SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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DIVANEA COVEN, Personal Representative of the Estate of Walter I. Coven, a/k/a Walter Irving Coven, a/k/a Walter Coven, Deceased,

Petitioner,

-against-

NEPTUNE EQUITIES INC. and STACI BRODER,

Respondents,

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Index No.:

VERIFIED PETITION

Petitioner, Divanea Coven, Personal Representative of the Estate ("Estate") of Walter I. Coven, a/k/a Walter Irving Coven, a/k/a Walter Coven, Deceased, by her attorneys, Forchelli Deegan Terrana LLP, as and for her verified petition, respectfully shows to this Court and alleges as follows:

1. At all times hereinafter mentioned, petitioner is the Estate of Walter I. Coven, a/k/a Walter Irving Coven, a/k/a Walter Coven ("Walter"), deceased, by his personal representative, Divanea Coven, who is the surviving spouse of Walter ("Petitioner").

2. At all times hereinafter mentioned, Petitioner was issued Letters of Administration to act as personal representative of Walter's estate by the Circuit Court for Palm Beach County, Florida, Probate Division.

3. At all times hereinafter mentioned, respondent Neptune Equities Inc. ("Neptune") was and is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with an address of P.O. Box 151, Bellmore, New York 11710.

4. At all times hereinafter mentioned, respondent Staci Broder ("Broder") was and is an individual residing at 3078 Ira Road, Bellmore, New York 11710.

5. As affirmed by the New York State Appellate Division, Second Department in a Decision and Order dated October 6, 2021, Petitioner owns 50% of the issued and outstanding shares of the common stock of Neptune and Broder owns the other 50% of said shares.

6. Neptune is not registered as an investment company under the Act of Congress entitled "Investment Company Act of 1940" and Neptune's shares are not listed on a national securities exchange or regularly quoted in an over the counter market by one or more members of a national or affiliated securities association.

7. Neptune engages in the business of owning, holding and managing the commercial real property located at 1711 Neptune Avenue, Brooklyn, New York 11224 ("Subject Premises").

8. Neptune owns the building located at 1711 Neptune Ave. and rents the building to tenants. The building is fully occupied and Neptune accepts and retains rental payments from the tenants.

9. As will be more fully set forth at length below, there are no validly elected directors or officers of Neptune.

10. Upon information and belief, there are no other shareholders of Neptune other than Petitioner and Broder, and both are entitled to vote in any election of directors of Neptune

FACTUAL HISTORY

11. Walter passed away in the State of Florida on May 30, 2016.

12. After Walter's death, Broder disputed Petitioner's 50% ownership interest in Neptune.

13. In an action between the parties commenced in New York State Supreme Court, Nassau County under index number 601706/2017, the Honorable Timothy S. Driscoll found, after

a framed-issue hearing, that Petitioner was the owner of 50% of the shares of Neptune, as set forth in his Decision and Order dated February 22, 2018.

14. Broder continued to dispute Petitioner's 50% ownership interest in Neptune and appealed the Order of Justice Driscoll.

15. By Decision and Order dated October 6, 2021, the New York State Appellate Division, Second Department affirmed the lower Court's Order holding that Petitioner owned 50% of the shares of Neptune.

16. There are no corporate records evidencing that Broder is the validly elected sole director of Neptune.

17. There are no corporate records evidencing that Broder is the validly elected Chief Executive Officer, President, Secretary or any other officer of Neptune.

18. There are virtually no Neptune corporate records at all. For example, no corporate by-laws were ever validly adopted for Neptune.

19. As of January 2022, Neptune did not have a validly elected Board of Directors or any validly elected officers.

20. Pursuant to New York State Business Corporation Law ("BCL") §603(a), by correspondence dated January 19, 2022 to Broder, Petitioner, as 50% shareholder of Neptune, called a special meeting of Neptune's shareholders for the election of a Board of Directors on March 30, 2022 at 10:00 a.m. via the Zoom platform. Broder was notified that the sole purpose of the meeting was to fix the size of the Board of Directors of Neptune and elect a Board of Directors.

21. The meeting was held on March 30, 2022 at 10:00 a.m. and Petitioner and Broder attended with respective counsel.

22. Each of the two Neptune shareholders, (1) Petitioner and (2) Broder, made a proposal as to the size of the Board and proposed Board nominee(s).

23. The Petitioner proposed that Neptune establish a Board of Directors consisting of one (1) Director, and nominated herself as sole Director. Broder rejected this proposal with a "No" vote.

24. At first, Broder proposed that the Neptune Board of Directors have one (1) Director, and nominated herself as sole Director. Petitioner rejected this proposal with a "No" vote.

25. Then, Broder proposed that the Neptune Board of Directors have two (2) Directors, and nominated herself and Ross Coven. Petitioner rejected this proposal with a "No" vote as well.

