punitive damages to be assessed against Shell. After a two-week trial the jury handed down its $50 million verdict.

Gwire said that presenting the punitive damages case to 12 new jurors was an unusual legal situation and required much of the original case to be re-presented because "reprehensibility" is a major factor in determining the amount of punitive damages.

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