



Trade Secret Plaintiff Wins Treble Damages from Court after Losing Jury Verdict

By [Sean T. Carnathan](#), Partner

In a decision issued November 23, 2011, the Massachusetts Appeals Court affirmed the trial court's decision awarding plaintiff treble damages and attorneys' fees under the Massachusetts Unfair Trade Practices Act for theft of its trade secrets. The decision is interesting because the trial court judge made the award despite the fact that the jury in the same case specifically found that the defendant had not stolen the plaintiff's trade secrets. The case is [Specialized Technology Resources, Inc. v. JPS Elastometrics Corp.](#), Docket No. 11-P-776.

Litigants do not have a right to a jury trial for claims for unfair trade practices under M.G.L. ch. 93 ("Chapter 93A"). Instead, the trial judge decides the Chapter 93A claims, even if there are other jury claims in the case.

There are several prior decisions holding that the trial judge is not bound to follow the jury's decision, but this case was unique in that it presented a situation where the trial judge made a large award based on a finding directly contrary to the findings of the jury. In a separate concurring opinion, Justice Andrew R. Grainger wrote that although the court's decision was "required by case law explicitly endorsing inconsistent findings based on identical evidence," the statute might "benefit from re-examination." In other words, Justice Grainger is encouraging the Legislature to reconsider whether the statute should allow such "cognitive dissonance."

Also interesting was the fact that one of the defendants was a former employee of the plaintiff. Typically, Chapter 93A does not apply to wrongs in the employer-employee context. Here, however, where the former employee stole a trade secret and

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took it to a competitor, the court expressly held that Chapter 93A does apply. This decision may be a wedge to insert Chapter 93A into other aspects of the employer-employee relationship where the challenged conduct is “independent of [the employee’s] contractual obligations.”

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