SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 24

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BARI YUNIS SCHORR,

Plaintiff,

Index No. 305587/11

-against-

DECISION AFTER TRIAL
Motion Sequences 32 and 33

DAVID EVAN SCHORR,

Hon. Ellen Gesmer

Defendant.

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Plaintiff Bari Yunis Schorr (Wife) commenced this divorce action on April 20, 2011. After four days of trial, the parties resolved the issue of custody by a stipulation dated January 20, 2015 (the Custody Stipulation). The court held a financial trial on April 20, 21, 22, and 27, and June 1 and 2, 2015 on equitable distribution, spousal maintenance, child support, and counsel and expert fees. On the first day of the financial trial, the court held an inquest on grounds and found that the Wife is entitled to a divorce pursuant to DRL 170(7), but held the judgment of divorce in abeyance pending resolution of the ancillary issues. At trial, both parties testified. In addition, the Wife called as witnesses Joel Yunis, her father; Simon Chin, CPS/ABV, a partner in Marcus & Company LLP (Marcus), the court-appointed business appraiser; and, as a rebuttal witness, Domenick Neglia, president and CEO of Neglia Appraisals, Inc. The Husband called Maureen Galli, Director of Executive Compensation at Ralph Lauren, the Wife's former employer; and Michael Vargas, president of Vanderbilt Appraisal Company. With the court's permission, the parties submitted post-trial affirmations on attorneys' fees. Both parties submitted post trial briefs on August 14, 2015.[1]

In Motion Sequence 32, the Wife moves for: 1) an order adjudging the Husband in contempt, because of his intentional and deliberate refusal to comply with the Order dated January 11, 2012 (the *Pendente Lite* Order); 2) entry of a judgment in her favor in the sum of $4,499.76 for arrears in child care costs for the period of June through September 2015, together with the arrears that accrue while the motion is pending; 3) an award of attorneys' fees in her favor for the time spent on the motion; 4) upon entry of an order of contempt, an order directing that the Husband be incarcerated on weekends until his contempt is purged; and 5) an order sanctioning the Husband, by enjoining him from maintaining certain websites. By stipulation dated December 16, 2015, the parties agreed that the Husband had paid the arrears sought on MS 32 in connection with the child care expenses through November 20, 2015, and had paid the legal fees sought on the motion. Accordingly, the only issue left open is the application for sanctions.

In Motion Sequence 33, the Husband moves for an order modifying the *Pendente Lite* Order to provide that he is required to pay a proportionate share of no more than 20 hours per week of child care costs for [redacted]. The Wife opposes the motion.

FACTS

[1] The Husband attached to his brief many documents that were not in evidence, and also attempted to supplement or correct his testimony (*see, e.g.*, his brief at footnote 48). Similarly, the Wife made reference in her brief to events and documents which occurred or were created after the trial. The court will not consider any of them.

Based on the testimony and evidence at trial, the court makes the following findings.

Credibility

The Husband was not credible. The Appellate Division, First Department has twice found that some of the Husband's contentions were "without support in the record." (*Schorr v Schorr*, 96 AD3d 583, 584 [1st Dept 2012][*Schorr I*]; *Schorr v Schorr*, 113 AD3d 490, 491[1st Dept 2014][*Schorr II*]). In addition, during the trial, the Husband was repeatedly evasive, and unwilling to answer simple, clear, and direct questions posed by the Court and the Wife's counsel. His persistent failure to answer direct questions resulted in the Court granting countless motions to strike the Husband's answers, together with repeated admonitions to answer the questions as posed. He was argumentative and disrespectful toward the court. Although an attorney, he claimed not to understand the meaning of the provision of the *Pendente Lite* Order which made his obligation for child support retroactive to September 2011. In addition, he made contradictory statements on various financial documents, such as his statement of his 2013 gross income on his tax return of $172,491, but on his application for a mortgage to First Republic Bank of $199,927. Similarly, he presented business expenses to the neutral evaluator which were much less than those deducted on his 2009 and 2010 tax returns (Tr. 4/21 at 234-238, 286). He used estate assets to pay for his personal and business expenses, without any court authorization to do so. He also continued to deny throughout the trial that the money judgments entered against him were the result of his failure to pay the Wife monies due her under the *Pendente Lite* Order. Accordingly, the Husband was not credible and his testimony is entitled to little weight.

The Wife's testimony was direct, responsive and clear. She was a credible witness.

Mr. Yunis testified clearly about his loans to the parties and his referral of business to the Husband; he was credible. Mr. Chin testified credibly and was qualified as an expert; moreover, the Husband proffered no expert testimony to contradict his opinions or conclusions. Ms. Galli, who testified only to introduce records, was wholly credible. Mr. Vargas was successfully impeached on cross-examination, causing his opinion to be of little weight. Mr. Neglia testified credibly.

Background

The parties were married on January 20, 2007. They have one child, [redacted], born on December 22, 2008. Pursuant to the Custody Stipulation, the Wife has sole legal and primary residential custody of [redacted]. The Husband has specified parental access time with [redacted]

The Wife's Career and Finances

The Wife was born on October 28, 1971, and is 44 years old. She has a B.A. degree from the University of Rochester. She was employed by Burberry at the time of the marriage, and later by Ralph Lauren. She is currently a retail executive for Rue La La, an on-line fashion business which operates 24 hours a day (Tr. 4/21 at 212). During 2014, her title was Vice President /Brand Manager, Accessories, Footwear, Beauty & Outdoor Active. Her annual base salary in 2014 was $306,624.86, inclusive of a

$2,500 401k contribution from her employer (Tr. 4/21 at 220; Ex. 97), and a policy of insurance on her life of which [redacted] is the beneficiary (Tr. 4/21 at 221). She works at her office four days a week, from approximately 9 or 9:30 am until about 6 pm, and at home on Fridays. She is required to attend meetings at her employer's home office in Boston once to twice per month (Tr. 4/21 at 213). The Wife pays for health insurance through her employer, including $114 per month to cover [redacted], for which the Husband has never reimbursed her. (Tr. 4/20 at 30-31, 193-194; Tr. 6/2 at 74). Until in or about September 2008, her paychecks were deposited into her own account. After that date, a portion of her salary was deposited into the Husband's Citibank account.

The Husband's Career and Finances

The Husband was born on August 11, 1970, and is 45 years old. He received a B.A. degree from Brandeis University in 1993, a master's degree from Oxford University in 1996, and a law degree from New York University School of Law in 1999 (Tr. 4/20 at 11-12). He was admitted to the New York Bar in 2000. The Husband engaged in the practice of law from 1999 until October 2003, first at Simpson Thacher & Bartlett LLP and then at Allen & Overy (Tr. 4/20 at 13). After that time, and through the time of trial, he did not do any legal work for third parties, but represented himself with regard to any legal issues that came up in his business, as well as representing himself in this litigation and in the various lawsuits he commenced during this litigation.

From about October 2003 until sometime in 2008, he worked with his father Jerome Schorr in his father's health insurance brokerage business, receiving a salary (Tr. 4/20 at 15). In or about October 2003, the Husband also started his own health insurance brokerage firm, Schorr Associates, which is a sole proprietorship (Tr. 4/20 at 18). He holds three New York insurance brokerages licenses, including a New York Health and Life Insurance Broker's License, a Broker's Property and Casualty License and an Insurance Agent's Health Insurance license, and, at various times, has also held insurance licenses in Connecticut, New Jersey, Iowa, California, and possibly in several other states. Initially, the Husband maintained an office outside his home but, since in or about April 2013, he has operated his business out of the apartment where he resides, Apartment 6A at 115 East 87th Street, New York (the Marital Residence).

The Husband operates Schorr Associates as a sole proprietorship and reports the income generated from it on Schedule C of his personal tax return (Ex. 90 at 2). In 2006, the year preceding the marriage, Schorr Associates reported gross revenues from operations of $63,329. (Ex. 90 at 4). At the time of the marriage, the Wife requested that her father assist the Husband to get additional clients for his business. Mr. Yunis agreed and asked many of his clients if they would ask the Husband to handle their insurance needs (Tr. 4/20 at 46). As a direct consequence of the referrals from the Wife's father, the gross revenues of Schorr Associates dramatically increased as follows:

	Gross income
2006	$63,329
2007	$201,601

2008 $228,000
2009 $243,503
2010 $256,608

This constitutes greater than a 300% increase in revenues between 2007 and 2010, or a compound annual growth rate of approximately 42% for the five years ending December 31, 2010 (Ex. 90 at 4; Tr. 4/20 at 46, 49; Tr. 4/21 at 239; Tr. 4/22 at 386-389; Tr. 6/1 at 116).

In or about March 2008, the Husband entered into an agreement with his father, Jerome Schorr (Ex. 25) providing the Husband certain contract rights to his father's business. During the pendency of this action, the Husband, without consideration, terminated that agreement with his father by agreement dated July 3, 2012, in clear violation of the automatic orders (Ex. 26). In 2013, Jerome Schorr earned commissions of $72,772. He had approximately 20 clients at the time of his death. Some of his clients executed "broker of record" letters in favor of the Husband.

Subsequent to the death of Jerome Schorr, on July 31, 2013, the Husband took commission checks made out to Jerome Schorr in amounts of less than $1,000, and deposited them into his personal Citibank account. The Husband initially deposited checks made out to Jerome Schorr in amounts exceeding $1,000 into his mother's account; after he was appointed as the fiduciary of his father's estate by the Surrogate of Queens County, he opened an estate account and deposited checks made out to Jerome Schorr in amounts exceeding $1,000 there (Tr. 4/20 at 63). He then either transferred the funds from the estate account into his personal account at Citibank, or used the estate account to pay various of his personal expenses, such as the mortgage and maintenance on the Marital Residence, and his business expenses (Tr. 4/20 at 63-68). He could not recall if he had written checks from the estate account for any other of his personal expenses. He had no idea as to the total amount of his business expenses that he paid with checks from the estate account. He last received a check from an insurance company payable to his father in or about November 2014. When the Husband received checks payable to his father which were not related to his business, he would endorse them and deposit them into his mother's account.

