FILED

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

2003 FEB 21 PM 3:00

RICHARD R. ROOKER, CLERK

B. Rawls D.C.

ROBERT KENDALL BROADBENT, )
Husband )
)
VS. ) NO. 01D-1410
)
SHARI KATHERINE LANGHI BROADBENT, )
Wife. )

**FINAL ORDER RESULTING FROM DIVORCE TRIAL**

This cause came on to be heard on the 24th day of September, 2002, and the 9th day of December, 2002, before the Honorable Marietta Shipley, Judge for the Second Circuit Court for Davidson County, Tennessee, upon the Husband's original Complaint for Divorce and the Wife's Answer thereto and her Counter Complaint for Divorce, and after hearing testimony of the parties and their corroborating witnesses, statements of counsel, and the entire record in this cause, the Court entered an Order awarding an absolute divorce to the Wife and dismissing the Husband's original Complaint for Divorce. The Court then took under advisement the issues of division of property and the Wife's request for compensatory alimony. Subsequently, on or about January 29, 2003, the Court issued a Memorandum Opinion setting forth its ruling on the remaining issues to be determined by the Court. Said Memorandum Opinion, a copy of

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which is attached hereto, is incorporated by reference herein and made a part of this Order as if copied verbatim.

In accordance with said Memorandum Opinion, for the reasons set forth therein, IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Wife shall be, and she hereby is, awarded a judgment for alimony *in solido* against the Husband in the amount of $51,500.00. Said amount shall be paid to the Wife within ninety (90) days from the date of entry of this Order. The Wife is hereby granted a lien against the Husband's separate residence, which is located at 1478 Clairmont Place, Nashville, Tennessee 37215, to secure payment of said alimony *in solido* award to the Wife.

2. Neither party shall be held responsible for reimbursing the other party for the tax payments made by one party to the other nor for the $5,000.00 downpayment made by the Wife for the purchase of a unimproved lot on which the parties defaulted.

3. The personal property of the parties has already been divided, and each party shall be awarded all right, title and interest in and to those items of personal property currently in his or her possession or titled in his or her respective name, free and clear of any claims from the other party.

4. Each party shall be solely responsible for payment of any and all outstanding debts in his or her respective name, and each shall indemnify and hold the other party harmless from repayment thereof.

5. As additional alimony *in solido*, the Wife shall be, and she hereby is, awarded a judgment in the amount of $7,918.57 against the Husband for the payment of a portion of her reasonable attorney's fees, the collection for which execution may issue if necessary. Said alimony *in solido* award shall be payable to the Wife's attorney, Rose Palermo, within ninety (90) days from the date of entry of this Order.

6. The Court costs of this cause shall be, and the same hereby are, taxed to the Husband.

7. The Wife shall be, and she hereby is, restored to her maiden name of **Shari Katherine Langhi**.

ENTERED this 21 day of February, 2003.

JUDGE

APPROVED FOR ENTRY:

Rose Palermo (#3330)
Attorney for Wife
Post Office Box 121857
Nashville, TN 37212
(615) 244-4270

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed to Robyn Ryan, Attorney for Husband, 500 Church Street, 5th Floor, Nashville, Tennessee 37219, on this 20 day of February, 2003.

Rose Palermo

Rose Palermo

FILED

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

2003 JAN 29 PM 12:05

RICHARD R. ROOT, JR., CLERK

ROBERT BROADBENT, B. Rawls D.C.

Plaintiff,

vs. NO. 01D-1410

SHARI BROADBENT,

Defendant.

MEMORANDUM OPINION

This case came on to be heard on September 24, 2002 and was continued to December 9, 2002. The court heard witnesses from Mikey Long, a financial consultant, the husband's mother, the wife's father, a public defender from Franklin, as well as the parties. The court took the matter under advisement and now issues this opinion.

