

THE COURT WILL NOW MOVE ON TO
THE NEXT CASE ON OUR DOCKET.
WHICH IS THE FLORIDA BAR --
>> MAY IT PLEASE THE COURT, GOOD
MORNING LOSE MY NAME IS JOI
PEARSALL, COUNSEL FOR THE
FLORIDA BAR.

DISBARMENT IS REQUIRED FOR TWO
REASONS.

THE RESPONDENT SOUGHT TO OBTAIN
A DISCHARGE AND BANKRUPTCY AND
WALK AWAY A MILLIONAIRE IS THIS
COURT SAID LACK OF CANDOR AND
DISHONESTY CANNOT BE TOLERATED
BY MEMBERS OF THE PROFESSION
THAT RELIES ON THE TRUTHFULNESS
OF ITS MEMBERS.

>> LET ME ASK YOU A QUESTION
REGARDING A PARTICULAR RULE THAT
MISTER HERMAN WAS FOUND GUILTY
OF.

UNDER THE PREAMBLE TO THE RULES
OF PROFESSIONAL CONDUCT IT SAYS
THE COMMON ACCOMPANYING EACH
RULE EXPLAINS THE MEANING AND
PURPOSE OF THE RULE.

MISTER HERMAN WAS CHARGED AND
FOUND GUILTY OF RULE 4.3.3 WHICH
IS CANDOR TOWARDS THE TRIBUNAL.
THAT COMMENT TO THAT RULE
SPECIFICALLY SAYS THIS RULE
GOVERNS CONDUCT OF A LAWYER WHO
IS REPRESENTING A CLIENT IN THE
PROCEEDING OF THE TRIBUNAL.
IT ALSO APPLIES WHERE THE
LAWYERS REPRESENTING A CLIENT IN
ANCILLARY PROCEEDING CONDUCTED
PURSUANT TO THE ADJUDICATIVE
AUTHORITY.

SUCH AS DEPOSITION.

WAS MISTER HERMAN REPRESENTING A
CLIENT IN BANKRUPTCY PROCEEDING?

>> HE WAS NOT.

HE WAS THE CLIENT.

>> HOW CAN THIS RULE APPLY TO
MISTER HERMAN?

>> MISTER HERMAN IS A LAWYER AND
HE WAS A LAWYER WHO FILED FOR
CHAPTER 7 BECAUSE HE.

>> WAS HE A LAWYER PRESENT

HIMSELF?

OR DID HE HAVE A LAWYER
REPRESENTING HIM?

>> HE HAD COUNSEL RESENTING HIM.

>> DOES THIS RULE APPLY UNDER
THE SECTION THIS RULE GOVERNS
CONDUCT OF A LAWYER WHO IS
REPRESENTING A CLIENT?

>> UNDER THE WORDING
REPRESENTING THE CLIENT HE WAS
NOT REPRESENTING THE CLIENT, BUT
HE IS A LAWYER AND HE DID
PRESENT A STATEMENT.

>> HE IS A LAWYER BUT WAS NOT
REPRESENTING HIMSELF BEFORE THE
TRIBUNAL.

>> I AGREE WITH YOU.

>> THANK YOU.

>> CAN I ASK YOU A QUESTION
ABOUT THE ADVICE OF COUNSEL
ISSUE?

IT SEEMS LIKE THE REFEREES
FINDINGS DEPENDED ON A CERTAIN
VIEW OF THE LAW AND HOW IT
APPLIED AND IT SEEMS LIKE THE
GENESIS OF THIS IDEA, ADVICE OF
COUNSEL SHOULDN'T MATTER TO THE
RESPONDENT'S STATE OF MIND
ORIGINATED FROM THIS CASE.
FROM THAT PART OF THE CASE, THEY
WERE CHARACTERIZING WHAT THE
REFEREE SAID IN WHEN WE WENT TO
OUR OWN ANALYSIS, THEY CAME BACK
TO ITS.

ST. LOUIS BECAME PRECEDENT WHERE
IT WAS CITED BUT IN A VERY
DIFFERENT CONTEXT AND IN THAT
CASE WE SAID SOMETHING LIKE
ADORNMENT, HE WAS TOLD BY OTHERS
SOMETHING OR OTHER BUT DIDN'T
SPECIFICALLY ANALYZE THE ADVICE
OF COUNSEL THING BUT I AM
WORRIED THIS THING CALL A
PRECEDENT THAT SEEMS TO HAVE
BEEN A SIGNIFICANT PART OF THE
REFEREE'S REASONING ISN'T
SOMETHING THE COURT HELD.

>> THE RULINGS IN ADORNO IN ST.
LOUIS SPEAK TO THE ADVICE OF
COUNSEL.

IN THIS CASE THE REFEREE'S REASONING IS WELL-FOUNDED BASED ON THE FACTS OF THIS PARTICULAR CASE.

IN ADDITION TO THE REFEREE RELYING ON THE RULING IN ST. LOUIS WHICH SAYS OF DEFENSE IN BAR CASES AN ATTORNEY CANNOT RELY ON THE ADVICE OF COUNSEL. >> HIS AUTHORITY SEEMS TO BE SUSPECT AND SEEMS -- I UNDERSTAND THERE WERE TWO DIFFERENT SITES THAT HAD PEOPLE WHO TESTIFIED ON THIS ISSUE. IT SEEMED THERE WAS CLEAR TESTIMONY FROM COUNSEL TO THE RESPONDENT THAT HE HAD ADVICE AND DIDN'T NEED TO DISCLOSE THIS.

THE WAY I READ WHAT THE REFEREE DID WAS HE REALLY FELT LIKE HE DIDN'T NEED TO WRESTLE WITH THE SIGNIFICANCE OF THAT BECAUSE HE CITED TO THE ST. LOUIS CASE AND SAID I THINK THE REFEREE'S REASONING WAS EVEN IF THAT HAD BEEN LEGAL ADVICE THE RESPONDENT GOT THAT IT WOULDN'T HAVE MATTERED.

IF WE TAKE AWAY THAT PREMISE WHERE DOES THAT LEAVE US?

>> I BELIEVE THE REFEREE WON'T BE ON THAT.

HE GAVE ADDITIONAL REASONS AND SPOKE ABOUT MISTER HERMAN SIGNED STATEMENTS UNDER OATH AND THE DEBTOR IN BANKRUPTCY IS RESPONSIBLE FOR HIS STATEMENTS AND HE SWORE UNDER OATH WHAT WAS FACTUAL AND WHAT HE PUT IN HIS STATEMENT WAS MATERIALLY MISREPRESENTING.

>> IT STILL DOESN'T ANSWER THE QUESTION WHICH IS IN MOST OTHER AREAS IN THE STATE OF FLORIDA UNDER THE LAW ANYONE, A CLIENT, CAN RELY ON ADVICE OF COUNSEL AND THAT IS A DEFENSE. HOW CAN IT BE IT IS NOT A DEFENSE IN A BAR DISCIPLINARY

PROCEEDING?

>> IF THE PLAIN READING OF THE BANKRUPTCY SCHEDULE ASK A SPECIFIC QUESTION AND IN THIS CASE MISTER HERMAN --

>> WOULD YOU AGREE THAT BANKRUPTCY IS A SPECIALIZED AREA OF THE LAW?

THERE IS A BANKRUPTCY BAR AND YOU HAVE TO BE A MEMBER OF THE BANKRUPTCY BAR TO PRACTICE BEFORE BANKRUPTCY JUDGE?

