

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On) Behalf of Itself and All Others Similarly) Situating,) Plaintiff,) vs.) HOUSEHOLD INTERNATIONAL, INC., et) al.,) Defendants.) _____))	Lead Case No. 02-C-5893 (Consolidated) <u>CLASS ACTION</u> Honorable Jorge L. Alonso
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**DECLARATION OF DANIEL S. DROSMAN IN FURTHER SUPPORT OF
PLAINTIFFS' OMNIBUS MOTION TO EXCLUDE DEFENDANTS' EXPERTS**

I, Daniel S. Drosman, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California, and I am also admitted *pro hac vice* in this Court for this action. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP, Lead Counsel of record for plaintiffs in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

- Ex. 1: Relevant excerpt from Transcript of Proceedings before the Honorable Ronald A. Guzmán dated Dec. 2, 2008; and
- Ex. 2: *United States Securities & Exchange Commission v. Mudd*, Opinion & Order, No. 11 Civ. 9202 (PAC) (S.D.N.Y. May 4, 2016).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of May, 2016, at San Diego, California.

s/ Daniel S. Drosman
DANIEL S. DROSMAN

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 9, 2016.

s/ Daniel S. Drosman

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Jaffe v. Household Int'l, Inc., No. 02-5893 (N.D. Ill.)
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN,
on behalf of itself and all
others similarly situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC.,
et al.,

Defendants.

No. 02 C 5893

Chicago, Illinois
December 2, 2008
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RONALD A. GUZMAN

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1 (Proceedings heard in open court:)

2 THE CLERK: 02 C 5893, Jaffe v. Household
3 International, Incorporated.

4 MR. MILLER: Morning, your Honor. Marvin Miller on
5 behalf of the plaintiffs.

6 MR. BROOKS: Morning, your Honor. Luke Brooks for
7 the plaintiffs.

8 MR. DEUTSCH: Morning, your Honor. Adam Deutsch on
9 behalf of the defendants.

10 MS. FARREN: Good morning, Your Honor. Patricia
11 Farren for defendants.

12 THE COURT: Good morning.
13 Who wants to go first?

14 MS. FARREN: Well, may we, your Honor, because
15 defendants oppose this presentment and we --

16 THE COURT: Okay.

17 MS. FARREN: -- would ask the Court to at least defer
18 its consideration and briefing until a more appropriate time.

19 This motion, if your Honor has even glanced at it,
20 has all the indicia of a summary judgment motion, except that
21 it's longer. It's about issues that may or may not be
22 relevant to the case. That remains to be seen. It's based on
23 hotly-contested facts presented by witnesses who were
24 concealed until now whom we've never deposed and who
25 plaintiffs aren't offering for deposition -- in fact, they

1 said that would be inappropriate -- all based on consumer
2 lending issues and alleged spoliation about consumer lending
3 that happened two years before this case was ever filed as a
4 predatory lending related case.

5 THE COURT: So far you seem to be speaking to the
6 merits of the motion, not whether or --

7 MS. FARREN: No, your Honor.

8 THE COURT: -- not we should hear it now.

9 MS. FARREN: Well, in a sense, what I'm talking about
10 is the level of effort that it would take to respond to this
11 motion when we're otherwise preparing the pretrial order and
12 preparing for trial on what we consider a collateral issue
13 that would require several other issues to be decided before
14 the Court could even turn to this motion. They would include
15 whether or not plaintiffs, in fact, can never articulate what
16 the securities fraud is, what the alleged misstatements or
17 fraudulent admissions were, and just try this case as a
18 consumer abuse case for its prejudicial value obviously.

19 If you look at these voluminous papers, your Honor, I
20 would defy you to find a single reference to a securities
21 fraud claim or how all these immense -- this immense body of
22 facts that they've alleged and that we dispute relate to
23 securities fraud.

24 One of the declarants -- I don't want to get into the
25 merits, but one of the declarants talks about alleged

1 increases -- not alleged, but increases in loan-to-value
2 ratios at the company beginning in 1999. That was fully
3 disclosed, Judge. The company and the analysts openly
4 discussed it. Whether or not plaintiffs think that was bad
5 for consumers, whom they don't represent, it was disclosed to
6 investors, whom they do represent.

7 So, Judge, the scope of this case for trial, what
8 misstatements of fact and alleged admissions -- omissions
9 during the class period they intend to try, we still don't
10 know. We should find that out, and we should make and resolve
11 any in limine motions about the relevance of these consumer
12 fraud allegations before defendants are put to the task of
13 briefing and factually addressing this immense collateral
14 motion that obviously has been in the works on their part for
15 at least a year. I say that because one of the declarations
16 of the previously concealed witnesses is dated a year ago.

