

SUPREME COURT – STATE OF NEW YORK  
**IAS TERM PART 14 NASSAU COUNTY**

**PRESENT:**

**HONORABLE LEONARD B. AUSTIN**

Justice

**Motion R/D: 11-23-2006  
Submission Date: 12-1-2006  
Motion Sequence No.: 001**

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**In the Matter of the Petition of Stephen  
O'Neill and Gerald Wood, for an order  
permitting the inspection and copying  
of the books and records of Little Neck  
Nursing Home, LLC., pursuant to  
Section 1102 of the Limited Liability  
Laws.**

**COUNSEL FOR PETITIONERS  
The Silber Law Firm, LLC.  
30 Vesey Street, 2<sup>nd</sup> Floor  
New York, New York 10007**

**COUNSEL FOR RESPONDENT  
Abe Rappaport, Esq.  
545 Eighth Avenue, 6<sup>th</sup> Floor  
New York, New York 10018**

**ORDER**

The following papers were read on Petitioners motion for an order permitting the inspection and copying of the books and records of Little Neck Nursing Home, LLC.:

- Notice of Petition dated September 18, 2006;
- Verified Petition of Stephen O'Neill and Gerald Wood dated September 18,2006;
- Affirmation in Opposition dated November 29, 2006;
- Affirmation of Meyer Y. Silber dated November 30, 2006.

**BACKGROUND**

Stephen O'Neill and Gerald Wood ("Petitioners") each own a five percent interest in the Little Neck Nursing Home, LLC. ("Nursing Home").

Petitioners allege that Sidney Esikoff ("Esikoff"), a managing director of the Nursing Home, illegally and improperly entered into a management contract with Chaim Kaminetzky ("Kaminetzky"). As a result, Petitioners want to be able to examine and copy certain corporate books and records that would shed light as to the current management status of the Nursing Home.

Petitioners claim that the need for the document disclosure is necessary because a management agreement between Esikoff and Kaminetzky may run contrary to Department of Health regulations and laws, and that any management agreement not approved by the Department of Health may subject Petitioners, as members of the Nursing Home, to fines and/or penalties should the Department of Health learn of such an arrangement.

Furthermore, Petitioners claim that inasmuch as they have interests, and are in the process of obtaining further interests, in other Nursing Homes, should the Department of Health discover the alleged management agreement between Esikoff and Kaminetzky, their interests and potential interests in other facilities may be adversely affected.

In furtherance of Petitioners' attempt to gain interests in other homes, they are required by the State to submit Nursing Home's 2005 certified financial statements.

Additionally, Petitioners indicate that Esikoff's interest in the Nursing Home has been, or may be in the process of being, sold to Kaminetzky or another entity. Petitioners allege that pursuant to the Nursing Home's Conversion

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and Operating Agreement, each member has the right of first refusal to purchase the interest of any selling member. Thus, Petitioners assert that, in order to determine the status of the Nursing Home's ownership, they must be allowed access to the corporate documents.

Nursing Home asserts that Petitioners have failed to demonstrate that Kaminetzky has a management agreement with the Nursing Home, and furthermore, even if he did, how such an agreement would be illegal.

Nursing Home also contends that, as Esikoff has management authority of the Nursing Home, as per the Conversion and Operating Agreement, should he wish to enter into a management agreement with anyone, it would be at his discretion.

Nursing Home also indicates that while Petitioners may have a right of first refusal, it would not be relevant here since Petitioners have no proof that the facility is being sold or has been offered for sale. Thus, this claim should not be used as the basis to examine the corporate documents in accordance with Article 9 of the Conversion and Operating Agreement of the Nursing Home.

Additionally, the Nursing Home relies upon Section 1102 of the Limited Liability Company Law as only allowing Petitioners to review the records enumerated in Limited Liability Company Law § Section 1102 (a)1-5 which is mirrored in Article 3.4 of the Conversion and Operating Agreement.

DISCUSSION

Article 3.4 of the Nursing Home's Conversion and Operating Agreement provides as follows:

"Information. Each member may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, the Operating Agreement, the minutes of any meeting of the Members and any tax returns of the Company for the immediately preceding three fiscal years.

The agreement in Article 11.9, also provides, that the governing law shall be that of the State of New York.

Limited Liability Company Law §1102(a)1-5 requires a limited liability company to maintain a current list of name and mailing address of its manager or managers, a current list of the names and mailing addresses of the members together with their ownership interest in the limited liability company, a copy of the articles of organization and any amendments or restatements thereto, a copy of the operating agreement and any amendments or restatements thereto, and a copy of the company's federal, state and local income tax or informational returns for the three most recent fiscal years.

Limited Liability Company Law 1102 (b) provides that any member, subject to reasonable standards as may be set forth in the operating agreement, may inspect and copy for purposes reasonably related to the member's interest, the items set forth in Limited Liability Company Law §1102(a)1-5, financial statements maintained by the LLC for the three most recent years *and other*

*information regarding the affairs of the limited liability company as is just and reasonable.* (Emphasis added).

Limited Liability Company Law §1102(b) also gives any member of a limited liability company the right to inspect all of the limited liability company's records so long as such inspection is reasonably related to the member's interest. See, 16 NY Jur2d *Business Relationships* §2070. Restrictions on a member's right to inspect the records of a limited liability company must be contained in the operating agreement. Limited Liability Company Law §§1102(b)(c). Respondent does not assert any of these limitations are relevant to this application.

Respondent's assertion that Petitioners must demonstrate a need to review the records before such records are made available is without merit. The only statutory requirements for obtaining full access to the records is that the person demanding access is a member at the time the demand is made and that the demand is reasonably related to the member's interest.

Petitioners seek to review the records of Nursing Home to determine if Esikoff has entered into a management agreement with Kaminetsky. While Esikoff as the managing member has the right under the operating agreement to enter into contracts on behalf of Nursing Home, that right does not override the provisions of Limited Liability Company Law §1102(b). Respondent cannot possibly be asserting that Esikoff has the authority to enter into a contract that might jeopardize Nursing Home's license and subject its members to sanctions

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and penalties without the right of members to review his actions. Certainly, the desire to avoid sanctions and penalties arising out of the operation of Nursing Home is reasonably related to Petitioner's interest.

Petitioners also seek to inspect the records in connection with the right of first refusal afforded to them in Nursing Home's operating agreement. This, too, is reasonably related to their interest.

Respondent's denial of having entered into a management agreement with Kaminetsky is not dispositive. The statute under which Nursing Home was formed gives its members the right to inspect the records.

Under the circumstances, Petitioners should be given the right to inspect the records of Nursing Home. Denying them that right would be in contravention of Limited Liability Company Law §1102(b).

Accordingly, it is,

**ORDERED**, that Petitioners' application for inspection of the books and records of Little Neck Nursing Home, LLC is **granted**; and it is further,

**ORDERED**, that Little Neck Nursing Home LLC shall make available to Petitioners, within 10 days of service of a copy of this order with Notice of Entry, such records of Little Neck Nursing Home as Petitioners shall specify in writing.

This constitutes the decision and Order of the Court.

Dated: Mineola, NY  
May 9, 2007



Hon. LEONARD B. AUSTIN, J.S.

**ENTERED**

MAY 15 2007

**NASSAU COUNTY**  
COUNTY CLERK'S OFFICE