

2nd Circ. Affirms Shire Sanctions In Pharma IP Fight

By **Adam Lidgett**

Law360 (April 26, 2022, 6:38 PM EDT) -- The Second Circuit backed a New York federal judge's ruling that a psychiatrist's company and its attorney had to pay nearly \$134,000 in sanctions following a now-dismissed suit against Takeda Pharmaceutical Co. unit Shire LLC and law firm BakerHostetler.

A three-judge panel on Monday affirmed a determination that LCS Group LLC, attorney Stephen M. Lobbin and his former law firm pay \$133,803.75 to Shire.

The panel said "that the record and procedural history of this case easily demonstrate the appropriateness of the sanctions that the district court, in its discretion, imposed on LCS."

"Further, in light of LCS's failure to preserve its challenge, we decline to second-guess the amount of attorney's fees that the district court ordered LCS to pay as that sanction," the panel wrote.

LCS initiated the case in March 2018, contending that Shire had violated a confidential disclosure agreement by challenging a patent that covers the treatment of a binge-eating disorder through the use of the drug lisdexamfetamine dimesylate.

Shire makes and sells this drug as Vyvanse, which is used for treating attention-deficit/hyperactivity disorder, according to court documents. The patent was originally issued to LCS' founder, psychiatrist Louis Sanfilippo.

LCS also accused BakerHostetler of malpractice for not advising Sanfilippo against signing a confidential disclosure agreement with Shire.

U.S. District Judge Analisa Torres in March 2019 tossed LCS' fraud and racketeering claims against Shire and its malpractice claim against BakerHostetler, finding the case to be so lacking that she agreed to impose sanctions.

At the Second Circuit, LCS argued that the lower court wrongly threw out a breach of contract suit lobbed against Shire, according to court documents.

But the Second Circuit said in its Monday decision it didn't have jurisdiction **to even** review that part of the appeal, since it said "LCS did not file a timely notice of appeal as to the judgment."

The amended complaint was tossed at the lower court on March 11, 2019, but the appeal at issue wasn't filed until late July 2020, the appellate panel said. That was far past a 30-day deadline, the panel wrote.

Counsel for LCS and Shire did not immediately respond to requests for comment Tuesday.

U.S. Circuit Judges John M. Walker Jr., Robert D. Sack and Susan L. Carney sat on the panel for the Second Circuit.

LCS is represented by Stephen M. Lobbin of SML Avvocati PC.

Shire is represented by Porter F. Fleming, Jonathan A. Herstoff and Jason A. Kanter of Haug Partners LLP.

The case is LCS Group LLC v. Shire LLC, case number 20-2319, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Kevin Penton. Editing by Andrew Cohen.