Herald-Tribune

SinoFresh Settles

SinoFresh settles lawsuit over alleged misuse of funds

By LAUREN MAYK

ENGLEWOOD — The legal saga that has dogged Sino-Fresh Healthcare since early 2004 is over, absolving the company and some of its management of alleged securities violations and giving SinoFresh $200,000 from the law firm that had originally defended it.

The lawsuit against the small nasal and oral spray company was filed in February 2004 by a group of shareholders that included two members of the company's board of directors.

It accused some top managers of misusing corporate funds and improperly removing those two directors — film and television financier Stephen Bannon and attorney David Otto — from the board, among other things.

In a settlement reached last week and still awaiting court approval, SinoFresh will receive a payment from law firm Greenberg Traurig and be released from fees it still owes to the firm accused of giving it bad advice. Also as part of the settlement, SinoFresh agreed to give the plaintiffs a total of 37,500 shares of stock, or 2,500 shares for individuals and 1,250 shares for corporations. The shares cannot be traded for one year.

"It's over," said SinoFresh founder Charles Fust, who had been particularly enraged by the accusation that he used company money to buy an engagement ring for his wife. "We were attacked pretty viciously."

The original defendants in the case were Fust, the company's chief executive; his wife, Stacey Maloney Fust, a director; Robert DuPont, another director; and then-SinoFresh Chief Financial Officer Russell Lee.

The first whiff of vindication for Fust and the other defendants came in the spring, when a University of Florida law professor reviewing the case for the court said allegations against the SinoFresh officials were baseless.

"I said all along that none of those charges were legitimate charges," Fust said.

The action against the company was originally spearheaded by Andrew Badolato, a venture capitalist who had helped take the company public. Badolato was never a plaintiff in the case, though his brother and father were, and did not take part in the settlement talks. He could not be reached for comment Thursday.

The charges against SinoFresh and its named officers and directors were dismissed in late August, but the plaintiffs continued with its malpractice case against Greenberg Traurig, the law firm that had once served as the company's corporate counsel.

It was Greenberg Traurig's legal advice that got SinoFresh executives into trouble with the removal of the board members and filings with the Securities and Exchange Commission, the plaintiffs said.

Bannon, Otto and the other plaintiffs criticized the way SinoFresh improperly kicked the two men off the board, filed documents with the Securities and Exchange Commission and dismissed its auditor, among other things, while under the counsel of Greenberg Traurig.

Some of the issues Otto and Bannon raised "likely did have some merit," Fust said.

"This company was following legal advice on everything that it did," said Fust, who along with SinoFresh's new corporate counsel worked on the settlement that was reached last week.

Bannon and Otto were reinstated on the board shortly after they were removed and remain as directors.

Bannon said he was pleased with the outcome and that the company now has to focus on building its business. He and Otto plan to stay on the board, he said.

"We remain on there and we're going to stay on there," Bannon said.

Greenberg Traurig and its counsel did not return calls seeking comment on Thursday.

"It was not an easy issue to resolve because everybody had different interests," said David Haber, the attorney who represented the plaintiffs in the case.

As part of the settlement, SinoFresh agreed to give Haber $25,000 cash for his legal fees and costs once the company received its Greenberg Traurig payment, plus the equivalent of $30,000 of SinoFresh unrestricted common stock and options for 40,000 shares of common stock. Shares now trade for 25 cents each.

The plaintiffs in the case received shares "for taking the risk of filing the lawsuit," Haber said.

"They never did this for personal gain, they did this for the company," Haber said. "They brought this action on behalf of the company to protect the company."