

EXHIBIT A

COPY OF TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,)	Deposition of:
)	
Plaintiff,)	<u>JUDSON PITTS</u>
)	
vs.)	
)	
AMERICAN PENSION SERVICES, INC., a Utah corporation, AND CURTIS L. DeYOUNG, an individual,)	Civil No. 2:14cv00309
)	Judge Shelby
)	
Defendants.)	

May 2, 2014 * 9:01 a.m.

Location: United States
Securities and Exchange Commission
Salt Lake District Office
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101

Reporter: Kathy Morgan, CSR, RPR
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P R O C E E D I N G S

JUDSON PITTS

called as a witness, being first duly sworn,
was examined and testified as follows:

MR. WADLEY: Mr. Pitts, my name is Daniel Wadley, as you know, and I'm counsel for the Securities and Exchange Commission in this matter. With me at the table is Paul Feindt, also an attorney with the Commission. I will go ahead and let Mr. Gaylord make his appearance.

MR. GAYLORD: As you know, Mark Gaylord appearing on behalf of the receiver, Diane Thompson.

EXAMINATION

BY MR. WADLEY:

Q. Could you please, Mr. Pitts, just give your full name, address and contact information for the record.

A. Yes. Judson Tolman Pitts is the full name. I reside at [REDACTED], Taylorsville, Utah, 84129.

Q. And telephone number, e-mail addresses?

A. Telephone [REDACTED]. E-mail address

1 requiring you to testify in connection with the legal
2 services you provided for APS in this matter. Is
3 that your understanding?

4 A. That is my understanding.

5 Q. Okay. Mr. Pitts, you were hired as
6 in-house counsel as an employee for APS acting as
7 in-house counsel for litigation matters beginning
8 January of 2013; is that correct?

9 A. That's correct.

10 Q. At some point, in connection with your
11 services, your legal work on behalf of Administrative
12 -- American Pension Services, did you come to learn
13 of a potential discrepancy between the custody
14 account that APS held on behalf of its customers and
15 the amount of cash that it represented to its
16 customers that it held on their behalf?

17 A. Yes, I did.

18 Q. And when did you learn of that
19 discrepancy?

20 A. That was disclosed to me on January 9th of
21 2014.

22 Q. And what was the context in which it was
23 disclosed to you?

24 A. We were having a deposition here at the
25 Securities and Exchange Commission for Mr. Curtis

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1 DeYoung. Prior to that time I had no knowledge of
2 that. Mr. DeYoung went ahead and disclosed that to
3 me, as well as to his other counsel that was present
4 at that time, during a break in the proceedings. And
5 we had to think very, very quickly about what the
6 ramifications of that disclosure meant.

7 Q. Certainly. So it was in the context of a
8 break in the deposition that Mr. DeYoung disclosed to
9 you that there was a current discrepancy between what
10 was in the bank account and what was supposed to be
11 in the bank account. Is that fair to say?

12 A. That's correct.

13 Q. And did he share with you the amount of
14 the discrepancy?

15 A. Not at that time.

16 Q. Is it safe to say he just disclosed that
17 there was a certain amount missing?

18 A. That's correct.

19 Q. And rather than me keep asking these
20 questions, why don't you just go ahead and tell me
21 what he told you.

22 A. Mr. DeYoung disclosed that between roughly
23 2000 and 2004 there was a period of time when he had
24 been asked by friends and family members orally to
25 invest some of their IRA monies in various

1 investments in which he himself had invested his own
2 IRA, self-directed IRA monies. He disclosed to me at
3 that time that he had gone ahead and done that and
4 invested those monies as he had been directed.

5 He also had invested other money from the
6 Master Trust account, which was not authorized to be
7 invested. Again, he did not disclose, at that time,
8 the amount of the money, but he was concerned that
9 the documents that we had provided during discovery
10 regarding the account balances of the
11 investors/clients of American Pension Services would
12 not add up to or equal the amount of money that was
13 held on file with the Bank of -- First Utah Bank.

14 Q. So whatever losses he had incurred -- and
15 it sounds like he incurred losses between 2000 and
16 2004. Was that your understanding?

