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number of the performance shares to be awarded was unknown, as was the amount of accumulated dividends that the husband would be entitled to when the number of those shares were determined and vested. The legislative formula for apportioning options was the better formula to be applied in this case and comported with the mandated policies of the IMDMA. Section 503(b)(3)(i) and (ii) specifically instructed Judge Goldfarb to consider all circumstances underlying the grant of the stock, including but not limited to whether the grant was for past, present, future efforts, or any combination thereof and the length of time from the grant to the time it was exercised and to consider these criteria in conjunction with Section 503(d).

The Judge valued not only the vested shares of restricted stock, but also the unvested shares of restricted stock. Unlike the performance shares, the number of restricted shares that would vest on a particular date was known. She chose to utilize the New York Stock exchange price for purposes of valuing the restricted stock.

The marital estate including investment accounts, stock, vested and unvested stock awards, performance shares, retirement accounts, real estate property, houses, and other assets had an aggregate net value of \$38,843,010 which was evenly split. Included within the division was dissipation by the husband of \$553,349 and \$643,142 of the wife. The husband was to pay permanent maintenance of \$52,000 per month.

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**Maintenance Despite Retirement**

**The parties were married on November 28, 1964. They had three children. After over 33**

**years of marriage, on June 19, 1998, a Judgment for Dissolution of Marriage was entered incorporating the parties' Marital Settlement Agreement. Initially, the ex-husband was to pay \$6,250 per month for permanent maintenance. That sum was later reduced to \$3,300 per month. The ex-husband sought to reduce that amount, claiming that he had retired and that due to his age, health and his present and future earning capacity, he was severely impaired. Judge Charles D. Johnson found that the change in the ex-husband's current and future income and worth was not exclusively the result of his retirement, but rather of his manipulation of his assets in such a way as to intentionally avoid his maintenance obligation. To read the full opinion, please sign on to [www.illinoisdivorcedigest.com](http://www.illinoisdivorcedigest.com).**

**The ex-wife was represented by David B. Yavitz of Yavitz & Levey, LLP.** The ex-husband was represented by Thomas W. Gooch and Michael J. Gauthier of Gauthier & Gooch.

In 2007 the ex-husband stopped paying the maintenance and was in arrears of \$173,322, which he eventually paid, after a body attachment was issued and after other efforts to collect were pursued in Cook County including a suit for fraudulent conveyance.

On March 3, 2011, the ex-husband filed the current Motion to Modify (Terminate) Maintenance. He alleged a substantial change in circumstances; specifically his retirement, which he claimed was done in good faith. He also alleged due to his age and health, that his present and future earning capacity was severely impaired. His current Motion to Modify (Terminate) Maintenance did not allege any change in the ex-wife's circumstances or financial position to justify a modification or termination of support. Judge Johnson refused to allow any

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questions of the ex-wife as to her income, assets or employment by reason of the fact that those elements were not the basis of the Petition to Modify or Terminate Maintenance.

Dennis Flynn testified that he ran the clearing-house at the Chicago Board of Trade (hereinafter referred to as CBOT) where the ex-husband used to clear his trades. He had known the ex-husband since 1993 when he was a trader in the corn pit. At that time, he described the ex-husband as one of the biggest brokers there, a very competent, go-to guy. Since 2008-09 Mr. Flynn opined the ex-husband was not doing well, he was forgetting things, transposing numbers and missing things, which resulted in out-trades (mistakes). He stated traders whose memory had faded were not successful; they didn't stay in the business. Mr. Flynn was not allowed to opine whether or not the ex-husband was capable of maintaining his employment as a trader.

The ex-husband retired in August 2007, when he left the trading floor [of the CBOT] and ceased his customer trading business. He totally stopped trading in January, 2010. He stated he left the commission business because he could not execute trades in the pits because he could not raise his arms due to two titanium shoulders and his difficulties hearing. He also said he had memory problems. He said he lacked the quickness and speed he had in the past. The ex-husband claimed he could not return to full time trading. He acknowledged members trade electronically using a computer but he had never done this.

Currently the ex-husband received \$1,285.00 per month while his ex-wife received \$590.00 and his daughter \$590.00 per month in Social Security benefits. He was married to his current wife, age 44, and they had a nine-year-old daughter. He also had \$7,000.00 in a mutual fund

that earned several hundred dollars per year. He claimed this was his entire income.