There was no Order from the Queens County Surrogate's Court authorizing the Husband to use estate funds for his personal use (Tr. 4/20 at 101-103).The Husband maintained no records as a fiduciary of his expenditures from his father's estate, and specifically, no records of the amounts that he withdrew from the estate account and deposited directly into his personal account, and of the amounts of the checks that he wrote on the estate account to pay his personal and business expenses. In 2014, he transferred approximately $26,000 directly from the estate account into his personal checking account and drew approximately $9,000 out of the estate account to pay personal and business expenses. He did this despite knowing that, once he was appointed as the executor, he was not authorized to transfer estate assets for his personal benefit (Tr. 4/20 at 101-03)

On his tax return for 2013, the Husband stated his gross receipts as $172,491, his business

expenses as $78,406,[2] his business income as $94,085, and his total income as $100,085. His financial statement to First Republic Bank in connection with refinancing his mortgage stated his gross income as $199,927.[3] On the mortgage application, he showed his business expenses as $3,348.06 for the period from January 1, 2013 to March 17, 2013, a 76 day period, which annualizes to $16,080, or $62,326 less than he reported on his taxes (Ex. M04, Q2; Tr. 4/20 at 83-84). At trial, he explained that he reported fewer expenses on his refinancing application because he only listed "expenses that I wanted to make sure that the bank would not take any issue with. That they would be satisfied that those were entirely for expenses that were entirely in connection with the business...."[4] He further explained that the $62,000 of business expenses that he included on his tax return but not on his refinance application "included expenses the bank would be likely to question... in the sense of whether they were entirely 100 percent for the business" (Tr. 4/20 at 89).

The Husband does not maintain any books or records with regard to the operations of his business except year-end credit card statements and his on-line personal checking account records for his account at Citibank, which he uses for both business and personal use[5] (Tr. 4/20 at 110-111; Tr. 4/21 at 233). Specifically, he maintains no general ledger, cash receipt or cash disbursements journal, and maintains no records on a software program such as Quickbooks or Quicken. He has never prepared a balance sheet. The Husband currently pays no office rent (except for $99 per month for a virtual office); uses his cell phone for both personal and business calls; and has virtually no business expenses for stationary, postage, entertaining clients or electricity (Tr. 4/20 at 123-124). At times, he has had one employee. Some of the Husband's commission payments were not reflected in his bank deposits (Ex. 30; Tr. 4/20 at 130-134).[6]

When Marcus undertook to evaluate the Husband's business, it could not proceed in its normal way, since the Husband does not maintain a general ledger and financial statements. As a result, the first step in its evaluation process was to reconstruct a set of books and records for Schorr Associates, as well as a profit and loss statement. The schedule of expenses that he provided them for 2009 and 2010 showed significantly less expenses than were reflected on his Schedule C, as follows:

Year	Expenses per schedule C	Expenses provided to Marcus	Difference
2009	$72,139	$29,371	$42,768

[2] This included $12,568 for "legal and professional fees" which he could not explain at trial, and provided no documents to support. It also includes $9,509 for utilities which, since he operates his business from his apartment, clearly provides a personal benefit.

[3] He did not indicate whether this was actual income for 2012 or projected income for 2013. Either way, it bears little relationship to the total income he declared on his 2012 taxes of $122,876 or the $100,085 of total income on his 2013 taxes.

[4] On the refinance application, the language that appeared above the Husband's signature included the following: "I/we hereby warrant to bank that this financial statement is complete and correct as of the date prepared and fairly represents my/our financial condition..."

[5] At some time after the date of commencement, the Husband also opened an account at TD Bank. During the marriage, the parties also occasionally held small joint accounts.

[6] For example, in March, 2013, he did not deposit commission checks for $1,378.30 and $6,977.92. It is not clear what he did with those funds, although he denied ever negotiating checks directly for cash.

2010	$69,277	$28,645	$40,632

Stating higher expenses on his Schedule C had the effect of reducing his taxable income. The court accepts the conclusion by Marcus that the appreciation in value of Schorr Associates, from the date of marriage to the date of commencement, was approximately $237,600, derived by using the preferred multiple of gross revenue method.

In or about October 2011, the Husband swore in an affidavit to this court that he would almost certainly have to file a petition in bankruptcy. He has not in fact done so.

Marcus was also directed to calculate the Husband's income for 2014, which it calculated to be $170,000. It took into account: 1) $233,000 deposited into his Citibank account, including $26,000 deposited from his father's estate account;[7] 2) $9,000 of deposits into the estate account; and subtracted the $21,000 given to him by his mother, and then subtracted $50,000 in operating expenses, consistent with prior years. However, the analysis did not consider: 1) any payments made directly out of the estate of Jerome Schorr to pay some or all of the Husband's personal expenses; 2) any checks received by the Husband payable to Jerome Schorr and endorsed and cashed (Ex. 90 at 9-10).

Of the four large clients referred to the Husband by Mr. Yunis, all have stopped doing business with the Husband: one in June 2011, another in January 2013, and the others since.

Other than retaining the majority of the clients of his late father, the Husband has done virtually nothing to increase his gross revenues in Schorr Associates. He also has taken no steps to actively seek employment as a lawyer; that is, he has not placed any ads seeking work; responded to any ads; gone to any legal headhunters, and has not, in the last two years, even told any lawyer friends that he might be looking for work. In fact, he did not look for other employment at all in 2013, 2014 and 2015 (Tr. 4/20. at 108-109; Tr. 6/2 at 103).

In total, he received $152,829.75 from his parents between July 1, 2013 and October 1, 2014. Of that, $21,000 was for child support in 2013, and $9,000 was for child support in 2014. Consequently, he received $14,032.26 from his parents in December 2013 for purposes other than child support, and an additional $108,797.49 during the period from January 1, 2014 through October 1, 2014. The Husband's mother also gave him checks or wire transfers totaling $6,159 in the last quarter of 2014 for purposes other than child support.[8] His mother also gave him money for the support check of $1,500 that he paid to his Wife in court on April 20, 2015. He also used funds from his parents to pay for the fees of the attorney for the child.

In August 2014, the Husband retained the law firm of Hinshaw & Culbertson, LLP in connection

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[7] In 2014, his bank records show deposits into his Citibank account and his TD bank account of $233,071.87.

[8] As discussed below, his parents paid a total of $21,000 toward his child support obligation in 2013, $14,250 in 2014 and $1,500 in 2015, through April 20, 2015.

with the contempt proceeding against him, and paid them a retainer fee of $50,000. These funds were loaned to him by his parents. Of those funds, approximately $35,000 was used in September 2014 to satisfy judgments rendered against him in this action.

At the time of trial, the Husband had approximately $2,000 in liquid assets, and the right to draw approximately $90,000 under the promissory note from his mother.

In more than one calendar year, including 2010, the Husband intentionally underpaid estimated quarterly tax payments. It was his sole decision to do so.

Since the commencement of this divorce action, the Husband brought a lawsuit against the State of New York, in which he took the depositions of six witnesses, each of which he arranged to have videotaped. That case was decided against him after trial. He also brought lawsuits against the forensic mental health evaluator and against the Wife's attorney. Both of those cases were dismissed. He perfected three appeals from orders in this action, and paid for the cost of printing the record for each appeal. He paid his share of the fees for the court appointed mental health forensic, and the financial forensic. For the latter cost, he borrowed funds from his parents. He also hired his own business evaluator, Baker Tilly, as a consultant at a cost of $5,000, and paid an additional $5,000 to Dr. Butcher, his own forensic mental health expert.

The Parties' Finances

Starting in August 2007, seven months after the date of the marriage, the Husband commingled his pre-marital funds with marital funds, by, for example, transferring premarital investment funds into a UBS brokerage account opened during the marriage, depositing marital investments and funds into the same account, and making withdrawals from that account during the marriage (Tr. 4/21 at 352-353; Ex. A2). During the marriage and prior to the commencement of the divorce action, the earnings of both parties were deposited into the Husband's Citibank checking account, and marital expenses were paid with funds from that account (Tr. 4/20 at 117-119; A2 at 3). At some times in the marriage, the parties had joint accounts. (Tr. 4/20 at 119; Ex. 40).

In September 2008, the parties purchased the Marital Residence in their joint names for $1,350,000, financed in part with an interest only mortgage in their joint names held by First Republic Bank (First Republic) in the principal sum of $1,012,500 (Tr. 4/20 at 138). The cash component of the purchase price was funded, in part, by two loans from the Wife's father, one for $70,000 (Ex. 79; Tr. 4/22 at 394)[9] and one for $250,000 (Ex. 47; Tr. 4/22 at 390). From the proceeds of the $70,000 loan, $45,000 was deposited into an account in the Wife's sole name, and $25,000 into the Citibank account in the Husband's sole name, at the Wife's specific request. Of the two loans from the Wife's father, the sum of $124,000 remains unpaid (Tr. 4/22 at 452, 454).[10] Mr. Yunis also noted that Mrs. Yunis gave the parties

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[9] Although the promissory note for the $70,000 loan was signed only by the Wife, the court finds that it is a marital debt.

[10] I reject the Husband's testimony that Mr. Yunis "forgave" $43,000 of this loan (6/1 at 142:12-143:12), and that no

$11,000 of her $16,000 commission on their purchase of the Marital Residence. In addition, the Wife cashed in her pre-marital retirement account, and used those funds toward the acquisition and renovation of the Marital Residence. The parties continue to own the Marital Residence jointly. On or about August 2011, the Wife and [redacted] moved out of the Marital Residence, where the Husband continues to reside.

Since the date of commencement, there have been times that the Husband has been in arrears in making the mortgage payments on the Marital Residence. In fact, on at least one occasion, he received a Notice of Intent to Foreclose from the Mortgagee.

