

**Answer to Petition with Counterclaim of William F. Macreery dated
February 23, 2009 with Exhibits (89-103)**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter
of
The Application of Herman I. Poritzky,
Holder of One-Half of All Outstanding
Shares Entitled to Vote in an Election
Of Directors,

Index No. 1336-09

Name of Assigned Judge:
Hon. Kenneth W. Rudolph, J.S.C.

Petitioner,

**ANSWER TO PETITION
WITH COUNTERCLAIM**

For the Dissolution of Dream Weaver,
Realty, Inc., a Domestic Corporation,

Pursuant to Section 1104 of the New York
Business Corporation Law

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The respondent, Stephen T. DeName ("DeName"), by his attorney William F. Macreery, Esq., as and for his answer to the petition herein respectfully sets forth and alleges upon information and belief as follows:

1. Except as otherwise specifically admitted hereinafter, denies each and every allegation set forth in paragraph "1" of the petition herein (the "Petition"), and further affirmatively alleges that grounds for the judicial dissolution of Dream Weaver Realty, Inc. ("Dream Weaver") do not exist, and that the petitioner, Herman I. Portzky ("Portzky" or the "Petitioner") is not entitled to any relief.

2. Admits the allegations set forth in paragraphs "2", "3", "4", "5" and "6" of the Petition.

3. Denies that the allegations set forth in paragraphs "7" the Petition are material or relevant, and admits that in or about July 1996 Poritzky hired DeName to

work for him and certain other businesses owned by Poritzky, or by Poritzky and Elaine Hartel.

4. Denies the allegations set forth in paragraph "8" of the Petition, except admits that on or about July 27, 2000 Poritzky, DeName and Poritzky's wife, Elaine Hartel, entered in to the written agreement (the "Shareholders' Agreement") annexed to the Petition as "Exhibit "1" which provided, *inter alia*, that DeName and Poritzky would be equal shareholders of the capital stock in the corporations specified therein, including Dream Weaver, but respectfully refers to all of the provisions contained in the original Shareholders' Agreement and the written modification thereto dated October 29, 2001 (the "Modification Agreement") for the proper interpretation and legal effect thereof.

5. Denies the allegations set forth in paragraph "9" of the Petition, except admits that Poritzky and DeName are parties in a pending action in this Court entitled, "Herman I. Poritzky, plaintiff, against 3-D Funding, Inc. f/k/a Poritzky Funding, Inc., SD Funding, Inc., Stephen T. DeName, and Sanossian Sardis & Co., LLP, defendants" bearing Westchester County Index Number 07-25992 (the "3-D Funding Litigation"), and respectfully refers to the pleadings and papers filed therein for the allegations and contentions of the parties that are raised therein.

6. Except as admitted in paragraph "5" of this answer, denies the allegations set forth in paragraph 10 of the Petition, and further admits that most communications between Poritzky and DeName take place through their respective counsel.

7. Denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "11" of the Petition, except admits that the day to day maintenance of the corporate books and records was given to DeName, that many of

the corporate books and records are kept and stored on computer, and that Poritzky hired the defendant Sonossian Sardis & Co., LLP to become the accountants for the corporations specified in the Shareholders Agreement.

8. Denies the allegations set forth in paragraphs "12", "13", "14" and "15" of the Petition except admits that Poritzky was paid amounts by Dream Weaver until 2005, and affirmatively alleges that the primary business activity conducted by Dream Weaver over the past two years has been directed towards the orderly marketing and sale of the four parcels of real property owned by the corporation, that Poritzky and DeName have agreed upon this course of action, and that Dream Weaver has been and remains able to pursue this course of action without the necessity of judicial dissolution.

9. Denies the allegations set forth in paragraph "16" of the Petition, except admits that the corporation is "solvent" as the term "insolvent" is defined by Section 101(32)(A) of the United States Bankruptcy Code.

10. Admits the allegations set forth in paragraph 17", except affirmatively alleges that the Petitioner is not entitled to the relief he seeks.

11. Denies the allegations set forth in paragraph "18" of the Petition.

12. Denies the allegations set forth in paragraph "19" of the Petition, and affirmatively alleges that liquidation of the four parcels of real property owned by Dream Weaver in the context of judicial dissolution will be harmful to the corporation and DeName, in that less money will be realized on the sale of such properties in dissolution proceedings than on sales to third parties that were already negotiated and agreed to prior to the commencement of this proceeding.

13. Neither admits nor denies the legal conclusion asserted in paragraph "20" of the Petition, and respectfully leaves all questions of law to the Court for determination.