**HISTORY:**

These parties had a very short, yet stormy marriage. They married in October 1999. They had dated for some time previously, at least back through 1998. Ms. Broadbent had a son from a prior marriage. Ms. Broadbent lived in a condominium which was two-thirds owned by her parents at 3733 West End Apt. #106. It was worth about $300,000. Mr. Broadbent lived in a house in Green Hills, at 1478 Clairmont Place, also worth about $300,000. He had purchased the house primarily to fix up and sell. Parts of the house were livable, but other parts were not. Strangely enough, the parties never actually lived in either house together. There was no real reason given

for Mr. Broadbent not living in Ms. Broadbent's condo, except that she didn't provide much space. It was obvious why they did not live in Mr. Broadbent's house. He did stay in Ms. Broadbent's condo several times per week.

The additional reason for not living together was that they were trying to find and buy a house or build a house. Mr. Broadbent worked for Bell South. Ms. Broadbent was a schoolteacher. He earned $72,000. She earned $33,000. They were apparently trying to find their dream house. Mr. Braodbent said they were looking in the $480,000 range. They both looked at numerous houses. He never really discouraged her from looking in that range of price until late in the search. They also considered a lot with a price of $162,000. Ms. Broadbent put $5000 down on the lot as a down payment. Mr. Broadbent did not allow them to go to closing, so Ms. Broadbent lost the $5000 deposit.

**FINANCIAL HISTORY:**

Prior to the marriage, Ms. Broadbent had about $32,000 in a Credit Union Account. Mr. Broadbent encouraged her to invest the monies in the stock market. He constantly studied the market and had done quite well. She agreed to transfer the money into a Waterhouse Account in the amounts of $30,000 in the trading account and $2000 to open an IRA in April, 1998. (Per Exhibit #10, December hearing).

Mr. Broadbent told Ms. Broadbent in October 1999 that he thought he needed to have access to her account directly, so it would be easier for him to deal with the brokerage house. On October 1, 1999, Ms. Broadbent admittedly signed a Limited Power of Attorney. She probably signed it at home, but it is not clear. She denied

that she signed a margin account form. The signed copy of this form was not available until the second hearing in December. Ms. Broadbent obtained that form from the brokerage house. Although her signature was on it with the date October 4, 1999, she denied she had signed. She compared the Power of Attorney form's, signature to the Margin Account form, which looked slightly different. During that hearing, both parties produced various documents with her signature on them. Frankly, it is inconclusive without expert testimony of a handwriting expert, whether her signature was real or forged.

Ms. Broadbent said she had specifically told Mr. Broadbent she did not want to give him margin account privileges. She also said that she wanted to remain in solid stocks, that were not risky. Ms. Broadbent testified that she had received all the account statements from the opening of the account until February, 2000. The statements show Ms. Broadbent's address on the statements until the period ending January 31, 2000, which she would have received in February. If she had read the statements and noticed anything unusual about them, she would have seen on the October 29, 1999 there was a "margin debit" of $10,572. On the period ending November 30, 1999, there was a "margin debit" of $51,569.17. On the period ending December 31, 1999, the "margin debit" was $31,108.06. On the period ending January 31, 2000, the "margin debit" was $124,956.15. If she knew nothing about margin trading, this number may have been meaningless. The market value, however was $235,594.55 of that January statement. She must have been excited, because in that same month she had deposited $51,338.58 into that account. That was, however,

the last statement she received. Other than what Mr. Broadbent had told her, she had no paper knowledge after February, 2000.

The actual value of the portfolio was at a high of $159,644 in March 2000, with a stock value of $328,871 and a margin debt of $159,644. By September the actual value dipped to $102,473, then to $73,065 in October, took a deep nose dive to $19,338 in November with a margin debt of $42,319 and finally rested at $6,709 in March, 2001 with a margin debt of $18,997. Ms. Broadbent had to pay a margin call in April of $3,993.97 and one in August of $4,063.84. Quite a ride!

Mickey Long of Saloman, Smith Long testified in the September, 2002 hearing concerning Ms. Broadbent's portfolio. He basically analyzed her statements from July 1999 to September 2002. His exhibits were helpful to the court. He testified that the in 2000 the DOW lost 14%; the NASDAQ lost 30%; his blue chip clients lost 9%; the S & P which was weighted with 30% tech stocks was down 9%. The S &P was down 12% in 2001. He analyzed Mr. Broadbent's style of trading. Mr. Broadbent traded over $3.5 million dollars in stock in 2000 in her account. (He was trading his own account also). He only had originally $100,000 to work with. Mr. Long said that not only was that evidence of day trading mania, but to the extreme. There was no way that any one person could make money in the stock market that way with so much volatility.

By analyzing the statements, one can see that Mr. Broadbent remained in four to five brand name brand stocks from September 1999 through December 1999, although he changed stocks and had a heavy margin. By April, 2000 he bought all tech stocks,

except for TD Waterhouse Group, just at the height of the market. He bought and sold stocks on the margin with dizzying speed for an individual. In April 2000 alone he had almost $1,000,000 in trades.

It is also interesting to note that Mr. Broadbent even did the same thing in her IRA Roth account. In October, 1999 she had $13,749 in her account. She deposited $2,000 in that account in January, 2000. She had mostly brand-name stocks in her account until April 2000. In March 2000 she had $13,000 in her account. By May, 2000 he had switched into two tech stocks. (The same stocks as in the larger account). From May to October, the account dropped from $15,000 to $10,000. Interestingly enough, even though the stock dropped 30%, in her IRA account it was not as dramatic as when he used the other account through trading on the margin. The value remained the same until September, 2001, when it dropped to $7,700.00, which was a 50% drop in the value of her IRA Roth.

**FINANCIAL DEMISE AND DEMISE OF THE MARRIAGE:**

Ms. Broadbent claimed that she did not know how much money was lost. She testified in January 2001, he had acted so erratically, she called Waterhouse and found out she had only $20,000 left in the account. He denied that her information was correct even at that time. He told her constantly he wanted a divorce. Mr. Broadbent testified that they had lots of discussions about the investments, that she knew what was happening. She kept wanting to have this dream house and would look at no cheaper houses. He said she was excited about the gains and had $50,000 in capital gains in 1999. He testified he made no trades on her behalf after January 31, 2001.

He further testified he had lost at least the same amount in his accounts. His mother testified Ms. Broadbent had talked to her about the finance downturn in April, but told the mother they had not gone down beyond their base. Shari denied she had told her that. The mother said that Ms. Broadbent had depression problems, mood swings, etc. She also disapproved of their buying such an expensive house. Ms. Broadbent and his mother testified, Mr. Broadbent was quite depressed.

Although the parties tried to reconcile in April 2001, they remained separated and both now wish a divorce.

**DIVORCE:**

The court finds that the divorce should be granted to Ms. Broadbent on the grounds of inappropriate marital conduct. Mr. Broadbent created an untenable situation when he refused to move into Ms. Broadbent's apartment. He simply did not make a real commitment. His dreamhouse was a pipe dream. He was expecting his new wife's family to put down $100,000 on this dreamhouse, without having really checked with them. His obsession with the stock market ruined her savings and left with her with virtually nothing. It was an unfortunate chapter in her life. She admittedly participated in this dream of both the over-expensive house as well as probable knowledge of the stock market problems. She nonetheless had expectations that she would not lose most of her original investment, however naive she may have been. His trading activity and margin trading to excess led to the almost total loss of her savings.

**RETIREMENT FUNDS:**

Both parties will keep their separate retirement and pension accounts that are in their possession. Ms. Broadbent contributed to her own IRA, but the fund decreased in value. Mr. Broadbent also lost monies in his account, so there is no gain for her to divide, even if marital funds were added to the account.

**ALIMONY IN SOLIDO:**

The primary issue in this divorce is whether Mr. Broadbent is responsible to Ms. Broadbent for the loss of her investments. The court has spent extensive time reviewing the investment record and the testimony of the parties. The court finds that she should be reimbursed for her losses as alimony in solido in this manner.

