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Fla. Appeals Court Tosses \$1.58 Billion Verdict Against Morgan Stanley

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Florida's 4th District Court of Appeal threw out one of the largest verdicts in U.S. history Wednesday when it overturned a \$1.58 billion judgment against financial behemoth Morgan Stanley.

The 2-1 decision in *Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.* tossed both the \$604.3 million economic damages award and the \$850 million punitive award handed down by a Palm Beach, Fla., Circuit Court jury. The conspiracy and fraud case was brought by billionaire financier Ronald O. Perelman.

The court found that Perelman did not prove damages because his damages expert did not correctly calculate the amount of damages his company suffered due to fraud allegedly committed by New York-based securities giant Morgan Stanley.

The majority held that the trial court should have entered a directed verdict on compensatory damages in favor of Morgan Stanley, and therefore the punitive damages verdict could not stand either. The court remanded the case with an order to enter a judgment in favor of the defendant.

The panel did not rule on Circuit Judge Elizabeth T. Maass' controversial partial summary judgment ruling against Morgan Stanley based on its violation of her discovery orders. Maass' ruling essentially handed the victory to Perelman and his lead trial attorney, Jack Scarola of West Palm Beach, Fla. The majority said it did not need to address the other issues in the appeal because its decision "regarding proof of damages is dispositive."

Fort Lauderdale, Fla., attorney Bruce Rogow, who served as appellate co-counsel for Morgan Stanley, along with Sylvia H. Walbolt of Carlton Fields, said in an interview that he was "pleased by the decision and delighted by the outcome." The heart of the case was that there was no proper proof of damages. He said he did not think that Maass' discovery sanctions ruling would be key in the appeal.

In a written statement, Perelman spokeswoman Christine Taylor said: "We are disappointed at this temporary setback. We appreciate the fact that the court implicitly affirmed that Morgan Stanley's misconduct merited the extraordinary sanctions imposed by the trial court and that Florida law applied to this Florida-based fraud. We believe that we will ultimately prevail on re-hearing before the full Florida court of appeal or, ultimately, the Florida Supreme Court."

Joel Eaton of Podhurst Orseck in Miami represented Coleman in the appeal.

STOCK ENDED UP WORTHLESS

Perelman sued Morgan Stanley after Delray Beach, Fla.-based Sunbeam Inc. purchased camping gear maker Coleman from him in 1998, partly using Sunbeam stock.

The Sunbeam-Coleman deal closed on March 30, 1998. The suit alleged that Perelman, on Morgan Stanley's advice, accepted 14.1 million shares of Sunbeam stock as partial payment. Perelman claimed that Morgan Stanley was part of a conspiracy to defraud him.

The merger agreement contained a "lockup" restriction, which limited Coleman's ability to sell its Sunbeam stock for a specified period. At the time of sale, Coleman's Sunbeam stock had an estimated value of more than \$600 million.

The stock dropped in value shortly after the sale due to an announcement of losses, then plummeted further when Sunbeam chief executive Al Dunlap was fired after an internal investigation found fraudulent bookkeeping. Coleman executives took over Sunbeam after Dunlap was fired.

But Coleman Holdings couldn't sell the stock due to the lockup provision. By the time it was legally free to sell its Sunbeam shares, Coleman Holdings claimed it couldn't sell it because it would have looked like it was abandoning a

sinking ship and that would have destroyed the value of the Sunbeam stock.

The Sunbeam stock ended up worthless when the company declared bankruptcy in 2001.

In his lawsuit, Perelman claimed that Morgan Stanley helped Sunbeam falsify the true value of the stock prior to the Coleman purchase. Perelman contended that he based his decision on the advice of Morgan Stanley, which was working with Sunbeam.

During the trial, Morgan Stanley claimed it also was defrauded by Sunbeam and suffered \$300 million in losses when Sunbeam collapsed. But Perelman claimed that the securities firm stood to earn \$40 million from the acquisition.

Prior to the start of the trial, Judge Maass granted a partial summary judgment in favor of Perelman because Morgan Stanley and its lawyers failed to comply with her discovery orders by not disclosing evidence, including e-mails.

That ruling shifted the burden of proof to Morgan Stanley. The securities firm was left to prove that it had not been part of a conspiracy with Dunlap to defraud Perelman.

Morgan Stanley fired its counsel, but Maass denied the company's motion for a six-month continuance to allow new counsel prepare for the case.

A jury awarded Perelman's Coleman \$604 million in compensatory damages and \$850 million in punitive damages. The award included another \$123 million in interest.

The "fraud-free" value would be the market price on the day the tendering of the Sunbeam stock was made (i.e. closing date). because investors had no idea there was a fraudulent inflation of revenue.

LACKED NECESSARY PROOF

In the opinion written by Judge Carole Taylor, the 4th DCA panel said Coleman failed to "meet its burden of proving the actual 'fraud-free' value of the Sunbeam stock on the date of the transaction" in March 1998. Taylor, along with Judge George Shahood, said determining the actual value of the stock on the date of the transaction was a "necessary element of proof."

Coleman's "expert testified as to the bargained-for value of the Sunbeam stock, but he did not testify as to the actual value of the Sunbeam stock at the time of purchase -- a necessary element of proof," the majority said. "... To allow [Coleman] to recover for nonfraud related losses during the 'lockup' period, when [Coleman] had effectively agreed to absorb nonfraud related losses for that period, would amount to giving [Coleman] more than what it bargained for."

Because the compensatory damages shouldn't stick, the majority found the punitive damages shouldn't either. "The punitive damages award cannot stand where, as here, no legally cognizable damage was shown as a result of the alleged fraud," the court wrote.

The 4th DCA rejected Coleman's request for a new trial on compensatory damages, finding that Coleman "can't complain about rulings it urged the court to make. ... The plaintiff is not entitled to a second 'bite at the apple' when there has been no proof at trial concerning the correct measure of damages."

Judge Gary Farmer dissented, saying that he would uphold the compensatory damages.

"I see nothing wrong with ... allowing the deceived victim of fraud to hold a defendant to his lies for purposes of assessing damages," Farmer wrote. "So if a defendant had represented the thing to be worth \$10,000 when it was actually worth nothing, it is fit and appropriate to [assess] him in money damages for the full \$10,000. Let the defendant pay what he said the value was."

But Farmer said he would remand the case for a new trial on punitive damages. He said the trial court erred in preventing Morgan Stanley from presenting evidence during the punitive damages phase of the trial to show that it didn't collude with Sunbeam to inflate its share price.

In its appeal, Morgan Stanley argued that Judge Maass improperly entered the partial summary judgment, and many observers expected that to be the pivotal issue. But the 4th DCA panel sidestepped it.

Miami appellate expert Joel Perwin, who was not involved in the case, said that often when an appellant raises a number of arguments on appeal, it's possible for the court to accept only one of them. That one argument could then make the other arguments negligible.

"It is impossible to know going in which argument if any the appellate court will find persuasive," Perwin said. "Whether the trial court should have partially defaulted Morgan Stanley as a sanction for discovery violations [became a moot point] because Morgan Stanley won [the appeal] anyway."