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Illinois Appellate Court Holds Double-Dealing Executive Liable for Breach of Fiduciary Duties, Orders him to Forfeit Salary

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In *Mason v. Sunstar Americas, Inc.*, 2018 IL App (1st) 170042-U, the Illinois First District Appellate Court held that a corporate vice president breached his fiduciary duties to his company by simultaneously maintaining employment and an ownership interest in a competing business, and not disclosing his dual occupation to his company. He further breached his duties by hiring his daughter, who was held to have aided and abetted the breach, to act as a sales broker on behalf of both companies while never revealing their relationship.

Beginning in 1989, Dennis Eatherton worked as a vice president for Sunstar Americas, Inc. (“Sunstar”), a company that designs, manufactures and sells oral care products. In 2001, while he was still employed at Sunstar, Eatherton began working at Consumer Care Products (“CCP”), which also supplies oral care products. At CCP, as with Sunstar, Eatherton’s primary goal was to obtain as much shelf space as possible for the products of each respective company.

Eatherton’s conduct on behalf of Sunstar’s competitor, CCP, was rife with conflicts. Among other things, Eatherton used his position at Sunstar to hire CCP to act as a broker for Sunstar’s products and caused Sunstar to pay commissions to CCP. Eatherton also retained brokers for CCP, some of whom were also Sunstar brokers, to place both companies’ products into the same markets. But he never disclosed anything to Sunstar about his relationship with CCP.

In 2007, Eatherton caused CCP to hire his daughter, Kristen Mason, as a broker. Mason reported to and was supervised by Eatherton and, unbeknownst to Sunstar, assisted him in selling CCP’s competing products to Sunstar’s clients. In 2008, while Mason was working for CCP, Eatherton caused Sunstar to also hire her as a broker and pay her commissions. Eatherton failed to disclose

to Sunstar that Mason was his daughter. In 2009, when Sunstar became aware of this fact, it terminated Eatherton and then terminated its relationship with Mason shortly thereafter.

Mason filed suit against Sunstar seeking to recover approximately \$240,000 in earned brokerage commissions. Sunstar, in turn, brought claims against Eatherton, Mason and CCP. The trial court entered judgment against Eatherton for over \$2.1 million, which included all compensation paid by Sunstar to Eatherton and monies received by Eatherton from CCP. The circuit court determined that Eatherton had breached his fiduciary duty by: (1) depriving Sunstar of a corporate opportunity by acquiring an ownership interest in CCP without disclosing it to Sunstar, (2) causing Sunstar to make broker commission payments to CCP, thereby benefiting himself as a CCP shareholder, and (3) concealing the fact that Mason was his daughter while paying her broker commissions. The circuit court also determined that Mason and CCP aided and abetted Eatherton's breach. Both Eatherton and Mason appealed, but the First District affirmed.

In reaching its decision, the First District observed that the corporate opportunity doctrine precludes a fiduciary from usurping a business prospect that he or she developed through the use of corporate assets. When a fiduciary desires to take advantage of an opportunity that is within his company's line of business, he must *first* tender the opportunity to the corporation regardless of whether he believes the corporation is legally or financially incapable of taking advantage of it. Eatherton disputed that CCP and Sunstar were competitors or in the same line of business, arguing that Sunstar had a policy against selling generic products like the ones Eatherton sold for CCP. Rejecting this argument, the court noted that both companies designed oral care products, used the same product manufacturer, and sold products to the same special markets customers. Although the products were not identical, they were "plainly in the same line of business—oral care products-[and] competed with each other." *Id.* at ¶42. Eatherton breached his fiduciary duties by selling CCP's products to Sunstar customers without informing Sunstar.

The First District additionally pointed out that Eatherton had used an email account and a computer belonging to Sunstar when performing "most of" his business for CCP. *Id.* at ¶41. Although Eatherton claimed he also had used Sunstar's computer for an authorized purpose, the court discounted this fact, noting that Eatherton had communicated with Mason about CCP's products on Sunstar's email account and "used time he should have been devoting to Sunstar to pursue opportunities with CCP." *Id.* Eatherton was therefore barred from claiming that his resulting opportunity with CCP belonged to anyone other than Sunstar, the company from which "assets were misappropriated." *Id.* at ¶40.

The First District similarly concluded that Eatherton breached his fiduciary duties by failing to disclose that Mason was his daughter. A corporate fiduciary has a duty to disclose to his corporate principal all material facts relating to his agency. By concealing the fact that Sunstar

was paying broker commissions to his family member, Eatherton breached his fiduciary duty to the company.

Finally, the First District agreed that Eatherton had been unjustly enriched by his conduct and that Sunstar was properly awarded forfeiture damages. Eatherton’s work for CCP essentially amounted to covertly “commencing business as a rival concern” and operating that business for about eight years while continuing to work for Sunstar. *Id.* at ¶51. Eatherton deprived Sunstar of a corporate opportunity by selling competitive products through CCP, channeling business to CCP without disclosing his interest in the company, and reaping the benefits in the form of both income and dividends.

Mason v. Sunstar is a stern warning to the corporate executive contemplating a shot at having his cake and eating it too, and bringing family members in to share in the spoils. Before capitalizing on an outside opportunity, an executive must give the company a shot at the opportunity first, even if he or she believes that the company would likely pass on the venture or that it does not compete in the same market as the company. An executive must continually bear in mind that his or her primary loyalty is to the company, and that any venture deemed to usurp a company opportunity may constitute a breach of that loyalty, and cost the executive dearly.

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