

# Litigation and Arbitration

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Sher Tremonte counsels and represents individuals, partnerships, early-stage startups, and established companies across a broad range of industries, including finance, health care, technology, hospitality, entertainment, insurance, and real estate. Our lawyers are known for their tenacious advocacy and have been lauded as “tactically astute, hard-working, responsive, and knowledgeable” (*U.S. News - Best Lawyers*) as well as “very strong...fighters” (*Chambers USA*).

The firm represents both plaintiffs and defendants in federal and state courts as well as arbitrations and mediations. We have an exceptional track record of obtaining favorable results at all stages of a dispute, from pre-litigation negotiations through trial and appeal. In matters where we represent aggrieved plaintiffs, petitioners, or claimants, we often utilize alternative billing arrangements, such as hybrid structures and success fees, to reduce out-of-pocket fees and maximize potential awards.

## Complex Contract Disputes

Contract disputes arise in numerous contexts and are adjudicated by a wide variety of courts and tribunals. Sher Tremonte's lawyers are adept at navigating these turbulent waters, especially as they relate to complex commercial relationships and transactions.

We have negotiated or litigated a broad spectrum of contract-related disputes, including those involving complex financial products, mergers and acquisitions, shareholder and investor agreements, license agreements, and asset purchase agreements. Our lawyers dive deep into complex structures and interrelated transactional documents to find previously overlooked pathways that give our clients the advantage. We work tirelessly to protect our clients' interests while minimizing the disruption of business as usual. If litigation cannot be avoided, we bring a strong bench of seasoned trial lawyers to the table – in itself, a strong deterrent – and can guide clients to successful outcomes through trial and appeal.

### **Experience**

## SHER TREMONTE

- Successfully represented an international celebrity and the celebrity's production company in federal litigation and mediation concerning a dispute over an endorsement deal. (Read press reports about the case [here](#).)
- Represented an internet advertising firm against a media giant that failed to make timely payments, securing a larger payment based on the company's failure to adhere to the letter of the settlement agreement. (Read the opinion [here](#).)
- Secured a complete victory for a private equity firm facing an \$8 million breach of contract claim, obtaining an early-stage dismissal that protected the client from incurring significant costs.
- Won summary judgment for a hedge fund/investment advisor and its principal against claims that they had breached a partnership agreement. (Read the decision [here](#).)
- Successfully defended a refrigeration equipment manufacturer in an international arbitration held at the Singapore International Arbitration Centre against claims that it had violated its obligations under a licensing agreement.
- Successfully represented a Singapore-based investment advisory firm in a contract dispute over \$358 million acquisition of luxury hotel chain.
- Successfully represented a startup real estate tech firm in an arbitration over a confidentiality agreement and allegations of unfair competition.

## Employment and Trade Secret Litigation

### *Employment*

Both employers and employees turn to Sher Tremonte for confidential counseling and courtroom advocacy on employment-related disputes. In this rapidly changing arena, our lawyers manage and defend client reputations through effective negotiation and, when necessary, hard-fought litigation.

The firm advises companies and individuals on the full range of disputes arising from employment and consultant relationships, including controversies over restrictive covenants such as non-competition, non-solicitation, and confidentiality agreements.

### *Trade Secret Litigation*

We have extensive experience litigating trade secret claims as part of civil lawsuits, criminal prosecutions, and internal investigations. These matters arise with increasing frequency in the context of commercial business separations, including partnership breakups, canceled acquisitions, and the departures of executives – battlefields on which we have secured numerous victories.

The firm has represented clients in disputes over a diverse array of proprietary information, from algorithms and software packages to consumer electronics technologies, business models, and customer lists. We draw on a wealth of experience working with experts in niche industries, as well as specialists in the hard sciences, to secure positive outcomes in even the most complex technical matters.

### **Experience**

- Achieved a complete victory in a federal jury trial on behalf of a private college sued for employment discrimination.
- Prevailed in a jury trial on behalf of a luxury travel agency and its executive sued for theft of trade secrets, breach of a non-competition agreement, and tortious interference.
- Represented a stock trader in a trade secret dispute with his former business partners over a high-frequency trading platform. Obtained a preliminary injunction enjoining former partners from disseminating information to third parties, including favorable rulings that our client's source code and algorithms were protected trade secrets.

