



## Forfeiture of partnership profit share

A recent High Court decision on the fall-out of the departure of Jeremy Hosking from Marathon Asset Management has provided a helpful summary of when remuneration may be forfeited by partners for breach of fiduciary duties....

Marathon is an investment management business originally set up in the 1980s by Mr Hosking and Mr Ostrer. Mr Hosking was a “Class A member”, and Class A members were either Executive Members (i.e. they worked for Marathon) or Non-Executive Members (i.e. they no longer worked for Marathon, but were still partners with an ownership stake). Non-Executive Members received 50% of the income profits of Executive Members – also known within the business as “half rations”.

In December 2012, Mr Hosking retired and became a Non-Executive Member, and that same month Marathon began arbitration proceedings against Mr Hosking for breach of contract and fiduciary duties. (Partners owe “fiduciary duties” to their fellow partners, such as a duty of confidentiality, a duty of no conflict and a duty not to profit from their position.) The arbitrator held that Mr Hosking had breached contractual and fiduciary duties he owed to Marathon by discussing with some employees the possibility of starting a new business and producing a business plan outlining his thoughts. The arbitrator held that, as a result, Marathon had lost a real or substantial chance of retaining three individuals referred to as “the Global Three”, and awarded Marathon compensation of £1.38m in respect of this. He also decided that Mr Hosking should forfeit 50% of the payments Mr Hosking received as an Executive Member during that period (some £10.4m).

Mr Hosking appealed the arbitrator’s decision to make him forfeit £10.4m of partnership payments to the High Court. The question the High Court was asked was: can the share of profits of a partner or LLP member be subject to the principle of forfeiture if that partner/member breaches his/her fiduciary duties?

The answer from the High Court was **yes** for the following reasons:

1. A partner is an agent of the partnership and owes fiduciary duties to the other partners, so the forfeiture principle can apply.
2. Profit share can represent compensation for services, and therefore be viewed as remuneration, which can be subject to forfeiture.
3. If a partnership deed is silent on whether forfeiture can apply, it can apply.

So, this case makes it clear that a partner’s profit share can be subject to forfeiture as a remedy for breach of fiduciary duties, **but**, if

(i) a partner only owns part of the business and provides no services to it; or (ii) the partnership agreement expressly excludes forfeiture as a remedy, then in similar circumstances, their profit share would have been left untouched.