17 A. You know, he didn't say whether or not
18 there were -- I mean, he didn't detail whether or not
19 there were losses to him personally. He just
20 mentioned that there had been lost funds in various
21 investments and that there was money missing from the
22 account.

23 Q. And so whatever money was lost in that
24 2000 to 2004 time frame, it persisted at least up
25 until 2013?

1 A. That was the implication.

2 Q. That was the implication. That was
3 certainly the records that he was being questioned
4 about at that deposition; is that correct?

5 A. If I remember correctly, that was the way
6 the deposition questioning was heading at that time,
7 which is why we took a break and he wanted to
8 disclose and talk to us about that.

9 Q. So as I understand it, when the deposition
10 resumed, he invoked his Fifth Amendment privilege
11 against self-incrimination; is that correct?

12 A. That's correct.

13 Q. So he informs you -- Mr. DeYoung informs
14 you -- that there was a discrepancy between the funds
15 that were held in the First Utah Bank custody account
16 and what is being represented on the investor
17 statements is cash held on behalf of investors?

18 A. Yes.

19 Q. Now, you don't know the amount at that
20 point?

21 A. At that point, no.

22 Q. And was there a time when you gained a
23 greater understanding as to the amount of the
24 discrepancy?

25 A. Yes.

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9

1 Q. And can you tell me about how you came to
2 learn the amount?

3 A. Well, as soon as the deposition was over
4 that day I arranged for a meeting with Mr. DeYoung,
5 to talk to him immediately about what he had
6 disclosed about the differences, and to talk with him
7 about what was going on.

8 First and foremost, I wanted to know
9 whether the monies that had been lost in investments
10 were from the Master Trust account, which is the
11 investors' accounts, or whether they were from the
12 corporate account. We discussed some past litigation
13 that I had conducted for Mr. DeYoung as outside
14 counsel between the years of 2007 and 2012.

15 I was under the impression during those
16 periods of time, as I brought lawsuits on behalf of
17 American Pension Services, that the money that had
18 been lost and that we were trying to recuperate in
19 various investments through that litigation was from
20 the American Pension Services corporate account. I
21 determined that in some of those cases the money had
22 been taken from the corporate account, and in some of
23 those cases likely it was probably trust money that
24 we were pursuing.

25 But I was unaware of that at the time I

1 was pursuing those cases then. I asked Mr. DeYoung
2 the amount of money that was lost, and he disclosed
3 to me at that time that there was approximately
4 \$24 million missing from the Master Trust account. I
5 informed him, obviously, that there was a huge
6 conflict of interest between what appeared to me to
7 be a misappropriation of funds.

8 So I began an investigation at that time
9 into the law regarding disclosures, oral disclosures,
10 written disclosures, other things that would need to
11 take place. For years, as outside counsel, prior to
12 coming on as inside counsel, I had superficially
13 reminded everyone at American Pension Services that
14 they needed "buy direction" letters; that they needed
15 to document various client permissions. Even if they
16 were moving money quickly, they should at least get
17 an e-mail or some other type of written documentation
18 that would assist them and help them later down the
19 line if somebody accused them of taking money out of
20 the trust account and investing it without their
21 permission so that they would defer back to something
22 that was written, an authorization.

23 And to my best knowledge, from the records
24 that I reviewed in the course of my investigation, we
25 didn't have any cases, at least for the last five or

1 A. Just took note of it.

2 Q. Did you have further conversations with
3 Mr. DeYoung?

4 A. Yeah, sure. I had a couple conversations
5 with him. I didn't have a lot of conversations with
6 Curtis, but I must have had about five or six
7 different conversations with Mr. DeYoung about this
8 issue since February.

9 Q. Okay.

10 A. Mr. DeYoung was gone a lot from the
11 office. He was out a considerable amount of time.
12 So let me go back to the second conversation that I
13 had with Mr. DeYoung.