>> I AGREE WITH THAT BUT I WOULD ALSO SAY IF YOU ARE ASKED TO TELL THE TRUTH IN A DOCUMENT YOU SHOULD BE TRUTHFUL IN THAT DOCUMENT.

>> I DON'T DISAGREE WITH THAT BUT WHEN YOU READ THE CASES, THE TALK ABOUT WHETHER A BONUS OR A FEE IS DISCRETIONARY, IT IS NOT SO CLEAR-CUT TO ME THAT IT WOULD BE A MISREPRESENTATION.

>> YOUR HONOR, IN THIS CASE, ALL CASES LOOK AT THE DIFFERENT FACTS AND CIRCUMSTANCES AND IN MISTER HERMAN'S CASE THE BANKRUPTCY COURT AS WELL AS THE REFEREE HAD TESTIMONY BEFORE THEM AND AS PART OF THE RECORD IN THIS CASE THERE WAS TESTIMONY FROM THE PRESIDENT OF MISTER HERMAN'S FIRM -

>> LET'S GO TO THAT BECAUSE THAT IS IMPORTANT.

MISTER PONS ONLY SPECIFICALLY SAID HE WAS IN CHARGE OF THE COMPENSATION COMMITTEE, ONLY TWO EQUITY PARTNERS IN THE ENTIRE FIRM AND THE FEES ARE FEES EARNED BY THE LAW FIRM AND WHATEVER IS DISTRIBUTED THROUGH THE COMPENSATION PROCESS FOR PERFORMANCE BONUS BE SOLELY THE DISCRETION OF THE COMPENSATION COMMITTEE AND THERE SHOULD BE NO ENTITLEMENT TO THAT MONEY BECAUSE OF ONE PARTICULAR DIRECTOR UNTIL SUCH TIME THE COMPENSATION COMMITTEE

DETERMINES HOW THE MONEY IS GOING TO BE DISPERSED. THERE IS NO ENTITLEMENT AND MISTER HERMAN WAS NOT AN EQUITY PARTNER BUT WAS AN AT WILL EMPLOYEE.

DID HE HAVE A CONTRACT?

>> HE DID NOT HAVE A CONTRACT.

>> IF YOU HAVE A CONTRACT, YOU COULD SAY I HAVE A CONTRACT AND I AM ENTITLED TO \$300,000 BONUS OR ENTITLED TO 10% OF WHATEVER I COLLECT BUT THERE WAS NO CONTRACT INITIATIVE HERE.

>> BUT FURTHER INTO MISTER PONSOHY'S TESTIMONY TALK ABOUT COMPENSATION FOR DIRECTORS, TWO THIRDS OF COMPENSATION FOR A DIRECTOR WAS THEIR MONTHLY SALARY.

ONE THIRD OF THAT COMPENSATION

>> RIGHT.

AND THERE'S BEEN, THERE WAS TESTIMONY FROM VARIOUS WITNESSES, NOT JUST MR. HERMAN. BUT AS IN ANY LAW FIRM IN THE STATE OF FLORIDA, SOMETIMES YOU GET YOUR FULL SALARY, SOMETIMES YOU DON'T.

SOMETIMES YOU GET A BONUS AND SOMETIMES YOU DO.

SO THERE WAS TESTIMONY THAT WENT BOTH WAYS.

IN FACT, MR. HERMAN TESTIFIED THERE WERE YEARS WHERE HE DIDN'T GET HIS FULL SALARY AND YEARS WHERE HE DIDN'T GET A PERFORMANCE BONUS.

SO AGAIN, THE QUESTION HERE IS, IS IT A VESTED INTEREST OR WAS IT A DISCRETIONARY INTEREST.

AND IF IT WAS A DISCRETIONARY INTEREST WHEN HE FILED THE PETITION, THE ONLY THING THE TRUSTEE IS ENTITLED TO DO, HE'S ONLY ENTITLED TO STEP INTO THE SHOES OF A DEBTOR AT THE MOMENT THE PETITION IS FILED.

SO ANYTHING THAT HAPPENS POST-PETITION DOES NOT BELONG TO

THE ESTATE.

IF IT'S PRE-PETITION, THEN IT BELONGS TO THE ESTATE.

>> YOUR HONOR, THE BAR'S POSITION AS WELL AS THE FINDINGS OF THE BANKRUPTCY COURT AND THE REFEREE IN THIS CASE IS THAT MR. HERMAN'S INTEREST IN THE \$10 MILLION FEE WAS VESTED.

BASED ON HIS PRE-PETITION--

>> COUNSEL--

[INAUDIBLE CONVERSATIONS]

>> HOW CAN YOU HAVE, I'M STRUGGLING WITH THE CONCEPT OF HOW YOU CAN HAVE A VESTED RIGHT IN AN UNDETERMINED AMOUNT.

THAT'S, I MEAN, MAYBE, MAYBE THAT, SUCH A THING EXISTS, BUT I'M STRUGGLING WITH THAT--

>> COUNSEL--

>>-- HAVE A VESTED RIGHT?

I THINK IT'S SOMETHING THAT YOU CAN SAY I'VE GOT THIS SPECIFIC RIGHT THAT'S ENFORCEABLE OR THAT WILL BE ENFORCEABLE UNDER CERTAIN CIRCUMSTANCES.

AND I DON'T, I'M-- AND HERE THIS IS, WHATEVER IT'S GOING TO BE, I MEAN, IT'S CLEAR THAT MR. HERMAN THOUGHT-- HE WAS HOPING HE WAS GOING TO GET A LOT OF MONEY .

AND YET HE WANTED-- AND IT LOOKS LIKE, TO ME, FROM WHAT IS IN THIS RECORD THAT IT SHOWS THAT HE WANTED MORE THAN AND HE THOUGHT HE WAS REALLY AT LEAST MORALLY ENTITLED TO MORE THAN HE GOT.

BUT HOW YOU CAN SAY THAT AT THE POINT WHEN THIS WAS FILED THAT WAS VESTED, I'M-- WHEN IT'S TOTALLY INDETERMINANT?

I DON'T UNDERSTAND.

>> WELL, COUNSEL, THAT'S NOT REALLY WHAT THE REFEREE FOUND. PLEASE CORRECT ME IF I'M WRONG. WHETHER IT'S VESTED OR NOT, I DON'T HAVE TO DECIDE BECAUSE THIS CASE IS ABOUT A FALSE

STATEMENT THAT WAS MADE ON A DOCUMENT MADE UNDER OATH. AND THAT FALSE STATEMENT RELATED TO WHETHER HE WAS REASONABLY ANTICIPATED TO HAVE INCOME MORE THAN THE, I THINK, THE 65 OR 70,000 THAT HE LISTED THERE. ISN'T THAT WHAT THIS IS REALLY ABOUT?

>> YOUR HONOR, YES, IT IS.

>> THEN WE DON'T HAVE TO DECIDE WHETHER THIS WAS VESTED OR NOT OR CONTINGENT OR NOT.

ALL WE HAVE TO DECIDE IS WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTING THE REFEREE'S FINDING THAT HE KNEW IN DECEMBER THAT HE WAS GOING TO GET MORE THAN HE LISTED ON THAT PETITION, RIGHT?

>> YES, YOUR HONOR.

[INAUDIBLE CONVERSATIONS]

>> TELL ME WHAT COMPETENT, SUBSTANTIAL EVIDENCE THERE IS IN THE RECORD TO SUPPORT THAT FINDING.

