SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

TRIAL/IAS, PART 1
NASSAU COUNTY

In the Matter of the Petition of
DEBRA GOLD,

Petitioner,

INDEX No. 6722/11

MOTION DATE: Aug. 24, 2011
Motion Sequence # 001, 002

For the Judicial Dissolution of COSMO HOLDINGS LLC Pursuant to Limited Liability Company Law-Section 702

-against-

MATTHEW KANTER,

Respondent.

The following papers read on this motion:

Order to Show Cause..... X
Cross-Motion..... X
Affirmation in Opposition..... X
Reply Affirmation..... X

Petition for the judicial dissolution of Cosmo Holdings LLC and the winding up of the affairs of the company is **denied**. Respondent's cross-motion to disqualify Robert Gold, Esq. from representing petitioner is **denied** as **moot**, as petitioner has retained other counsel.

This is a petition for the judicial dissolution of a limited liability company pursuant to § 702 of the Limited Liability Company Law. Petitioner Debra Gold holds a 25 %

membership interest in Cosmo Holdings LLC and claims to be a managing member. Respondent Matthew Kanter is a managing member and holds the other 75 % membership interest.

Cosmo was formed on April 30, 2007 for the purpose of investing in other limited liability companies. The operating agreement provides that each member shall make an initial contribution of $526,500 to the capital of the company. The operating agreement further provides that a member who wishes to sell her interest must first make an offer to the other member to sell the interest at a mutually agreed upon price.

In 2009, Kanter removed Debra Gold as a signatory on Cosmo's bank account. On April 20, 2011, petitioner served a demand on respondent's counsel that Cosmo be dissolved based upon deadlock between the managing members.

This proceeding for the judicial dissolution of Cosmo was commenced on May 5, 2011. Petitioner alleges that respondent has withheld financial documents concerning the company and has refused to make distributions to petitioner.

Limited Liability Company Law § 702 provides that the court may decree judicial dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement. Dissolution is a drastic remedy, which is not to be granted unless management is unwilling or unable to promote the company's stated purpose or continuing the company is financially unfeasible (***1545 Ocean Ave. v Crown Royal Ventures***, 72 AD3d 121, 131 [2d Dept 2010]).

Article 4 of Cosmo's operating agreement provides that members holding a majority of the capital interests of the company shall elect the managers. As the holder of a majority membership interest, respondent has the authority to exclude petitioner from the management of Cosmo. Petitioner has not established that Kanter, the managing member is unable or unwilling to promote Cosmo's purpose of investment. Nor has petitioner shown that the continuation of Cosmo is financially unfeasible Accordingly, petitioner's motion for the judicial dissolution of Cosmo Holdings LLC, the appointment of a receiver, and the winding up of the affairs of the company is **denied**.

However, absent agreement between the parties as to a buyout price, petitioner has the common law right to an appraisal proceeding for the purpose of determining the fair market value of her membership interest in the limited liability company (***Appleton Acquisition v***

Nat'l. Housing Partnership, 10 NY3d 250, 256 [2008]). The parties shall conduct discovery as to the fair market value of petitioner's interest in Cosmo Holdings as of the date of the filing of the dissolution petition, May 5, 2011.

A Preliminary Conference has been scheduled for January 5, 2012 at 9:30 a.m. in Chambers of the undersigned. Please be advised that counsel appearing for the Preliminary Conference **shall** be fully versed in the factual background and their client's schedule for the purpose of setting **firm** deposition dates.

So ordered.

Dated OCT 26 2011

J.S.C.

ENTERED
OCT 28 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE