

Inconsistent appraisal report results in remand

Case name: Sampson v. Sampson

Citation: 2004 Mass. App. LEXIS 1223

Date of decision: October 29, 2004

Country: US

State or Federal: State

State/Jurisdiction: Massachusetts

Court: Court of Appeals

Type of action: Marital Dissolution

Judge: Kafker

SIC: 6411 Insurance Agents, Brokers, and Service (insurance agents and brokers)

The issues in this marital dissolution were the valuation of wife's insurance agency and the "double-dipping" that wife claimed was a result of the improper division of the property.

Valuation evidence

Both parties presented expert testimony. Both experts valued the insurance agency using the capitalization of earnings method. Husband's expert used a capitalization rate of 19.1% then discounted that by 20% for lack of marketability (due in part to an asymmetrical buy-out provision) resulting in a fair market value of \$175,000.

Wife's expert used a 31% capitalization rate. However, further details of wife's experts valuation were not provided. Both experts used a reasonableness check to ensure the validity of the primary method of valuation, but neither expert presented a detailed report on other valuation methods.

Holding and rationale

The trial court adopted the husband's expert's valuation of \$175,000. On appeal, wife argued that the capitalization method was an improper valuation method even though her expert used it also. The court dismissed that argument but was more inclined to entertain the double counting problem. The value of the insurance agency was offset in husband's property distribution and then was counted as credit towards his alimony support obligations.

Wife argued this was double counting. The court noted that, "Courts and commentators have often disagreed, however, as to what constitutes double-dipping, whether double-dipping ought to be prohibited as a matter of law, and if not so prohibited, whether it is inequitable in the circumstances of the particular divorce settlement."

The court was unable to determine whether double counting occurred, given there were inconsistencies in the expert's reports concerning owner salary. The court remanded the case for further factual determinations on this point.