At the date of commencement (January 2, 2008), the Husband had the following assets:

(a) JP Morgan Chase account with a balance of $35.75 (Ex. 38);
(b) Citibank account with a balance of $28,199.18 (Ex. 41);
(c) Receivable from Wells Fargo of $7,500 (Tr. 4/20 at 43);
(d) Receivable from Levcor of $7,500 (Tr. 4/20 at 43-44); and
(e) Sole ownership of Schorr Associates.

As of the date of commencement, the Wife had the following assets:

(a) Citibank account with a balance of $32.85 ((Ex. 43);
(b) Citibank account with a balance of $530.00 (Ex. 44);
(c) ING account with a balance of $1,930.38 Ex. 76);
(d) Ralph Lauren stock (Ex. 75);
(e) Retirement account (Ex. 74 & C);
(f) Two pieces of marital jewelry; and
(g) Her separate property engagement ring.

Pendente Lite Relief

On January 12, 2012, Justice Kaplan issued the *Pendente Lite* Order (Ex. 16), which, in relevant part, directed the Husband to pay the Wife $1,500 per month as basic child support, as well as 35% of the cost of nanny and childcare, and reasonable specified "add-ons," retroactive to September 7, 2011 (Ex. 18 at 3). The Husband made no retroactive child support payments or payments for his share of the nanny or [redacted]s medical insurance for the period from September 7, 2011 through January 12, 2012. The Husband did not make any basic child support payments until July 2013 when his father provided a check for $12,000 (Ex. 23). The Husband's mother and father either paid funds directly to the Wife or regularly advanced funds to the Husband to make his court ordered basic child support payments (Tr. 4/20 at 110-116, 130, 134-135; Tr. 6/2 at 101; Ex. 32, 33). Specifically, in 2013, the Husband's mother, Marcia Schorr, paid the Wife two checks and two wire transfers, totaling $9,000 (Ex. 54, 55). In 2014, the Wife received $15,000 in base child support, of which $9,000 came from the Husband's mother (Ex. 55 at 5,

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amounts were due under the Note at the time of trial. The evidence shows that he was repaid $115,000 in or about October 2008; and Mr. Yunis confirmed receiving an additional $81,000 in or about January 2009.

N9, M9, L9, 55 at 6, K9, J9). From January 1, 2015 through April 20, 2015, the Wife received $6,000 in base child support, of which the Husband paid her $1,500 on April 20, 2015, the first day of trial, using funds from his mother.

On October 16, 2014, the Husband entered into a security agreement with his mother which encumbered the Marital Residence, in violation of the automatic orders (Ex. 93, Z4; Tr. 4/27 at 77; Tr. 6/2 at 51). The security agreement was signed in connection with a promissory note for $300,000. At that time, the Husband claimed to be indebted to his mother in the amount of $152,829.75, and to have the right to borrow additional funds under the promissory note. He did not borrow any money from his parents to make payments to his Wife toward the cost of the nanny. The money he borrowed from July 1, 2013 until July 3, 2014 was used to pay for base child support, to pay the retainer for his attorney in the contempt proceeding ($50,000), and for other expenses.

In order for the Plaintiff to work, it has been necessary for a nanny to care for [redacted] (Tr. 4/20 at 25-26; Tr. 4/21 at 213-214). The nanny, Jenny Bandhu, has been [redacted]'s nanny since he was four months old (Tr. 4/21 at 214). The Wife pays her $3,200 per month. Ms. Bandhu gets [redacted] up in the mornings, takes him to school and does errands and chores related to [redacted] during the day, such as arranging play dates and doing laundry. She picks him up from school at 2:30 pm, takes him to his extracurricular activities, helps him with homework and then prepares his dinner. If [redacted] is sick, she takes him to the doctor, and the Wife meets them there. The Husband agrees that Ms. Bandhu is an important person in [redacted]'s life.

Despite his knowledge that the *Pendente Lite* Order required him to pay 35% of the cost of the nanny, the Husband failed to make any payments pursuant to the *Pendente Lite* Order for the cost of the nanny until the Wife brought enforcement actions which resulted in the issuance of money judgments for some of the childcare arrears (Tr. 4/20 at 26-27; Ex. 94, 95). As a result of the Husband's failure to satisfy the judgments, the Wife sought contempt. The Wife obtained payment of some of the judgments by serving a Restraining Notice on counsel retained by Defendant for the contempt hearing (Tr. 6/2 at 47) to whom the Husband had paid a $50,000 retainer fee (Ex. O2). Since September 7, 2011, the effective date of the *Pendente Lite* Order (Ex. 18 at 2), the Wife received $11,001.55 in payment of a money judgment for child care arrears (Tr. 4/27 at 5), $9,750.74 in payment of a second money judgment for child care arrears (Tr. 4/27 at 5-6), and three payments for October, November and December 2014. The last three payments were made in conformity with a settlement made before Special Referee Liebman, just before he was scheduled to begin a hearing on contempt and sanctions, made as the result of the entry of a confession of judgment, aggregating $3,349.05 (Tr. 4/27 at 6; Ex. 85, O2). Of the $50,000 that the Husband paid to his attorneys in the contempt action, approximately $45,000 was used to pay judgments that the Wife had against him, and the balance remained with his counsel. The Husband made no payments toward the nanny's salary for the period from January to September 2014, and from January 1, 2015 through April 20, 2015.

The Wife pays for medical insurance for [redacted] at the rate of $114 per month. She paid medical bills for [redacted] totaling $8,920. [redacted] attends public school, receives speech therapy and reading tutoring, attends religious school at Park East Day School, and participates in Big Apple Sports, Amazing Science,

Taekwondo, Manhattan Youth Baseball Pee Wee League, and science classes (Tr. 4/21 at 215-219; Tr. 4/20 at 27-29). The Wife paid the following extracurricular expenses for [redacted]: Big Apple Sports $800; Taekwondo $2,371; Super Soccer Sports $1,015, and baseball $400. The Husband paid 35% of the cost of Amazing Science and the reading tutor but contributed nothing toward [redacted]'s other add-on expenses, including medical insurance, unreimbursed medical bills and extracurricular expenses, despite being aware that the *Pendente Lite* Order required him to do so.[11]

The Wife paid for [redacted] to attend religious school at Park East Day School, but has not requested contribution from the Husband for this expense, and he has not offered.

During the pendency of this action, the Husband has accused the originally assigned Justice (Kaplan, J.) of perjury, accused her Court Officer of assault, sued the State of New York, sued the Court-Appointed forensic evaluator, sued the Wife's counsel and has recently sued the Chief Administrative Judge of the State of New York and the New York County Departmental Disciplinary Committee in the United States District Court for the Southern District of New York. As a consequence of the Husband seeking the deposition of Justice Kaplan, she recused herself and the matter was assigned to me.

Attorneys' fees

The Wife was initially represented in this action by Chemtob Moss & Forman, LLP (CMF), which rendered bills to her reflecting total fees and disbursements of $231,584. She was then represented by Newman & Denney, P.C. (N&D), which billed her $358,805.82, through May 31, 2015, including disbursements of $31,478.51, of which N&D had been paid $282,551.50, leaving a balance due of $52,371.07. N&D does not generally double bill the client when more than one attorney is present. In addition, their bills reflect credits of $23,883.25.

The Wife paid her attorneys' fees with loans from her father and by applying her bonus to her legal fees. The loans from her parents are evidenced in part by a promissory note for $93,000 from the Wife to East End Realty, on which they have not been paid back.

In addition to the *Pendente Lite* Order's award of $1,500 to the Wife as interim counsel fees (Ex. 16), Justice Kaplan directed the issuance of a money judgment for $20,000 in favor of CMF and against the Husband as counsel fees in connection with enforcement of the *Pendente Lite* Order (Ex. 18).

The Parties' Positions

The Wife contends that:

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[11] The Husband did pay $996.38 to Super Soccer Stars for which the Wife did not reimburse him, as well as $480 for a parent child workshop at the Metropolitan Museum, $400 for an additional class at the Metropolitan Museum, and $432 for the Art Farm in December 2012. The court does not have adequate information to determine whether the Wife owes him any money on account of this.

1. The Husband should be required to pay basic child support and his pro rata share of medical insurance and unreimbursed medical expenses for [redacted] and add-ons;
2. The Husband should post security for future payments and life insurance;
3. The Wife is entitled to an award for arrears pursuant to the *Pendente Lite* Order;
4. The Marital Residence should be sold with the debts associated with the property, including the debt to Plaintiff's father, to be paid at closing;
5. The Wife should share in the appreciation of Schorr Associates;
6. The Husband's claim for credits is without merit, and
7. The Wife should be awarded legal and professional fees.

The Husband contends in his post trial memorandum that:

1. He should be given the option of buying out the Wife's interest in the Marital Residence, which should be valued at $1,675,000, he should be given a separate property credit in it of $128,313.43, and the court should find that there is no debt to the Wife's father in connection with it.
2. The Wife should be given at most a de minimus interest in Schorr Associates, which should be valued at $183,339.

In his statement of proposed disposition, he also stated that:

1. The Marital Residence should be valued at $1,400,000; he should be given a separate property credit of $144,411.62; 60% of it should be awarded to him; and therefore, he should be able to buy out his Wife's share for $77,735.35.
2. His income should be determined to be $170,000.
3. Child support should be calculated pursuant to the CSSA only up to the statutory cap;
4. He should be given a credit for: 1) $51,046.82 because of the Wife's "marital waste" in refusing to refinance the mortgage; 2) $520, representing 40% of the cost of the parties' pet poodle.
5. He did not propose any credit to the Wife on account of the bank accounts in his name, or the increase in value of Schorr Associates during the marriage.

ANALYSIS

Evidentiary issues

During trial, the Wife reserved her right to strike Defendant's Exhibits K through S, which are the Husband's credit card account documents. While I do not find them to be highly relevant or probative, I see no reason to exclude them since there is no objection to their authenticity.

