

Dallas police-fire pension fund sues advisor for millions over ‘reckless and improper’ advise

BY STEVE THOMPSON, DALLAS MORNING NEWS, APRIL 5, 2016

The troubled police and fire pension fund is trying to recover millions of dollars from an advisory firm that the fund says led it into risky deals while scoring improperly high fees and other perks.

A legal claim filed late Tuesday by the Dallas Police and Fire Pension System pension fund alleges “multiple breaches of fiduciary duties” by **CDK Realty Advisors**, which at one time managed more than \$700 million for the fund. For many years, the small firm had its offices in the fund’s headquarters building.

“High-risk investments have resulted in write-downs and losses of more than \$320 million -- losses on assets managed by CDK that represent funds that should have been safeguarded for the benefit of Dallas’s loyal and hardworking police officers and firefighters,” the pension fund’s court filing says.

A lawyer for CDK said in a statement that the firm believes the fund’s allegations “are are totally without merit and untrue. We intend to dispute them vigorously in court.”

The fund’s board and management approved the deals, which “in the aggregate, have substantially increased the retirement funds of Dallas’s police and firefighters in the Pension System,” said the lawyer, Steven A. Schneider.

The fund’s claim was filed in response to a lawsuit CDK filed in February, which accused the fund of failing to pay \$139,479 in management fees.

The pension fund “knows it owes the fees, but has wrongfully, knowingly and intentionally withheld payment,” CDK’s lawsuit said.

CDK is not responsible for some of the fund’s more notorious bad investments, such as luxury houses in Hawaii; the fund managed those itself. But in 2005 CDK scouted the proposed development of what would eventually become Museum Tower, the luxury condominium building that has created controversy over the glare it casts in Dallas’ downtown Arts District. CDK didn’t end up managing the project.

Some of the investments that CDK managed for the fund led to huge losses, the new filing says. They included an investment called “Eagle,” which involved the purchase years ago of thousands of acres of undeveloped land outside of Boise, Idaho. The pension fund now claims CDK overvalued the property in periodic reports, allowing the advisory firm to charge inflated management fees.

The pension fund’s board removed its longtime director in 2014 and ousted CDK last year. The fund “subsequently learned that the entire Eagle investment was worth only a small fraction of the value invested,” according to the legal claim, and the plan to develop houses on the land was not feasible.

CDK Realty Advisors was formed in 2001 by Kenneth Cooley, Jon Donahue, and Brent Kroener. It was initially headquartered in the north Dallas home of Kroener, who already was doing business with the pension fund through other companies.

The partners began scouting real estate projects for the pension fund to invest in. The firm’s strategy was to connect investors to real estate developers with whom the partners had long-standing relationships, according to CDK’s web site. “Our approach to investment sourcing has provided CDK clients with unique and off-the-market real estate assets,” the site says.

The firm started with \$45 million in real estate under its management, according to information previously on its web site. It’s not clear how much of that may have been funded by the pension.

In 2008, the pension fund and CDK moved into separate floors of an office building on Harry Hines Boulevard, which the fund bought and CDK managed. The filing claims CDK later “abused its position as property manager to provide its friends and affiliates with below-market leases” at the fund’s expense.

The pension fund also accuses CDK of self-dealing in relationship to the investment in The Beat Lofts in the Cedars area just south of downtown Dallas.

CDK recommended that the pension fund “purchase the complex as a real estate investment, which it did through a limited partnership,” the claim says. “While acting as manager of this property, CDK entered into multiple sweetheart deals with friends, associates or persons associated with the other owners of the limited partnership to sell and rent units at below-market rates.”

Ultimately, the investment lost the fund \$6 million, the claim says.

CAUSE NO. DC-16-01566

CDK REALTY ADVISORS, LP	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
DALLAS POLICE AND FIRE PENSION SYSTEM,	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

CDK Realty Advisors, LP, Plaintiff, files this Plaintiff’s Original Petition and in support would show as follows:

A. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3, because the monetary relief sought is greater than \$100,000.00, excluding interest, attorneys’ fees and expenses, and court costs.

B. Parties

2. Plaintiff CDK Realty Advisors, LP (“CDK”) is a Texas limited partnership with its principal place of business in Dallas, Dallas County, Texas.

