Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Issue 24

Well-Known Cases Concerning "Hiding the Ball"

In re the Marriage of Elena and Aaron Feldman
153 Cal.App.4th 1470, 64 Cal.Rptr.3d 29

In re the Marriage of Denise and Thomas Rossi
90 Cal.App.4th 34, 108 Cal.Rptr.2d 270

I was recently asked by the co-chairs of the LA County Bar Association Family Law Section's e-newsletter (*E-News*) to provide an article for their upcoming edition. The subject I decided to address was *failing to provide full disclosure*. Because this topic is of interest to many family law attorneys, I thought it would make sense to cover this subject in ***Forensic Accounting Today,*** as well.

As a result, I prepared two somewhat distinct versions of the article highlighting a unique case within each. In the LACBA submission, I focused on the appeal of *In re the Marriage of Elena and Aaron Feldman*. There I covered four areas the trial court ruled as failures to disclose and briefly explained why Aaron lost his appeal. The version presented here in ***Forensic Accounting Today*** centers on *In re the Marriage of Denise and Thomas Rossi*, which concerns non-disclosure of lottery winnings.

The version submitted to *E-News* and the one presented in this newsletter offer overviews of the key points of these cases. Should you wish to discuss the courts' findings more thoroughly or wish to ask me questions related to fiduciary duty, please do not hesitate to contact me.

Ron

Potential Consequences of "Hiding the Ball"

In re the Marriage of Denise and Thomas Rossi

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA*

The fiduciary duty of each party involved in the dissolution of a marriage requires full disclosure of documents and information that are pertinent to their case without being requested. This obligation includes the distinct nature and valuation of all assets and debts in which the community has or could have an interest or for which the community may be liable. In addition, both parties must provide complete access to all of their records and books that concern the value and nature of their assets and debts when requested. Each spouse is to serve on the other a preliminary declaration (under Family Code § 2104) and a final declaration of disclosure (under Family Code § 2105). The final declaration of disclosure, however, does not have to be exchanged if both parties have agreed in writing to exempt each other from this requirement.

Possible Repercussions for Failure to Adhere to Full Disclosure

Over the past 25 years, we have witnessed momentous reforms concerning family law disclosure requirements here in California. The purpose of these refinements has been to deter individuals from failing to provide full disclosure. The statute that was established enables judges to impose sanctions on non-compliant parties in a sufficient amount to discourage the continuation of this conduct. A party neglecting to fully disclose financial information enables the judge to direct any, or even all, of the following penalties:

1) Ordering the offending spouse to pay the other party's attorney fees, litigation expenses and court costs,
2) Applying monetary sanctions, (in one prominent case,

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* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today.*

"Hiding the Ball: Continued from page 1

Marriage of Feldman, the appellate court upheld the trial Court's order for the husband to pay $250,000 in sanctions and $140,000 in attorney fees),

3) Awarding 100% of an asset to the spouse of the party who failed to disclose the asset. (In the well-known case of *Denise and Thomas Rossi,* which is described below, the court ordered wife to pay husband the full amount of her lottery winnings, which she had failed to disclose,
4) Denying the non-compliant spouse the opportunity to present evidence in his/her case, and/or
5) Voiding a judgment or court order that had been entered.

Failure to Disclose: The Marriage of Denise and Thomas Rossi

Twenty-five years after Denise and Thomas Rossi were married, Denise was invited to participate with co-workers in a lottery pool. In December of 1996, less than two months after agreeing to take part, she was informed the group had won the jackpot and she would be receiving $1,336,000 to be paid in 20 annual installments of $66,800 through 2015.

Both Denise and a co-worker signed declarations that stated the co-worker would provide Denise a share of the winnings as a gift despite Denise having withdrawn from the pool prior to the participants being declared winners. Denise had explained to the court that she was afraid to apprise Thomas concerning the lottery because she believed he would try to grab all the money. Thus, Denise used her mother's address to receive checks and communications from the California Lottery to withhold knowledge of her winnings from Thomas.

Denise told the court she had explained to the Lottery Commission that she was considering divorce and was advised by them to file for termination prior to receiving her initial check. Subsequently, in January 1997, Denise filed her petition of dissolution of marriage in the Los Angeles Superior Court.

The same day Thomas was served with the dissolution petition he discussed settlement with Denise and both met with her attorney. Thomas was given and signed the papers to finalize the dissolution without legal representation. Denise did not reveal her lottery winnings in her final declaration of disclosure and the marital settlement agreement was approved as part of the judgment.

Thomas learned of Denise's winnings in 1999 through a letter sent to his address from the Lottery Commission. As a result, he retained counsel and filed a motion to set aside the dissolution of marriage based on fraud, breach of fiduciary duty and failure to disclose.

In support of her declaration, Denise detailed her troubled marriage and argued that the winnings were a gift and, thus, were separate property. Despite her attempt, the trial court ruled that Denise intentionally failed to disclose her lottery winnings in the settlement agreement, judgment and final declaration of disclosure. In addition, the court found Denise breached her fiduciary duty under Family Codes § 721, § 1100, § 2100 and § 2101 by fraudulently failing to disclose her winnings, and intentionally breaching her warranties and representations as set forth in the Marital Settlement Agreement. In addition to fraud, the court ruled her failure to disclose constituted oppression and malice {Civil Code § 3294 and § 1101 subdivision (h)}. The court awarded Thomas 100 percent of the lottery winnings, less taxes.

The lesson from this case: Ensure you educate your clients concerning the requirements of full disclosure and the ramifications of failing to disclose. Make certain your clients take their fiduciary duties seriously and perform full disclosures of their assets and liabilities.