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Marmar Penner Inc. Newsletter

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VALUATION OF AN INVESTMENT ADVISOR'S BOOK OF ACCOUNTS: IS IT FINALLY A DUNN DEAL?

The *Family Law Act* requires a spouse to include in net family property the value of all property that the spouse owns on the valuation date. In general, this has been interpreted as the fair market value on the valuation date of that property. A number of cases involving stock brokers, or "investment advisors," and their books of accounts, has thrown this interpretation into a state of confusion. Many stock brokerage firms encourage their employed investment advisors ("IAs") to source new clients and build up a client base from which to earn commissions or fees for financial management services. As in most businesses, there is a value to having a loyal client base that generates a steady stream of revenue. Not wishing to lose this revenue should an IA decide to leave to compete or to retire, many brokerage firms offer a formal

purchase plan for the book of accounts if the retiring IA assists in the orderly transition of his or her book of accounts to a younger IA or an IA selected by the firm.

In a number of such cases, the Court has found that it is inappropriate to include the value implied by a formal purchase plan of the book in net family property on the basis that it is inequitable to deem that the IA had access to the notional proceeds from the sale of the book while still expecting him or her to pay support from the earnings generated by the book. This is inconsistent with the Court's treatment of most other business owners, who must include the value of their business interests but still continue to include their earnings from the business in *Guidelines* income.

As a result of this inconsistency, many settlements in which we have been involved have seen the parties arrive at a value of the book of accounts somewhere between the value implied by the formal purchase plan and the discounted value for the number of years until expected retirement.

It was hoped that a recent decision in *Dunn v. Dunn* (2011 ONSC 6899) would be a source of clarity on this issue. Mr. Dunn was an IA at Investors Group Financial Services ("Investors") and had built up a book of accounts that generated an average annual income for him of \$225,000. Investors is one of the many large brokerage firms which has a formal policy to purchase an IA's book of accounts on retirement. This program is called the Assured Value

Program (“AVP”). The Court was presented with evidence under two scenarios: 1) under the AVP, the book of accounts was worth \$261,000 at V-Day but was discounted to \$170,000, likely as a result of income tax and present value adjustments (the Reasons are not clear on this) and 2) under the assumption that the value of the book of accounts could also be measured by the amount Mr. Dunn could receive on an after-tax basis to leave Investors to join a competitor, determined to be \$126,000.

Ultimately, the Court chose the midpoint between these two amounts, or \$148,000, explaining that “choosing the midpoint between these two values as a value of the asset is neither a perfect or elegant solution to the valuation of the book of business. However, in light of the pressing need for a decision in this case, the evidentiary problems which I have identified and the lack of funds for further valuations, I will make a decision on this basis”.

As “art imitates life”, so has the Court in this case imitated real life settlements by adopting the midpoint of two approaches without selecting one as more appropriate. Unfortunately, the Reasons do not indicate how the approaches (or the Court) dealt with the issue that has been the subject of debate: Should the value of the book of business be discounted to the expected age of retirement, or not? Accordingly, we still must keep waiting for guidance on this issue.

This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.