

Docket Number: 1624

DARIEN CAPITAL MANAGEMENT, INC.

~~John D. Killian, Esquire~~
~~*Gerald Gornish, Esquire~~
~~Jerome J. Shestack, Esquire~~
~~Daniel D. McClain, Esquire~~

CLOSED

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

~~Nicholas J. Marcucci, Esquire~~
~~Susan Ray Kempinski, Assistant~~
~~James J. Kutz, Esquire~~
~~Timothy A. Hoy, Esquire~~

March 24, 1992

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$3,090,972.00+.

March 30, 1992

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General.

April 8, 1992

Letter forwarded to attorney for Plaintiff requesting additional information. Copy forwarded to attorney for Defendant.

April 9, 1992

Acceptance of Service of Statement of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by

April 13, 1992

Amended Claim (supporting documentation) filed by attorney for Plaintiff.

April 20, 1992

Copies of Amended Claim (supporting documentation) forwarded to attorney for Defendant and Chief Deputy Attorney General.

April 23, 1992

Acceptance of Service of Amended Claim (supporting documentation) received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 22, 1992.

May 6, 1992

Acceptance of Service of Amended Claim (supporting documentation) received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 22, 1992.

May 19, 1992

Praecipe for appearance filed by attorney for Defendant, Susan ray Kampske, Assistant Counsel. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 19, 1992

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 17, 1992

Reply to New Matter as well as Motion to Strike Off and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 8, 1992

Respondent's Answer to Claimant's Preliminary Objection, in the nature of a Motion to Strike Off filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 30, 1992

Brief in support of Respondent's answer to Claimant's Preliminary Objection in the Nature of a Motion to Strike Off filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 31, 1992

Brief in Support of Motion to Strike Off filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 8, 1992

Request and Response to Claimant's First Request for Production of Documents and Things Directed to respondent and supplements thereto filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 8, 1992

Claimant's First Set of Interrogatories Addressed to Respondent Commonwealth of Pennsylvania, Public School Employees' Retirement system, supplements thereto and Answers filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 8, 1992

Respondent's First Set of Interrogatories Directed to Darien Capital Management, Inc. filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 9, 1992

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 9th day of October, 1992, Paragraph 37 of the Respondent's, Commonwealth of Pennsylvania, Public School Employees' Retirement System, New Matter is hereby **STRICKEN** from the record. The parties are **ORDERED** to proceed with discovery and to place this case in the position where it can be heard by the Board and a judicial determination made." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

October 14, 1992

Claimant's First Request for Production of Documents and Things Directed to Respondent filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 14, 1992

Notice of Deposition of John C. Lane filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 14, 1992

Claimant's First Set of Interrogatories Addressed to Respondent Commonwealth of Pennsylvania, Public School Employees' Retirement System filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 15, 1992

Acceptance of Service of Opinion and Order dated October 9, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 14, 1992.

October 16, 1992

Acceptance of Service of Opinion and Order dated October 9, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 14, 1992.

November 3, 1992

Claimant's Answers to Respondent's First Set of Interrogatories Directed to Darien Capital Management, Inc. as well as Response to Respondent's First Request for Production of Documents Directed to Darien Capital Management, Inc. filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant by attorney for Plaintiff.

November 5, 1992

Motion to Compel Discovery Responses and Proposed order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 18, 1992

Public School Employees' Retirement System's Response to Darien's Supplementary Request for Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 24, 1992

Respondent's Answer to Claimant's Motion to Compel Discovery filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

CLOSED

Notice of Deposition of Gregory M. Hryb for December 11, 1992 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 16, 1992

Notice of Deposition of Gregory M. Hryb for December 21, 1992 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 23, 1992

Notice of Deposition of Gregory M. Hryb for January 28, 1993 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 4, 1993

Amended Notice of Deposition of Gregory M. Hryb for January 28, 1993 (correcting date from January 28, 1992 to January 28, 1993) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 1, 1993

Praecipe for Entry of Appearance of James J. Kutz, Esquire, and

Timothy A. Hoy, Esquire, attorneys for Defendant. Copy forwarded to attorney for Plaintiff by attorneys for Defendant.