Equitable Distribution

Marital property is defined in Domestic Relations Law Section 236(B)(1)(c) as "all property acquired by either or both spouses during the marriage...." Separate property is defined as "[p]roperty

acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse..." (Domestic Relations Law Section 236[B][1][d]). The court has used these definitions and the evidence adduced at trial in identifying and classifying the property of the husband and wife.

The following assets were held by the parties at commencement and are classified as marital property:

1. Marital Residence:

The Marital Residence, a cooperative apartment, was acquired by the parties in September 2008 with title held in the parties' joint names (Tr. 4/20 at 45; Ex. Z2). Plaintiff's appraiser valued the property at $1,975,000 (Ex. W1), while Defendant's appraiser valued the property at $1,675,000 (Ex. P15).[12]

2. Schorr Associates:

Schorr Associates, a sole proprietorship owned by the Husband, commenced business operations prior to the parties' marriage on January 20, 2007, as a broker of health-related insurance. Utilizing the preferred method of valuation of the Court-Appointed Expert (Tr. 4/21 at 244-245), the appreciation in value of the business during the marriage is $236,629. (Ex. 90).

3. Cash Accounts:

The following checking and savings accounts were held at commencement:

Account	Exhibit	Title	Value
Citibank (7002)	40	Joint	$184.53
Chase (9470)	38	Husband	$35.95
Citibank (9842)	41	Husband	$28,199.18
Citibank (4083)	43	Wife	$32.85
Citibank (6996)	44	Wife	$530.00
ING	76	Wife	$1,930.38

4. Receivables:

[12] The Husband argues that the court should have excluded the Neglia report and disregarded Mr. Neglia's testimony because the Wife's counsel did not provide the Neglia Report to him until May 29. However, the Husband did not produce his appraisal of the Marital Residence (the Vargas Report) to the Wife's counsel until March 31, 2015, less than three weeks before trial, notwithstanding 22 NYCRR §202.16(g) which requires that expert reports "shall be exchanged and filed with the court no later than 60 days before the date set for trial, and reply reports, if any, shall be exchanged and filed not later than 30 days before such date." Given the Husband's failure to serve and file his expert report 60 days before trial, I could have excluded the report and Mr. Vargas' testimony. Instead, I accepted his report, and permitted the Wife's counsel to submit a report in response, which was certainly within my discretion. In any event, the admission into evidence of both reports is of little importance, since the court is directing the sale of the Marital Residence, and is not relying in any respect on its value.

In his Statement of Net Worth (Ex. 12), the Husband listed a receivable from Wells Fargo, upon which he sued (Ex. 48) and recovered $7,500 post-commencement (Ex. 80; Tr. 4/20 at 42-43). He had an additional receivable from Levcor which he omitted from his Statement of Net Worth, on which he sued and collected $7,500 post-commencement (Tr. 4/20 at 43-44).

5. Stocks:

During her employment with Ralph Lauren, the Wife received stock awards (Ex. 75). The award grants were "prospective" for "future work" (Tr. 6/1 at 97). Of the 153 share award granted in July 2010:

a. One-third was for the period ended June 8, 2011,
b. One-third was for the period ended June 12, 2012, and
c. One-third was for the period ended June 11, 2013

(Ex. 75; Tr. 6/1 at 96).

Of the 153 shares awarded in July 2010, one-third, or 51 shares, are for the period ended June 8, 2011; of these 51 shares, 5/6 (10 months/12 months - the coverture fraction) or 42.5 shares fall within the marital, pre-commencement period. As Exhibit 75 valued the 153 shares at $13,526.22, the value per share is $88.40 ($13,526.22/153 = $88.40) resulting in the marital component of the stock award (42.5 shares) valued at $3,757.28.

The award made in July 2011 (post commencement), also prospective, did not cover any work for the period prior to July 2011 (Tr. 6/1 at 97-98) and, therefore, is not marital property.

6. Retirement Accounts:

Plaintiff had a retirement account through Ralph Lauren with T. Rowe Price as custodian (Ex. 74, C). Pursuant to Exhibit C, the balance as of April 1, 2011 (the date closest to the commencement date) is $36,678.58.[13]

7. Jewelry:

There are two pieces of jewelry that are marital property: a wedding band and a sapphire ring. (Tr. 4/20 at 185). The parties agree that these two items should be sold, with the distribution of the sale proceeds to be ordered by this court. The Wife's engagement ring is her separate property (Tr. 4/20 at 155).

Marital Debts

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[13] There is a loan against this account in the amount of $13,015.62. The Wife incorrectly contends that the marital value of this asset is $23,662.96, which she reached by incorrectly subtracting the loan amount again.

The Husband correctly states that the Appellate Division held that his unpaid taxes for 2010 are a marital debt (*Schorr I*). He states that his unpaid 2010 taxes include his federal taxes of $44,195, his state taxes of $14,908, his New York City Unincorporated Business Tax (NYC UBT) of $5,741, and his New York State Metropolitan Commuter Transportation Mobility Tax (NYS MCTMT) of $609.

The Wife opposes being held liable for his state and federal 2010 taxes on the grounds that he should have paid estimated taxes, and that she should not be held liable for any penalties and interest. The Husband is not asking that the penalties and interest be deemed a marital debt. Moreover, the Wife's argument provides no basis for this court to disregard the First Department's ruling that the Husband's 2010 taxes are indeed a marital debt. However, the NYC UBT is an obligation of Schorr Associates, not the Husband individually, so this debt should have been considered as part of the valuation of Schorr Associates, and therefore will not be treated as a marital debt. The remaining taxes, totaling $59,712, are a marital debt.

The marital assets and debts as of commencement were as follows:

Asset	Exhibit	Title	Value	Titled to Wife	Titled to Husband
Marital Residence		Joint	TBD: to be sold		
Increase in value of Schorr Assoc.	90	H	$236,629		$236,629
Citibank (7002)	40	Joint	$184.53	$92.26	$92.27
Chase (9470)	38	H	$35.95		$35.95
Citibank (9842)	41	H	$28,199.18		$28,199.18
Citibank (4083)	43	W	$32.85	$32.85	
Citibank (6996)	44	W	$530.00	$530.00	
ING	76	W	$1,930.38	$1,930.38	
Wells Fargo Receivable	80	H	$7,500.00		$7,500.00
Levcor Receivable	Tr. 4/20 at 43-44	H	$7,500.00		$7,500.00
Ralph Lauren Stock	75	W	$3,757.28	$3,757.28	
T. Rowe Price retirement account	74	W	$36,678.58	$36,678.58	
Jewelry	Tr. 4/20 at 155	W	TBD: to be sold		
Husband's 2012 tax debt		H	(59,712)		(59,712)
TOTAL			**$263,265.75**	**$43,021.36**	**$220,244.40**

Exclusive of the Marital Residence and the jewelry, the total value of the assets is $263,265.75.

Of this, the assets in possession of the Wife total $43,021.36, and those in possession of the Husband total $220,244.40, assuming an equal division of the joint Citibank account (Ex. 40).

Domestic Relations Law Section 236(B)(4)(b) provides in pertinent part: "...The valuation date or dates may be anytime from the date of commencement of the action to the date of trial."

As to the valuation of specific assets, the court in *Wegman v Wegman* (123 AD2d 220, 234 [2d Dept 1986]) held that:

> If an asset increases in value due to market forces or inflation, valuation as of the date of commencement of the action would result in a windfall to the titled spouse and injustice to the other. If the asset greatly decreased in value ... a court which values assets might make a distributive award that is beyond the owner spouse's ability to pay.

(*Wegman, supra*, at 234 [citations omitted]).

Thus, a passive asset is properly valued at the date of trial whereas an active asset may be more appropriately valued at an earlier time. The court noted "[a]n asset such as, for example, a business, might suddenly appreciate in value due solely to the efforts of the owner spouse. If a considerable period of time has elapsed since the date of commencement or the date of separation, the court might be justified in establishing a valuation date earlier than the date of trial" (*Id.*).

Accordingly, under the circumstances of this case, the court finds that Schorr Associates is an active asset, and values it as of the date of commencement, or a date close thereto, and the balance of the assets are passive and values them as of the commencement of trial, or a date close thereto.

The premise of the equitable distribution law as it has been written and interpreted by the courts of this state is that marriage is an economic partnership (*O'Brien v O'Brien*, 66 NY2d 567, 585 [1985]). The success of this partnership depends not only on the contributions of the wage earner spouse but on various contributions made by the non-titled spouse. In *Price v Price* (69 NY2d 8 [1986]), the Court of Appeals recognized this concept, stating:

> The Equitable Distribution Law reflects an awareness that the economic success of the partnership depends not only upon the respective financial contributions of the partners, but also on a wide range of non-remunerated services to the joint enterprise, such as homemaking, raising children, and providing emotional and moral support necessary to sustain the other spouse in coping with the vicissitudes of life outside the home

(*Price, supra* at 14).

In *Conner v Conner* (97 AD2d 88 [2nd Dept. 1983]), the Appellate Division in the Second Department stated:

> According to the Assembly memorandum in support of the new law [citations omitted]: 'The basic premise for the marital property and alimony (now maintenance) reforms of this legislation (§236) is that modern marriage should be viewed as a partnership of co-equals. Upon the dissolution of a marriage, there should be an equitable distribution of all family assets accumulated during the marriage and maintenance should rest on the economic basis of reasonable needs and the ability to pay. From this point of view, the contributions of each partner to the marriage should ordinarily be regarded as equal and there should be an equal division of family assets, unless such a division would be inequitable under the circumstances of the particular case.'

