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| Matter of Estate of Philip Mandelbaum v Five Ivy Corp. |
| 2010 NY Slip Op 03373 |
| Decided on April 27, 2010 |
| Appellate Division, First Department |
| Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431. |
| This opinion is uncorrected and subject to revision before publication in the Official Reports. |

Decided on April 27, 2010

Gonzalez, P.J., Catterson, Moskowitz, Renwick, Richter, JJ.

2654 601050/08

[*1]In re Estate of Philip Mandelbaum, Petitioner-Appellant,

v

Five Ivy Corp., Respondent-Respondent.

Orloff, Lowenbach, Stifelman & Siegel, P.A., Roseland, NJ
(Samuel Feldman of counsel), for appellant.

Putney, Twombly, Hall & Hirson LLP, New York (Philip H.
Kalban of counsel), for respondent.

Order, Supreme Court, New York County (Charles E. Ramos, J.), entered November 23, 2009, which, in a proceeding pursuant to Business Corporation Law § 623 to fix the fair value of shares, inter alia, denied petitioner's motion to compel production of respondent's Subchapter S election documents for 2008 or 2009 and tax returns for 2008 and 2009, unanimously affirmed, with costs.

The motion court properly denied production of information regarding events subsequent to the undisputed valuation date of December 27, 2007. Contrary to petitioner's contention, the statute's requirement that the court consider "all other relevant factors" in

fixing value does not modify its time frame for fixing value "as of the close of business on the day prior to the shareholders' authorization date" (Business Corporation Law § 623[h][4]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 27, 2010

CLERK

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