July 10, 1993

Hearing scheduled for September 21, 22, 23, and 24, 1993, in Board's Court Room #1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania at 10:00 a.m.

July 6, 1993

Second Request for Production of Documents filed by attorney for Defendant (James J. Kutz, Esquire). Copy forwarded to attorney for Plaintiff by attorney for Defendant (James J. Kutz, Esquire).

July 15, 1993

Motion to Enter Deposition and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 30, 1993

CLOSED

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of July, 1993, Claimant, Darien Capital Management, Inc., is **DIRECTED** to respond to the Motion for a Protective Order Under PA. R.C.P. Nos. 4004(e) and 4012(a) within twenty(20) days of the date of this Order. Upon failure to respond to said Motion, the Board will have no recourse but to issue the Protective Order, as requested." Copies forwarded to attorney for Plaintiff and attorneys for Defendant.

July 30, 1993

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of July, 1993, the Defendant, Commonwealth of Pennsylvania, Public School Employees' Retirement of System, is **DIRECTED** to respond to said Motion to Enter Disposition within twenty (20) days of the date of this Order or to agree that said Motion be allowed and the deposition become part of the record." Copies forwarded to attorney for Plaintiff and attorneys for Defendant.

August 3, 1993

Acceptance of Service of Opinion and Order dated July 30, 1993, received from attorney for Plaintiff. Receipt of same acknowledged

by attorney for Plaintiff August 2, 1993.

August 6, 1993

Acceptance of Service of Opinion and Order dated July 30, 1993, received from attorneys for Defendant (Nicholas J. Marcucci, Esquire and Susan Ray Kempinski, Assistant Counsel). Receipt of same acknowledged by attorneys for Defendant August 3, 1993.

August 6, 1993

Acceptance of Service of Opinion and Order dated July 30, 1993, received from attorneys for Defendant (Nicholas J. Marcucci, Esquire and Susan Ray Kempinski, Assistant Counsel). Receipt of same acknowledged by attorneys for Defendant August 3, 1993.

August 12, 1993

Letter/Response to Motion to Enter Deposition filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

September 7, 1993

The Board made the following Order: **"AND NOW,** this 7th day of September, 1993, after due consideration of Letter/Response received from James J. Kutz, Esquire, advising that he has no objection to entering the deposition of Harry Markopolos at hearing, it is therefore **ORDERED** and **DECREED** that the Motion to Enter Deposition of Harry Markopolos is hereby **GRANTED**". Copies forwarded to attorney for Plaintiff and attorneys for Defendant.

September 10, 1993

Acceptance of Service of Order dated September 7, 1993, received from attorneys for Defendant (James J. Kutz, Esquire and Timothy A. Hoy, Esquire). Receipt of same acknowledged by attorneys for Defendant September 8, 1993.

September 10, 1993

Acceptance of Service of Order dated September 7, 1993, received from attorneys for Defendant (Nicholas J. Marcucci, Esquire and Susan

Ray Kempiski, Esquire). Receipt of same acknowledged by attorneys for Defendant September 9, 1993.

September 13, 1993

Acceptance of Service of Order dated September 7, 1993, received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff September 8, 1993.

September 20, 1993

Acceptance of Service of Order dated September 15, 1993, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 16, 1993.

September 21, 1993

Hearing held in Board's Court Room No. 1, 70 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 10:00 a.m.

September 22, 1993

Hearing held in Board's Court Room No. 1, 70 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m. Case Completed.

October 8, 1993

Acceptance of Service of Opinion and Order dated July 30, 1993, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 10, 1993.

December 1, 1993

Testimony of hearing held September 21 and 22, 1993, filed.

December 3, 1993

Copy of testimony of hearing held September 21 and 22, 1993, forwarded to attorneys for Defendant (James J. Kutz, Esquire and Timothy A. Hoy, Esquire).