3. Defendant Dallas Police and Fire Pension System (“System”) is a Texas pension fund and retirement system for employees of the police and fire departments of the City of Dallas, governed by Tex. Rev. Civ. Stat. Art. 6243a-1, with its principal place of business located in Dallas, Dallas County, Texas. The System may be served with citation by serving its Chairman of the Board Samuel Friar or any member of the Board of Trustees or officer of the System, at 4100 Harry Hines Blvd., Suite 100, Dallas, TX 75219, or wherever he or she may be found.

C. Jurisdiction

4. The Court has jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

D. Venue

5. Venue is proper in Dallas County, Texas under Texas Civil Practice and Remedies Code §15.002(a)(1) in that all or a substantial part of the events and omissions giving rise to these claims occurred in Dallas County, Texas, and under §15.002(a)(3) because Defendant System's principal office in Texas is located in Dallas County, Texas. Venue is also proper under §15.020(b) because the parties agreed in the written agreement at issue in this case that venue for any disputes arising under the agreement shall be exclusively in Dallas County, Texas. Venue is also proper under §15.035(a) because the contractual sums owed by Defendant were due and payable to Plaintiff in Dallas County, Texas.

E. Nature of this Action

6. This is a breach of contract suit against the System for intentional refusal by the System and failure to pay \$139,479.00 in asset management fees due and owing to CDK as of September 30, 2015. The fees remain unpaid despite previous promises and representations by the System that they would be paid, and despite written demand by CDK for payment more than thirty (30) days prior to the commencement of this action. The System knows it owes the fees, but has wrongfully, knowingly and intentionally withheld payment, first as "leverage" to force CDK to provide additional services after September 30, 2015, without the System paying for those additional services, and then after CDK completed the services and demanded payment of the fees owed to CDK.

F. Facts

7. CDK was retained by System in 2002 to provide investment management services, specifically for certain of the System's real estate investments. The contract ultimately executed by the parties was that certain Investment Management Agreement entered into as of April 10, 2003, and later amended as of July 15, 2014 (the "IMA"). The IMA is incorporated by reference as if set forth here in full.

8. Under the IMA and supplemental agreements made by the System, CDK agreed to provide investment management services with respect to those certain real estate projects and assets specified within Exhibit B to the IMA (including sub-Exhibits within Exhibit B) and other projects, and the System agreed to pay CDK fees for those services at the rates and in the amounts provided in Exhibit B (and its sub-Exhibits) to the IMA, as amended from time to time, and in supplemental agreements.

9. Over the twelve years from approximately the third quarter of 2002 through the fourth quarter of 2014, CDK and the System enjoyed a professional relationship that was profitable for the System. CDK managed a number of real estate investments and projects on behalf of the System, and as of the end of 2014 the fair value of the System's investments exceeded the net cash invested by the System by at least \$80,000,000.

10. In the usual course of business, CDK provided services for the System and invoiced the System on a monthly or quarterly basis in accordance with the specific sub-exhibits within Exhibit B to the IMA or the other agreed arrangements. The specific projects and assets managed by CDK for the System under the IMA in the third quarter of 2015, and CDK's invoices for the investment management services rendered in the quarter ending September 30, 2015, are listed in the summary attached hereto as Exhibit A (the "Unpaid Account Summary"). (The invoices listed on Exhibit A are hereinafter referred to

as the “Invoices”).

11. The fees charged by CDK in the Invoices are the amounts agreed upon by the System under the IMA, or amounts agreed upon by the System in supplemental agreements with respect to certain of the projects managed by CDK. Defendant System accepted the investment management services described in the Invoices and is obligated to pay to CDK the fees accrued for those services as provided in the IMA and supplemental agreements and itemized in the Invoices.

12. The IMA and other supplemental payment agreements constitute an enforceable contract between CDK and the System. The Invoices accurately state the fees earned by CDK under the IMA and other supplemental agreements made by the System, for CDK’s services rendered during the third quarter ended September 30, 2015. The System is obligated to pay the Invoices in full to CDK.

13. The Invoices were sent to the System timely and the fees were due to be paid to CDK upon receipt of the invoice. The System has paid only a portion of each Invoice, and has failed to pay the full amount of the Invoices. The Unpaid Account Summary attached hereto as Exhibit A represents an accurate account of the unpaid balance owed by the System on each of the Invoices issued by CDK for the third quarter of 2015, exclusive of any allowable interest on the overdue amounts of the Invoices.

14. Beginning in 2011 and 2012 and continuing to date, the System has been in some turmoil, relating to public disputes between the System and the Nasher Sculpture Center with respect to a System asset currently known as the Museum Tower in downtown Dallas. CDK was not involved with design or construction of that building, was not involved in management of the building, and was not responsible for anything having to do with the System’s problems, disputes or losses from that asset.