1. She placed $38,000 in the hands of Mr. Broadbent prior to the marriage as well as $2,000 in January, 2000 to an IRA account. In January 2001, she deposited approximately $51,000 in the stock account. By December, 1999, she had about $80,000 in her account, after writing checks for the honeymoon, taxes and establishing another IRA. Thus the court will start with $90,000, the original amount deposited. The ending balance was about $7,000, as the parties had attempted reconciliation until April, 2001.

2. If the account had remained with either blue chip stocks or at least not used as a margin account to as he did, the S & P would have decreased 9% in 2000 and 12% in 2001. Thus the court will err on the high side and determine her loss normally would have been about $11,000, rather than $83,000. The total net amount lost in the

stock account would be $72,000. ($90,000 x 12% = $10,800. $79,000 - $7,000 remains $72,000.)

3. Ms. Broadbent would have lost $1,500 in her IRA, at 12% rather than $4,000 to $6,000. If the court uses the figure $5,000 as a median number, the loss would be $3,500. The total loss in both accounts is approximately $75,000, as adjusted. ($13,000 x 12% = $1,140 - $7,700 = $3,740) plus the $72,000 in the stock account.

4. The court finds that Ms. Broadbent was 30% responsible for her own losses, if we compare her responsibility. It is unclear whether she knew she was signing a Margin Account Document. It is unclear whether she knew of the losses and did nothing to really stem the problem. The court believes she was not totally without knowledge. This evidence comes from common sense, the fact she did receive statements until March, 2000, Mr. Broadbent's and his mother's testimony and finally the fact that he lost a large amount of money, himself. Therefore, the court will hold her 30% responsible for her own behavior. The concept is similar to comparative negligence in torts.

5. Therefore, Mr. Broadbent will owe Ms. Broadbent $51,500. This amount will be paid to Ms. Broadbent as alimony in solido within 90 days from the date of the entry of the final decree. The judgment will be a lien on the home owned by Mr. Broadbent.

**TAX DEBTS AND DOWN PAYMENT ON LOT:**

Mr. Broadbent had to pay Ms. Broadbent's taxes, apparently due to an insufficient funds' check for 1999 taxes. He obtained a home line of equity to pay approximately $13,000. Ms. Broadbent paid $5,000 as a down payment on the lot for

the house, Mr. Broadbent refused to close. The court, unable to totally unravel these events, finds that the parties are even on this point and neither owes the other any money.

**PERSONAL PROPERTY:**

The parties have already divided all their personal property.

**DEBTS:**

Each party shall pay any debts in their own name.

**ATTORNEYS FEES:**

The court finds that Mr. Broadbent should pay 70% of Ms. Palermo's fees, as further alimony in solido, or $7,918.57. This amount shall be paid in full 90 days from the date of the entry of the divorce. Thereafter, execution may issue.

**COURT COSTS:**

Mr. Broadbent will pay all additional court costs.

The attorney for Ms. Broadbent shall draw the order.

JUDGE MARIETTA M. SHIPLEY

## CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum Opinion has been faxed and mailed to the following attorneys of record:

Robyn Ryan
500 Church Street, 5th Floor
Nashville, TN 37219
242-3996
FAX 242-2003

Rose Palermo
P.O. Box 121857
Nashville, TN 37212
244-4270
FAX 244-4281

On this the 29 day of January, 2003.

Barbara Iddings
CLERK

**STATE OF TENNESSEE**

**I, RICHARD R. ROOKER,** Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the SECOND Circuit Court for Davidson County, Tennessee, on the 21 day of FEBRUARY , 2003 , in the Case Number 01D1410 between BROADBENT, ROBERT KENDALL Plaintiff, and BROADBENT, SHARI KATHERINE LANGHI Defendant, as same remains of record in Vol. 5102 , Page 1036902 of the Minutes of said Court.

**IN TESTIMONY WHEREOF,** I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 27 day of MARCH in the year two thousand three and in the 226th year of American Independence.

**RICHARD R. ROOKER,** Clerk,

By _____ Deputy Clerk

SEAL

RICHARD R. ROOKER
CIRCUIT COURT CLERK