

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

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DEUTSCHE BANK TRUST COMPANY AMERICAS,

Plaintiff-Respondent,

-against-

HPM PARTNERS LLC, BENJAMIN A. PACE III,
LAWRENCE B. WEISSMAN, STEVEN A.
KUROSKO, LINDSEY JONATHAN NADEL, QUINN
JO-ROSE PORTFOLIO, and NEZA BEVC,

Defendants-Appellants.

Index No. 651622/2014

I.A.S. Part

Hon. Marcy S. Friedman

PREARGUMENT STATEMENT

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PLEASE TAKE NOTICE THAT, the above named Defendants-Appellants, Benjamin A. Pace III and Lawrence B. Weissman, by and through their attorneys Vladeck, Waldman, Elias, & Engelhard, P.C., submit the following as their pre-argument statement pursuant to Rule 600.17 of the Supreme Court, Appellate Division – First Department, in connection with their appeal in the above-titled action:

1. Title of the Action: The title of the action is set forth in the caption.
2. Original Parties to the Action: The full names of the Defendants-Appellants are Benjamin A. Pace III ("Pace") and Lawrence B. Weissman ("Weissman"). The full name of the Plaintiff-Respondent is Deutsche Bank Trust Company Americas. There has been no change in the parties.
3. Counsel for Defendants-Appellants: Counsel for Defendants-Appellants Pace and Weissman are Debra L. Raskin, Valdi Licul and Jungmin Cho, Vladeck Waldman Elias & Engelhard, P.C., 1501 Broadway, Suite 800, New York, New York 10036. Our telephone number is (212) 403-7300.

4. Counsel for Plaintiff-Respondent: Counsel for Plaintiff-Respondent is John Siegal and Sammi Malek, Baker & Hostetler, LLP, 45 Rockefeller Plaza, 11th Floor, New York, New York 10111. Their telephone number is (212) 589-4200.

5. Court from Which the Appeal is Taken: This appeal is taken from an order of Hon. Marcy S. Friedman, Supreme Court State of New York, County of New York. The order is dated May 30, 2014.

6. No Additional Appeals: There are no additional appeals pending in this action.

7. Related Action: There is one related action pending in this court: *Pace and Weissman v. Deutsche Bank Securities Inc. et al.*, Index No. 651623/2014, filed in Supreme Court of New York, New York County. Defendants-Appellants Pace and Weissman are Plaintiffs in that case, and they will also file a notice of appeal to the Appellate Division, First Department, in that case.

8. The Object and Nature of the Action: The object of the action is to recover damages and enter a declaratory judgment and injunction against Defendants-Appellants in aid of arbitration, for the alleged breach of contract, tortious interference, breach of fiduciary duty, unfair competition, and unjust enrichment. Plaintiff-Respondent alleges that individual Defendants-Appellants have breached their restrictive employment covenants by resigning from Plaintiff-Respondent and attempting to work for Defendant-Appellant HPM Partners, LLC ("HPM").

9. Result Below: The court below granted Plaintiff-Respondents' motion for a Temporary Restraining Order and temporarily enjoined Defendants-Appellants from soliciting or doing business with any of Plaintiff-Respondent's clients on whose account individual

Defendants-Appellants worked; soliciting any employees from individual Defendants-Appellants' division to work for Defendant-Appellant HPM; and using or disclosing any confidential information or trade secrets of Plaintiff-Respondent. The court below also ordered Defendants-Appellants to preserve all documents containing Plaintiff-Respondent's information.

10. Grounds for Reversal: Defendants-Appellants seek to reverse the Temporary Restraining Order on the grounds that: (1) there is no agreement between Defendant-Appellant Pace and Plaintiff-Respondent regarding any notice or non-solicitation period; and (2) any notice or non-solicitation period is unenforceable with respect to Defendant-Appellants Pace and Weissman because they were forced to resign from Plaintiff-Respondent and enforcing any such periods would harm the customers who are unaware of Plaintiff-Respondent's shady business practices.

Dated: New York, New York
June 3, 2014

VLADECK, WALDMAN, ELIAS &
ENGELHARD, P.C.

By: 

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