(*Conner, supra* at 96). However, equitable distribution is not necessarily equal distribution (*Arvantides v Arvantides*, 64 NY2d 1033, 1034 [1985]; *Gering v Tavano*, 50 AD3d 299, 301 [1st Dept 2008]), and the trial court has broad discretion in determining what distribution is equitable under all of the circumstances, provided it has considered the factors enumerated in DRL §236(5)(d) (*Holterman v Holterman*, 3 NY3d 1 [2004]).

The court has considered the factors set forth in Domestic Relations Law §236(B)(5)(d) in making its decision as to the equitable distribution of the marital property, as follows.

1) Income and Property at the time of marriage, and at the time of the commencement of the action:

At the time of the marriage, the parties' 2007 joint tax return (Ex. 1) reflects the Wife's wages as $203,295 and the Husband's income from Schorr Associates as $177,992. For 2011, the year of commencement, the Wife's tax return (Ex. 7) reflects wages of $221,645 while the Husband's 2011 tax return (Ex. 5) shows income from Schorr Associates of $144,057. However, the Husband's 2011 tax return must be viewed in the context of his having overstated his expenses, thereby artificially reducing his reported income. For 2014, the Wife's W-2 statement reflects income of $306,624.86 (Ex. 10) and adjusted income of $283,313,55, and the Husband's 2014 income, with imputed income (see discussion in Child Support section below), was $299,206.49, and his AGI was $292,559.49.

The marital estate consists of the Marital Residence valued at $1,975,000, two pieces of jewelry (unvalued) and other assets and debts with a net value of $263,265.75. The Husband had separate property at the time of the marriage as discussed in the Marcus Report (Ex. A2) and the Letter of Modification (Ex. C15), which was comingled with marital property (Ex. A2 & C15). The Wife had a retirement account with her former employer Burberry, which she cashed in and contributed to the purchase of the Marital Residence . However, she did not establish the value of that account at trial. The Husband earned his law degree prior to the marriage.

2) Duration of the marriage and age and health of the parties:

The Wife was born August 11, 1970 and the Husband was born October 28, 1971. Both are in

good health, as no medical evidence was presented at trial to the contrary. The parties married on January 20, 2007, and this action was commenced on April 20, 2011, so this is a marriage of four years and three months.[14]

3) Need of custodial parent to occupy or own the marital residence: Not applicable.

4) The loss of inheritance and pension rights: Not applicable.

5) The loss of health insurance benefits upon dissolution of the marriage:

The Wife maintains her own health insurance which provides coverage for the parties' child. The Husband will lose his health insurance through the Wife's plan, but he may be eligible to purchase health insurance on his own through a COBRA option. Presumably, as an insurance broker, the Husband will not find it burdensome to locate an appropriate health insurance plan.

6) An award of maintenance: Not applicable.

7) Direct and indirect contributions: In addition to working full time throughout the entire marriage, the Wife was the primary caretaker of the parties' child and maintained the parties' home. The Wife also made direct contributions to the Husband's business, Schorr Associates, by actively participating in the growth of Schorr Associates by generating new business clients for the Husband. The Husband participated in taking care of [redacted] and contributed some of his earnings to the marital expenses.

8) Liquid or non-liquid character of the property: The marital estate is essentially non-liquid since it consists primarily of the Marital Residence and Schorr Associates.

9) Future financial circumstances of the parties: Each party is healthy, currently employed and capable of being self-supporting. The Husband has the potential for substantial income as an attorney and has access to the assets of his father's estate as the fiduciary.

10) The difficulty of valuing marital assets: Not applicable

11) The tax consequences to each party: There will be no tax consequences to the parties as any payout would be in the nature of equitable distribution and, therefore, tax free. Any taxes related to the sale of the Marital Residence should be paid equally by the parties and sums sufficient to pay such taxes should be escrowed at the closing.

12) The wasteful dissipation of assets: As discussed in prior decision of the Appellate Division, First Department, and this court, the Husband engaged in contentious and meritless motion practice and other obstructionist conduct, causing the Wife to incur unnecessary legal fees.

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[14] Therefore, this divorce action has lasted longer than the marriage.

13) Transfer in contemplation of action: During the pendency of the action, the Husband, without consideration, terminated an agreement he had entered into with his father during the marriage which gave the Husband contract rights to his father's business (Ex. 25, 26). In addition, in violation of the Automatic Orders, the Husband granted his mother a security interest in his ownership rights to the Marital Residence. (Ex. Z4).

14) Any other factors: The Wife argues that the Husband engaged in egregious conduct during the course of this litigation which should be taken into account in the court's determination of equitable distribution. Specifically, she argues that the court should consider egregious his conduct in accusing a sitting Supreme Court Justice of perjury, suing the State of New York, suing the forensic evaluator appointed by the Court, suing the Wife's counsel, engaging in meritless motion practice, behaving disrespectfully to this court, engaging in dilatory, obstructionist conduct and, notwithstanding being a member of the bar, failing to comply with orders of this court. While the court does not condone the Husband's conduct, the court declines to conclude that it rises to a level of egregiousness sufficient to be a factor in equitable distribution (*Howard S. v Lillian S.*, 14 NY3d 431 [2010]; L*evi v Levi*, 46 AD3d 520 [2nd Dept 2007]).

Before addressing the distribution of the assets, the court will address the Husband's claims for various credits.

The Wife agrees that the Husband should receive the following credits in equitable distribution:

1. $500 credit, because the Wife cashed a check from Traveler's Insurance Company in the amount of $1,000, which was payable to the parties jointly in connection with a loss sustained by the parties;
2. $40 credit, because of the Husband's claim that his income was improperly levied;
3. $1,750 credit, because the Wife cashed an insurance check for $3,500, to which they were both entitled.

The Husband requests other credits to which the Wife does not consent.

First, the Husband requests a separate property credit toward the purchase of the Marital Residence. The court rejects this because the evidence at trial showed that the Husband commingled the funds that he had at the date of marriage with his earnings during the marriage. Where separate property has been commingled with marital property "there is a presumption that the commingled funds constitute marital property" (*Scher v Scher*, 91 AD3d 842, 846 [2nd Dept 2012]; *Diaco v. Diaco*, 278 AD2d 358 [2nd Dept 2000 The First Department, in *LeRoy v LeRoy* (274 AD2d 362, 362-363 [1st Dept 2000]) held:

> The law, however, favors the inclusion of property within the marital estate (*compare,* Domestic Relations Law § 236[B][1][c] and [d]; *see, Burns v. Burns,* 84 N.Y.2d 369, 374, 618 N.Y.S.2d 761, 643 N.E.2d 80; *Majauskas v. Majauskas,* 61 N.Y.2d 481, 489, 474 N.Y.S.2d 699, 463 N.E.2d

> 15), and, accordingly, 'the party seeking to establish that a particular item is indeed separate property bears the burden of proof' (*Seidman v. Seidman,* 226 A.D.2d 1011, 1012, 641 N.Y.S.2d 431; *see also, Heine v. Heine,* 176 A.D.2d 77, 83, 580 N.Y.S.2d 231, *lv. denied* 80 N.Y.2d 753, 587 N.Y.S.2d 905, 600 N.E.2d 632).

The Husband failed to rebut the presumption that his bank accounts containing the commingled funds were marital property. Accordingly, he is not entitled to a separate property credit based on his contribution of funds to the purchase of the Marital Residence.[15]

Second, the Husband seeks a credit on the basis that he should have been awarded *pendente lite* maintenance. However, when the First Department affirmed the *Pendente Lite* Order, it noted that "[the Husband]'s contention that he is the non-monied spouse is without support in the record" (*Schorr v Schorr*, 96 AD3d 583 [1st Dept 2012]). Since he never made a motion to renew on new facts, his application for a credit on that theory is no longer timely.

Third, he seeks a credit for statutory interest that he paid on the three money judgments entered against him. No direct appeals were taken from the money judgments and the time to appeal has long since expired. Moreover, the Husband consented to the payment of the three money judgments together with interest thereon in the Stipulation placed on the Record before Special Referee Liebman on September 29, 2014 (Ex. O2 at 11). In addition, CPLR §5003 mandates that "every money judgment shall bear interest from the date of entry" and CPLR §5004 fixes the rate of interest at "nine per centum per annum." Consequently, there is no legal or factual basis to give him a credit for the statutory interest that he has already paid.

Fourth, he seeks a credit for the $21,500 of legal fees awarded to the Wife during the pendency of this action. The Husband appealed the two orders containing the fee awards and both orders were affirmed on appeal (Tr. 4/20 at 158; *Schorr I; Schorr II*). This court lacks authority to reverse the affirmance by the First Department and rejects the Husband's application for a credit.

Fifth, he seeks a credit for the bonus received by the Wife from Ralph Lauren for 2010. Since that bonus was received before commencement and was deposited into the Husband's Citibank account, any funds remaining would be included among the marital assets described above and distributed below.

Sixth, he seeks a credit for the bonus of $51,153 received by the Wife from Ralph Lauren for 2011. That was for the period from April 4, 2010 to April 2, 2011, and was therefore marital. The Wife

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[15] The Husband is correct in asserting in his post-trial memo that Marcus and Company determined that he contributed a total of $128,313.43 toward the Marital Residence, but he is incorrect in claiming that the expert determined that that sum was his separate property. Rather, the Marcus Report stated: "Should the court determine that the separate property is distinguishable from marital property, notwithstanding the commingling of funds and that Mr. Schorr's Citibank checking account... was merely a conduit for the transfer of distinguishable separate property for the purchase and renovation of the marital residence, we... have determined that Mr. Schorr's separate property claim was $134,411.62" (Ex. A2 at 2). However, the court did not make that determination, in light of the commingling of funds.

credibly testified that she used those funds to pay her counsel and to support herself and [redacted], since the Husband provided no support until his payment to her of $12,000 in July 2013. Consequently, the court declines to give the Husband a credit for these funds.