14 Q. If you could put -- kind of pin it down.

15 A. I will try to pin it down.

16 Q. As far as dates go.

17 A. For timeline purposes. So after I had had
18 a conversation with Mr. DeYoung, in the week of
19 January following the deposition on the 9th -- well,
20 the first thing -- because I'm trying to just keep a
21 timeline in my head -- the first thing that I asked
22 Mr. DeYoung after that conversation was I asked him
23 whether or not he had let anybody know about the
24 missing money that he had disclosed. He said no. I
25 asked him whether or not the computer system

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1 reflected this money so that employees at the office
2 would know. Mr. DeYoung mentioned that he had made
3 an entry into the computer system that would
4 basically hide the fact that the money was missing,
5 and that way nobody would be able to see that.

6 Q. Did he tell you when he made that entry?

7 A. He said that he made the entry in 2008.

8 Q. So this was all in that January meeting?

9 A. Yes.

10 Q. So you asked if anyone knew, and he said
11 no. You asked if the computer system reflected the
12 discrepancy, and he said that he had made an entry to
13 hide the discrepancy in 2008?

14 A. Yes.

15 Q. Okay. What other issues, in that January
16 meeting, did you talk about?

17 A. He mentioned that he was working on
18 something to replace the money.

19 Q. Did he tell you what that was?

20 A. Yes.

21 Q. What's that?

22 A. He had been working with a man by the name
23 of Mike Memmott Junior in conjunction with -- I don't
24 remember the name, a Filipino man, and that they had
25 sold some investment options. Let me think exactly

1 And I advised him that at some point that
2 the money, you know -- I told Mr. DeYoung that I
3 didn't think that whether the money came in or not
4 was going to make a lot of difference in the end
5 outcome, as far as he was concerned.

6 Q. Violations had occurred, whether the money
7 was made up or not?

8 A. Yeah.

9 Q. Is that fair to say?

10 A. Fair characterization. Whether I said it
11 out loud or not, in my mind I could see that
12 Mr. DeYoung had committed violations between the year
13 2000 and 2004, 2005, that were a problem. There were
14 ongoing violations that could continue to be
15 construed as a breach of his fiduciary duty in not
16 notifying investors. And, in fact, at the time we --
17 at the time that we were asked to produce statements
18 to the Securities and Exchange Commission, I was
19 unaware of the fact that we had missing money and
20 problems.

21 After Mr. DeYoung's disclosure to me that
22 that had happened, I talked with Michelle DeYoung,
23 who was in charge of making sure the statements were
24 sent out with the company, and those statements had
25 already gone out to the printer and had already hit

1 the mail at the time that that disclosure had been
2 made to me, or at least the follow-up discussions
3 that I had had. So that was one of the first things
4 I did after Mr. DeYoung disclosed all of that
5 information to me and said exactly what was there.

6 I said, "Have you guys already sent out
7 yearly statements?"

8 They said, "Yes, we've already sent those
9 out."

10 And that's when we got into a discussion
11 with the SEC about inaccuracies that were contained
12 on some of the statements that we had provided. And
13 so I advised Ms. DeYoung that she needed to resend
14 statements that were accurate and complete, and I
15 advised Mr. DeYoung that he needed to advise or
16 notify people about the money that was there.

17 The problem was at that time I'm not sure
18 Mr. DeYoung -- well, at that time, in January, I'm
19 not sure Mr. DeYoung -- I didn't know whether
20 Mr. DeYoung knew exactly what accounts the money was
21 missing from.

22 Again, one of the things that I was not
23 asked to do as counsel for American Pension Services
24 was compliance issues. I told them at the time that
25 I came on that I did not have a background in

1 these conversations with Michelle that the investor
2 statements are incorrect, did you disclose to her why
3 the statements were incorrect or how they needed to
4 be corrected?

5 A. With Michelle, I just said that there's a
6 good segment of the statements that were incorrect
7 because of the 16-day lag time between the first of
8 January and when -- or 15 days or 14 days, whatever
9 it was, that the printer had mis-done. And I asked
10 her, I said that those needed to be corrected. I did
11 not tell her at the time about the missing money
12 because Curtis had not authorized me to do anything
13 like that.

14 Q. You attributed it to just a calculation
15 error?

16 A. Yeah, errors in terms of what was
17 reflected on the statements. And she was aware of
18 that. I told Curtis, "You need to make sure that the
19 statements, when those fixed statements go out, they
20 need to go out to everybody and you need to fix them
21 and show everybody what they have."

