

2017 WL 7593346 (Cal.Super.) (Trial Order)  
Superior Court of California.  
Central Justice Center  
Orange County

QUALITY SYSTEMS, INC., Cross-Complainant,  
v.  
Ahmed D. HUSSEIN, Cross-Defendant.

No. 30-2013-00679600.  
July 26, 2017.

### Statement of Decision

[Michael Brenner](#), Judge.

\*1 Department C62

1. At the close of Cross-Complainant Quality Systems, Inc.'s ("QSI") case-in-chief Cross-Defendant Ahmed D. Hussein ("Hussein") brought a motion for judgment pursuant to [California Code of Civil Procedure, Section 631.8](#). After weighing the evidence the Court grants the Motion and enters Judgment for Hussein.

2. This case proceeded on the Cross-Complaint filed by QSI on 8/29/2014 in response to the Complaint filed by Hussein on October 04, 2013. QSI's Complaint contained one cause of action at law for Breach of Fiduciary Duty. At the outset of these proceedings counsel for QSI stated that QSI did not have and did not seek any quantifiable damages. Rather, QSI intended to proceed on the second item in QSI's *Prayer For Relief*, the "disgorgement of profits and amounts by which Hussein was unjustly enriched". The Court found that this cause of action, disgorgement, was in equity and ordered that the matter proceed by way of bench trial.

3. The Court held pretrial proceedings during portions of two weeks in early June, 2017. Counsel for QSI informed the Court that QSI's claim for disgorgement sought disgorgement of two specific categories of funds.

First, QSI sought disgorgement of the money Hussein saved by paying off high interest loans he had in Egypt with money he borrowed at much lower interest rates in the USA, using his QSI stock as security for the USA loans.

Second, QSI sought disgorgement of the money Hussein was paid by QSI for serving as a QSI director.

4. A principal that has guided the Court in ruling on QSI's disgorgement claims is that the basis of disgorgement is that a fiduciary, or someone with an equivalent duty imposed by a relation of trust and confidence, wrongfully receives a benefit that should belong to the person to whom he owes the duty. [Restatement \(Third\) of Restitution and Unjust Enrichment, Section 43 \(2011\)](#).

5. The Court finds that a corporate director does owe his corporation certain fiduciary duties. Both Parties agree that a corporate director owes his corporation duties of loyalty and candor, and a duty to act with the utmost good faith in the best interests of his corporation. These duties are created by law. They are well-defined obligations of general applicability. Corporate boards have no power to create new fiduciary duties unique to their corporation by simply adopting corporate policies. Different corporations cannot have different fiduciary duties.

6. The Court finds that no prohibition exists regarding a corporate director pledging his corporate stock as security for obtaining a loan by use of a broker's margin account. Further, based on the testimony of Professor Wayne Quay, QSI's witness, the Court finds that during the relevant time periods in this case margin accounts were both lawful and commonplace among directors of public companies. The Court finds that no generally-applicable fiduciary duty limited Hussein's right to hold margin accounts at the time of the conduct in this case.

7. The Court finds that there was nothing overly "risky" about Hussein's margin activity in terms of loans that were too high for the collateral posted. This subject was touched on by QSI during trial but whatever the specifics of this allegation QSI failed to meet its burden of proof. Again, according to Professor Quay, Hussein's loan to collateral ratio represented overcollateralization, not undercollateralization.

\*2 8. With regard to the forced sale of Hussein's QSI stock the Court finds that Hussein was not a wrong-doer. In fact he fought to prevent his margined stock from being sold. Also, QSI has not proven it suffered any real damages because Hussein's stock was sold. The primary cause of QSI's stock dropping in price on July 26, 2012 was QSI's earnings report. This was what caused the sale of Hussein's stock, which resulted in Hussein losing a large amount of money. Further, the evidence was that QSI stock steadily rose again in the 2-3 months that followed July 26<sup>th</sup>.

9. On QSI's claim for disgorgement of whatever benefit Hussein received from margining his shares and borrowing to pay off his Egyptian loans, the Court finds for Hussein. This activity did not violate QSI's 2004 policy which allowed a director to borrow against his shares for purposes other than to buy more QSI stock or stock in another company. Again the Court cites to the [Restatement \(Third\) of Restitution and Unjust Enrichment, Section 43](#). Hussein's activity did not violate QSI's 2004 policy, was perfectly legal and a common place activity among corporate directors at the time, and did not result in any benefit to Hussein that should have gone to QSI. The Court finds absolutely no reason Hussein should disgorge whatever benefit he received from this activity.

10. QSI also seeks disgorgement of Hussein's director's compensation, apparently for the period from July 27, 2011, when QSI's Board adopted their 2011 policy preventing a director margining his shares, to May 14, 2013, when Hussein resigned from QSI's Board. On this claim the Court finds for Hussein. During this period Hussein's shares in QSI entitled him to be a director and there is no showing he didn't serve as such, albeit as a dissenting voice on QSI's Board. To the extent this claim is based on his refusal to fill out QSI's questionnaire, during this period QSI knew that he had margined his shares or at least they were held in "marginable" accounts. The point, however, is that QSI fails to show that any damages flowed from Hussein's refusal to fill out the questionnaire. No evidence was presented that the SEC ever took action or perhaps even knew about this situation. At one point QSI claimed that they suffered some "reputational damage" because of this but no evidence of this claim was ever offered. Again, disgorgement requires that a person owing a duty wrongfully receives a benefit that in fact should have gone to the person to whom he owes the duty. Hussein's activities as a director did not produce any benefit for him that should have gone to QSI. In fact, his using his QSI shares as collateral for loans caused him to lose millions of dollars, and caused no "quantifiable" or any damage to QSI. The Court finds that disgorgement, as an equitable remedy, has no application to Hussein's compensation for being a director on QSI's Board.