Seventh, he seeks a credit for 50% of plaintiff's New York State tax refunds for 2010 and 2011. However, the Husband requests this credit only if the court imposes a liability on him for the Wife's tax liabilities. Since the court has not done so, this request for a credit is moot.[16]

Eighth, he seeks a credit for $5,244 he claims to have paid the IRS on account of unpaid taxes, penalties and interest for 2009. However, the only evidence he presents is the front of a check, and he provided no proof that the check was negotiated by the IRS or even tendered to it. Accordingly, the court rejects this claim.

Ninth, the Husband seeks a credit for his payment of his overdraft at First Republic Bank in the amount of $4,858.62, claiming that he used it to pay the mortgage on the Marital Residence before commencement. However, he provided no documentary evidence that he used the overdraft for that purpose; the overdraft account statement in evidence does not show the purpose for which it was used.

Tenth, the Husband claims a credit for a payment of $526 he made on his American Express Platinum Card (account number xx-1000) and of $2,246.95, toward his American Express Plum Card (account number xx-1004) on account of charges that the Wife made after commencement. The court rejects this argument for two reasons. First, he testified that these expenditures were for marital purposes. Second, he failed to show that he paid these bills with post-commencement funds.

Eleventh, the Husband seeks a credit for the insurance proceeds for the Wife's engagement ring. Since he concedes that her ring was her separate property, this claim is rejected.

Having considered the statutory factors, the court finds that the marital assets should be equally divided between the parties, subject to the credits above and except as set forth below. More specifically, the assets shall be distributed as follows:

1. Marital Residence

DRL §234 authorizes the Court to "make such direction, between the parties...as in the court's discretion justice requires," including, but not limited to directing a sale of the marital residence. "Ordinarily, the sale of the marital residence should be ordered at the time of the divorce judgment, absent extenuating circumstances" (*Wobser v Wobser*, 91 AD2d 826, 827 [4th Dept 1982]; *see also Church v Church*, 169 AD2d 851 [2d Dept 1991]; *Tanner v Tanner*, 107 AD2d 980 [3d Dept 1985]). Here, the circumstances of the parties support the sale of the Marital Residence.

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[16] Moreover, the evidence does not show that she received a refund for either year.

First, the value of the Marital Residence represents a substantial percentage of the entire marital estate. Where "the marital residence is clearly the most valuable marital asset . . . each party has the right to access their share of the equity" (*P.D. v L.D.*, 28 Misc3d 1232(A) [Sup Ct Westchester Co 2010]). Second, although the Husband wants to buy out the Wife's equity in the Marital Residence, he has presented extensive evidence that he is not able to do so, since the evidence shows that he is in debt to his mother and that he has not complied with the *Pendente Lite* Order and this court's orders requiring him to pay the Wife's attorneys' fees. In fact, he testified at trial that the total cash available to him was $2,000. Third, the Husband will be required to pay the Wife a percentage of the appreciation in value of Schorr Associates. Fourth, the Husband's current financial condition makes it virtually impossible that he would be able to refinance, so that the Wife would continue to be burdened by the mortgage debt. Consequently, the only appropriate remedy is for the court to order the sale of the Marital Residence.[17]

In light of this, it is unnecessary for the court to make a finding as to the fair market value of the Marital Residence. However, if it were necessary to do so, the court would accept the appraisal by Neglia Appraisals, Inc. that the fair market value of the Marital Residence is $1,975,000.

The Marital Residence should be immediately placed on the market for sale with the net sale proceeds (after payment of the mortgage, closing costs and repayment of $124,000 to Joel Yunis) to be equally divided between the parties, subject to the deductions discussed below.

2. The two pieces of jewelry (the wedding ring and sapphire ring) should be immediately sold, with the net sale proceeds to be divided between the parties.

3. Retirement funds: The Wife's 401K should be divided equally. Within 10 days of receiving a notice from the Husband identifying an appropriate retirement account, Wife shall instruct T. Rowe Price to rollover the Husband's share of the account into the account he identified. If T.Rowe Price requires a QDRO, the Father shall prepare and file the QDRO to accomplish the rollover, at his expense.

4. Schorr Associates:

The Court of Appeals, in *Hartog v Hartog* (85 NY2d 36 [1995]), stated:

Domestic Relations Law § 236(B)(1)(d)(3) expressly provides that appreciation in separate property remains separate property, *"except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse"* (emphasis added). Moreover, Domestic Relations Law § 236(B)(5)(d)(6) explicitly recognizes that indirect contributions of the non-titled spouse (including services as spouse, parent and homemaker, and contributions to the other party's career

[17] The Husband argues that he should be given the option to buy out the Wife's interest because of his "strong desire" to maintain the former marital residence. That is not a strong enough reason, especially in view of his failure to stay current in his child support obligations. If he has the resources to buy out the Wife's interest in the Marital Residence, it makes it even more disturbing that he is so far in arrears in his obligations to his Wife and child.

> or career potential) are relevant in the equitable disposition calculations just as direct contributions are. Thus, to the extent that the appreciated value of separate property is *at all* "aided or facilitated" by the non-titled spouse's direct or indirect efforts, that part of the appreciation is marital property subject to equitable distribution (*Price v. Price*, 69 N.Y.2d 8, 18, 511 N.Y.S.2d 219, 503 N.E.2d 684, *supra; see*, Domestic Relations Law § 236[B][1][c]; [5][c], [d]).
>
> In *Johnson v. Chapin* (12 NY3d 461 [2009]), the Court of Appeals held:
>
> Under the equitable distribution statute, separate property is defined to include an increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse (Domestic Relations Law § 236[B][1][d][3]). Thus, any appreciation in the value of separate property due to the contributions or efforts of the non-titled spouse will be considered marital property (*Price v. Price*, 69 N.Y.2d 8, 511 N.Y.S.2d 219, 503 N.E.2d 684 [1986]). This includes any direct contributions to the appreciation, such as when the non-titled spouse makes financial contributions towards the property, as well as when the non-titled spouse makes direct nonfinancial contributions, such as by personally maintaining, making improvements to, or renovating a marital residence (*see generally Price v. Price*, 69 N.Y.2d at 17–18, 511 N.Y.S.2d 219, 503 N.E.2d 684).

Here, the Wife made a direct contribution to the Husband's business by prevailing upon her father, an attorney, to refer his legal clients to Schorr Associates and, as the Husband admitted, the result was that his business revenues "increased dramatically;" indeed in his post-trial memo, he refers to "the outsized role that Mr. Yunis had on the business during the marriage as a result of his referring several very large clients" (Tr. 6/2 at 116; Defendant's memorandum of law at 13-14).[18] In addition, the Wife made indirect contributions to the business by her actions as a wife and mother.

The Court-Appointed Expert valued the appreciation of Schorr Associates from date of marriage to the commencement date as ranging from a low of $183,339 to a high of $306,337. (Exh. 90, p. 2). The Report (Ex. 90), together with the testimony of Mr. Chin, sets forth the methodology to determine the value of the appreciation of Schorr Associates constituting marital property. In response to a question posed by the Court, the Mr. Chin stated that, for valuation purposes, more reliance should be given to the "multiple gross method." (T. 4.21, p. 244-245). Utilizing the Multiple of Gross Revenues Method (Ex. 90, p.2), the appreciation ranges from $183,339 to $289,919. The court finds that the increase in value of Schorr associates is the average appreciation utilizing the preferred method, or $236,629.

The Wife asks that she be awarded 50% of the increase in value of Schorr Associates. However, the case law does not support that (*see Hartog v Hartog*, 85 NY2d 36 [1995][awarding wife 25% of appreciation in value of husband's business interest in a long marriage where she made indirect contributions]; *Benabu v Rienzo*, 104 A.D.3d 714 [2d Dept 2013][award to wife of 1/3 of appreciation in

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[18] The fact that the Husband eventually lost much of the business referred to him by Mr. Yunis does not diminish the contribution made by the Wife in encouraging her father to refer business to the Husband.

value of husband's business interests was proper where wife made indirect contributions]; *Scher v Scher*, 91 AD3d 842 [2d Dept 2012][awarding wife 20% of appreciation in value of husband's business interest where she made both direct and indirect contributions]; *Golden v Golden*, 98 AD3d 647 [2d Dept 2012][award to wife of 30% of the appreciation in value of the husband's business interest was proper]; *Kerrigan v Kerrigan*, 71 AD3d 737 [2d Dept 2010][award of 35% of value of husband's business interest to wife was proper]; *Giokas v Giokas*, 73 AD3d 688 [2d Dept 2010][award of 10% of appreciation in value of husband's businesses to wife was proper in long marriage where wife made only indirect contributions]; *Peritore v Peritore*, 66 AD3d 750 [2d Dept 2009][finding award of 40% of value of husband's dental practice to wife who made only indirect contributions was error, and reducing the award to 15%]; *Quinn v Quinn*, 61 A.D.3d 1067[3d Dept 2009][award to wife of 30% of the value of the husband's business in a long marriage where she made indirect contributions was proper]).

Accordingly, having considered all of the statutory factors, including the Wife's direct and indirect contributions, the court awards the Wife 30% of the increase in value of Schorr Associates. Consistent with this, the court awards the Wife 30% of the receivables collected by the Husband from Levcor and Wells Fargo.

