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PROBATE

Trio helps siblings recover assets taken by trustee

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It began in 2003 as a complaint against attorney Dana Brigham, son of Miami eminent domain lawyer E.F.P. Brigham, claiming he was self-dealing as trustee of his parents' trust.

It became "one of the toughest battles of our careers," according to the trio representing Brigham's siblings. "We had to combat so much at every step of the way," Cotzen said.

Michael Schlesinger, Michael Cotzen and Bruce Katzen teamed up to recover about \$3 million in real estate, investments and cash that Dana Brigham

transferred from the trust. With interest, the loss totaled almost \$8 million.

Brigham gained control over the assets by creating a number of trusts and naming himself trustee. He shifted assets from trusts originally set up by his parents — which were more restrictive and spread the rest evenly among the siblings — to trusts Brigham established for his sole benefit. Evidence showed Brigham's mother had no idea this was being done even though he had her sign numerous documents that facilitated his misdeeds. She died in 2002.

Senior Miami-Dade Circuit Judge Herbert Stettin ruled in 2007 that Brigham did nothing wrong when he transferred a 688-acre North Carolina tree farm to himself and pocketed \$2.4 million from its sale. But in 2009, the 3rd District Court of Appeal reversed the decision and ordered Brigham to transfer the proceeds to the EFP Land Trust.

A significant challenge for Schlesinger, Cotzen and Katzen was that they were up against an opponent who had a significant war chest — the trust assets. Out of the assets, Brigham paid more than \$3 million to his attorneys and experts. Meanwhile, the trio's clients "were basically mortgaging things to pay costs like transcripts."



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Bruce Katzen, Michael Cotzen and Michael Schlesinger teamed up to recover about \$3 million that Dana Brigham transferred from his parents' trust.



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But the three convinced the 3rd DCA that Brigham's payment of attorney fees without court approval was an improper withdrawal of trust assets, and Brigham was ordered to return all funds taken from the trust that were used to pay for the underlying litigation.

In February 2011, Stettin ordered Brigham to transfer \$7.9 million to two trusts and awarded \$1 million in punitive damages for conversion, self-dealing and breach of fiduciary duty. The order also stated Brigham, who was replaced as trustee in 2009, is not entitled to anything in the trusts while he still owes damages.

Schlesinger, Cotzen and Katzen are now in the midst of post-judgment proceedings to collect on the final judgment.