## SHER TREMONTE

- Represented a fitness technology entrepreneur in a trade secret dispute with his former employer. Successfully opposed a preliminary injunction that would have prevented the client from bringing a new product to market.
- Obtained summary judgment in the U.S. District Court for the Southern District of New York and before the U.S. Court of Appeals for the Second Circuit on appeal on behalf of a cosmetics company and its executive defending against trade secret claims brought by a former business partner.
- Advocated before the U.S. Attorney's Office for the Southern District of New York on behalf of a client accused of stealing securities trading algorithms. Conducted forensic examination of relevant files to convince prosecutors that allegedly stolen information could not support the theft of trade secrets charge.
- Defended a health care technology executive against a lawsuit brought by a former employer that included claims that he breached his non-competition agreement, misappropriated trade secrets, violated the federal Defend Trade Secrets Act, and breached his fiduciary duty.
- Represented a nationally known plastic surgeon in an employment dispute with an Upper East Side medical practice; achieved a favorable settlement through formal mediation.
- Advised an executive departing a fintech startup in connection with potential disputes concerning stock options, bonus, and disclosure obligations.
- Represented an international real estate firm in a dispute with an employee concerning breach of a confidential agreement.

## First Amendment and Defamation Litigation

Sher Tremonte has extensive experience in litigating defamation and other First Amendment-related matters.

Outside the courtroom, the firm helps media clients develop strategies that minimize exposure to defamation lawsuits, providing pre-publication review and counsel to ward off litigation. Our lawyers also counsel clients on ways to mitigate and redress injury caused by false and damaging speech, as well as freedom of speech issues raised by government regulations.

### Experience

- Successfully defended a public relations firm in a defamation lawsuit arising out of remarks on an internet comment thread. Obtained a complete dismissal of all claims, affirmed by the U.S. District Court for the Second Circuit, on the grounds that remarks constituted non-actionable, protected speech.
- Represented an entertainment industry news outlet in a dispute with a celebrity involving claims of copyright infringement and defamation; resolved the case early and favorably for a fraction of the damages sought by our adversary.
- Defended and obtained favorable, early-stage resolution for journalist sued for defamation in connection with investigative reporting into alleged securities fraud.
- Represented professional fencing coaches in a defamation lawsuit arising from clients' efforts to disclose potential mistreatment of minor athletes; obtained complete dismissal of claims following a pre-discovery motion to dismiss.
- Prevailed against a major national law firm, surviving a motion to dismiss the complaint we filed on behalf of a priest in a defamation lawsuit against the Archdiocese of New York.
- Obtained a landmark Second Circuit ruling on prisoners' free speech rights, holding that the First Amendment's "right not to speak" protects prisoners from becoming informants against their will.
- Defended an entity sued by a litigious copyright troll and obtained a rare pre-answer/pre-discovery dismissal of copyright infringement claims while maintaining the client's anonymity.
- Representing a literary and media agency asserting claims of defamation and tortious interference against competing agency and its principal.

## Fraud and Recovery

Sher Tremonte routinely prevails for clients in complex and high-stakes fraud and recovery actions. Our litigators bring extensive experience in prosecuting fraudulent practices from their prior positions with the U.S. Attorneys' Office, the SEC, and other government offices.

Our practice focuses on recovering losses from business partners, suppliers, and departing executives who have cheated, stolen, or otherwise abused their positions of trust. Often working on a hybrid or contingency basis to limit our clients' out-of-pocket expenses, we are adept at pursuing claims that can support enhanced recovery options, including claims based on RICO, unfair competition and antitrust laws, the faithless servant doctrine, and fraudulent conveyance statutes. When necessary, the firm partners with world-class consultants – including private investigative firms, computer forensics experts, and certified fraud examiners – to ensure a thorough understanding of our clients' losses and to identify wrongdoers.

Sher Tremonte also consults on referrals to regulators and enforcement agencies, especially in respect to preserving private civil recovery options against perpetrators even in the face of government forfeiture actions and prosecutions. In these matters, we are highly sensitive to our clients' potentially relevant obligations to other stakeholders – whether regulators, investors, customers, or consumers.

### Experience

- Recovered millions in losses from a Ponzi scheme for a record company executive and his family in a federal lawsuit and FINRA arbitration, and advised clients in connection with related investigations by the U.S. Attorney's Office and the SEC.
- Represented one of New York state's largest health insurers in a lawsuit against a home health agency who obtained a multimillion-dollar contract by paying kickbacks to our client's personnel.
- Successfully prosecuted an action on behalf of an industrial equipment manufacturer against a departing chief executive officer for waste and abuse, including entering into above-market contracts with suppliers, misusing company funds, and misrepresenting available financing to the board of directors.