>> THE REFEREE RELIED ON THE E-MAIL COMMUNICATIONS BETWEEN MR. HERMAN--

>> BUT THE E-MAIL COMMUNICATIONS BETWEEN MR. HERMAN AND MR. PONZOLI, MR. HERMAN WAS DESPERATELY TRYING TO GET AN ANSWER FROM MR. PONZOLI AS TO WHAT HE WAS GOING TO GET. AND AFTER JANUARY MR. PONZOLI SAID THERE IS NOTHING-- UNTIL WE GET THE MONEY, WE'RE NOT GOING TO TALK ABOUT ANYTHING MORE.

SO THE QUESTION WAS EVEN FOR THE DECEMBER-- AND, BY THE WAY, THIS WAS THE ONLY TIME IN THE HISTORY OF TRIPP SCOTT UNDER THE TESTIMONY OF ALL THE WITNESSES WHO TESTIFIED THAT THERE HAD EVER BEEN A DISTRIBUTION THAT WAS NOT SOLELY AT THE END OF THE YEAR.

ALL THE OTHER DISTRIBUTIONS, IF

THERE WAS A DISTRIBUTION, WAS AT THE END OF THE YEAR.

HOW DO WE KNOW WHEN HE FILED HIS PETITION-- HE FILED HIS PETITION IN MARCH, I BELIEVE. AT THAT POINT IN TIME, HE HAD NO VESTED RIGHT TO DISTRIBUTION, BECAUSE THE DISTRIBUTION, AS MR. PONZOLI TESTIFIED, WAS SOLELY DISCRETIONARY, AND IT WAS BASED ON WHAT THE COMPENSATION COMMITTEE DECIDED WHETHER OR NOT HE WAS GOING TO BE ENTITLED TO ANYTHING.

BECAUSE REALLY, FRANKLY, AT THE END OF THE DAY IT WAS BY THE GRACE OF THE COMPENSATION COMMITTEE AS TO WHETHER HE WAS GOING TO GET ANYTHING, A DIME, FIVE CENTS, \$50,000 OR \$100,000 OR \$2 MILLION.

WHERE IS THE EVIDENCE THAT SAYS THAT HE KNEW WHEN HE FILED THAT PETITION IN MARCH THAT HE WAS ENTITLED TO RECEIVE ANYTHING OTHER THAN HIS MONTHLY SALARY?

>> YOUR HONOR, AGAIN, I TURN TO THE E-MAILS AND THE COMMUNICATION BETWEEN MR. HERMAN AND MR. PONZOLI AS WELL AS MR. HERMAN AND MR. McLAUGHLIN. THERE'S A SPECIFIC E-MAIL, YOUR HONOR, WHICH STATES A FIGURE OF \$2 MILLION THAT MR. McLAUGHLIN HAD THOUGHT ABOUT FOR MR. HERMAN.

AND THIS WAS DONE, I BELIEVE, IN JANUARY.

THIS WAS PRIOR TO THE BANKRUPTCY FILING IN FEBRUARY.

>> THERE WAS AN EXPECTATION. BUT THERE'S A DIFFERENCE-- I'M SORRY.

GO AHEAD.

>> SO WHAT I DON'T-- DO WE HAVE TO, DO WE HAVE TO OURSELVES REACH A JUDGMENT AS TO LEGALLY WHETHER HE-- BECAUSE REALLY THE QUESTION, I DON'T THINK, IS VESTED OR NOT VESTED.

THE QUESTION IS WAS HE LEGALLY OBLIGATED TO PUT DOWN HIS EXPECTATION FOR THIS BONUS ON THAT FORM.

AND THERE'S TESTIMONY FROM HIS LAWYER THAT SAID I LOOKED AT THIS AND I ADVISED HIM YOU DO NOT HAVE TO DISCLOSE THAT.

SO DO WE HAVE TO SAY THAT THE LAWYER WAS WRONG?

I MEAN, THE WAY I READ THE BAR'S EXPERT WAS, YOU KNOW, HE SAID, WELL, YOU'RE, I THINK HE SHOULD HAVE DISCLOSED IT.

AND AT THE END OF THE DAY, I THINK YOU SHOULD ERR ON THE SIDE OF DISCLOSING IT WHEN IN DOUBT. BUT THAT WOULD BE A PRETTY FLIMSY BASIS FOR US TO SAY THAT, YOU KNOW, HE MADE A-- THEY BASICALLY LIED.

AND YOU'RE ASKING TO DISBAR HIM FOR THAT.

I MEAN, IT'S EASY TO WHEN IN DOUBT DISCLOSE, BUT YOU'RE BEING-- YOU'RE ASKING US TO UPHOLD A FINDING THAT HE LIED NOT DISCLOSING IT.

WHETHER IT WAS VESTED OR NOT OR WHATEVER, HE WAS GIVEN THE LEGAL ADVICE YOU DO NOT HAVE TO DISCLOSE THIS.

>> YOUR HONOR, THE ISSUE IN THIS CASE IS MR. HERMAN'S--

>> WASN'T HIS ANSWER, WAS HIS ANSWER TO THAT--

>> LET'S LET HER ANSWER HIS QUESTION.

>> OKAY, I'M SORRY.

>> OF THE ISSUE AS TO MR. HERMAN'S CANDIDNESS AND TRUTHFULNESS IN HIS SCHEDULES, AND MR. HERMAN WASN'T CANDID IN HIS SCHEDULES.

IT SAYS THAT HE IS SUPPOSED TO DESCRIBE HIS ANTICIPATED INCREASE OR DECREASE IN INCOME WITHIN THE NEXT 12 MONTHS.

REASONABLY ANTICIPATED.

THE RECORD BEFORE THE REFEREE

WAS THAT MR. HERMAN, THROUGH HIS OWN COMMUNICATIONS ON HIS OWN WORDS, EXPECTED A REWARD FOR HIS UNPRECEDENTED TREMENDOUS RESULT. THE E-MAILS SAY THAT IT WAS GOING TO BE A WIN/WIN SITUATION FOR ALL OF US.

HE KNEW HE WAS GOING TO RECEIVE A SUBSTANTIAL--

>> HE DIDN'T KNOW.

HOW DOES ONE KNOW?

BECAUSE THERE'S A DIFFERENCE UNDER THE CASE LAW, UNDER THE FEDERAL CASE LAW REGARDING BANKRUPTCY.

THE QUESTION-- AND, BY THE WAY, UNDER STATE LAW, STATE LAW APPLIES AS TO WHETHER OR NOT HIS INTERESTS, HIS PROPERTY INTEREST IS VESTED OR DISCRETIONARY. AND THEN, OBVIOUSLY, FEDERAL LAW APPLIES FOR PURPOSES OF THE INTEREST UNDER THE FEDERAL BANKRUPTCY LAW ARE.

THE QUESTION IS WHAT CASE LAW IN FLORIDA STANDS TO THE PROPOSITION THAT A BONUS OR A CONTINGENCY FEE WHERE YOU HAVE NO CONTRACTUAL RIGHT, YOU'RE AN AT-WILL EMPLOYEE, WHAT DOES THE LAW STATE OR IS THERE A CASE THAT SAYS THAT YOU HAVE A VESTED INTEREST?