26. By reason of the foregoing, a vote on the establishment, size and appointment of a Board of Directors of Neptune was deadlocked, and no Board was established or appointed.

27. In the absence of a duly appointed Board of Directors or officers, no option exists for the management of Neptune other than by its two 50% shareholders jointly.

28. By email dated March 31, 2022, Petitioner's counsel requested that Broder's counsel advise her, among other things, that (a) she was to take no action on behalf of Neptune without the prior written approval of Petitioner, including, but not limited to, the payment of any costs or expenses, the payment of any compensation or benefit to herself, the reimbursement of any expense to herself, the provision of any employee benefit to herself, the payment of legal fees on behalf of herself or Neptune, any loan repayments, and any shareholder distributions; and (b) Petitioner be provided with full and immediate access to all Neptune bank accounts, including remote and/or electronic access (including banking institution names, bank account numbers, access codes, passwords, etc.).

29. By email dated April 1, 2022, Broder's counsel rejected Petitioner's "interpretation" of the March 30, 2022 shareholders meeting and rejected Petitioner's requests set forth in the March 31, 2022 email.

30. Broder has continued to act unilaterally in connection with all Neptune management and business and she continues to take compensation and benefits to herself, in each instance all without the authorization and approval of Petitioner.

31. Broder pays herself a salary out of Neptune's funds of, upon information and belief, $117,000/year or more. That salary was decided upon unilaterally and not authorized or approved by Petitioner. In fact, Petitioner has objected to Broder's continued receipt of this salary.

32. Upon information and belief, Broder performs little to no actual work for Neptune to substantiate the significant salary she takes. Neptune's mailing address is a post office box because Neptune lacks a real physical office and Broder operates out of her home.

33. As stated above, Neptune owns one parcel of commercial real property located at 1711 Neptune Avenue, Brooklyn, New York and the building is fully tenanted. As such, Broder merely collects the monthly rental checks and every couple of years has to work on new leases, for which she hires attorneys, paid for out of Neptune's funds. Upon information and belief, other than those sporadic, nominal tasks, Broder does not provide any services to Neptune to justify such a significant salary.

34. In addition, upon information and belief, Neptune provides other benefits to Broder and reimburses her for certain expenses, none of which was authorized or approved by Petitioner and none of which was authorized or approved by any Board of Directors of Neptune.

AS AND FOR A FIRST CAUSE OF ACTION
(Dissolution Under BCL §1104(a)(2) and §1104(a)(3))

35. Petitioner repeats and realleges the allegations set forth in paragraphs "1" through "34" of this Petition with the same force and effect as if set forth herein.

36. The grounds for dissolution under BCL §1104(a)(2) is that the shareholders are so divided that the votes required for the election of a Board of Directors cannot be obtained.

37. As is shown above, the dissension between Petitioner and Broder has led to the inability to establish and appoint a Board of Directors of Neptune.

38. The grounds for dissolution under BCL §1104(a)(3) is that "[t]here is internal dissension and two or more factions of shareholders are so divided that dissolution would be beneficial to the shareholders."

39. As shown above, Petitioner and Broder are divided on the issue of Broder's salary as well as her reimbursement by Neptune for other benefits and expenses.

40. Broder has continued to take a salary and other benefits from Neptune despite Petitioner's objections, which equates to further deadlock.

41. By reason of the foregoing, Petitioner, as 50% owner of Neptune, seeks dissolution of the corporation pursuant to BCL §1104(a)(2) and §1104(a)(3), liquidation and then distribution of its assets between its shareholders.

AS AND FOR A SECOND CAUSE OF ACTION
(Appointment of a Receiver)

42. Petitioner repeats and realleges the allegations set forth in paragraphs "1" through "41" of this Petition with the same force and effect as if set forth herein.

43. Due to the deadlock of the shareholders of Neptune, pursuant to BCL §1113 a receiver should be appointed to take over the day-to-day operations of Neptune until such time as the corporation is dissolved and liquidated.

AS AND FOR A THIRD CAUSE OF ACTION
(Accounting)

44. Petitioner repeats and realleges the allegations set forth in paragraphs "1" through "43" of this Petition with the same force and effect as if set forth herein.

45. As is shown above, Broder continues to illegally act unilaterally without appropriate authorization with respect to the affairs of Neptune, including, but not limited to, making unilateral decisions regarding Neptune's finances including compensation for herself.

46. Petitioner has continuously asked for all Neptune's financial documentation and information, and Neptune bank account information and access, be provided to her. Despite due demand, Broder has failed to forward Petitioner Neptune's financial documentation for the first three quarters of 2022, and failed to provide her with Neptune bank account access.

47. By reason of the foregoing, Petitioner is entitled to a full accounting of all Neptune transactions from October 6, 2021 to date.