The ex-husband owned a home in Sarasota, Florida, his largest asset, jointly with his wife that was purchased for \$1.85 million. The house had an outstanding loan at UBS of one million dollars.

At the time of the initial divorce in 1998, the ex-husband owned a seat on the CBOT that was awarded to him. Subsequent to the divorce in 2005, the CBOT restructured from a partnership to a corporation and the ex-husband retained his CBOT seat and also received stock in the new CBOT. In 2007, the CBOT was purchased by the Chicago Mercantile Exchange (CME) and the ex-husband received 10,251 shares of CME stock. His CME stock was placed in his UBS account. He then transferred some of his stock or the sales proceeds from that stock to a UBS trust account in his current wife's name. This transfer into his current wife's trust account occurred in 2007 or 2008 and was a gift. He believed the 10,251 CME shares were sold for 4 million dollars or more.

His current wife sold \$2,050,642.00 and the ex-husband sold \$5,792, 033.00 of capital assets from their respective USB accounts in 2007. In 2007, after the sale of his CME stock, the ex-husband's tax-exempt interest income was over \$300,000.00, a sum that exceeded his 2004 earned income of \$197,000.00 that was the basis of the current maintenance order. In 2008, he reported \$129,000.00 of tax-exempt interest and \$4,040,000.00 on the sale of short-term capital assets.

In 2006, the ex-husband bought condo Unit 4010 at 474 N. Lake Shore Drive, Chicago, Illinois, for \$525,000.00. The ex-husband stated that "no title was given" until 2010 when he

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caused title to be placed in his current wife's Trust.

On January 25, 2010, the ex-husband gifted his CBOT seat to his current wife. She was trading at the CBOT and was paying for the ex-husband's living expenses not covered by his Social Security and small Sequoia investment income.

Judge Johnson denied the ex-husband's Petition to Modify/Terminate Maintenance finding that "the change in the ex-husband's current and future income was not exclusively the result of his retirement, but rather of his manipulation of his assets in such a way as to intentionally avoid his maintenance obligation. The Judge found that the issue was controlled by the holding in *In re Marriage of Smith* 77 Ill.App.3d 858, 396 N.E. 859 (2<sup>nd</sup> Dist, 1979). The change in the ex-husband's circumstances had been brought about by his own actions, and therefore could not be the basis of a modification of maintenance."

Judge Johnson ordered the ex-husband, pursuant to 508(b), to pay to Yavitz & Levey \$90,000 of the \$137, \$766.50 in fees sought and \$4,131.64 costs incurred. The ex-husband's action was without cause or justification. He denied the ex-wife's request for \$84,492.05 incurred in the Cook County Fraudulent Conveyance case, finding these fees were not compensable in the Lake County divorce case.

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### **Homemaker's Maintenance Extended**

**The former wife sought an extension of maintenance while the ex-husband sought termination. Judge Mark J. Lopez required the ex-husband to continue to pay \$12,000 as unallocated maintenance finding good cause for the ex-wife's inability to achieve full or partial independence.**

The former wife was represented by Howard H. Rosenfeld and Shaska R. Dice of Rosenfeld, Hafron, Shapiro & Farmer. The former husband was represented by Steven H. Klein and Christopher D. Wehrman of the firm Swanson, Martin & Bell, LLP.

A Judgment for Dissolution of Marriage was entered on March 12, 2009. The ex-husband was to pay the ex-wife as unallocated family support, the sum of \$12,000 per month for 60 months predicated on his represented current annual base gross salary of \$300,000. From his bonus income he was to pay 50% of income received between \$300,000 and \$352,500 and from income in excess of \$352,500, and less than \$600,000, he would pay 20%.

Upon entry of the Judgment for Dissolution of Marriage, the ex-wife had an Undergraduate degree and a Master's Degree in Nutrition. She was unemployed and had no employment income. She had not worked outside of the home for the vast majority of the marriage.

The ex-husband argued that since the entry of the Judgment, the ex-wife had made no effort to seek full time employment. She had not sought any additional training or education to enhance her skills and knowledge or to improve her ability to obtain full time employment. He cited the case of *In re The Marriage of Patel*, 993 N.E.2d 1062 (2013). He essentially argued that the Judge should give great weight to what he believed was the ex-wife's purported failure to seek full time employment or additional education to make herself more marketable for full time employment.

The ex-wife testified that since the entry of the Judgment, she had renewed her nutritionist and dietician licensure and registration, had