15. Similarly, the System has suffered significant losses and received adverse publicity relating to certain other real estate investments on projects that were not managed by CDK, including projects in Napa Valley, California, luxury homes in Hawaii, Utah, Arizona and other locations, land transactions in or near Tucson, Arizona and other locations, and other real estate investments. Upon information and belief, those investments and projects were managed by others and the System, or were self-managed by the System without outside experienced advisors or managers, but they were not within the scope of the IMA or managed by CDK. CDK was not involved with those projects and assets, was not involved in their acquisition or management, and was not involved in or responsible for anything that caused the significant losses suffered by the System on those projects or assets. Upon information and belief, as a result of the System's significant losses on those projects and assets, in June 2014, the longtime Executive Director of the System resigned and there have been numerous changes in staff of the System and in the System's investment strategy and relationships with and use of outside advisors.

16. Due to the change in the System's investment strategy, by letter dated August 12, 2015, CDK resigned as the System's manager of the projects and assets under the IMA, effective September 30, 2015. The IMA was not automatically terminated, as both parties had continuing rights and obligations thereunder, including the obligation of the System to pay the fees that are owed to CDK under the IMA and the Invoices that are the subject of this lawsuit.

17. In October 2015, the System made "interim payments" of 50% of each of CDK's Invoices, as identified on the Unpaid Account Summary attached as Exhibit A hereto. The System represented it would pay the remaining balance of the Invoices on several occasions, including in a meeting on October 7, 2015, and an email from the

System reiterating the work product to be completed by CDK for the quarter ending September 30, 2015. Such work product was completed by CDK by early December, 2015. However, after CDK performed the requested services, the Executive Director of the System informed CDK in a letter dated December 22, 2015, that the remaining balance of the fees would not be paid. At no time has the System disputed that the unpaid fees in CDK's Invoices were earned by CDK for services performed by CDK and accepted by System for the period ending September 30, 2015.

18. The System, acting by and through its executive staff, made promises or representations of payment in or around October 2015, including October 7, 2015 and thereafter, to induce CDK (i) not to suspend services to the System, (ii) to forbear from exercising CDK's rights and remedies to collect the investment management fees owed to CDK under the IMA and the Invoices, and (iii) instead to continue to provide services to the System under the IMA (after CDK's resignation) while awaiting the System's promised payments.

19. CDK relied on System's promises and representations. CDK was induced by System's promises and representations to forbear from exercising CDK's rights to collect the fees that were owed to CDK under the IMA and the Invoices, and instead continued to provide services to System under the IMA during the months of October through December 2015, while awaiting System's promised payments.

20. Defendant System never made the promised payments and, upon information and belief, System never intended to make the payments promised. System knew that System's promises and representations of payment to CDK were false when made. Such false promises and representations were made to induce CDK to continue to provide services to System under the IMA, even though it now appears that System did not

intend to pay, and/or its officers and agents knew that System would not pay, the unpaid balance of CDK's Invoices for CDK's services rendered for the quarter ended September 30, 2015.

21. CDK would not have continued to provide additional services to System under the IMA during the months of October through December 2015, and instead CDK would have pursued collection of its unpaid Invoices under the IMA in the last quarter of 2015, if CDK had known that System's promises and representations of payment were false.

22. By letter dated December 29, 2015, CDK demanded payment of all outstanding Invoices in full. More than thirty (30) days have passed and System has not made any payment.

23. CDK has hired the undersigned attorneys to enforce CDK's rights and to pursue CDK's claims against System to collect the sums owed to CDK under the Invoices and the IMA and the damages caused by System.

G. Causes of Action

1. Breach of Contract

24. Plaintiff CDK incorporates all of the foregoing paragraphs by reference.

25. CDK rendered investment management services to Defendant System in accordance with the IMA and supplemental agreements made by the System. Defendant System agreed to pay CDK fees for such services as provided under the IMA and supplemental agreements made by the System.

26. The Unpaid Account Summary attached hereto as Exhibit A and the Invoices listed thereon are a true and correct statement of the investment management fees earned by and owed to CDK under the IMA and supplemental agreements, for the

investment management services rendered to and on behalf of the System during the quarter ended September 30, 2015.

