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**No. 84-3040 Motion for Stay Pending Appeal and Memorandum
of Points and Authorities in Support of Motion for Stay**

United States District Court for the District of Columbia

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Defendant.

MOTION FOR STAY PENDING APPEAL
AND MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR STAY

The reasons for granting the stay are set forth in the attached Memorandum of Points and Authorities. A proposed order also is filed with this Motion.

DATED: June 21, 1990

Respectfully submitted,



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It is well settled that the party appealing a money judgment is entitled to a stay as a matter of right upon the posting of a good and sufficient supersedeas bond and approval of the bond by the District Court. See Fed. R. Civ. Pro. 62(d) ("The stay is effective when the supersedeas bond is approved

by the court."); American Manufacturers Mutual Ins. Co. v. American Broadcasting-Paramount Theaters, Inc., 87 S. Ct. 1 (1966) (Harlan, Circuit Justice); Federal Prescription Service, Inc. v. American Pharmaceutical Ass'n, 636 F.2d 755 (D.C. Cir. 1980); 7 Moore's Federal Practice ¶ 62.06.^{1/} The Court should stay execution or enforcement of the back pay and attorney's fees portion of the May 25, 1990 judgment conditioned upon the posting and approval of a supersedeas bond in an amount determined to be appropriate by the Court.^{2/}

II

THE COURT SHOULD EXERCISE ITS DISCRETION TO STAY THE PARTNERSHIP ADMISSION ORDER

This Court has discretion to stay or "suspend" its equitable order requiring Price Waterhouse to admit plaintiff to the partnership "during the pendency of the appeal upon such

^{1/} The Court has discretion to grant a stay of the judgment in this case without the posting of a bond because there is no "reasonable likelihood of the judgment debtor's inability or unwillingness to satisfy the judgment in full upon ultimate disposition of the case" and therefore an unsecured stay will not "unduly endanger" plaintiff's "interest in ultimate recovery." Federal Prescription Service, 636 F.2d at 760-61 (granting of unsecured stay appropriate under the circumstances).

^{2/} Given that the median time to disposition from the filing of a notice of appeal in this Circuit is approximately 10 months, see Federal Court Management Statistics 3 (1989), a bond covering the amount of the back pay award and attorney's fees, plus potential post-judgment interest for a one-year period, should sufficiently protect plaintiff during the pendency of the appeal.

terms as to bond or otherwise as it considers proper for the security of the adverse party." See Fed. R. Civ. Pro.

62(c).^{3/} The factors relevant in determining the appropriateness of a stay include: "(1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? . . . (2) Has the petitioner shown that without such relief, it will be irreparably injured? . . . (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? . . . (4) Where lies the public interest?" Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977) (quoting Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958)). These factors support a stay of the partnership admission order in this case.

As this Court recognized in its May 14, 1990 opinion, the question "[w]hether the Court should force Price Waterhouse to make Ms. Hopkins a partner presents a difficult and unresolved issue." Slip op. at 16. The Court's rulings on this and other issues raise substantial and important questions of first impression regarding the jurisdictional reach and application of Title VII. The Court has already noted "the

^{3/} The posting of a supersedeas bond also may entitle Price Waterhouse to a stay of the partnership admission order pursuant to Rule 62(d). Cf. Becker v. United States, 451 U.S. 1306, 1309 (1981) (Rehnquist, Circuit Justice) (taxpayer appealing order compelling it to turn over materials in response to tax summons entitled to automatic stay upon posting of a bond).

clear probability that a further round of appeals would ensue" in this case. Slip op. at 3. The probability of success on the merits on appeal of these questions is sufficient to justify a stay. See Washington Area Metropolitan Transit, 559 F.2d at 844-45 (probability of success test met where "serious" and "difficult" questions are presented).

Furthermore, the balance of the equities (see id. at 843) strongly favors the granting of a stay of the partnership admission order. In the absence of stay, the members of the Price Waterhouse firm will be compelled to enter into the "strained partnership relationship" (slip op. at 20) that the firm intends to challenge on appeal as an inappropriate and unauthorized Title VII remedy. Decisions and conduct by the plaintiff as a Price Waterhouse partner would in most respects be irrevocable. Relationships with Price Waterhouse clients would be irreparably altered. In short, the partnership, once established, would be extremely difficult to unravel. The courts in equity have been historically reluctant to compel the existence and continuation of personal relationships, Karrick v. Hannaman, 168 U.S. 328, 335 (1897) (courts "will seldom, if ever, specifically compel . . . performance of [a partnership] contract, the contract of partnership being of an essentially personal character") (emphasis added), and a Price Waterhouse partnership would entail hundreds of such personal relationships with partners and employees of Price Waterhouse

and with Price Waterhouse clients.^{4/} Thus, the failure to grant a stay will irreparably injure Price Waterhouse and might deny effective relief to Price Waterhouse if it prevails on appeal.

On the other hand, plaintiff herself has characterized her present World Bank position as "an absolutely superb position . . . with terrific benefits." 1990 Tr. at 25. Under such circumstances, plaintiff cannot claim that she will suffer "substantial harm" if the Court grants a stay of the partnership admission portion of the judgment.^{5/}

Thus, in this case "a serious legal question is presented, . . . little if any harm will befall other interested persons or the public and . . . denial of the order would inflict irreparable injury on the movant." Washington Metropolitan Area Transit, 559 F.2d at 844. Therefore, "[a]n order maintaining the status quo is appropriate" and should be granted. Id.

4/ See also Clark v. Truitt, 183 Ill. 239, 55 N.E. 683, 685 (1899) ("An agreement to enter into a partnership, and, as a partner, to use and exercise personal skills and judgment in the control and management of the partnership business, is not enforceable specifically.") (citations omitted); Marek v. McHardy, 234 La. 841, 101 So. 2d 689, 693 (1958) ("Manifestly, in a case like this involving personal services coupled with a promise of the obligees to make the plaintiff their business partner, the court would not order the exceptional relief of specific performance.").

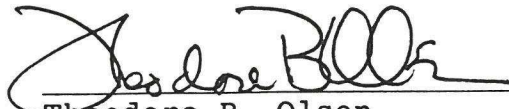
5/ A stay of the judgment in this "obviously atypical case" (slip op. at 33) does not implicate the "public interest" factor listed in Washington Metropolitan Area Transit. See 559 F.2d at 843 ("this is not a case where the Commission has ruled that the service performed by appellant is contrary to the public interest").

CONCLUSION

The Court's judgment raises significant and difficult issues for appeal and the balance of the equities favors the granting of a stay of the entire judgment. The authority of this Court to maintain the status quo is clear, as is the appropriateness of the exercise of that authority in this case. The stay should be granted.

DATED: June 21, 1990

Respectfully submitted,



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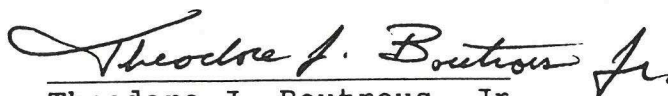
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UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing Notice of Appeal, Motion for Stay Pending Appeal and Memorandum of Points and Authorities in Support of Motion for Stay, and proposed Order, to be served by hand delivery this 21st day of June 1990, upon James H. Heller, Esq., Kator, Scott & Heller, 1275 K Street, N.W., Suite 950, Washington, D.C. 20006.



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