## SHER TREMONTE

- Represented an international real estate company in an investigation and recovery efforts against a former executive who embezzled company funds by hiring vendors that he secretly controlled.
- Conducted internal investigations for numerous clients, including participants in the health care, financial services, and entertainment industries, as well as government entities, resulting in referrals to and prosecutions by law enforcement authorities.



## Health Care Litigation

Sher Tremonte counsels and represents clients in civil lawsuits, arbitrations, internal investigations, government investigations, and criminal prosecutions throughout the health care sector. Our lawyers have a strong track record as advocates for managed care organizations in high-stakes provider disputes, including over reimbursements, prompt pay claims, and contract termination.

We also handle fraud recovery cases, including matters involving physicians, diagnostics and testing centers, clinical laboratories, and home health care agencies. In addition, the team has successfully defended, prosecuted, and advised clients with respect to a wide array of legal obligations, including the False Claims Act, the Anti-Kickback Statute, the Stark Law, and HIPAA.

### Experience

- Successfully represented Medicaid Managed Care/Medicare Advantage Plans in numerous disputes with providers over claims for payment.
- Prevailed for a managed care organization in a lawsuit against a home health agency that was terminated from the provider network for offering kickbacks to organization personnel.
- Defended a health insurer against a lawsuit by a clinical laboratory seeking millions of dollars in payments, including successfully defeating an application to preliminarily enjoin the lab's termination from the provider network.
- Advised clients on numerous matters relating to the opioid crisis, including assessment of legal claims and obligations arising from corrupt referral arrangements as well as the disclosure of patient prescription data to parties to civil cases.
- Represented a health care technology company in a dispute arising from acquisition by a competitor.

## Investor and Partner Disputes

Sher Tremonte represents corporate investors, officers, directors, and managers in a broad spectrum of investment-related disputes. Our clients include family offices, members of investment funds, investment advisors, and executives in controversies involving accusations of mismanagement or other wrongdoing resulting in substantial investment losses. The firm regularly litigates these disputes on behalf of both plaintiffs and defendants in state and federal courts as well as in FINRA arbitrations. In addition, we represent clients in connection with investigations and parallel proceedings initiated by the SEC; the DOJ; the New York State Attorney General; and other local, national, and international law enforcement and regulatory agencies.

Our lawyers also represent clients in disputes involving partnerships, joint ventures, and other closely held companies. In this arena, we prosecute and defend claims of breach of contract; breach of fiduciary duty; fraud; and other claims arising from allegations that a partner or managing member misappropriated a business opportunity, withheld profits from other owners, misrepresented the finances of a company, or engaged in other self-interested conduct.

### Experience

- Successfully defended an investment advisor and hedge fund founder in a lawsuit alleging a breach of partnership agreement. Obtained complete dismissal following cross-examination of plaintiff in pretrial hearing.
- Represented a South American financial firm in litigation against an investment bank arising from a breach of joint venture agreement.
- Prevailed for a technology firm in an arbitration brought by a former partner involving claims of misappropriation, breach of fiduciary duty, and unfair competition.
- Successfully defended a medical marijuana company and its founders against claims of misappropriation, breach of contract, and breach of fiduciary duty.
- Represented shareholders of a closely held real estate company in multifront litigation and dissolution proceedings.
- Represented investors in an insurance venture as plaintiffs in federal litigation involving claims of civil RICO, fraud, and unjust enrichment as well as in parallel investigations by law enforcement offices.

## SHER TREMONTE

- Defended the founder of an e-commerce company in a federal lawsuit brought by an investor as well as a related investigation by the New York State Attorney General.
- Represented real estate company investors in shareholder derivative litigation against a president and chief executive officer.
- Represented a group of investors in connection with litigation and investigation by the SEC relating to a Ponzi scheme.
- Successfully recovered investments by international investors in the EB-5 visa program in a dispute with fund managers.
- Defended founders and executives of a medical marijuana company in multiple lawsuits brought by investors alleging breaches of fiduciary duty and breaches of contract.
- Defended a fund manager in parallel federal criminal prosecution and enforcement actions brought by the SEC and CFTC.
- Successfully represented a hospitality company with interests in restaurants and hotels throughout the United States in a dispute with former partner.