22 Q. And did Curtis respond and say, "Well,
23 let's see what happens with the Europe money first"?

24 A. No, he just -- "okay," shook his head.

25 Q. So he was compliant with your suggestion,

1 or he was agreeable to your suggestion that new
2 statements, correct statements needed to go out?

3 A. I felt like he was putting me off.

4 Q. And, in fact, had any corrected statements
5 ever gone out?

6 A. Not to my knowledge. I did follow up once
7 on it and I reasked that question again back in
8 February. And I said, "Have statements gone out that
9 are correct that show what's going on?" I advised
10 him that he could be in violation if statements
11 didn't go out that were correct, in terms being an
12 ongoing violation of his duty as president of the
13 company. And I asked him whether or not he knew all
14 of the people who were owed back, and he said that he
15 did.

16 Q. Except for the funds came out of the trust
17 account, which was a co-mingled account; correct?

18 A. That's correct.

19 Q. So there really was no attribution to who
20 those funds belonged to, other than it was just a
21 draw from the co-mingled funds; is that correct?

22 A. That's correct.

23 Q. So from your investigation, Mr. Pitts,
24 obviously, other than Curtis DeYoung himself, have
25 you been able to identify anybody that you believe

1 a brief figure. But yeah, I mean, that's the
2 conversation I had with the employees about the
3 missing funds.

4 Q. Just kind of a general informational?

5 A. Just kind of general. No specifics, but
6 just kind of generally letting them know probably
7 what was coming in the news, what was coming down the
8 line so that they would be aware.

9 Q. So I apologize, we keep kind of going
10 forward and then coming back. There's some issues we
11 need to revisit. So when Mr. DeYoung had -- when you
12 had your meeting with Mr. DeYoung in January, and he
13 admitted that \$24 million was missing, he admitted to
14 taking steps to conceal that missing \$24 million, he
15 didn't indicate that there was anybody else in the
16 company that was involved in the misappropriation of
17 those funds?

18 A. No.

19 Q. He was taking credit for whatever was done
20 to misappropriate those funds?

21 A. Yeah.

22 Q. It wasn't like he was blaming anybody else
23 and saying somebody else, you know, took those funds
24 and absconded with them?

25 A. Huh-uh (negative)

1 make a difference, and that he needed to just -- he
2 needed to take steps and measures. He needed to talk
3 to his attorneys and he needed to get counsel on that
4 issue.

5 Q. So investor statements, corrected investor
6 statements, to your knowledge, were never issued by
7 APS?

8 A. Not to my knowledge.

9 Q. Did APS undertake any efforts in any other
10 fashion to inform investors of the missing funds?

11 A. Not to my knowledge.

12 Q. Regarding this \$24 million, was it your
13 understanding from your conversations with
14 Mr. DeYoung that the funds were lost in investments
15 as opposed to him taking the funds and using them for
16 his personal expenses?

17 A. That's correct. It was explained to me
18 that the money was lost in investments.

19 Q. So unwise or imprudent investments,
20 whatever the case may be, he was using those customer
21 funds to invest in these ventures; is that correct?

22 A. That's my understanding, yes.

23 Q. Not to pay for vacations or homes or
24 sports cars?

25 A. Correct.

1 Q. And it's your understanding that the funds
2 in the custody account belonged to the investors, not
3 to APS; is that correct?

4 A. Yes.

5 Q. And that APS holds those customer funds
6 and is contractually and legally obligated to use
7 them only as directed, generally by written direction
8 from its customers; is that correct?

9 A. That's correct. In fact, that exact
10 explanation is what was given to me by Mr. DeYoung
11 when I was hired.

12 Q. When you say "that exact explanation,"
13 when he was describing the way APS did its business?

14 A. Yeah. It was probably four or five months
15 after I was hired that we had that conversation in
16 terms of what's the Master Trust account, how does
17 that work, who's in charge of it. It took me a few
18 months to try and figure that out.

19 Q. And it would be helpful for me, why don't
20 you describe that conversation that you had with
21 Mr. DeYoung.

22 A. I just simply went to him and I just said,
23 "So, you know, all this money that comes in, where
24 does it go?"

25 He said, "Well, Nannette puts it into this