

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**In Re:  
The Marriage of:**

**JEWELL K. WHITTAKER,**

**Appellant/Petitioner,**

**And**

**ANDREW J. WHITTAKER,**

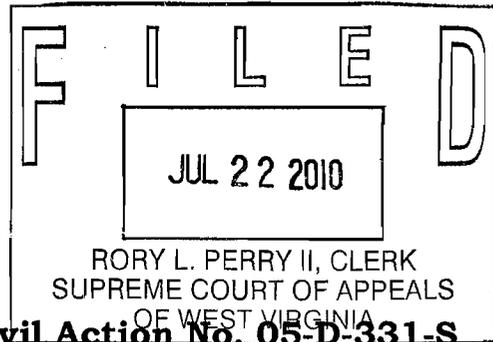
**Appellee/Respondent.**

**RESPONSE OF APPELLANT JEWELL K. WHITTAKER  
TO BRIEF OF APPELLEE ANDREW J. WHITTAKER**

Now comes the Appellant/Petitioner, Jewell K. Whittaker, and for her Response to the Brief of Appellee Andrew J. Whittaker and replies as follows:

The Appellee argues that the parties have not reached a valid and enforceable order for marital distribution because the Orders entered on November 7, 2008 and March 25, 2009 are both void for lack of subject matter jurisdiction on behalf of the family and therefore, the Trial Court's Order should be upheld.

However, the Appellant would like to once again state that when the matter was remanded to Family Court and a hearing was held on November 7, 2008, the Appellee/Respondent admitted that he is the sole member of Whittaker, LLC and M&J Development, LLC and that as sole member he has sole control of said companies. As such, he acknowledged that the assets at issue were marital or if not marital, he could use said assets to settle his claim in the Family Court. Further,



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(Raleigh County)  
Appeal No. 35552**

he acknowledged as sole member these assets were disposable and completely under his control. Additionally, the Appellee chose to agree as stated in the Order because he did not want to liquidate said companies. Therefore, by his own free will he entered into an agreement/contract which was typed at that hearing and signed by him on that same date.

Additionally, since that time, the parties have already completed ninety (90%) percent of said agreement, with the only remaining terms of the agreement to be completed as follows: (1) Appellee/Respondent was to sign an Errors and Omissions Agreement; (2) Appellee/Respondent was to provide a full accounting as to the rent or lease payments incurred or received by Whittaker, LLC from March 5, 2008 to the present along with other necessary information so that the Appellant can determine that she has received that which she was awarded; and (3) Appellee/Respondent was to assign all of his rights, title and interest to the following notes: (a) Lisa Smith Note; (b) Mancor Industries, Inc. Note; and (3) JEEM, Inc. (JLW, LLC - known in prior Orders as Note on Sunmine property and M & J Development, Inc.

All realty awarded to the Appellant/Petitioner has been transferred by Deed and she has subsequently sold numerous properties.

The Family Court has the authority to enforce this agreement because it was voluntarily entered into by the Appellee/Respondent, who is the sole member of the limited liability corporation and he consented individually and as sole member of the limited liability corporation to said agreement. The terms of this agreement are judicially enforceable because everyone understands that the Appellee/Respondent had the power and authority to make such

decisions and enter into such an agreement. Further, the settlement agreement to which the parties entered into is considered a contract and thus enforceable by the Court.

In conclusion, the parties have already completed and disbursed over 90% of the Agreed Order to which the Trial Court has reversed. To uphold the Trial Court's Order to allow such a reversal now would be inviting utter chaos into the lives of these people as numerous properties that were awarded and already transferred to the Appellant/Petitioner have been sold and transferred to other third parties and will only create additional lawsuits for both parties.

WHEREFORE, for those reasons stated in her Brief as well as in this Response to the Reply Brief of Appellee, the Appellant/Petitioner respectfully requests that this Honorable Court reverse the Trial Court's Order and find that the Order of the Family Court of November 7, 2008 to be valid and enforceable.

JEWELL K. WHITTAKER,

BY COUNSEL



David J. Lockwood, Esq. (#2230)

*Counsel for Petitioner*

LOCKWOOD & LOCKWOOD

741 Fifth Avenue

Huntington, WV 25701

(304) 697-4100

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**ANDREW J. WHITTAKER,**

**Appellee/Respondent.**

**CERTIFICATE OF SERVICE**

I, David J. Lockwood, Esq., counsel for the Appellant/Petitioner, Jewell K. Whittaker, do hereby certify that on the 16<sup>th</sup> day of July, 2010, I served a true and exact copy of the following **Response of Appellant Jewell K. Whittaker to Brief of Appellee Andrew J. Whittaker** for same via the United States Mail, postage prepaid to the following:

**Andrew J. Whittaker  
P.O. Box 33  
Rocky Gap, VA 24366**



**David J. Lockwood, Esq. (#2230)  
Counsel for the Appellant/Petitioner**