AS AND FOR A FOURTH CAUSE OF ACTION
(Shareholder Derivative Action under BCL §626)

48. Petitioner repeats and realleges the allegations set forth in paragraphs "1" through "47" of this Petition with the same force and effect as if set forth herein.

49. As shown above, there is no validly elected Board of Directors or officers of Neptune, yet Broder continues to act as the sole Board member and sole officer of the corporation, unilaterally making all decisions to the detriment of the corporation and Petitioner, the other shareholder.

50. As shown above, Broder pays herself a salary out of Neptune's funds of, upon information and belief, $117,000/year or more. That salary was decided upon unilaterally and not authorized or approved by Petitioner. In fact, as shown above, Petitioner has objected to Broder's continued receipt of this salary.

51. As shown above, Broder performs little to no actual work for Neptune to substantiate a salary of $117,000/year.

52. In addition, upon information and belief, Neptune provides other benefits to Broder and reimburses her for certain expenses, none of which was authorized or approved by Petitioner and none of which was authorized or approved by any Board of Directors of Neptune.

53. Moreover, Broder has made other unilateral decisions to the detriment of Neptune and its shareholders.

54. At the time of Walter's death, Broder and Neptune alleged that Walter had taken loans from Neptune in the total amount of $70,665.17.

55. Neptune thereafter caused a complaint to be filed in the Circuit Court for Palm Beach County, Florida against Petitioner to recoup these alleged loans.

56. In October 2021, after the Decision and Order of the Appellate Division, Second Department affirming Petitioner's 50% ownership interest in Neptune, Broder unilaterally chose to issue herself a distribution check in the sum of $22,360.00. Broder did not advise Petitioner that she was doing this.

57. Only after Petitioner learned about and questioned this unequal distribution did Broder advise, through counsel, that Broder had unilaterally chosen to reclassify the alleged loans owed by Walter in the sum of $70,665.17 and the loans owed by Broder in the sum of $48,305.00,

both of which had been carried for years on Neptune's books and records as loans, as shareholder distributions.

58. Broder advised that since the loans attributable to Walter exceeded the loans attributable to Broder by $22,360.00, Broder unilaterally paid herself an alleged equalizing distribution of $22,360.00 on October 15, 2021.

59. Thereafter, on December 10, 2021, almost two (2) months later and after being confronted by Petitioner about this alleged distribution, Neptune's counsel in the Florida litigation advised Petitioner that Broder unilaterally decided to withdraw Neptune's lawsuit against the Estate because Broder decided to take this "equalizing distribution". A Notice of Voluntary Dismissal Without Prejudice was e-filed in the Florida action on December 9, 2021.

60. Upon information and belief, the attorney representing Neptune in the Florida litigation against the Estate was paid out of Neptune funds. As such, Broder further wasted corporate assets paying attorneys' fees to bring a lawsuit on an alleged note against the Estate, then unilaterally deciding to reclassify the loans that lawsuit is based on as distributions and take an equalizing distribution from Neptune to herself for the difference, and then paying attorneys' fees again to voluntarily withdraw the claim Neptune paid attorneys' fees to commence.

61. In addition, Neptune's General Ledger for 2019 showed that an alleged distribution to W. Coven was reclassified into a "Loan Receivable – Estate of Walter Coven" in the sum of $24,500.00, with no explanation of allegedly what this loan was comprised of. This $24,500.00 "distribution" only existed in the books of Neptune and was never distributed to the Peitioner.

62. This General Ledger adjusting entry seemingly sat idly on Neptune's books for 2020 and 2021.

63. When Broder unilaterally chose to reclassify the loans to Walter as distributions, as set forth above, she did not include this $24,500.00 amount in the alleged "equalizing" distribution she took.

64. Instead, in the Neptune 2021 General Ledger Adjusting Entries, the $24,500.00 "loan receivable" from the Estate to Neptune is reclassified as a "loan payable" from Neptune to Broder. Upon information and belief, this sum has not yet been taken by Broder as a distribution, but it seemingly is now being carried on Neptune's General Ledger as a distribution, which Broder can take at some point in the future. Again, Broder made all of these decisions unilaterally, without any authorization from Petitioner to the detriment of Neptune.

65. Broder also gets a monthly payment from Neptune in the sum of $2,325.56, which allegedly constitutes the monthly payment on a promissory note that Neptune allegedly executed in favor of Broder.

66. This promissory note was executed by Broder on behalf of Neptune, to herself, despite the fact she admitted to not being an officer of the corporation at the time of the note.

67. Finally, the east facing, exterior wall of the Subject Premises now has a large "billboard" sign hanging on it for Optimum Internet. Once again, Broder unilaterally made all decisions to allow this sign to be hung on the Subject Premises, never notified Petitioner that the sign would be hung and never obtained the Estate's approval to do so.