**AS AND FOR A FIRST DEFENSE DeNAME SETS
FORTH AND ALLEGES, ON HIS OWN BEHALF
AND ON BEHALF OF DREAM WEAVER, AS
FOLLOWS UPON INFORMATION AND BELIEF:**

14. The respondent, DeName, is an individual with a place of business in Westchester County, New York.

15. The Plaintiff, Herman Poritzky, is an individual who resides in Westchester County, New York.

16. Dream Weaver is a real estate holding corporation organized under the laws of the State of New York, having its principal office and place of business located in Westchester County, New York.

17. In or about July 1996, the Petitioner, Poritzky, hired the respondent, DeName to work for him and Poritzky's lending business that was formerly known as Poritzky Funding, Inc. and now know as 3-D Funding, Inc. ("3-D Funding") which is involved in the 3-D Funding Litigation, and to manage properties owned by Poritzky or real estate companies in which Poritzky had an interest.

18. At all material times subsequent to July 1996, DeName occupied himself in seeking out opportunities to extend loans secured by real property, and to locate investors willing to advance monies to fund such loans, but was also responsible for the day to day operations of 3-D Funding and real estate companies, including Dream Weaver, which the Petitioner was unwilling and unable to perform.

19. At the time that Poritzky hired DeName, 3-D Funding and Dream Weaver had total yearly net income that was insufficient to pay DeName compensation comparable to that paid by similar businesses for the type of work performed by DeName.

20. In order to keep DeName associated with the business and to perform duties that Poritzky was unwilling and unable to perform, on July 27, 2000, Poritzky, DeName and Poritzky's wife, Elaine Hartel, entered in to the written Shareholders' Agreement annexed to the Petition as "Exhibit "1". DeName respectfully refers to all of the provisions contained in the original Shareholders' Agreement and the Modification Agreement for the proper interpretation and legal effect thereof.

21. In addition to other matters, the Shareholders' Agreement provided that DeName and Poritzky would be equal shareholders of the capital stock in the corporations specified therein, including Poritzky Funding, Inc., now known as 3-D Funding, and Dream Weaver.

22. At all times subsequent to July 27, 2000, DeName has faithfully performed all of his duties and observed all of his fiduciary obligations as an employee, shareholder, officer and director of Poritzky Funding, Inc., now known as 3-D Funding, and its affiliated corporations, including Dream Weaver.

23. Subsequent to July 27, 2000, and up until approximately mid 2004, DeName performed all of his duties for Dream Weaver without compensation from Dream Weaver. From between mid 2004 and March 2008, DeName received only approximately \$1,700 per month from Dream Weaver as management fees, and at all

times subsequent to March 2008, DeName received no compensation of any kind from Dream Weaver for the duties he has performed for Dream Weaver.

24. Subsequent to July 27, 2000 Poritzky also received distributions from Poritzky Funding, Inc., now known as 3-D Funding, and Dream Weaver.

25. Dream Weaver's only significant assets at the present time consist of four parcels of real property (collectively, the "Four Parcels"), which were all acquired by Dream Weaver after DeName became an officer, director and fifty percent shareholder of Dream Weaver.

26. One of the Four Parcels is located at 542 North Main Street in Brewster, New York (the "Brewster Property"), and is improved with a building that is operated as a restaurant by Rincon Chapin Corp. ("Rincon"), which is not related to any party to this proceeding.

27. The Brewster Property was purchased by Dream Weaver from Bruno and Maria Ballessarre on September 11, 2001 for \$133,400, which was contributed by Poritzky. Shortly after the closing on such sale, DeName and Poritzky executed the Modification Agreement modifying the Shareholder's Agreement to take into account the contribution to the purchase price made by Poritzky. A copy of the Modification Agreement is annexed hereto as Exhibit "A" and made a part hereof.

28. In addition to other matters, the Modification Agreement provides that upon the sale or transfer of the Brewster Property, Poritzky would be entitled only to the return of the \$135,000 he had contributed to purchase the property, and that the parties would otherwise share equally in all proceeds of such sale or transfer in excess of

\$135,000 and would also otherwise share in the profits and losses and income and expenses from the Brewster Property on an equal basis.

29. The Brewster Property currently generates rents of approximately \$3,000 each month and has annualized monthly expenses of approximately \$2,100 for real property taxes and insurance.

30. The second of the Four Parcels is improved by a building located at 1380 Albany Post Road, in Croton-on-Hudson, New York (the "Albany Post Road Property"), which is currently rented to Poritzky's son-in-law, Ronald Weinheim on a month to month tenancy at a rental of approximately \$1,400 per month and has expenses of approximately \$3,500 per month, for a monthly operating loss of approximately \$2,100.

31. The Albany Post Road Property was purchased by Dream Weaver in 2002 for \$275,000, which was financed by private investors. It was subsequently refinanced with a conventional bank mortgage that was guaranteed by both Poritzky and DeName. The mortgage is now held by Hudson City Savings Bank with a current outstanding principal balance of approximately \$265,813, and has a monthly payment of approximately \$3,375.00.

32. The third of the Four Parcels is located on Route 301 in the Town of Kent, New York (the "Route 301 Property"), and was purchased by Dream Weaver in December 2004 from Edward and Barbara Klein for \$175,000, financed ultimately by individual private investors who are still owed approximately \$178,000.

33. A delicatessen business was conducted on the Route 301 Property until approximately two years ago, when both Poritzky and his attorney, Kenneth Gunshor,

Esq. demanded that the business cease operations due to ongoing losses. Prior to the cessation of business, DeName contributed approximately \$50,000 worth of equipment to the Route 301 Property that he had purchased from his own funds in the hopes of attracting a purchaser for the land and business as a going concern.

34. The last of the Four Parcels consists of an unimproved lot located at 1325 Lincoln Terrace in Peekskill, New York (the "Lincoln Terrace Lot"), which Dream Weaver purchased from Barbara Shuler in May 2003 for approximately \$5,000 in cash and the satisfaction of approximately \$10,000 in accrued real property taxes, using funds that were contributed equally by DeName and Poritzky.

35. For more than two years DeName expended considerable time and personal resources to manage and maintain all Four Parcels currently owned by Dream Weaver, which at present have a net operating loss.

36. During the last two years, Dream Weaver's principal business activity was devoted towards the sale of its properties. DeName and his attorney, Gerald Klein, Esq., and Poitzky and his attorney, Mr. Gunshor, attended meetings, had numerous discussion, conducted extensive negotiations and exchanged correspondence in attempting to sell the Four Parcels.

37. Mr. Klein and Mr. Gunshor conducted negotiations with the ARSA, LLC and its attorney, Philip Hersh, Esq., for the sale of the Albany Post Road Property. Mr. Gunshor assumed responsibility for the sale of the Brewster Property, and conducted all of the negotiations on behalf of Dream Weaver with Rincon Chapin Corp. and its attorney, John Savoca, Esq. for the sale of the Brewster Property to the operator of the restaurant business conducted on that property.

38. Mr. Gunshor reported on the progress of the negotiations, and advised DeName and Mr. Klein that a closing could be set from since June 2008.

39. From June to December 2008, further progress was made toward selling both the Brewster Property and the Albany Post Road Property, and by then, it appeared that Rincon Chapin Corp. and ARSA, Inc. were prepared to purchase those properties on terms that had been negotiated between Dream Weaver and the respective purchasers.

40. In early December 2008, Mr. Gunshor requested a meeting to discuss those sales and possible sales of the Lincoln Terrace Lot and the Route 301 Property.

41. With respect to the Lincoln Terrace Lot and the Route 301 Property, both Mr. Gunshor and Mr. Poritzky represented that they had received offers of \$225,000 from a prospective purchaser of the Route 301 Property and \$80,000 from a prospective purchaser of the Lincoln Terrace Lot.

42. After receiving assurances from Mr. Gunshor that agreements reached with respect to the Brewster Property and the Albany Post Road Property would not be held up by a failure to reach agreement as to all of the details for the sales of the Route 301 Property and/or the Lincoln Terrace Property, a meeting was held on December 12, 2008 as requested by Mr. Gunshor, which was attended by Mr. Klein, Mr. Gunshor, Poritzky and DeName.

43. At the meeting held on December 12, 2008, both Poritzky and DeName agreed to all of the terms for the sales of the Albany Post Road Property to ARSA, LLC and the Brewster Property to Rincon Chapin Corp., as well as all credits, debits and distributions that should be made with the proceeds of those sales among Dream Weaver, Poritzky and DeName. The parties also formed an outline or plan for selling the Lincoln

Terrace Lot and the Route 301 Property, and agreed on the purchase prices that would be acceptable to Poritzky and DeName on those sales, namely \$225,000 for the sale of the Route 301 Property and \$80,000 for the sale of the Lincoln Terrace Lot.

44. Following the meeting held on December 12, 2008, Mr. Klein prepared an agreement for the sale of the Albany Post Road Property and the Brewster Property incorporating everything that had been agreed to at the meeting, and sent the agreement to Mr. Gunshor on December 18, 2008. A copy of that document is annexed hereto as Exhibit "B" and made a part hereof.

45. If the sales of the Four Parcels were consummated at the prices agreed to by both DeName and Poritzky, the sales would generate more than a net total of approximately \$540,000 for Dream Weaver and distribution to Poritzky and DeName, after payment of: (a) the mortgage on the Albany Post Road Property; (b) the amount owed to private investors on the Route 301 Property; (c) the amount due to Poritzky for the Brewster Property under the Modification Agreement; and (d) accrued taxes and expenses attributable to all Four Parcels.