COULD HE HAVE SUED TRIPP SCOTT FOR UNJUST ENRICHMENT OR BREACH OF CONTRACT OR ANYTHING IF DECEMBER 31ST AT MIDNIGHT OR JANUARY 1ST AT MIDNIGHT HE GOT NOTHING?

COULD HE HAVE SUED?

>> YOUR HONOR, THE BANKRUPTCY--

>> ANSWER MY QUESTION.

COULD HE HAVE SUED UNDER ANY CAUSE OF ACTION FOR NOT RECEIVING A PERCENTAGE OF THAT CONTINGENCY FEE?

>> YOUR HONOR, BASED ON THOSE SPECIFIC CASES, THE HOME DEPOT AND SECURITY MUTUAL CASES, THE FINDING OF THE--

>> ANSWER MY QUESTION.
THE CASE IN THE STATE OF
FLORIDA, BECAUSE THE STATE OF
FLORIDA LAW CONTROLS THE
QUESTION ABOUT WHETHER HE HAS A
PROPERTY INTEREST OR NOT.
THE QUESTION I'M ASKING IS, IS
THERE A CASE THAT STANDS FOR THE
PROPOSITION THAT YOU'RE AN
AT-WILL EMPLOYEE AND YOU HAVE NO
CONTRACT, DO YOU HAVE
ENTITLEMENT TO THAT MONEY?
COULD HE HAVE SUED THE LAW FIRM
ON JANUARY 1ST FOR NOT PAYING
HIM A BONUS?
OR A FEE?
PERCENTAGE OF THAT AMOUNT?

>> YOUR HONOR, YES, I BELIEVE--
I'M GOING TO LOOK FOR THE CASE
IF YOU GIVE ME A MOMENT.
I BELIEVE THERE WAS ONE THAT WAS
REFERRED TO.

AS FAR AS THE DATE OF--
>> IN THE STATE OF FLORIDA, NOT
ELSEWHERE.

>> IF HE COULD HAVE SUED ON THE
EXACT DATE OF JANUARY 1ST, YOUR
HONOR, THAT I AM NOT SURE OF.
BUT I BELIEVE THE COMMUNITY
CASE-- I WOULD HAVE TO CHECK TO
SEE IF IT'S A FLORIDA CASE, SO I
DON'T WANT TO MISSPEAK BEFORE
THE COURT-- ADDRESSED THE IDEA
OF UNJUST ENRICHMENT.
SO IF THE COURT WOULD GIVE ME A
MOMENT.

>> ISN'T THERE A CASE FROM THE
SOUTHERN DISTRICT OF FLORIDA,
RIANDA, AND THEN THERE'S ANOTHER
CASE, RIANDA TALKS ABOUT FLORIDA
LAW, AND IT SAYS THERE IS NO
VESTED RIGHT IN SOMETHING FOR AN
UNJUST ENRICHMENT CLAIM WHEN YOU
DON'T HAVE A CONTRACTUAL
OBLIGATION.

>> THE RIANDA CASE IS A FLORIDA
CASE, YOUR HONOR, AND IT DOES
TALK ABOUT UNJUST ENRICHMENT.

>> I MEAN, THERE CLEARLY IS NO
BREACH OF CONTRACT.

HE WOULDN'T BE ENTITLED TO SUE UNDER BREACH OF CONTRACT IF HE HAD NOT RECEIVED ANY AMOUNT, ANY PERCENTAGE OF THE \$10 MILLION, CORRECT?

>> OKAY.

WE'RE WAY ON OVERTIME HERE.

>> OH.

OKAY, SORRY.

>> JUSTICE LAWSON HAD A QUESTION.

I WANT TO GIVE HIM AN OPPORTUNITY TO ASK HIS QUESTION.

>> THE QUESTION WAS, WAS HIS ANSWER UNTRUE?

THE QUESTION WAS WHAT DO YOU ANTICIPATE GETTING.

THE ANSWER WAS I DO GET A BONUS, AND THIS IS THE RANGE IT'S BEEN IN PREVIOUS YEARS.

WAS THAT UNTRUE?

>> THE ANSWER WAS NOT TRUTHFUL, YOUR HONOR--

>> WELL, I MEAN, WHAT WAS UNTRUTHFUL ABOUT THE ANSWER ITSELF?

>> BECAUSE IT SAYS WHAT DO YOU ANTICIPATE TO REASONABLY GET AS AN INCREASE OR A DECREASE--

>> SO IT WAS A NONANSWER.

HE DIDN'T ANSWER THE QUESTION THEY ASKED, HE GAVE THEM DIFFERENT INFORMATION.

>> YES, YOUR HONOR.

WITHIN THE NEXT 12 MONTHS, SO FROM THAT TIME FORWARD.

>> NOW THAT COULD BE CONSTRUED AS MISLEADING, BECAUSE YOU DIDN'T ANSWER THE QUESTION.

YOU GAVE AN ANSWER THAT WAS EXCLUDED IN THE RESPONSE, WHICH I THINK THE EVIDENCE WOULD SUPPORT A FINDING THAT HE DID REASONABLY ANTICIPATE GETTING MILLIONS OF DOLLARS.

RIGHT?

>> YES, YOUR HONOR.

>> SO HE LEFT THAT OUT.

>> YES, YOUR HONOR.

THE RECORD DOES--

>> AND THE QUESTION THAT I'M CONCERNED WITH IS SO THAT OMISSION, MATERIAL OMISSION, IS IT A DIFFERENT DISCIPLINARY CASE IF THAT ANTICIPATED BONUS HE HAD NO RIGHT TO IT AND IT WASN'T AN ASSET OF THE ESTATE SO THAT THEY REALLY SHOULDN'T HAVE BEEN ASKING FOR IT?

AS OPPOSED TO THE CASE WHERE THAT'S AN ASSET OF THE STATE. SO BY OMITTING THAT, HE'S OMITTING SOMETHING THAT WOULD POTENTIALLY DEFRAUD CREDITORS. ARE THOSE TWO DIFFERENT DISCIPLINARY MATTERS IN TERMS OF THE PROPER SANCTION?

>> YOUR HONOR, IN THIS CASE BECAUSE THE ANSWER WAS NOT CANDID AND BANKRUPTCY REWARDS THE HONEST DEBTOR, THE MISREPRESENTATION WHICH WAS MATERIAL IN THIS CASE REQUIRED--

>> WELL, I MEAN, I GUESS THAT'S THE QUESTION.

IS IT MATERIAL IF THE LAWYER'S ADVICE WAS CORRECT, THAT THIS IS NOT AN ASSET OF THE STATE. IT'S NOT SOMETHING THE LAW REQUIRES YOU TO DISCLOSE, IT'S NOT SOMETHING THEY HAVE THE RIGHT TO.

IT'S CLEARLY, I MEAN, EVEN IF YOU ASSUME-- EVEN IF IT IS AN OMISSION AND IT'S MATERIAL IN THE SENSE OF THE QUESTIONS FOR THE INFORMATION, BUT IS IT A DIFFERENT DISCIPLINE ON THOSE TWO SCENARIOS?

>> YOUR HONOR--

>> SHOULD IT BE?

>> YOUR HONOR, BEING UNTRUTHFUL IN A SWORN DOCUMENT BEFORE A BANKRUPTCY COURT, IT WASN'T CANDID.

IT WASN'T AN ANSWER THAT WAS REQUIRED.

ON THAT SAME DOCUMENT, SCHEDULE I, MR. HERMAN PUT THAT HE WORKED

AT THE SAME FIRM FOR 30 YEAR--
>> YOU'VE ANSWERED MY QUESTION,
THANK YOU.

