

PARTY THAT DOES NOT HOLD A PRIVILEGE HAS NO STANDING TO CONTEST DECISION TO ADMIT PRIVILEGED TESTIMONY

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D'Amico v. Structural I Company

Ct. Appeals, Division One, April 3, 2012

Authored by the [JSH Appellate Team](#)

Business owners nearing retirement were seeing a psychologist about their personal and business matters. At the counselor's suggestion, the owners hired D'Amico as a consultant and then negotiated an agreement to bring D'Amico on as CEO. The owners discharged D'Amico less than 3 years into a 5 year contract. D'Amico sued owners for breach of contract, alleging the company withheld wages in bad faith and fired her without cause. The company filed a series of counterclaims. The jury determined that the company breached the contract by terminating D'Amico without cause and withheld over \$500,000 in wages in bad faith, but that D'Amico breached her fiduciary duty to the company. Both parties appealed.

On appeal, the company argued, among other things, that the court should have excluded privileged testimony by the psychologist concerning her personal counseling sessions with the owners. The court of appeals rejected this argument, because the privilege was held by the owners, not the company. The owners were not parties to the suit. The company, therefore, lacked standing to complain about the admission of the psychologist's testimony.

D'Amico argued that the trial court abused its discretion by refusing to treble her damages. The court rejected this argument as well. A.R.S. § 23-352 prevents an employer from withholding or diverting any portion of an employee's wages unless...[t]here is a reasonable good faith dispute as to the amount of wages due. But under A.R.S. 23-355(A) an award of treble damages is not mandatory.