As a result, the distribution of marital assets is as follows:

Asset	Value	Possession of		Distribution to	
		Wife	Husband	Wife	Husband
Schorr Assoc.[1]	236,629.00		236,629.00	70,988.70	165,640.30
Citibank 7002	184.53	92.27	92.27	92.27	92.27
Chase 9470	35.95		35.95	17.98	17.98
Citibank 9842	28,199.18		28,199.18	14,099.59	14,099.59
Citibank 4083	32.85	32.85		16.43	16.43
Citibank 6996	530	530		265.00	265.00
ING	1,930.38	1,930.38		965.19	965.19
R.L. stock	3,757.28	3,757.28		1,878.64	1,878.64
Wells Fargo Receivable	7,500.00		7,500.00	2,250.00	5,250.00
Levcor Receivable	7,500.00		7,500.00	2,250.00	5,250.00
Retirement Account [2]	36,678.58	36,678.58		18,339.29	18,339.29
total assets	322,977.75				
total assets to be distributed now	286,299.17				
debt					
H's 2010 taxes	-59,712		-59,712	-29,856	-29856
net assets	263,265.75	43,021.36	220,244.40		
total assets to be distributed now	226,587.17	6,342.78	220,244.40	62,967.79	163,619.39
Amount owed by Husband to Wife, before credits				56,625.01	56,625.01
credit				-2,290	
Amount owed by Husband to Wife				54,335.01	
[1] Appreciation as determined by Court Appointed Appraiser.					
[2] to be distributed by instructions to T.Rowe Price					

The distributive award owed by the Husband to the Wife of $54,335.01 shall be deducted from his 50% share of the proceeds of the sale of the Marital Residence.

Neither party presented credible evidence about the value of any items of personal property, or any reason why any item should be awarded to either party. Accordingly, each party shall retain all items of personal property in his or her possession,[19] without any credits to either party.

Child Support

This court, pursuant to Domestic Relations Law §240(1-b), has considered the calculations delineated in Domestic Relations Law §240(1-b)(c) as well as the factors set forth in Domestic Relations

[19] This includes the parties' poodle Chester.

Law §240(1-b)(f) which permit a deviation from the calculations set forth in Domestic Relations Law §240(1-b)(3).

The first step in determining child support is to determine each parent's income. While Section 240(1-b)(b)(5) of the Domestic Relations Law provides that income for purposes of calculating child support is the "gross (total) income as it should have been or should be reported in the most recent federal income tax return," courts may rely upon partial information from a tax year not yet completed, and may base income on average projected income (*Culhane v Holt*, 28 AD3d 251 [1st Dept 2006]; *Kellogg v Kellogg*, 300 AD2d 996 [2002]). A court is not required to rely upon a party's own account of his or her finances and may impute income based upon his or her past income or demonstrated earning potential (*Id.*).

The Wife's gross compensation in 2014 was $306,624.86. After deduction of Social Security ($7,254), Medicare ($5,243.65) and New York City ($10,813.66) taxes paid, the Wife's adjusted gross income for the purposes of calculating child support (AGI) is $283,313.55.

Courts are not bound by a "party's own account of his or her finances, but may impute income based upon the party's past income or demonstrated future potential earnings [citation omitted]. The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives (see *Matter of LoCasto v Chiofolo*, 89 AD3d 847, 848 [2d Dept 2011]; *Matter of Collins v Collins*, 241 AD2d 725, 727 [3d Dept 1997]; *Rohme v Burns*, 92 AD3d 946 [2d Dept 2012]). In *Recco v Turbak* (124 AD3d 900 [2nd Dept 2015]), the Second Department affirmed the imputation of income to a father who had "resources provided to him by his own father over a number of years." Statutory authority for the imputation of income is authorized by DRL §240. The court rejects the Husband's argument that it should impute as income to the Wife the loans she received from her father, because those loans were necessitated by the Husband's noncompliance with the *Pendente Lite* Order. However, the court finds that it is appropriate to impute additional income to the Husband because he has received substantial funds from his parents, and had unfettered use of his father's estate account, as well as income from the clients of his deceased father. The court appointed expert concluded that the Husband's income in 2014 was $170,000. However, Mr. Chin testified that he did not consider checks payable to Jerome Schorr and cashed by the Husband but not included in his deposit analysis, and did not consider payments made by the Husband's parents to him or on his behalf. The first number is difficult to quantify. Accordingly, adding the payments made to or on his behalf by his parents to the Husband's 2014 gross income as determined in the Marcus Report, and subtracting from this sum the non-deductible portion of self-employment taxes paid by the Husband in 2013 to approximate statutory deductions, the Husband's AGI is $323,400.49, as follows:

Husband's 2014 income per Marcus Report	$170,000.00
Child support paid by Husband's parents	$14,250.00
Other payments by Husband's parents to Husband or on his behalf	114,956.49
Husband's Gross 2014 Income	$299,206.49

Less non-deductible portion of self-employment tax per Husband's 2013 tax return (Ex.M4)	($6,647.00)
Husband's 2014 AGI	$292,559.49

The Husband's adjusted gross income for the purposes of child support is $292,559.49. The combined parental income for purposes of child support is $ 575,873.04. The prorated responsibility between the parents for child support obligations is 51% for the Husband and 49% for the Wife. The appropriate child support percentage is 17%.

On the first $141,000 of combined income, applying a child support percentage of 17%, the non-custodial parent's annual obligation would be $12,177.43 per year or $1,014.69 per month for basic child support, unless the court finds that this would be unjust or inappropriate after consideration of the following factors in subsection "f" of Section 240(1-b) of the Domestic Relations Law:

(1) The financial resources of the custodial and non-custodial parent, and those of the child;

(2) The physical and emotional health of the child and his/her special needs and aptitudes;

(3) The standard of living the child would have enjoyed had the marriage or household not been dissolved;

(4) The tax consequences to the parties;

(5) The non-monetary contributions that the parents will make toward the care and well-being of the child;

(6) The educational needs of either parent;

(7) A determination that the gross income of one parent is substantially less than the other parent's gross income;

(8) The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to the CSSA, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such children are less than the resources available to support the children who are subject to the instant action;

(9) Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and

(10) Any other factors the court determines are relevant in each case.

The court does not find that this amount is unjust or inappropriate.

Since the combined parental income exceeds $141,000, the court must decide whether to make an award based on the additional income and, if so, whether to apply the statutory formula and/or rely on the factors set forth in DRL § 240(1-b)(f) (*See,* A.D. Scheinkman, McKinneys Practice Commentaries, C 240:27A; DRL § 240[1-b][c][3]). Where the court awards support based on parental income above $141,000, irrespective of the statutory method used, the court must articulate a rationale for its determination (*Matter of Cassano v Cassano*, 85 NY2d 649 [1995]; *Anonymous v Anonymous*, 12/8/99 NYLJ 27 (col 6) *affd,* 286 AD2d 585 [1st Dept 2001]).

The court finds that an award based on income above $141,000 is appropriate. Given the combined parental income, [redacted] would have enjoyed a very comfortable lifestyle had the marriage not ended. However, the court further concludes that the award should not be based on the full combined parental income, since a lesser award will be sufficient to meet [redacted] reasonable needs (*Kosovsky v Zahl,* 272 AD2d 59 [1st Dept 2000]). The court also notes that the Husband enjoys substantial parental access with [redacted], thereby decreasing some of the Wife's expenditures for the child's benefit. For these reasons, the court concludes that $350,000 shall be the total combined marital income subject to basic child support consideration.

The court also determines that it is appropriate to apply the statutory percentage formula to the amount over $141,000. Even upon consideration of the paragraph (f) factors, the court concludes that reliance on the statutory percentage formula is neither unjust nor inappropriate.

Applying the statutory formula to the total combined income of $350,000, and attributing to the Husband his *pro rata* obligation of 51%, the court finds that Husband's child support obligation shall be $30,227.65 per year, to be paid in monthly installments of $2,518.97 on or before the first day of each month commencing March 1, 2016, and retroactive to the date of commencement, April 20, 2011.

Add-on costs

The Wife shall maintain the child on her health insurance policy and shall pay 100% of this cost. Commencing March 1, 2016, each party shall contribute to any non-reimbursed medical costs, with the Husband to pay 51% and the Wife to pay 49% of these costs.

Commencing with the 2016-17 academic year, the Husband shall contribute 51% and the Wife 49% of the costs of the child's extracurricular activities, including after school, weekend, religious and summer activities.

The Husband shall pay 51% and the Wife 49% of the childcare costs necessary for the Wife to work. The Husband's obligation for childcare costs will cease when [redacted] turns 14 years old. In addition, he shall be responsible for 51% of add-ons retroactive to the date of commencement, with a credit for sums actually paid.

The Husband shall contribute 51% and the Wife 49% of the costs of the child attending a private university or college, including tuition, room and board, books, computers, and reasonable transportation costs for four round trips between home and school each year, if such costs are necessary. This is appropriate because each party attended an excellent private university, and the Husband attained two graduate degrees at private universities. Moreover, it is appropriate to determine this cost at this time so that the parties can save money to meet the needs of the child.

This award is retroactive to the date of commencement. The Husband is entitled to a credit for payments made pursuant to the *Pendente Lite* Order and shall pay retroactive arrears at the rate of $500 per month until paid in full.

The Wife shall be entitled to take [redacted] as a deduction for tax purposes.

The Husband shall maintain a life insurance policy for the benefit of [redacted] with a death benefit of at least $1.5 million dollars until [redacted] is emancipated, provided, however, that the Husband may decrease the death benefit by $100,000 per year, starting on [redacted]'s birthday in 2017, and on his birthday each year thereafter until [redacted] is emancipated (DRL § 236[B][8][a]). In addition, based on the Husband's manifested "'pattern of nonpayment'" (*Adler v Adler*, 203 AD2d 81 at 81 [1st Dept 1994][citations omitted]), the court shall require the Husband, pursuant to DRL §243, to post the sum of $75,000 as security to insure future payments of child support, childcare and "add-ons." (*Brinckerhoff v Brinckerhoff*, 53 AD3d 592 [2nd Dept 2008]; *Branche v Holloway*, 46 Misc3d 1217(A) (Sup Ct NY Co 2013), *affd*, 124 AD3d 553 (1st Dept 2015)].

Arrears Due Under the *Pendente Lite* Order

The Wife requests a judgment for the arrears in *pendente lite* maintenance.

For the 44 month period from September 2011, the effective date of the *Pendente Lite* Order, to April 2015, the Wife should have received as base child support the sum of $66,000 (44 x $1,500). As set forth above, the court finds that, during that 44 month period, the Wife received as base child support the sum of $42,000 ($21,000 & $15,000 & $6,000 = $42,000), leaving unpaid base child support arrears due under the *Pendente Lite* Order of $24,000 ($66,000 - $42,000 = $24,000) .

