

Appellate Division Decides Issue of First Impression of Accrual of Challenges to Revocable Trust in Victory for Carter Ledyard Client Radio Drama Network

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On October 13, 2020, the Appellate Division, First Department unanimously affirmed the decision of the New York Surrogate's Court holding that Carter Ledyard client Radio Drama Network can pursue claims against attorney Richard L. Kay for fraud, fraudulent concealment, undue influence and unjust enrichment.

In doing so, the Appellate Division decided an issue that had not been addressed previously by any New York appeals court — the question of when a challenge to a revocable trust accrues. The Court unanimously held that the six-year statute of limitations for claims sounding in fraud and undue influence begins to run upon the death of the grantor. The Appellate Division rejected Kay's argument that the clock begins to run at the time the grantor executes the revocable trust instrument.

Accordingly, Radio Drama Network will continue with its challenge to Kay's changes to the estate plan of renowned radio pioneer Himan Brown, his diversion of a \$100 million bequest away from the charity Mr. Brown founded, Radio Drama Network, to a new charity that Kay himself controls, and Kay's payment of millions of dollars in enhanced commissions to himself. Matter of the Application of Radio Drama Network, Inc., Seeking Relief Regarding the Himan Brown Revocable Trust Created by Himan Brown, Grantor, Case NO. 2019-03428 (1st Dep't Oct. 13, 2020). For more, see [here](#).