27. Defendant System was required to pay all Invoices from CDK upon System's receipt of the Invoice.

28. Defendant has failed and refused to pay the full amounts of the Invoices, and the unpaid balances of such Invoices as reflected on the Unpaid Account Summary (attached as Exhibit A) remain unpaid, due and owing to CDK. The unpaid principal balances of the Invoices due and owing to CDK are in the total amount of \$139,479.00, exclusive of any accrued interest.

29. CDK has made demand upon Defendant for payment.

30. Defendant has failed to pay, and continues to fail to pay, the amount owed to CDK under the Invoices. Specifically, Defendant System has failed to pay Plaintiff the unpaid principal balance of \$139,479.00 for the services rendered and fees earned by Plaintiff under the IMA and supplemental agreements made by the System for the third quarter of 2015, as reflected on the Invoices. Defendant has breached the IMA by failing to pay such sums owed under the IMA.

31. Defendant is liable to Plaintiff for all damages caused by Defendant's breach of contract, including the full unpaid amount of the Invoices, plus interest on the unpaid balance of the Invoices as allowed by applicable law.

H. Attorney's Fees and Interest

32. Plaintiff's claims have been timely presented to Defendant and the claims remain unpaid. Accordingly, Plaintiff has retained the undersigned attorneys to pursue Plaintiff's claims to collect the sums owed to Plaintiff. Plaintiff has agreed to pay all reasonable and necessary attorneys' fees and costs incurred on behalf of Plaintiff CDK in

connection with this lawsuit.

33. Plaintiff is entitled to recover its attorneys' fees and expenses incurred pursuing these claims, under the terms of the IMA and under Chapters 37 and 38 (including section 38.001) of the Tex. Civ. Prac. & Rem. Code.

34. Plaintiff is entitled to recover all lawful prejudgment and post-judgment interest on the sums owed to Plaintiff.

I. Damages and Relief Requested

35. Plaintiff CDK seeks recovery of all actual damages suffered by Plaintiff from Defendant's wrongful acts as alleged above. Plaintiff's actual damages are in excess of \$100,000.00, including the unpaid balance of Plaintiff's Invoices in the amount of at least \$139,479.00 for the investment management services rendered by Plaintiff during the third quarter of 2015, through September 30, 2015. Plaintiff further seeks recovery of all accrued prejudgment interest on the foregoing sums, as allowed under applicable law, and Plaintiff's attorneys' fees and expenses incurred pursuing these claims. Plaintiff reserves the right to amend its damages to conform to the evidence.

J. Conditions Precedent

36. All conditions precedent to Plaintiff's claims have been performed, have occurred, or have been waived.

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that this Court issue citation for Defendant to appear and answer, and that, following trial, Plaintiff be awarded all relief sought herein including a judgment against Defendant for the following:

- a. All actual damages suffered by Plaintiff, in the amount of at least \$139,479.00;
- b. Prejudgment and post judgment interest as allowed by law;

- c. Plaintiff's attorneys' fees and expenses pursuing Plaintiff's claims herein;
- d. Court costs; and
- e. All other relief to which Plaintiff is entitled.

Respectfully submitted:

/s/ Steven A. Schneider

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**ATTORNEYS FOR PLAINTIFF
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Summary of Asset Management Fees Owed to CDK by Dallas Police & Fire Pension System

<u>Asset Name</u>	<u>Third Quarter 2015 Due as of 9/30/2015</u>	<u>Interim Payments</u>	<u>Final Balance Due</u>	<u>Interlm Payment Date</u>
Bryan Street Lofts	\$ 13,158.00	\$ (6,579.00)	\$ 6,579.00	10/9/2015
4100 Harry Hines Back Land	6,000.00	(3,000.00)	3,000.00	10/9/2015
So7 No. 3-Fort Worth	33,000.00	(16,500.00)	16,500.00	10/9/2015
Riverview Apartments-Austin	33,000.00	(16,500.00)	16,500.00	10/9/2015
Bellevue Condos	6,000.00	(3,000.00)	3,000.00	10/9/2015
CCH Lamar Partners I, LP	50,000.00	(25,000.00)	25,000.00	10/9/2015
The Tribute-Lake Lewisville	37,800.00	(18,900.00)	18,900.00	10/9/2015
Southern Cross Group USA LLC	<u>100,000.00</u>	<u>(50,000.00)</u>	<u>50,000.00</u>	10/16/2015
	<u>\$ 278,958.00</u>	<u>\$(139,479.00)</u>	<u>\$ 139,479.00</u>	

