

## Foulger estate suing Paley Rothman for malpractice

By: Anamika Roy Daily Record Legal Affairs Writer May 31, 2017



'We are continuing our efforts on behalf of Sid Foulger to rectify the wrongs and make the trust and charitable foundation whole,' says Jeffrey E. Nusinov, of Nusinov Smith LLP in Baltimore, who represents the Foulger estate in its lawsuit against Foulger's former lawyers at Paley Rothman. (Maximilian Franz/The Daily Record)

Less than a year after the late Sidney W. Foulger's family regained control of his estate and charitable foundation from his caretaker, his estate has filed a \$25 million malpractice suit against his former lawyers.

The estate alleges Bethesda-based Paley Rothman was negligent and breached its fiduciary duty by failing to protect the founder of the Foulger-Pratt Cos. from "undue influence" from his caretaker, Florence K. Tung. There were clear signs Foulger was being manipulated by Tung, according to the complaint, but Paley Rothman gave Tung access to its services, thereby giving her the means to take control of Foulger's assets and charitable foundation. As a result, Tung was able to divert millions of dollars to herself and her sister and forced the estate into costly litigation, according to the complaint, filed Tuesday in Montgomery County Circuit Court.

"We are continuing our efforts on behalf of Sid Foulger to rectify the wrongs and make the trust and charitable foundation whole," said Jeffrey E. Nusinov, of Nusinov Smith LLP in Baltimore, a lawyer for the estate.

A spokeswoman for Paley Rothman said Wednesday the firm had not been aware of the lawsuit until contacted by The Daily Record and declined further comment.

Foulger died in August 2014 at age 93. He founded the precursor to Foulger-Pratt in 1963, and the company now is one of the Washington region's largest general contracting and property management firms.

In the final years of his life, Foulger was in poor health and dependent on Tung, who was also his "romantic interest," according to court documents. Foulger made several amendments to his will and trust in 2013 after moving to California with Tung. His children claimed the changes, which transferred money and property worth millions to Tung and her sister, were invalid. Foulger denied being unduly influenced by Tung, according to court documents, and said he fully trusted her in his final will.

But the estate claims in its lawsuit that Paley Rothman not only failed to protect Foulger despite he was being manipulated but also "facilitated" Tung's actions, resulting in "significant losses" to the estate, the complaint states.

Paley Rothman also is accused of negotiating an "illusory and unenforceable agreement" in the sale of some of his partnership interests, resulting in a \$12 million loss to the estate when the purchasers refused to honor the

agreement after Foulger's death, according to the complaint.

The estate also claims Paley Rothman prolonged litigation after Foulger's death, resulting in high legal fees, according to the complaint.

The case is *Clayton F. Foulger, et al. v. Paley Rothman, et al.*, 433142V.

Foulger's children filed several lawsuits against Tung and regained control over the estate and charitable foundation in August on the eve of a month-long trial. The settlement agreement disregarded Foulger's later wills, trusts and codicils. Tung and her sister also returned the deed to a California home Foulger purchased in 2011 and more than \$300,000 in cash and stocks.

The estate's lawsuit comes two months after Roy Niedermayer, a principal at Paley Rothman, was awarded \$41,000 in attorney's fees for his work on Foulger's estate despite asking for more than \$350,000. Montgomery County Circuit Judge Robert A. Greenberg, in his ruling, said Paley Rothman created a conflict of interest by representing both Foulger and his daughter, Sue F. Alfandre, and her husband, Joseph L. Alfandre Sr.

"Paley Rothman is a well-known and respected law firm in Montgomery County. Its attorneys are uniformly well prepared and effective advocates," Greenberg wrote. "In the court's estimation, however, in this matter the firm did not comply with the requirements imposed by the Rules of Professional Conduct, to the detriment of Joe and Sue Alfandre."

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