11. In summation, this matter began as a one count cross-complaint for a legal claim; breach of fiduciary duty. Once QSI agreed that they had no real damages from anything Hussein did as a director of QSI the Court found that this became an equitable claim, based on the second item in QSI's *PRAYER FOR RELIEF*, disgorgement "of profits and amounts by which Hussein was unjustly enriched".

In deciding on which side should prevail on QSI's disgorgement claim the Court adopts the criteria for disgorgement stated in the Restitution (Third) of Restitution and Unjust Enrichment. That is:

1. That a person (Hussein) obtains a benefit

2. In breach of a fiduciary duty or equivalent duty imposed by a relation of trust and confidence

\*3 3. Is liable in restitution to the person (QSI) to whom the duty is owed.

As to QSI's first disgorgement claim for Hussein converting his Egyptian loans to margin loans with his QSI stock as collateral, this activity was consistent with QSI's own 2004 policy regarding a director obtaining margin loans on his company stock. It therefore did not breach any duty owed to QSI. QSI suffered no harm because of this activity and Hussein received no benefit that should have gone to QSI. There was no causal link whatsoever between this activity and anything related to QSI.

The Court finds that it is unclear from the evidence when QSI learned of Hussein's margin loans. There was evidence that whenever Hussein opened a margin account with another brokerage the broker would call QSI's legal department to see if this violated QSI policy. This would at least notify QSI that Hussein had the potential to pledge his stock as collateral. Still, Hussein never directly told QSI he had margined his stock until much later. Despite confusion surrounding Hussein's various responses to QSI's D&O questionnaires, however, the Court finds that these responses never caused any harm to QSI and never caused Hussein to receive a benefit that should have gone to QSI.

Concerning QSI's second claim for disgorgement, of Hussein's compensation for being a company director from July 27, 2011 to May 14, 2013, the Court finds for Hussein. It appears that Hussein acted in what he believed was QSI's best interest whether or not other Board members agreed. Being a major stockholder alone would have motivated him to act in this way, and that motivation would be enhanced by the fact that his shares were collateral for loans. Further, during his entire period of QSI's Board Hussein never received a benefit that should have gone to QSI. In fact, during the period in question he lost millions of dollars due to the forced sale of his QSI stock. There is simply nothing for him to disgorge that should have gone to QSI.

12. The Court finds that Hussein only benefited from his margin loans to the extent they allowed him to avoid the higher Egyptian interest rates. The Court finds that overall Hussein lost millions of dollars because of his margin loans. Regarding his savings from being relieved of the higher Egyptian interest rates, the Court finds that this was not a benefit that QSI would otherwise have received. Therefore QSI would not be entitled to disgorgement of these amounts, even if this were the only result of Hussein's margin loans. Not only did margining his stock not violate to pay off his Egyptian loans QSI's 2004 insider trading policy, it had nothing to do with QSI.

13. The Court does not believe that *County of San Bernardino vs. Walsh*

[158 Cal.App. 4<sup>th</sup> 533 \(2007\)](#) has any application to this case.

14. The Court finds that:

a. Hussein owed a fiduciary duty of loyalty to QSI.

b. The extent of this fiduciary duty was to act in the best interests of QSI and not put his own interests ahead of QSI's interests, if there was a conflict between the two.

c. Hussein did not breach this fiduciary duty by margining his QSI shares. Hussein had no fiduciary duty not to margin his shares. Also, the loans he received to pay off Egyptian loans did not violate QSI's 2004 policy. The 2004 policy did not create a fiduciary duty. Hussein had no duty to disclose his margining activity prior to 2011, and perhaps thereafter. *IN re Zaqq Shareholder Deriv Action*, 826 F. 3<sup>rd</sup> 1222.

\*4 d. Hussein had a fiduciary duty of honesty and candor to QSI. The terms "honesty and candor" speak for themselves, but generally mean not to say anything untruthful.

e. Hussein did not breach this duty with respect to his alleged non-disclosure to QSI of the margining of his QSI shares. Prior to QSI's 2011 policy he had no duty to disclose his margining of his QSI shares to QSI. *Zaqq*, supra. He left that question blank on his QSI questionnaire. After QSI issued its 2011 policy, which did not create a new fiduciary duty, he immediately indicated he would not comply with that policy. This was an example of honesty and candor and should have alerted QSI that he may have margined his shares.

f. Hussein did not receive any net benefit from margining his QSI shares. While he may have received some benefit from paying off his Egyptian loans, on balance he lost millions of dollars when some of his shares in QSI were force sold after QSI's quarterly income report caused QSI shares to go down in value, thus decreasing his collateral for his loans.

g. The Court finds QSI is not entitled to any disgorgement of Hussein's director fees. The number of shares he held entitled him to be a director under California law. He acted in what he thought were the best interests of QSI. He did not collateralize his shares in QSI to a risky level considering what he knew about QSI's share value and QSI's previous statements concerning future revenue. Nothing about Hussein's margining his shares caused damage to QSI. He received no net benefit from margining his QSI shares, no benefit that should have gone to QSI.

h. QSI was not entitled to disgorgement of the net benefit that Ahmed Hussein received from margining his QSI shares. He did not receive a net benefit from margining his QSI shares. He did not receive any benefit that should have gone to QSI.

A Proposed Judgment is ordered prepared by the Prevailing Party, Ahmed Hussein forthwith, to be lodged with the Court and served on Quality Systems, Inc. by the close of business day at 4:30 p.m. on August 04, 2017.

DATED: Mar 26, 2017

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MICHAEL BRENNER

JUDGE OF THE SUPERIOR COURT