46. Based on all of the foregoing, no good grounds exist for the judicial dissolution of Dream Weaver, in that Dream Weaver has been able to successfully conduct and manage the business activity agreed to by the Petitioner and the respondent DeName, namely orderly and profitable sales of the Four Parcels owned by Dream Weaver, and Dream Weaver remains able to pursue this course of action and manage its affairs without the necessity of judicial dissolution.

**AS AND FOR A SECOND DEFENSE DeNAME SETS
FORTH AND ALLEGES, ON HIS OWN BEHALF
AND ON BEHALF OF DREAM WEAVER, AS
FOLLOWS UPON INFORMATION AND BELIEF:**

47. DeName repeats and realleges each and every allegation set for in paragraphs "14" through "46" herein above as if fully set forth at length herein.

48. The relief sought by the Petitioner herein, namely the judicial dissolution of Dream Weaver and the forced sale of all Four Parcels by a receiver can only produce substantial costs and expenses associated with the fees, commissions and expenses of a referee and receiver, as well as substantial attorneys' fees and expenses associated with litigation.

49. All such costs and expenses are unnecessary and can be avoided if the sales of the Four Parcels were consummated at the prices agreed to by both DeName and Poritzky.

50. The forced sale of the Four Parcels in judicial dissolution proceedings will result in lower purchase prices being paid by the ultimate purchasers in the court proceedings than the amounts that have been offered by the existing prospective purchasers following arms length negotiations.

51. Based upon all of the foregoing, judicial dissolution is not beneficial, and will instead cause DeName and Dream Weaver irreparable harm.

**AS AND FOR A THIRD DEFENSE AND COUNTERCLAIM
DeNAME SETS FORTH AND ALLEGES, ON HIS OWN
BEHALF AND ON BEHALF OF DREAM WEAVER, AS
FOLLOWS UPON INFORMATION AND BELIEF:**

52. DeName repeats and realleges each and every allegation set for in paragraphs "14" through "46" and "48" through "51" herein above as if fully set forth at length herein.

53. After reaching the agreements at the meeting held on December 12, 2008 which were memorialized in Exhibit "B", and contrary to the assurances that had been given to Mr. Klein and DeName by the Petitioner's attorney, Poritzky refused to honor his word and insisted on an all or nothing agreement, encompassing all Four Parcels.

54. Poritzky then retracted on parts of the agreements that had been reached at the meeting held on December 12, 2008 with respect to sales of the Brewster Property and the Albany Post Road Property and reneged on those agreements, just as he had refused to honor his word and other oral promises he made to DeName concerning their business dealings, including those involving 3-D Funding, Inc. and property located on Park Street in Peekskill.

55. Poritzky then threatened to bring the instant proceeding, knowing the harm that it would cause Dream Weaver and DeName, in an attempt to obtain additional funds and considerations that he was not entitled to under the law or the Shareholders' Agreement and Modification Agreement.

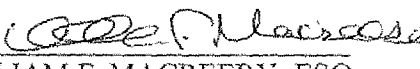
56. The Petitioner's conduct as described above violated the fiduciary obligations that he owed to Dream Weaver and DeName, and has seriously jeopardized the sales of the Four Parcels to the prospective purchasers that had been arranged after months of time, effort and expense.

57. By reason of the foregoing, the Petitioner has been guilty of bad faith and oppressive conduct warranting dismissal of this proceeding.

58. As a direct result of Poritzky's breaches and violations of his fiduciary duties, oppressive conduct and bad faith, the Petition should be dismissed and Dream Weaver and DeName should be awarded a money judgment against the Petitioner on this counterclaim in an amount to be determined at trial in excess of \$270,000, plus interest, costs and expenses, including reasonable attorneys' fees.

WHEREFORE, the respondent DeName demands judgment as follows: (a) dismissing the Petition; (b) awarding Dream Weaver and DeName a money judgment against the Petitioner on the counterclaim in an amount to be determined at trial in excess of \$270,000, plus interest, costs and expenses, including reasonable attorneys' fees; and (c) granting the respondent DeName the costs and disbursements of this action, together with such other and further relief as the Court may deem just and proper.

Dated: Granite Springs, New York
February 23, 2009


WILLIAM F. MACCREERY, ESQ.
Attorney for the Respondent
Stephen T. DeName
7 Granite Springs Road
Granite Springs, New York 10527
(914) 248-0531

To: Kenneth Gunshor, Esq.
Attorney for the Petitioner
100 South Bedford Road
Mount Kisco, New York 10549