17 In effect, Judge, they're asking us to spend
18 January -- December and January, which we should be spending
19 getting ready for trial, getting ready for the pretrial order
20 and our own in limine and Daubert motions, on this detour
21 without any indication that what's in there is relevant or
22 actionable.

23 THE COURT: I take it the thrust of the argument here
24 is that -- leaving aside even the merits of your motion, that
25 the material that you claim has been obliterated, disposed of

1 goes to an issue that's not relevant to this case. Is that --
2 is that a major thrust of your argument?

3 MS. FARREN: Well --

4 THE COURT: That the amount of and/or existence of
5 any consumer fraud by Household International doesn't have
6 anything to do with this case.

7 MS. FARREN: Well, though that happens to be so, your
8 Honor, that's not my point today.

9 THE COURT: Okay.

10 MS. FARREN: My point today is that there has been no
11 articulation of what the securities fraud that they intend to
12 try is.

13 THE COURT: And how does --

14 MS. FARREN: And we certainly --

15 THE COURT: How does that impact this motion? This
16 motion is clearly about an allegation that you folks destroyed
17 evidence of massive consumer fraud. That's what this alleges.
18 Now, you're telling me that I shouldn't decide that why?

19 MS. FARREN: No, I'm not saying you shouldn't decide
20 it, your Honor. I'm saying that several issues have to be
21 decided by this Court before the Court can turn to that
22 particular issue, namely, whether or not there was spoliation,
23 whether or not there was bad faith and whether or not alleged
24 spoliation having to do with the consumer fraud investigation
25 or prospective litigation two years before this suit was ever

1 filed as a securities fraud case about predatory lending, all
2 of that has to be determined first, your Honor.

3 And before that's determined, that is, whether or not
4 plaintiffs can put on a consumer fraud case instead of a
5 securities fraud case, we have to know -- defendants have to
6 know, and the judge does, what are they going to prove as the
7 fraudulent misstatements of fact and the fraudulent
8 admissions.

9 Your Honor, they gave us 84 -- I think that's the
10 right number -- in their interrogatory answers of alleged
11 fraudulent misstatements of fact. Their expert witness said
12 that none of them caused artificial inflation in the price of
13 the stock. So we don't know if they're dropping those now or
14 turning to new ones or changing their theory.

15 The pretrial order process is the correct vehicle for
16 determining this. So far, we don't have their answer. If we
17 don't have it, we may have to move for it. But until we know
18 how this consumer lending branch level abuses -- you see a lot
19 of references to individual customers in these cases -- until
20 we know how that fits in with their alleged fraud, until
21 they've articulated that, which they don't in their motion,
22 and until your Honor has had an occasion to rule on the scope
23 of this case, whether or not branch level individual consumer
24 alleged abuses will or will not be before the jury, then going
25 off to worry about whether or not there was bad faith in

1 destroying some documents about something that, in fact, may
2 not be relevant two years before it ever -- we ever had notice
3 that plaintiffs had a predatory lending related case is just
4 going to waste an enormous amount of resources for the parties
5 and for the Court.

6 THE COURT: Your response.

7 MR. BROOKS: I would respond, Judge, I think that
8 it's clear and everyone in this room knows what our
9 allegations are. We've had our complaint upheld under the
10 PSLRA. We've had several Dura briefs.

11 The spoliation brief goes to a wide-scale destruction
12 of documents that would evidence predatory lending practices.
13 This wide-scale predatory lending was either sanctioned or
14 recklessly ignored by the defendants. They made statements
15 about their financials. They made denials about predatory
16 lending. And those are the false statements in this case,
17 which defendants know.

18 Obviously our expert did not say -- and you're
19 familiar with the summary judgment papers -- that none of the
20 false statements caused inflation in the stock.

21 So we're here, Judge -- their entire argument is we
22 should delay this until the motion in limine stage; and that
23 just puts off the question that should be answered now.
24 Everything that Ms. Farren just said, is this stuff relevant,
25 are these facts correct, all that stuff is the substance of a

1 motion that they're trying to avoid arguing.

2 So we brought this now because it's a significant
3 motion. We expected defendants would want more time than just
4 the standard motion in limine to respond to it. And so we
5 think we should just set a briefing schedule.

