



Forensic Accounting Today

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

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Issue 28

Double Dipping

As you are aware, *double dipping* refers to the situation in which one of the parties to a marital dissolution receives double payment for a single asset, or gets charged with the receipt of an asset and then is asked to pay support from its income stream. Double dipping can occur when investments or pensions have been included in the equalization payment. Typically, the non-investment or non-pension holding spouse traded his or her interest in future payouts for other assets, such as the party's share in the home or a business. The double dip scenario arises when the party who traded his or her share in an asset later requests spousal support when the paying party's primary or single source of income is a pension or investments.

Of course, it is the obligation of the attorney representing the party who wishes to gain full possession of investments or a pension to advise the client of the potential for double dipping and to assist that client to avoid a potential nightmarish scenario. Although this responsibility is rarely violated, I thought it would be of interest to present a case in which counsel actually breached the Attorney Standard of Care by neglecting this duty, which eventually led to a serious malpractice action.

In this newsletter, I am providing you a brief review of the background of *In re Marriage of White (1987)*, in which the findings directly impacted cause for the malpractice case addressed in the feature article. Please note that due to the sensitive nature of the case presented here, I am using fictitious rather than actual names of the law firms and parties involved. Also, there are specifics about this case I will not divulge. Nevertheless, I believe you will find this account interesting and informative.

If you have questions about double dipping or how a forensic accountant can be of assistance to you in regard to cases involving such matters, please contact me.

Ron

Double Dipping and Breach of Attorney Standard of Care

In the practice of Family Law, it is the attorney's duty to inform clients of all reasonably evident legal issues or problems and to surpass his scope of representation when necessary, including recommending consultations with other professionals, such as Forensic Accountants. Falling within this sphere of responsibility includes advising clients concerning the potential of double dipping and how to prevent its potential, should the client wish to do so.

In re Marriage of White (1987) 192 Cal. App. 3d 1022 {237 Cal. Rptr. 764}

Background

Bernice and Dewitt were married for 23 years. For 17 of those years, Dewitt was employed by the City of Los Angeles and was earning rights to a pension. Bernice owned a beauty shop. The couple purchased a home in 1964, separated in 1977, and Dewitt soon thereafter filed for marriage dissolution.

At the 1978 trial, Dewitt's pension was valued at \$97,500. Their home value after encumbrances was determined to be \$42,000. The beauty shop suffered a net loss in 1977 of \$2,300 and was valued at just \$2,000. Bernice closed the business three years later.

The parties rejected the trial court's recommendation and instead stipulated to divide the community property so that Dewitt was awarded all rights, title and interest in his pension and Bernice received the home.

In 1983, Dewitt suffered a job-related injury, began receiving disability and soon thereafter retired. In January, 1984, Dewitt started drawing pension benefits of \$1,540 per month. Then, in the spring of 1985, Dewitt stopped paying spousal support. Subsequently, Bernice obtained a writ for payment of arrearages and levied Dewitt's pension income. Dewitt then filed an order to show cause to terminate spousal support arguing that Bernice had exchanged all rights to his retirement in exchange for the family home. Bernice then claimed that Social Security was her only source of income and requested an increase in support.

At the order to show cause in October of 1985, Dewitt's monthly net income had increased, due to the pension, disability and Social Security, to \$2,348. Bernice was able to substantiate that her financial situation had remained unchanged.

Bernice argued that the trial court abused its discretion by failing to

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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*.

Communicating directly with me doesn't stop when you send us forensic accounting work...

IT BEGINS



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regardless whether it's prior to beginning casework, when engaged in our assignments or after completing our work. Even if you've been serviced by a staff person, feel free to call me directly. Anytime. You may call my office or my cell. Type me a text. Send me an e-mail. I'll respond to you within 1 business day. And if it's an emergency and I'm tied up in court when you call, I'll get back to you as soon as I can make myself free. That's my promise.



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consider Dewitt's monthly income from his pension for the purpose of determining his ability to pay spousal support. Additionally, she claimed that her financial situation warranted an increase in her award. The Appeals Court ruled that the reduction of Bernice's award of spousal support improperly exempted Dewitt's monthly pension payments from consideration in determining his ability to pay. As a result, the trial court's decision was reversed and Dewitt was ordered to pay increased support from his pension despite being awarded full possession of this asset by the trial court.

The Case of Smith versus Jones & Jones, LLP**

In the malpractice action against the firm of Jones & Jones, LLP, Simon Smith alleged that the firm breached the Attorney Standard of Care for Family Law practitioners. Nine specific issues were addressed in this case. We will discuss two, both of which involved the need for a Forensic Accountant: *Responsibility to include a Marital Standard of Living in the Marital Settlement Agreement* and *failure to place a cap on spousal support*.

Background

Simon Smith was a top executive for a Fortune 500 company. He had enjoyed a lucrative compensation package that included a substantial base salary and stock options, which equated to nearly one million dollars per year. The attorneys of his marital dissolution case had negotiated a settlement agreement that included the other party receiving ownership of the matrimonial home and Mr. Smith retaining full ownership of his stock options. Unfortunately, soon thereafter, Mr. Smith lost his job. Per the findings of *In re Marriage of White*, if the Marital Settlement Agreement does not stipulate for income to be excludable, the recipient of spousal support could successfully demand payment from any income source that was received by the payor. There was no such exclusion in the Smith's Marital Settlement Agreement for spousal support.

Responsibility to Include Marital Standard of Living in the Marital Settlement Agreement

The Marital Standard of Living is one of the most significant factors courts consider when establishing permanent spousal support. Failure to set an upper limit on support based on the MSOL leaves open the possibility of increasing spousal support obligations.

Unfortunately, Jones & Jones failed to even consider the Marital Standard of Living. Thus, they failed to meet the standard of competence expected from Family Law practitioners. Since there was no cap, spousal support could exceed the amount determined at the trial to be equitable.

In the next issue of *Forensic Accounting Today*, we will discuss the case of Smith versus Jones & Jones in greater detail.

** The names of the parties used in this case are fictitious. Any similarity to actual names is unintentional and purely coincidental.