Under the *Pendente Lite* Order, the Husband is entitled to "a credit for sums voluntarily paid after the making of this motion and prior to the date of this decision for which he has canceled checks or similar proof of payment" (Ex. 16 at 11). The Husband proffered various checks totaling $5,163.02, which he claimed should be a credit against his arrears. However, they are not dated during the relevant period, and many are allocated to specific items. Accordingly, the Husband has not produced any evidence of payments made during that period for which the court directed that he would be entitled to a credit and is not entitled to a credit against basic child support predicated on his proffered checks.

For the 44 month period from September 7, 2011 to April 2015, the Husband should have paid the Wife, as his share of child care costs, $49,280.00 ($3,200 x .35 = $1,120 x 44 = $49,280). As set forth

above, the court finds that the Husband paid a total of $24,101.34. Accordingly, the total child care arrears owing by the Husband to the Wife pursuant to the *Pendente Lite* Order are **$25,178.66.**

The Husband seeks a credit in the amount of $20,752.29 which represents the amount paid by him to satisfy two of the money judgments (Ex. 94 & 95) entered upon his failure to pay 35% of the cost of the nanny and child care pursuant to the *Pendente Lite* Order (Ex. 16), affirmed by *Schorr I.* At trial, the Husband presented no evidence to support his claim that the 35% payment mandated by the *Pendente Lite* Order (Ex. 16) was "unlawful." Justice Kaplan rejected this claim in her Order dated January 28, 2013 (Ex. 18) and by granting a money judgment in favor of the Wife for unpaid nanny and childcare expenses.[20] Since this court is without authority to reverse or overturn the affirmance of the *Pendente Lite* Order by the First Department, the court rejects this claim.

During the 44 month period encompassed by the *Pendente Lite* Order through April 2015, the Wife paid $5,016 for [redacted]'s health insurance, $8,920 for his unreimbursed medical expenses, and $4,586 for his extracurricular expenses. Since the Husband did not pay any share of those expenses, under the *Pendente Lite* Order he owes her 35% of those costs or **$1,755.60** for health insurance, **$3,122** for medical bills, and **$1,605.25** for extracurricular expenses.[21]

The Husband also appears to be seeking a credit for the payments he has made since commencement to Via Cord, where they store [redacted]'s stem cells for future use. He has not shown any basis for receiving a credit for those voluntary payments.

The Wife agreed to credits against *Pendente Lite* Order arrears in the amount of $2,700, for a check that she received on July 10, 2012. The Wife acknowledged that she has not paid the Husband back for any extracurricular expenses that he had paid for since commencement. The Husband shall be entitled to any such credits for which he gives her documentation. Accordingly, the Husband owes the Wife total arrears under the *Pendente Lite* Order through April 2015 of **$52,962,** and she is entitled to a judgment in this amount, minus any documented payments he made toward extracurricular activities.

The arrears owed by the Husband to the Wife of $52,962 shall be deducted from his 50% share of the proceeds of the sale of the Marital Residence, if not paid before then.

Counsel Fees

The Wife seeks an award of counsel fees[22] in the amount of $350,000, plus $2,144.84 for printing fees related to opposing the Husband's appeals, pursuant to Domestic Relations Law §237, which provides that, in an action for a divorce, the court may award counsel fees "to enable that spouse to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the

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[20] Justice Kaplan's January 28, 2013 Order was affirmed by the First Department (*Schorr I*).

[21] The Wife did not seek any contribution for her payments for [redacted]'s religious school.

[22] The court will disregard the exhibits to the Wife's counsel's affirmation which were not directly related to attorneys' fees, such as the complaint in a new action filed by the Husband, this one against the chief Judge of the Court of Appeals.

circumstances of the case and the respective parties." In support of her fee request, the Wife points out that the Husband has engaged in dilatory and unnecessary litigation practice that resulted in additional counsel fees, including filing four appeals, all of which have been perfected and decided against him; made three motions and two applications for interim relief to the Appellate Division, all of which were denied; refused to appear for his deposition; failed to comply with the *Pendente Lite* Order; failed to timely pay the court-appointed neutral forensic accountant; failed to timely appear for trial, causing delays; when on the stand, refused to answer questions directly and was consistently evasive; and repeatedly interrupted and argued with the court.

The Husband argues that the Wife is now the monied spouse, and that he can only be required to pay her attorneys' fees if he has engaged in sanctionable conduct, after a hearing, citing *Silverman v Silverman* (756 NYS2d 14[1st Dept 2003] and *Wells v Serman* (92 AD3d 555 [1st Dept 2012]). He also points out that this court denied all three of the motions made by the Wife during the time this case was pending in Part 24. He acknowledges that he wasted some time during the trial because of his "lack of experience as a litigator and... unfamiliarity with the Rules of Evidence." He suggests that he be responsible for $4,950 of the Wife's attorneys' fees, representing nine hours of the Wife's counsel's time.

In view of this court's findings above regarding the parties' incomes, the court rejects the Husband's claim that the Wife is the 'monied' spouse, and finds that the parties' incomes are substantially similar. Ordinarily, where parties' financial circumstances are comparable, an award of counsel fees under Domestic Relations Law Section 237 is not appropriate, since the primary goal of that statute is to create "a more level playing field" (*Silverman v Silverman*, 304 A.D.2d 41, 48 [1st Dept 2003]; *see also Hirsch v Hirsch*, 96 AD3d 541 [1st Dept 2012]; *Cvern v Cvern*, 198 AD2d 197 [1st Dept 1993]). Here, however, the Husband had the added advantage of being an attorney, which meant that any litigation strategy he pursued, whether successful or not, resulted in additional fees for the Wife, and none for him. Given the extent to which the Husband has used that advantage in this case to the Wife's economic disadvantage, the court finds that an award of counsel fees to the Wife is appropriate. The court awards the Wife, in addition to the fees awarded to her *pendente lite*, counsel fees in the amount of $50,000. The Husband shall pay this sum directly to the Wife's current attorneys in five installments of $10,000 each, with the first payment to be made on or before the first day of the month following the month in which the divorce judgment is entered, and the subsequent payments to be made on or before the first day of each month thereafter until paid in full. If the Husband fails to pay the Wife's counsel $50,000 by the first day of the sixth month following the month of entry of the judgment of divorce, counsel shall be entitled to a money judgment against the Husband, with statutory interest, upon filing of an affirmation with the Clerk of this court, with no further notice to the Husband required.

Expert fees

The Wife requests reimbursement to her of the $3,000 she paid to Dr. Schiller, since the Husband's consent that she have sole custody made Dr. Schiller's report unnecessary. She also requests reimbursement of the $3,400 that she paid to Mr. Neglia, since her retention of him was only made necessary by the Husband's request that he be permitted to buy her out of the Marital Residence. She also

requests that the Husband be required to reimburse her for the fees she paid to Marcus, if the court rejects the Husband's claim for a separate property credit claim.

The Husband seeks reallocation of the fees paid by the parties to Marcus & Co. in accordance with their *pro rata* shares of income. Since he claims that the Wife's income is $309,124.88, and his is $170,000, this would result in his being responsible for 35%, rather than 50%, of the neutral forensic accountant's fees.

When appointing a forensic mental health expert to prepare a report as to custody, the court is always hopeful that the report, and perhaps even the process itself, will be helpful to the parties in reaching a resolution of custody. The court is hopeful that doing so had that effect in this case. Accordingly, the court declines to reallocate Dr. Schiller's fees.

The court finds that, while it appears at this time that the Husband is not able to buy the Wife out of the Marital Residence, it was not frivolous for him to seek a valuation to enable him to determine if he could do so.

The report and testimony of Marcus & Co. in this case contained information that was ultimately helpful to the Wife. Although the court finds that the Husband failed to meet his burden to prove his separate property credit claims, the court does not find that his attempting to assert them was frivolous.

Accordingly, the court declines to reallocate any of the expert fees in this matter.

Motion Sequence 32

The only issue left open for this court to decide on this motion sequence is the Wife's application that the Husband "be sanctioned pursuant to 22NYCRR Part 130-1.1 and that such sanctions include, but not be limited to enjoining [the Husband] from maintaining the Offending Websites (as defined in the supporting Affirmation) and be directed to take Down said websites." The Wife's counsel claims that the Husband intentionally engaged in conduct to harass or malicious injure the Wife and her counsel by purchasing two web domain names which constituted slight variations on the name of the Wife's counsel and his law firm, and then inserting content on those websites purporting to constitute an admission of perjury by the Wife's counsel. The Husband does not deny having created the websites and having posted the content, but opposes this application.

The court denies the relief sought because: 1) the moving papers do not show that the Wife (as opposed to her counsel) has been harmed in any way by the creation of the websites; and 2) Part 130.1-1 does not permit the court to issue an injunction as a sanction for conduct found improper under that section. Accordingly, while by no means condoning the conduct complained of, the court denies the relief sought.

Motion Sequence 33

This motion is, in essence, an application for a modification of a child support award. Accordingly, under NYCRR 202.16(k)(2), the motion papers must include a current Statement of Net Worth, which the Husband failed to do. Moreover, the Wife, in her opposition papers, amply supported her need for full time child care for the parties' seven year old son. Accordingly, the motion is denied.

In accordance with this decision, it is

ORDERED that the Plaintiff shall settle the Judgment of Divorce on notice to Defendant, and shall submit the Judgment, together with all other documents necessary for its entry, within 60 days of this Order; and it is further

ORDERED that, if the Plaintiff fails to settle the Judgment within 60 days, then the parties and their counsel, if any, shall appear in Part 24 at 9:30 a.m. on July 14, 2016.

Dated: February 26, 2016

ENTER:

Hon. Ellen Gesmer, JSC