December 30, 1993

Acceptance of Service of testimony of hearing held September 21 and 22, 1993 received from attorneys for Defendant. Receipt of same acknowledged by attorneys for Defendant December 29, 1993.

January 31, 1994

Deposition of Mr. John C. Lane filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 31, 1994

Claimant's Findings of Fact Conclusions of Law and Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 2, 1994

Letter/Amendment to Claimant's Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 7, 1994

Respondent's Proposed Findings of Fact, Proposed Conclusions of Law and Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 1, 1994

Claimant's Reply Brief filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorneys for Plaintiff.

May 12, 1994

Letter received from attorney for Plaintiff advising of a change in Plaintiff's Reply Brief. Copy forwarded to attorneys for Defendant by attorney for Plaintiff.

March 28, 1995

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 28th day of March, 1995, upon due consideration of the pleadings, testimony, evidence, and other submissions of the parties in this matter it is hereby **ORDERED** and **DECREED** that the Claim filed by Darien Capital Management, Inc. is **DISMISSED** for lack of jurisdiction of the subject matter in the Board of Claims, because the Claim was untimely filed." Copies forwarded to attorney for Plaintiff and attorneys for Defendant.

April 24, 1995

Petition for Review as filed in Commonwealth Court filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendant by attorney for Plaintiff. [No. 989 C.D. 1995]

June 5, 1995

File transmitted to Commonwealth Court.

November 15, 1995

Opinion and Order rendered by Commonwealth Court in re: **"AND NOW,** this 15th day of November, 1995, the order of the Board of Claims, at No. 1624, dated March 28, 1995, is hereby affirmed. It is further Ordered that Petitioner's Application to Impose Costs on Respondent Pursuant to Pa. R.A.P. 2155(b) is hereby denied."

September 11, 1996

Petition for Allowance of Appeal granted in part, but limited to the following two issues: (1) Whether the Commonwealth Court erred in concluding that the applicable statute of limitations had expired prior to the filing of Darien Capital Management, Inc.'s claim. (2) Whether the principle of estoppel addressed by this Court in Pennsylvania Department of Public Welfare v. UEC, Inc., 483 Pa. 503, 397 A.2d 79 (1979) is applicable to this case.

CLOSED
Copy of Opinion decided August 20, 1997, received from Supreme Court. First paragraph as follows: "...Therefore we hold that the Commonwealth Court erred in failing to apply the appropriate legal standard in the case at bar, and, as a result, incorrectly determined that the statute of limitations had expired prior to the filing of Darien's claim. The order of the Commonwealth Court is reversed, and the matter is remanded to the Board for proceedings in accordance with this opinion."

November 20, 1997

Petition for Attorney's Charging Lien and Brief in Support thereof filed by attorney for Defendant.

***December 8, 1997**

Entry of Appearance of Gerald Gornish, Esquire and Jerome J. Shestack, Esquire filed on behalf of Plaintiff.

December 19, 1997

Respondent's Preliminary Objections to Petition for Attorney's Charging Lien filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 20, 1998

Proposed Order, Rule to Show Cause, and Petitioner's Preliminary Objections to Respondent's Preliminary Objections to Petition for Attorney's Charging Lien filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 20, 1998

Brief in Support of Petitioner's Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 20, 1998

Brief in Opposition to Dallen Capital Management, Inc.'s Brief in Support of Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 2, 1998

Practitioner requesting the case be marked 'settled, discontinued' and ended with prejudice filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 11, 1998

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 11th day of February, 1998, it is **ORDERED** and **DECREED** that this matter be marked 'settled, discontinued and ended with prejudice.' It is further **ORDERED** and **DECREED** that any other motions pending before the Board of Claims are dismissed as being **MOOT**." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

February 19, 1998

Acceptance of Service of Opinion and Order dated February 11, 1998, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 17, 1998.

February 19, 1998

Acceptance of Service of Opinion and Order dated February 11, 1998, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 17, 1998.
