

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

HELEN WEBSTER,

Plaintiff,

-against-

FOREST HILLS CARE CENTER LLC, FOREST
HILLS ESTATE ASSOCIATES, LLC, DVORA
OSTREICHER and BENJAMIN LANDA,

Defendants.

SUMMONS

Index No.

Date Filed:

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon third-party plaintiff's attorneys an Answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Carle Place, New York
September 18, 2014

DOLLINGER, GONSKI & GROSSMAN
Attorneys for Plaintiff

By:



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SUPREME COURT OF THE STATE OF NEW YORK
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HELEN WEBSTER,

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HILLS ESTATE ASSOCIATES, LLC, DVORA
OSTREICHER and BENJAMIN LANDA,

Defendants.

COMPLAINT

Index No.

Plaintiff, HELEN WEBSTER, by her attorneys, Dollinger, Gonski & Grossman, complaining of the defendants, respectfully shows to this Court and alleges, upon information and belief, as follows:

THE PARTIES

1. Plaintiff, HELEN WEBSTER ("WEBSTER"), is a resident of the State of New York, County of Kings and is a member of FOREST HILLS CARE CENTER LLC and FOREST HILLS ESTATE ASSOCIATES, LLC.

2. Defendant, FOREST HILLS CARE CENTER LLC ("FOREST HILLS CARE"), is a domestic limited liability company formed on April 27, 2000, maintaining its principal place of business in Queens County, New York, and owns and operates a nursing home facility at 71-44 Yellowstone Boulevard, Forest Hills, New York.

3. Defendant, FOREST HILLS ESTATE ASSOCIATES, LLC ("FOREST HILLS ESTATE"), is a domestic limited liability company formed on November 24, 1997,

maintaining its principal place of business in Queens County, New York, owns the real property located at 71-44 Yellowstone Boulevard, Forest Hills, New York upon which the FOREST HILLS CARE nursing home facility is located.

4. Defendant, DVORA OSTREICHER ("OSTREICHER"), is an individual residing in Kings County, New York.

5. Defendant, BENJAMIN LANDA ("LANDA"), is an individual residing in Kings County, New York.

6. LANDA is a member of FOREST HILLS CARE.

7. OSTREICHER is the manager of FOREST HILLS CARE.

8. LANDA is a member of FOREST HILLS ESTATE.

9. OSTREICHER is the manager of FOREST HILLS ESTATE.

10. WEBSTER has not received distributions from each of FOREST HILLS CARE and FOREST HILLS ESTATE to which she is entitled to be paid.

11. OSTREICHER is the manager of each of the defendant limited liability companies named herein.

12. LANDA has dominion and control over the operations of FOREST HILLS CARE and FOREST HILLS ESTATE (collectively the "Entities").

13. LANDA has exerted influence and pressure to prevent the Entities and OSTREICHER from permitting the Entities to pay distributions to WEBSTER.

14. LANDA and WEBSTER are involved in numerous lawsuits involving their relationship in other corporations and limited liability companies, and LANDA has made clear that

he will not comply with any demands made by WEBSTER concerning the operations or finances of the defendant Entities, including any distributions.

**AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF WEBSTER, INDIVIDUALLY, AGAINST
FOREST HILLS CARE, OSTREICHER AND LANDA
(ACCOUNTING)**

15. Plaintiff, WEBSTER, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "14" of this Complaint as if same were more fully set forth at length herein.

16. WEBSTER is a member of FOREST HILLS CARE owning a fifteen (15%) percent membership interest.

17. WEBSTER has not received all of her distributions from FOREST HILLS to which she is entitled to be paid.

18. Other members of FOREST HILLS have received and continue to receive distributions from FOREST HILLS CARE.

19. Limited Liability Company Law §1102(b) and the Operating Agreements of the Limited Liability Companies provide that the members of a limited liability company may inspect and copy:

- A current list of the full name and last known mailing address of each manager.

- A current list of the full name and last known mailing address of each member together with the contribution and the share of profits and losses of each member or information from which such share can be readily derived.