>> OH.

THANK YOU, YOUR HONOR.

THANK YOU VERY MUCH.

I'LL RESERVE THE REST OF MY
TIME, IF I HAVE ANY.

[LAUGHTER]

IF I HAVE ANY.

>> THE TIME YOU HAD HAS LONG,
LONG GONE.

>> OKAY.

WELL, THANK YOU, YOUR HONORS.

>> YOU'RE SIX MINUTES OVER, BUT
I UNDERSTAND.

THE COURT FACILITATED THAT SO
I'M SORRY.

>> MAY IT PLEASE THE COURT,
CHIEF JUSTICE, JUSTICES OF THE
FLORIDA SUPREME COURT.

I'M GOING TO BEGIN BY ANSWERING
SOME OF THE QUESTIONS YOU ASKED,
BECAUSE I SEE WHERE YOU'RE
GOING.

CANDIDLY, I'M PLEASED THAT WE'RE
HERE, AND I HAVE NO IDEA WHY WE
WEREN'T HERE UNTIL NOW.

I GET IT, AND I'LL TRY TO STAY
AWAY FROM THOSE ISSUES THAT
YOU'VE NOT RAISED.

BUT I WOULD LIKE TO SAY
SOMETHING TO BEGIN WITH THAT I
THINK IS CRITICAL.

WE KNOW NOW FOR SURE THAT WHAT
PETER HERMAN PUT ON HIS
SCHEDULES WAS THE TRUTH.

WE KNOW THAT FOR SURE.

AND THE REASON WE KNOW THAT IS
BECAUSE ALMOST THE ENTIRE
BANKRUPTCY ORDER, WHICH IS WHAT
THE BAR HITCHED ITS WAGON TO
FROM THE VERY BEGINNING, WAS
BASED ON SCHEDULE B.

SCHEDULE B REQUIRES A DECISION
BETWEEN VESTED AND
DISCRETIONARY.

CIB, THE CREDITOR, TOOK THE
POSITION IN THE BANKRUPTCY COURT
AND WON STATING THAT IT'S

VESTED.

>> COUNSEL, FOR ME-- AND I CAN ONLY SPEAK FOR MYSELF-- THERE IS A STATEMENT MADE THAT MR. HERMAN REASONABLY ANTICIPATED AN INCREASE IN HIS INCOME OF PUTTING WHAT IN PRIOR YEARS WAS, I THINK, \$65,000 OR SO.

>> 65-70.

>> OKAY.

THAT'S NOT TRUTHFUL.

>> LET-- I HAVEN'T GOTTEN, I'LL GET THERE NOW, AND IT'S IN MY NOTES.

>> YOU GOT TO GET THERE, BECAUSE I'M WITH YOU UNTIL THERE.

>> OKAY.

WELL, THAT WAS PRETTY QUICK.

[LAUGHTER]

TYING EVERYTHING TOGETHER, LET ME BEGIN WITH THIS.

MR. HERMAN WAS NOT A LAWYER IN THOSE PROCEEDINGS REPRESENTING A CLIENT.

THAT'S BEEN NOTED.

>> AND THAT'S A GREAT POINT WITH THAT.

>> SO ADVICE OF COUNSEL DOES MATTER.

NOW, THE QUESTION FOR YOU ALL TO DECIDE IN YOUR SECRET CONCLAVE BACK THERE AND WHEN THE SMOKE COMES OUT, WE'LL KNOW WHAT'S GOING TO HAPPEN, DOES THAT AFFECT WHETHER HE LIED, MEANING KNOWINGLY MADE A FALSE STATEMENT, OR, OR-- IF I COULD FINISH--

>> BUT, COUNSEL, OUR QUESTION IS DIFFERENT THAN THAT.

BECAUSE AT THIS POINT WE'RE ON AN APPELLATE PANEL DEALING WITH A REFEREE THAT HAS MADE FINDINGS OF FACT.

SO THE QUESTION IS ARE THERE COMPETENT, SUBSTANTIAL-- IS THERE COMPETENT, SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDING THAT IT WAS

AN INTENTIONALLY FALSE
STATEMENT?

>> NO.

NO, AND THE REASONS ARE SEVERAL.
NUMBER ONE, YOU'VE GOT A GUY
GOING INTO A BANKRUPTCY THAT'S
EMBARRASSING THE HECK OUT OF
HIM.

HE KNOWS THAT WHAT HE HAS TO DO
NOW BASED ON THE STATE COURT
PROCEEDINGS THAT BEGAN, THEY'RE
GOING TO START TAKING HIS
FURNITURE AND HIS JEWELRY AND
HIS HOUSE AND EVERYTHING HE AND
HIS WIFE OWN.

>> BUT, COUNSEL, HAVEN'T WE--

>> CAN I FINISH--

>> COUNSEL, HAVEN'T WE SAID
UNDER THE CASE LAW THAT A
REFEREE AND US ARE ENTITLED TO
RELY ON A PRIOR FINDING BY
ANOTHER COURT?

>> YES, SIR.

>> AND DIDN'T THE BANKRUPTCY
COURT HERE FIND THAT THERE WAS
AN INTENTIONALLY MISLEADING
STATEMENT?

>> BUT THE--

>> YES--

>> I'M SORRY.

BUT THE BANKRUPTCY JUDGE DID
SO--

>> [INAUDIBLE]

>> WE'VE GOT TO LET HIM ANSWER
JUSTICE LUCK'S QUESTION.

>> THANK YOU.

>> I DIDN'T HEAR THE QUESTION.

[LAUGHTER]

I HEARD A STATEMENT, I DIDN'T
HEAR A QUESTION.

>> I WILL REPEAT THE QUESTION.
DIDN'T THE BANKRUPTCY COURT FIND
THAT WE AND THE REFEREE ARE
ALLOWED TO RELY ON A TRIAL
COURT, ON AN ORDER FINDING?
AND THAT WAS ENTERED INTO
EVIDENCE IN THIS CASE.

DIDN'T THE BANKRUPTCY COURT FIND
THAT THERE WAS A FALSE STATEMENT
HERE, INTENTIONAL FALSE

STATEMENT?

>> HE DID WITHOUT SUBSTANTIAL,
COMPETENT EVIDENCE.

THAT ANSWERS YOUR FULL QUESTION,
NOT THE HALF OF THE QUESTION.

YES, HE MADE THAT FINDING.

BUT YOU HAVE TO REMEMBER, AND
THIS HAS GOT TO BE THE CRITICAL
PART OF THIS, THE BANKRUPTCY
JUDGE MADE THE DETERMINATION NOT
ALLOWING IN-- IT WASN'T HIS
FAULT, IT WASN'T PLED-- NOT
ALLOWING IN THE ADVICE OF
COUNSEL DEFENSE, NOT ALLOWING
IN.

AND THE HEARING FROM THE
CONTEMPT PROCEEDING AT THE END,
ALSO CRITICAL I'LL GET TO IN A
MOMENT, BUT NEVER HEARING WHY
PETER DID WHAT HE DID.

>> MR. ROTHMAN--

>> SORRY.

