[J-126-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

DEUTSCH, LARRIMORE & FARNISH, P.C.,	:	No. 26 EAP 2003
Appellant	:	Appeal from the Judgment of Superior Court entered on 1/22/02 at No. 1106 EDA 2001 affirming the Order dated 3/14/01 in
v.	:	the Court of Common Pleas of Philadelphia County, Civil Division at No. 2846 July Term 1996
JOYCE & WILLIAM JOHNSON AND MORGAN STANLEY DEAN WITTER, INC.,	:	791 A.2d 350 (Pa. Super. 2000)
Appellees	:	ARGUED: October 20, 2003

RUTH S. LIBROS,

Intervenor

CONCURRING OPINION

MR. JUSTICE SAYLOR **DECIDED: April 29, 2004**

In my view, the scope of the terms "account" and "financial institution" under Section 6301 of the Multiple-Party Accounts Act, 20 Pa.C.S. §6301, must be assessed in light of both the open-ended statutory definitions and, as important, the evolving nature of financial services. Concerning the brokerage account, I do not believe that it is necessary to characterize it as akin to a "share account" to fall within the statutory definition, particularly since the latter is generally employed to denote a specific arrangement in the context of a credit union or savings and loan association. See, e.g.,

Credit Union Nat'l Ass'n., Inc. v. Bd. of Governors of Fed. Reserve Sys., 700 F. Supp. 1152, 1154-55 (D.D.C. 1988). Rather, for the same reason that share accounts are included in the definition, namely, because of their similarity to bank accounts, I would treat the account at issue as sufficiently analogous to a bank account. Here, the record indicates that the Active Assets Account provided by Morgan Stanley Dean Witter included characteristics generally associated with traditional bank accounts, for example, check writing privileges, loan privileges, a VISA debit card, a personal identification number for VISA card and ATM cash withdrawals, preprinted deposit slips, direct deposit of social security or payroll, and the placement of cash into a money trust, government trust, tax-free money market trust account or, significantly, an FDIC insured account. In addition, the account assets could include, inter alia, cash, certificates of deposit, money market funds, municipal bonds, stocks, government securities, mutual funds, and annuities.

Similarly, I do not believe that it is necessary to view the phrase "financial institution" as impliedly ambiguous, inasmuch as the definition in Section 6301 specifically states that it is "without limitation." Moreover, consistent with the definition in Section 6301, the testimony at the hearing from a Morgan Stanley Dean Witter vice president indicated, inter alia, that the company provides a wide range of financial services and is subject to federal regulation. It is also noteworthy that the definition of financial institution varies within the Probate, Estates and Fiduciaries Code. Compare 20 Pa.C.S. §6301 with 20 Pa.C.S. §6401 (defining financial institution as "[a]ny regulated financial institution insured by the Federal Deposit Insurance Corporation or its successor or an affiliate of the financial institution"). Given the General Assembly's express and substantial limitation upon the scope of the definition of a financial

institution in Section 6401, it is at least arguable that the more open-ended definition contained in the Multiple-Party Accounts Act was intended to sweep more broadly.

Finally, as the definitions for account and financial institution in Section 6301 are not specifically limited in scope, consideration of the dramatic changes in financial services that have occurred in recent years is appropriate. For example, the historical division between commercial banking institutions and firms engaged in securities investments reflected in the Glass-Steagall Act, see Act of Jun. 16, 1933, ch. 89, 48 Stat. 188, was partially abrogated with the enactment of the Gramm-Leach-Bliley Financial Services Modernization Act, see Pub. L. No. 106-102, 113 Stat. 1338 (1999) (permitting, inter alia, the affiliation of banks and security firms). Indeed, even prior to repeal of the Glass-Steagall Act, the drafters of the 1989 amendments to the Uniform Probate Code (from which the Multiple-Party Accounts Act is derived), acknowledged that, while the function of assets in a bank account is distinct from those in a security account:

> [T]his distinction between bank accounts and securities has begun to crumble. Banks are offering certificates of deposit of large value under the same account forms that were devised for low-value convenience accounts. Meanwhile, brokerage houses with their so-called cash management accounts and mutual funds with their money market accounts have rendered securities subject to small recurrent transactions. In the latest developments, even the line between real estate and bank accounts is becoming indistinct, as the "home equity line of credit" creates a check-writing conduit to real estate values.

UNIFORM PROBATE CODE art. VI prefatory note (revised 1989 version), 8 U.L.A. 428 (1997).

On this record, therefore, and in light of the realities of the financial industry, I agree that there is sufficient evidence to apply Section 6303(a) of the Multiple-Party

Accounts Act, 20 Pa.C.S. §6303(a). Cf. In re Estate of Ashe, 787 P.2d 252, 254 (Idaho 1990) (recognizing the evolving nature of financial services in acknowledging that litigants may be able to demonstrate that stock brokerage firms are financial institutions under Idaho's Probate Code).

Mr. Justice Castille joins this concurring opinion.