68. Petitioner is unaware if Neptune and/or Broder entered into an agreement to allow this "billboard" to be hung on the building and whether Neptune and/or Broder are receiving any monies for the right to hang the "billboard".

69. Petitioner has continuously requested that Broder stop this unilateral behavior and stop taking sums of money from Neptune to benefit herself.

70. Broder has refused to cease her self-enriching behavior.

71. Said withdrawals and payments by Broder were made from the funds and assets of Neptune, without any accounting to the shareholders of said corporation, and without authorization by a Board of Directors.

72. No demand has been made upon Broder because Broder has illegally taken unilateral control of Neptune, and has usurped the powers and prerogatives to conduct the business and affairs of Neptune, against the will and desire of Petitioner, the only other shareholder interested in Neptune; and, as such, it would be futile to make such demand.

73. There are no other persons or shareholders entitled to any shares in Neptune other than Petitioner and Broder, except such other creditors as the corporation may have.

74. Any judgment rendered herein for the actions of Broder should be chargeable to Broder.

75. By reason of the foregoing, Neptune has been damaged as a result of Broder's unauthorized compensation, benefits, reimbursement for costs and expenses, legal fee payments, note payments and unequal distributions in an amount to be determined at trial, which sum should be returned to Neptune by Broder.

AS AND FOR A FIFTH CAUSE OF ACTION
(Injunction)

76. Petitioner repeats and realleges the allegations set forth in paragraphs "1" through "75" of this Petition with the same force and effect as if set forth herein.

77. As shown above, there is no validly elected Board of Directors of Neptune and there is a shareholder vote deadlock as to the election of such a Board.

78. As such, Broder should not be allowed to continue to take unfettered, unauthorized corporate action, including making any and all unilateral decisions regarding Neptune such as

compensation and benefit and expense reimbursements, and she should not be allowed to continue taking a salary which was never authorized, nor approved, by any Board of Directors.

79. By reason of the foregoing, Petitioner is entitled to an injunction enjoining and restraining Broder from taking compensation, expense and cost payments and reimbursement, benefits, legal fee payments, note payments and unequal distributions, and/or making unilateral decisions for Neptune until such time as a Board of Directors is elected.

80. Petitioner has no adequate remedy at law.

81. There was a prior application by Petitioner for dissolution of Neptune which application was denied after trial by Justice Driscoll. Other than that, there has been no prior application for this relief made in this or any other Court or jurisdiction.

WHEREFORE, Petitioner demands judgment as follows:

(1) On the First Cause of Action, an order dissolving Neptune Equities Inc. pursuant to BCL §1104(a)(2) and/or §1104(a)(3), liquidating the assets of the corporation and distributing the proceeds to the shareholders;

(2) On the Second Cause of Action, an order pursuant to BCL §1113 appointing a receiver over Neptune Equities Inc. to take over the day-to-day operations of Neptune until such time as the corporation is dissolved and liquidated;

(3) On the Third Cause of Action, an order directing that an accounting be furnished by respondents with respect to all financial transactions of Neptune Equities Inc. from October 6, 2021 to date;

(4) On the Fourth Cause of Action, judgment against respondent Staci Broder for the damages which Neptune Equities Inc. has sustained by reason of the matters and things heretofore stated and set forth, as may be ascertained and determined at a trial of this matter;

(5) On the Fifth Cause of Action, a preliminary and permanent injunction enjoining and restraining respondent Staci Broder from taking compensation, expense and cost payments and reimbursement, benefits, legal fee payments, note payments and unequal distributions, and/or making unilateral decisions for Neptune until such time as a Board of Directors is elected; and

(6) For such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action, including reasonable attorneys' fees pursuant to BCL §626(e).

Dated: Uniondale, New York
October 12, 2022

FORCHELLI DEEGAN TERRANA LLP

By: Jacqueline Rappel
Jacqueline A. Rappel, Esq.
Attorneys for Petitioner
333 Earle Ovington Boulevard, Suite 1010
Uniondale, New York 11553
(516) 248-1700

VERIFICATION

STATE OF FLORIDA)
) ss:
COUNTY OF Palm Beach)

DIVANEA COVEN. being duly sworn, deposes and says that: I am the Personal Representative of the Estate of Walter I. Coven a/k/a Walter Irving Coven a/k/a Walter Coven, deceased, the Petitioner in the within action; I have read the annexed Verified Petition, know the contents thereof and the same are true to my knowledge, except for those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

DIVANEA COVEN

Sworn to before me this
10 day of October, 2022.

Frances C Stewart
Notary Public

FRANCES C. STEWART
Commission # GG 317240
Expires May 27, 2023
Bonded Thru Budget Notary Services