>> BUT, MR. ROTHMAN, ISN'T IT
TRUE ALSO THAT THE BANKRUPTCY
JUDGE, JUDGE JONES, IN MAKING
THAT FINDING THERE WAS NO
COMPETENT, SUBSTANTIAL EVIDENCE
BECAUSE HE COMPLETELY
DISREGARDED THE ACTUAL EVIDENCE
AND TESTIMONY OF THREE WITNESSES
WHO TESTIFIED THAT THAT MONEY
WAS DISCRETIONARY BECAUSE IT DID
NOT VEST UNTIL THE COMPENSATION
COMMITTEE DECIDED AND DETERMINED
WHO WAS GOING TO GET WHAT AND
HOW MUCH?

IF ANY?

>> AND THE VERY BEGINNING OF
YOUR QUESTION WAS--

>> DID THE BANKRUPTCY JUDGE,
WHEN HE MADE THAT FINDING, HE
DID SO BY COMPLETELY
DISREGARDING THE WITNESSES WHO
TESTIFIED.

>> YEAH.

THERE WERE A TOTAL OF SEVEN
TESTIMONIES IN THE BANKRUPTCY
CASE AND THE BAR CASE RELATED TO
THE VERY ISSUE.

IT WENT UNREPORTED, UNCHALLENGED

AND JUST STOOD THERE AS THIS
HARBINGER OF THIS EVIL THAT--
>> AND NOW MAY I ASK YOU ANOTHER
QUESTION.

IN MARCH, AND CORRECT ME IF I'M
WRONG, MARCH OF 2012 IS WHEN--

>> WHEN THE SCHEDULES WERE
FILED.

>> WHEN THE SCHEDULE WAS FILED.
IN MARCH OF 2012, THE \$10
MILLION HAD NOT YET HIT TRIPP
SCOTT.

ONLY A PART OF IT HAD HIT BUT
NOT THE FULL 10 MILLION.

>> THAT'S CORRECT.

I NEED TO CORRECT ONE THING.
THAT DOESN'T MATTER UNDER
BANKRUPTCY LAW.

AND I DIDN'T KNOW THIS BECAUSE
I'M JUST A CRIMINAL DEFENSE
LAWYER AND BAR DEFENSE LAWYER.
WHAT MATTERS IS THE FEBRUARY
18TH DATE WHEN THE PETITION'S
FILED--

>> NO, I UNDERSTAND THAT.
BUT AT THE TIME THE PETITION IS
FILED, ACTUALLY TRIPP SCOTT HAS
NO MONEY.

THEY RECEIVE NO MONIES, CORRECT?

>> THAT'S CORRECT.

>> AND THEN MY UNDERSTANDING IS
THAT THE FIRST DISTRIBUTION--
NOT DISTRIBUTION, THE FIRST HIT
THAT COMES IN FROM ONE OF THE
CASES IS IN MARCH.

AND AT THAT POINT IN TIME,
PONZOLI TELLS HERMAN THERE'S NOT
GOING TO BE ANY DISTRIBUTION
BECAUSE TRIPP SCOTT DID NOT HAVE
A HISTORY OF HAVING ANY
DISTRIBUTIONS UP UNTIL A YEARLY
DISTRIBUTION, IF ANY.

>> EXACTLY.

>> LET ME REFER YOU TO THE
FINDINGS OF THE REFEREE IN
PARAGRAPHS 94 AND 95,
PARTICULARLY IN 95.

THE REFEREE NOTES THAT AT THE
TIME THE BANKRUPTCY SCHEDULES
WERE FILED, THAT YOUR CLIENT HAD

RECEIVED \$2.7 MILLION BONUS.

>> I'M SORRY, WHAT PARAGRAPH?

>> 95.

AT THE TIME THESE BANKRUPTCY SCHEDULES WERE FILED HAD YOUR CLIENT RECEIVED \$2.7 MILLION?

>> NO, SIR.

AT THE TIME THE PETITION WAS FILED, HE HAD RECEIVED NOTHING, AND THE LAW FIRM HAD RECEIVED NOTHING, AND THERE WAS STILL ONGOING LITIGATION AS TO WHETHER THE LAW FIRM WAS GOING TO GET ANY OR ALL OR PART OF THAT MONEY.

>> RIGHT.

>> THAT WAS, THE 2.7 WAS HIS EXPECTED FEE TO BE RECEIVED?

>> NO.

THAT'S WHAT EVENTUALLY WAS PAID WHICH WAS PUT IN TRUST AT THE END AFTER MR. HERMAN-- WELL, AT THAT POINT HE ADMITTED THAT HIS SCHEDULES, WHICH WAS NOTED BY THE REFEREE, BUT THAT'S MUCH FURTHER DOWN LINE.

>> IN THE SECOND SENTENCE OF THAT PARAGRAPH, THIS SAYS THE NONDISCLOSURE-- IT SAID RESPONDENT KNEW HIS POSITION TO ACTUALLY RECEIVE A MULTIMILLION DOLLAR BONUS FROM THE 10 MILLION FEE.

THIS IS ESPECIALLY TRUE SINCE JUST A FEW WEEKS PRIOR TO THE RESPONDENT FILING THE SCHEDULES IN SOFA, TRIPP SCOTT HAD ACTUALLY RECEIVED THAT FEE. IS THAT TRUE OR FALSE?

>> THAT'S INCORRECT.

>> INCORRECT.

>> THE, AS FAR AS THE REFEREE'S FINDINGS THOUGH, TO THE EXTENT THAT THEY MAY HAVE BEEN PREMISED ON THE MISUNDERSTANDING ABOUT THE ADVICE OF COUNSEL ISSUE BECAUSE OF MISREADING OUR CASES-- AND I'M NOT SURE WHAT THE LEGALLY, YOU KNOW, WHAT THE LAW SHOULD BE, BUT IT SEEMS LIKE

THE AUTHORITY FOR THAT IS NOT WHAT IT WAS PURPORTED TO BE. DOES THAT UNDERMINE, YOU KNOW, THE VALIDITY OF THE FINDINGS? IF THE REFEREE ESSENTIALLY DIDN'T GET INTO HIS STATE OF MIND AS POTENTIALLY AFFECTED BY THE ADVICE OF COUNSEL, THEN IT SEEMS LIKE--

>> AND THAT'S THE, THAT'S THE RESULT OF THE REFEREE DECIDING. AND HE WROTE IT POINT-BLANK, ADVICE OF COUNSEL IS NOT A DEFENSE IN A BAR CASE. PERIOD, END OF DISCUSSION. AND IT NEVER WAS DISCUSSED AGAIN.

IT NEVER WAS RAISED AGAIN.

>> DIDN'T HE THOUGH, DIDN'T HE RELY ON TWO OTHER JUSTIFICATIONS--

>> YES, SIR.

>> I THINK?

IT'S NOT THAT HE DIDN'T CONSIDER ADVICE OF COUNSEL, IT'S THAT HE MAY HAVE MADE A LEGAL MISTAKE. BUT COUNSEL, DIDN'T HE ALSO SAY IN THE REFEREE'S ORDER THAT YOUR CLIENT INDEPENDENTLY LOOKED AT THE CASE LAW THAT HIS LAWYER HAD DONE AND MADE AN INDEPENDENT DETERMINATION ON THE LEGAL ISSUE?

>> YES.

WHICH SUPPORTED THE-- EXACTLY. THE REFEREE TOOK THAT AS AN AGGRAVATING FACTOR THAT MY CLIENT READ THE CASES THAT THE LAWYER GAVE HIM TO SHOW HIM WHY HE DECIDED THAT THIS, THAT THE SCHEDULE B REQUIRED NO INFORMATION BECAUSE IT WAS DISCRETIONARY.

