

Monthly Memo

STOCK IN LIEU OF WAGES: EMPLOYEE LOST BOTH

The California Supreme Court issued an interesting decision on November 2, 2009 regarding stock incentives and wages.

Mr. David Schachter worked for Smith Barney (a subsidiary of Citigroup) as a stockbroker. "Citigroup offered a voluntary compensation plan that provides employees with shares of restricted company stock at a reduced price in lieu of a portion of that employee's annual compensation." Per the terms of the stock option plan, employees agreed, in writing, that "should they resign or be terminated for cause before their restricted shares of stock vested, they would forfeit the stock and portion of cash compensation they directed to be paid in the form of restricted stock." If the employee remained with Smith Barney for at least two years of the stock purchase, the stocks vested fully with the employee.

However, if the employee "voluntarily terminated employment or was terminated for cause before the end of the two-year period, the employee forfeited his or her restricted stock as well as the percentage of annual income designated by the employee. But, ... if an employee was involuntarily terminated without cause," the employee would lose the shares of stock but would be paid the actual wages earned.

On March 31, 1996, Mr. Schachter voluntarily quit. Because Schachter's resignation occurred prior to the vesting date of his restricted stock, he forfeited all of his shares of stock and the percentage of his annual compensation he directed to be paid to him in the form of restricted stock.

Litigation was filed and both the trial court and Court of Appeal determined that Mr. Schachter had waived any and all rights to compensation, regardless of whether it was cash and/or stock options. Mr. Schachter claimed he had not waived his rights per California Labor Code Section 201 (discharge requires immediate payment of wages earned), California Labor Code Section 202 (quitting employee to be paid within 72 hours), and California Labor Code Section 219 (more frequent payment or more higher wages are not prohibited).

The Courts of Appeals wrote that "... Schachter's actions - not the company's - resulted in the loss of Schachter's contingent incentive compensation. As such, Schachter is not entitled to 'gather the fruit' because he failed to perform the condition necessary to do so - in this case, remain employed with the company until two years had passed from the date he received the restricted stock." Additionally, the Court of Appeals determined that the *Suastez v. Plastic Dress-Up Co.* decision is not applicable. Per *Suastez*, vacation is paid for past service not as an incentive for a person to stay on the job as is the Citigroup payment plan.