## M&A Litigation

Sher Tremonte advises companies, shareholders, officers, directors, and executives in disputes arising from complex corporate transactions. These controversies typically follow a change of control or acquisition of a company, and often involve non-competition agreements and provisions for paying a portion of the purchase price over time in the form of an “earn-out” tied to the company’s performance. Our lawyers have successfully represented both plaintiffs and defendants in these high-stakes matters across a variety of industries, including health care technology, telecommunications, aerospace, financial technology, and cannabis.

### Experience

- Defended an executive and shareholder of an aircraft communications company in a federal lawsuit involving allegations that he made false representations to induce acquisition by an avionics company; won dismissal of the case on summary judgment.
- Successfully represented an executive and shareholder of a satellite communications company in a federal lawsuit against an acquiring company in relation to an earn-out dispute.
- Represented a shareholder representative and the founding president of a health care technology company in a dispute over unpaid earn-outs and mismanagement following an acquisition.
- Advised the purchaser of an e-commerce business concerning claims of fraudulent inducement and breach of contract arising from the seller’s misrepresentation of the company’s profits.
- Represented the founder and chief executive officer of an international travel management company in a dispute arising from merger with public company; helped the executive resolve disputes relating to a covenant not to compete and potential claims of fraudulent inducement.

## Real Estate Disputes

Sher Tremonte regularly secures optimal results in litigation and investigations involving real property. Our clients include real estate investment firms, lenders, borrowers, landlords, and commercial tenants as well as owners and operators of industrial facilities.

Our seasoned group of litigators obtains positive outcomes in real estate finance disputes under loan agreements, mortgages, and guaranties and helps clients assess and reduce risk in the context of workouts, foreclosures, and other exit strategies. We have litigated every manner of business dispute surrounding real property assets, including partnership break-ups, fiduciary duty claims, and compulsory buyouts. The firm also helps real estate clients tackle complex and novel issues in a variety of settings, from decades-old environmental obligations to emerging issues in the sharing economy.

### **Experience**

## SHER TREMONTE

- Successfully represented an investor in a “billionaire’s row” luxury tower in an action against developers for breach of fiduciary duty and related claims arising from the developers’ scheme to force capital calls and dilute other investors while securing debt financing on favorable terms for themselves.
- Obtained a \$50 million judgment in an action by an asset manager/investment advisor against an investor in connection with the purchase of a renowned luxury hotel chain.
- Represented a lender in a district court action and successful appeal which reinstated claims that mechanics liens triggered full recourse under a “bad boy” guaranty to a \$110 million loan.
- Represented a general partner in a federal court action to enforce buyout rights against a limited partner concerning a 142-unit apartment building in Cambridge, MA.
- Represented a publicly traded real estate/asset management company in an action against the seller and builder of a 12-story, 105-unit residential building in Brooklyn for concealing construction defects prior to sale.
- Represented a real estate investment trust sponsor in numerous lawsuits with prior owners over the acquisition of a sponsor entity.
- Advised a client transportation operator on the termination of a 25-year public contract and private partnership for long-term lease and management of publicly owned, bond-financed facilities.

## Trust and Estate Litigation

Controversies over the administration of wills, trusts, and estates can be highly emotional matters, requiring both sensitivity and experience. We advise and represent grantors, settlors, administrators, heirs, trustees, and beneficiaries through every stage of these disputes. Our lawyers combine deep knowledge of procedure with high-stakes trial experience to prevail for clients in both U.S. and international trust and estate litigation, including cases that involve allegations of undue influence, breach of fiduciary duty, and fraud.

### Experience

- Successfully represented the trustees of a charitable trust in a \$50 million federal lawsuit against a financial advisor and his firm for securities fraud, conversion, and breach of fiduciary duty.
- Represented the beneficiaries of a trust in an action against the trustee for the theft of \$15 million in distributions.
- Successfully represented a trustee against claims of breach of fiduciary duty brought by beneficiaries.
- Represented the father of the deceased in a high-profile wrongful death claim against the deceased's husband in proceedings in Surrogate's Court, New York Supreme Court, and the New York Appellate Division. (Read about the case [here](#).)
- Defended a nonprofit executive in a criminal investigation involving alleged elder abuse.
- Represented a decedent's romantic partner, a member of an international royal family, in an estate dispute with the decedent's children.
- Represented the owners of a real estate business in a dispute with co-owners over distribution of founder's estate, contract issues, and breaches of fiduciary duty.