PETER READ THOSE CASES.

IF YOUR HONORS WANT TO READ THOSE CASES AND SEE IT, IT'S SUPPORTED-- IT SUPPORTED THE OPINION OF THE LAWYER.

SO IT'S NOT AN AGGRAVATING FACTOR--

>> AND--

[INAUDIBLE]

>> IT'S A DEFENSE.

>> BUT DOESN'T IT GO TO THE
ADVICE OF COUNSEL?

IN OTHER WORDS, WHAT I
UNDERSTAND THE REFEREE TO BE
SAYING IS I LEGALLY CAN'T
CONSIDER IT, AND EVEN SO HE
DIDN'T RELY ON ADVICE OF COUNSEL
BECAUSE HE MADE AN INDEPENDENT
LEGAL DETERMINATION.

>> YOU'RE INFERRING BY THAT
QUESTION THAT A PERSON, WHETHER
IT'S A LAWYER OR NONLAWYER,
SHOULD BE PUNISHED FOR FOLLOWING
UP ON HIS OR HER LAWYER.

NO.

IT DOESN'T MATTER, BUT IF IT
DOES MATTER, IT IS TO PETER'S
BENEFIT.

BECAUSE WHEN HE READ THE CASES,
INCLUDING RIANDA, AS I RECALL
DECIDED BY A FANTASTIC DISTRICT
COURT JUDGE IN MIAMI, INCLUDING
THAT CASE.

IT DEMONSTRATED TO HIM IT WAS
NOT VESTED.

AGAIN, GOING TO SCHEDULE B
YOU'RE REFERRING IN YOUR
QUESTIONS EARLIER, WHICH I'M NOW
FINALLY GETTING TO, SCHEDULE I.
SCHEDULE I'S SIMPLE QUESTION WAS
DO YOU EXPECT TO GET AN INCREASE
OR A DECREASE IN THE COMING
YEAR.

ANSWER: YES.

>> WELL, NO, THAT'S NOT-- NO,
NO, NO.

I'VE GOT IT HERE.

I'M READING IT.

WHAT IT SAYS, IT'S A LITTLE HARD
TO READ BECAUSE THE PRINTER IS
BLURRY, WHAT PRINTED OUT.

DESCRIBE ANY INCREASE OR
DECREASE IN INCOME REASONABLY
ANTICIPATED TO OCCUR WITHIN THE
NEXT YEAR FOLLOWING THE FILING
OF THIS DOCUMENT.

AND THEN IT SAYS ANNUAL

PERFORMANCE BONUS, PARENTHESES,
HISTORICALLY 65,000 TO 70,000 IN
CLOSED PARENTHESES.

NOW, I DON'T SEE THERE'S ANY WAY
YOU CAN READ THAT WITHOUT SAYING
THERE'S AN ASSERTION THERE THAT
HE REASONABLY ANTICIPATED THAT
AN ANNUAL PERFORMANCE BONUS THAT
WOULD BE IN LINE WITH WHAT HE
HAD HISTORICALLY RECEIVED.

AND I ALSO HAVE TROUBLE
UNDERSTANDING HOW THAT WAS A
TRUTHFUL STATEMENT OF FACT.
LEAVE ASIDE THE LAW, WHETHER
THIS IS PART OF THE ESTATE, YOU
KNOW?

I UNDERSTAND THAT'S A DIFFERENT
ISSUE.

BUT I'M HAVING A HARD TIME
UNDERSTANDING HOW ANYBODY COULD
THINK THAT THAT, GIVEN THE FACTS
THAT WE SEE HERE, WAS A TRUTHFUL
STATEMENT.

NOW, DISABUSE ME OF MY
PERCEPTION OF THAT IF I'M WRONG.

>> I'LL TRY.

THERE'S A FEW THINGS AT PLAY
HERE.

NUMBER ONE, YOU CAN'T PULL A
STATEMENT JUST OUT OF THE AIR OR
OUT OF A DOCUMENT WITHOUT
KNOWING THE CONTEXT.

THE CONTEXT OF THIS IS PETER
HERMAN HAD TAKEN ON TWO MASSIVE
CASES, ONE VERY LATE IN TIME AND
ONE ON BEHALF OF TWO CLIENTS,
TWO OF HIS CHARACTER WITNESSES.
THE CLIENTS MADE MILLIONS AND
MILLIONS OF DOLLARS.

MR. HERMAN WAS NOT GOING TO MAKE
MILLIONS AND MILLIONS OF
DOLLARS.

BUT HE GOT A VERDICT IN TWO
CASES.

AND THEN IN THEIR APPEALS AND
THEN THE PUBLICATIONS THAT TALK
ABOUT WHAT A GREAT JOB PETER
DID, IT WAS DAVID V. GOLIATH, IT
WAS WELL KNOWN, WELL PUBLICIZED.
STEP FORWARD.

HE'S UNDER THE--

>> SO THAT'S, THAT'S SAYING THAT, WELL, BECAUSE EVERYBODY KNEW ABOUT THIS, I DIDN'T HAVE TO ANSWER--

>> NO.

NO, NO.

NO, NO.

IT'S STATE OF MIND.

JUSTICE CANADY, WE'RE TALKING ABOUT STATE OF MIND.

THAT'S WHAT THIS IS REALLY ABOUT.

IF SOMETHING IS A LIE, IT HAS TO BE IN YOUR MIND.

IF YOU ARE CRAZY AND YOU THINK IT'S THE TRUTH, IS IT A LIE?

NO.

IT'S NOT RIGHT BUT IT'S NOT A LIE--

>> I'M SORRY TO INTERRUPT YOU THOUGH.

IS THERE, IS-- IN THE RECORD DID YOUR CLIENT'S LAWYER TESTIFY THAT HE GAVE ADVICE AS TO ANSWERING THAT SPECIFIC QUESTION?

NOT THE B, BUT THE I?

>> SPECIFICALLY BOTH PETER AND HIS LAWYER TESTIFIED THAT WHAT HAPPENED WAS HIS LAWYER SAID GIVE ME ALL YOUR DOCUMENTS, GIVE ME ALL YOUR RECORDS, AND WE AS OUR COURTESY IN THESE TYPES OF CASES, WE FILL OUT THE PAPERWORK.

IN THE PAPERWORK WAS HIS PRIOR HISTORY, HIS TAX RETURNS, EVERYTHING.

THE LAWYER FILLED IT OUT.

AND THEN THE LAWYER SAID, PETER, TELL ME-- AND THIS IS HIS TESTIMONY-- TELL ME BALLPARK WHAT YOU NORMALLY GET AS A BONUS, IF YOU GET A BONUS.

>> DID THE RECORD THOUGH, DID THE LAWYER GIVE ADVICE KNOWING ABOUT THE POSSIBILITY OF GETTING MONEY FOR THIS?

>> OH--

>> PARAGRAPH 9.

>>-- ABOUT I?

>> YES.

AND WHAT THE EVIDENCE PROVED BOTH IN THIS CASE, WHICH DIDN'T GO TO THE BANKRUPTCY JUDGE AND THROUGH DEPOSITIONS, IS THAT NOT ONLY DID THE LAWYER, THE--

>> WAS THIS HIS TESTIMONY?

I ADVISE MR. HERMAN THAT ON SCHEDULE I HE SHOULD DISCLOSE THAT HE ANTICIPATED RECEIVING AN ANNUAL PERFORMANCE BONUS IN AN AMOUNT THAT WAS BASED UPON PAST-YEAR BONUSES?