6 MS. FARREN: Your Honor, if I may briefly respond?

7 THE COURT: Sure.

8 MS. FARREN: It's not correct, Mr. Brooks' comment
9 that we don't want to argue the relevance of consumer lending
10 anecdotes. It's just not true. We do. We think it's very
11 important. We think it's the central issue that this Court
12 will be addressing at the in limine stage.

13 It's also not true that we know what plaintiff's
14 securities fraud claim is. We know what their complaint says,
15 all 153 pages of it. We know what their interrogatory answers
16 say. We know what their expert says that we believe is
17 inconsistent with what their interrogatories say.

18 The pretrial order, as you know, Judge, supersedes
19 all that and is the time for plaintiffs to tell us exactly
20 which fraudulent statements -- which alleged fraudulent
21 statements they intend to prove at trial and which omissions.
22 And then we can respond.

23 This is about timing, Judge. I don't know if you've
24 had a chance to just see the sheer volume of these papers.
25 They're based in part on declarations by witnesses who were

1 not disclosed during discovery, whom we've never deposed.

2 THE COURT: What does that have to do with it?

3 MS. FARREN: Well, here's what it has to do with it,
4 Judge: Think of it from our perspective in trying to answer
5 what amounts to formally a summary judgment motion. They're
6 asking you to preclude defendants from defending certain
7 allegations that they make, and they're asking you to preclude
8 defendants from cross-examining their expert witness on those
9 issues. That sounds a lot like partial summary judgment on
10 issues that they claim are central to their case.

11 THE COURT: It's a motion that's asking for drastic
12 sanctions.

13 MS. FARREN: Sanctions, Judge, if --

14 THE COURT: Which is, to my way of thinking, why it's
15 not really a motion in limine. This is a discovery motion.
16 This is a motion about misconduct in discovery.

17 MS. FARREN: And --

18 THE COURT: Now, whether it occurred five years
19 before or five days before or after you filed -- you received
20 the notice of this lawsuit is an issue to be decided within
21 the motion; that is, does the motion state the case of
22 inappropriate destruction of evidence. It's not a basis for
23 deciding that I'm not going to decide the motion now or wait
24 until later.

25 The sheer volume of papers, believe me, I've seen it,

1 but it's in keeping with everything else in this case. You
2 folks have filed a massive amount of papers in just about
3 everything you've done in this case. Everything in this case
4 has been massive.

5 How this fits in with the alleged fraud, I assume it
6 fits in the same way since almost day one when we had a
7 conference in this case I don't know how many years ago now.
8 They're alleging that part of the fraud upon the investors was
9 that the company was running a fraudulent lending scheme and
10 denying that it was doing so and by virtue of that scheme
11 pumping up its share values and the price of its shares,
12 thereby defrauding its shareholders. Is that essentially
13 about right? Do I have that?

14 MR. BROOKS: That's about it, Judge.

15 THE COURT: Okay. That's how it fits in. So now we
16 have that done.

17 I don't want to look through all this stuff any more
18 than you do. In fact, probably less than you do because I
19 suspect my hourly is a lot less than yours. But it appears to
20 be a motion that, if it's correct, would call for sanctions.
21 And I think that has to be decided not along with motions in
22 limine determining smaller evidentiary issues but rather in
23 the context of what is it we're going to try. Because if this
24 motion is successful, what is left to be tried is a lot less
25 than if the motion is not successful.

1 MS. FARREN: Well, your Honor, it's hard to disagree
2 with any of that. But I think where we do disagree is on
3 timing. You've seen how voluminous these papers are. To
4 reach the conclusion that there was spoliation and -- if I may
5 respectfully disagree as to whether this would be sanctionable
6 conduct in this case when it had nothing to do with this case
7 and occurred years ago, but we can --

8 THE COURT: That's a question of whether or not the
9 motion is a valid motion.

10 MS. FARREN: We'll brief that, Judge.

11 THE COURT: Sure.

12 MS. FARREN: But to come to the conclusion that there
13 was spoliation and that there was bad faith involved and that
14 this -- and that either relates to their securities fraud
15 case, we would have to present counter facts on what amounts
16 to their entire consumer lending case.

17 They say, for example, that when the company said we
18 don't want you to use unauthorized material on an effective
19 rate presentation to clients, something, it doesn't matter
20 what it is, they claim that it's fraudulent to customers. The
21 company -- the company's official position is that it was
22 against those presentations. It did not formerly train them.
23 When it found pockets and whenever it found pockets of
24 unauthorized trading materials of that kind, it would
25 confiscate them. It would have bulletin boards. It would