THAT'S WHAT HE TESTIFIED.

>> AND THE SAME THING PETER TESTIFIED TO.

NOT IN THE BANKRUPTCY CASE BECAUSE--

>> WAS THERE ANYTHING ON THE OTHER SIDE SUGGESTING THAT THE ADVICE WAS A SHAM OR, YOU KNOW? OBVIOUSLY, PEOPLE THINK IT WAS INCORRECT--

>> IT WAS NEVER CHALLENGED, AND THERE WAS NOT A SINGLE FACT WITNESS OTHER THAN A TRUSTEE WHO WAS CALLED BY THE BAR.

AND IN ANSWER TO YOUR QUESTION ALSO, JUSTICE LUCK, THE TRUSTEE SAID UPON REVIEWING THE SCHEDULES HE DOESN'T REALLY PAY MUCH ATTENTION TO I.

IT'S SORT OF A THROWAWAY.

BUT HAD HE LOOKED AT IT, IT WOULD HAVE PUT HIM ON NOTICE THAT PETER WAS GETTING A BONUS WHICH WOULD HAVE BEEN ONE OF THE DISCUSSIONS HE HAD WITH THE FIRM.

STANDARD OPERATING PROCEDURE WHICH, OF COURSE, MR. HOUSTON, THE LAWYER FOR PETER, KNEW AND TOLD PETER THAT THIS IS WHAT'S GOING TO HAPPEN IN THIS PROCEEDING.

PETER WOULD HAVE TO BE EITHER INSANE OR A MORON TO THINK THAT NO ONE WAS GOING TO KNOW ABOUT

THESE \$25 MILLION, \$50 MILLION
IN JUDGMENTS--

>> MR. ROTHMAN, DID THE-- MY
UNDERSTANDING IS THAT
MR. HOUSTON ALSO IN HIS
AFFIDAVIT SAID, MR. HERMAN, I
GAVE HIM ADVICE THAT HE DID NOT
HAVE A VESTED RIGHT TO A BONUS
AND, THEREFORE, ANY POTENTIAL
DISCRETIONARY BONUS WOULD NOT
CONSIDERED HIS PROPERTY; BUT,
RATHER, THE PROPERTY OF TRIPP
SCOTT UNTIL SUCH TIME AS A BONUS
WAS ACTUALLY AWARDED.
THAT WAS HIS ADVICE FROM HIS
COUNSEL.

>> YES.

AND IT WAS UNCONTROVERTED AND
UNCHALLENGED.

AND MR. HERMAN POINTED OUT
CORRECTLY IN RESPONSE TO YOUR
STATEMENT IN QUESTION IT WAS
ABSOLUTELY CERTAIN THAT THE
AMOUNT OF ANY BONUS WOULD BE
UNCERTAIN, IF AT ALL BEING GIVEN
WITHIN THE DISCRETION.

UNREFUTED, UNDISPUTED BY THE
TESTIMONY.

THE FINDINGS, WE'RE NOT HERE TO
RETRY THE BANKRUPTCY CASE.

I'M NOT GOING TO DO THAT.

BUT IN FRONT OF THE REFEREE, IT
JUST, IT LACKS SUFFICIENT
EVIDENCE--

>> WELL, THERE'S NO-- DID THE
BAR PRESENT ANY EVIDENCE THAT
MR. HERMAN HAD AN ACTUAL DEAL
WITH TRIPP SCOTT THAT HE WAS TO
RECEIVE X AMOUNT OF MONEY?

>> NO, BECAUSE THAT WOULD BE
IMPOSSIBLE SINCE IT DIDN'T
HAPPEN.

BUT, NO, THERE'S NO SUCH
EVIDENCE.

>> COUNSEL, YOU'RE IN OVERTIME
NOW.

>> COULD I MAKE ONE-- COULD I
MAKE MY CLOSING STATEMENT?

>> YES.

SINCE THE BAR GOT A LOT OF

OVERTIME, I'LL GIVE YOU A LITTLE MORE TIME, BUT TRY TO SUM UP.

>> MY CLIENT DOESN'T WANT ME TO TALK ABOUT SANCTIONS BECAUSE HE BELIEVES HE'S INNOCENT.

SO I'M GOING TO LISTEN TO HIM, AND I'M NOT GOING TO DO THAT. BUT WHAT I AM GOING TO TELL YOU IS THAT, IS THAT IN THIS CASE IT'S WITHOUT HYPERBOLE THAT I SAY THAT MR. HERMAN'S--

HERMAN'S DISCIPLINARY CASE IS FACTUALLY RARE IF NOT UNIQUE. BANKRUPTCY LAW IS A HYPERTECHNICAL, ALMOST OBSCURE PRACTICE AREA.

EVEN EXPERIENCED LAWYERS DON'T KNOW ABOUT BANKRUPTCY UNLESS THEY'VE BEEN INVOLVED WITH BANKRUPTCY.

AND MY GUESS IS IT'D BE THE SAME FOR JUDGES.

AND WHEN YOU ARE INEXPERIENCED AS TO THE LAW, WHAT DO YOU DO? YOU HIRE A LAWYER.

MR. HOUSTON, AS HE TESTIFIED, WAS A BANKRUPTCY LAWYER. HIS FATHER WAS A BANKRUPTCY JUDGE.

AND PETER KNEW HIM FOR MANY YEARS, SO HE TRUSTED HIM. HE WENT TO HIM.

HE HAD NOTHING AT ALL DURING THE REPRESENTATION UNTIL IT HIT THE FAN AT THE END IN THE CONTEMPT PROCEEDING WHERE THE JUDGE CALLED BOTH MR. HERMAN AND HIS LAWYER BEFORE HIM TO DISCOVER WHETHER BOTH OR ONE WAS IN CONTEMPT FOR THE WAY THAT MR. HERMAN PAID HIS LAWYER HIS LAWYER'S FEE.

FOR THE FIRST TIME IN THE BANKRUPTCY CASE, MR. HOUSTON TESTIFIED BECAUSE HE WAS CALLED AS A WITNESS BY MR. PUGOCH WHO NOW REPRESENTS PETER IN THAT HEARING AND THEREAFTER.

AND IN THAT HEARING, MR. HERMAN SAID THE SAME THING HE SAID IN

THIS CASE: I GAVE HIM THE
ADVICE.
HE SAID HE WAS A BABE IN THE
WOODS AS IT RELATED TO
BANKRUPTCY CASES.
HE FOLLOWED MY ADVICE.
AFTER THAT THE JUDGE, WHO HAD
DENIED THE DISCHARGE-- SAME
JUDGE-- FOUND PETER NOT GUILTY
OF CONTEMPT, MR. HOUSTON GUILTY
OF CONTEMPT AND STATED AS TO WHY
HE FOUND PETER HERMAN NOT
GUILTY.
VERY SIMPLY, HE WAS THE
UNWITTING CLIENT RELYING UPON
THE ADVICE OF HIS LAWYER.
IF HE'S NOT GUILTY OF THAT
CONTEMPT FOR THAT REASON, HE'S
NOT GUILTY OF THE VIOLATION.
THANK YOU.
>> ALL RIGHT.
WE THANK YOU BOTH FOR YOUR
ARGUMENTS, AND THE COURT ARE NOW
BE IN RECESS FOR ABOUT TEN
MINUTES.
>> ALL RISE.