- A copy of the articles of organization and all amendments or restatements and all executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed.
- A copy of the operating agreement, any amendments and any amended and restated operating agreements.
- A copy of the federal, state and local income tax or information returns and reports for the three most recent fiscal years.
- Any financial statements maintained by the limited liability company for the three most recent fiscal years.
- Any other information regarding the affairs of the limited liability company.

20. Plaintiff, WEBSTER, has the right to access the books and records of FOREST HILLS CARE.

21. Defendant, FOREST HILLS CARE, has maintained and continues to possess the books and records of FOREST HILLS CARE and has repeatedly denied WEBSTER access to such books and records.

22. Because of the failure of FOREST HILLS CARE to disclose and afford WEBSTER access to the books and records of FOREST HILLS CARE, WEBSTER has been deprived of knowledge of the financial status of the business.

23. The information regarding the financial status of FOREST HILLS CARE and its business enterprises have been deliberately withheld from WEBSTER by FOREST HILLS CARE.

24. As the manager of FOREST HILLS CARE, OSTREICHER owes a fiduciary duty to WEBSTER.

25. Upon the rendering of an accounting, FOREST HILLS CARE should be capable of determining the propriety of all the distributions made and expenses disbursed by FOREST HILLS CARE, in furtherance of its respective business activities.

26. FOREST HILLS CARE has a duty to account, has failed and refused to do so, and has never rendered an accounting of the financial status and operations in accordance with the Limited Liability Company Law.

27. WEBSTER has been denied access to the books and records of FOREST HILLS CARE, although such access has been duly demanded by the plaintiff.

28. As a result of the foregoing, plaintiff, WEBSTER, suffered and will continue to suffer irreparable harm and injury from the aforesaid conduct of the defendant, FOREST HILLS CARE, OSTREICHER and LANDA.

29. No final settlement of accounts between WEBSTER and FOREST HILLS CARE has ever been had and no correct statement of the debts and credits of the business of the LLC has ever been had.

30. Plaintiff, WEBSTER, has no remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION
BY WEBSTER INDIVIDUALLY AGAINST
FOREST HILLS ESTATE, OSTREICHER AND LANDA
(ACCOUNTING)**

31. Plaintiff, WEBSTER, repeats, reiterates and religious each and every allegation contained in paragraphs "1" through "30" of this Complaint as if same were more fully set forth at length herein.

32. WEBSTER is a member of FOREST HILLS ESTATE owning a fifteen (15%) percent membership interest.

33. WEBSTER has not received all of her distributions from FOREST HILLS ESTATE to which she is entitled to be paid.

34. Other members of FOREST HILLS ESTATE have received and continue to receive distributions and benefits from FOREST HILLS ESTATE.

35. Limited Liability Company Law §1102(b) and the Operating Agreements of the Limited Liability Companies provide that the members of a limited liability company may inspect and copy:

- A current list of the full name and last known mailing address of each manager.
- A current list of the full name and last known mailing address of each member together with the contribution and the share of profits and losses of each member or information from which such share can be readily derived.
- A copy of the articles of organization and all amendments or restatements and all executed copies of any powers of attorney pursuant to which any certificate or amendment has been executed.

- A copy of the operating agreement, any amendments and any amended and restated operating agreements.

- A copy of the federal, state and local income tax or information returns and reports for the three most recent fiscal years.

- Any financial statements maintained by the limited liability company for the three most recent fiscal years.

- Any other information regarding the affairs of the limited liability company.

36. Plaintiff, WEBSTER, has the right to access the books and records of FOREST HILLS ESTATE.

37. Defendant, FOREST HILLS ESTATE, has maintained and continues to possess the books and records of FOREST HILLS ESTATE and has repeatedly denied WEBSTER access to such books and records.

38. Because of the failure of FOREST HILLS ESTATE to disclose and afford WEBSTER access to the books and records of FOREST HILLS ESTATE, WEBSTER has been deprived of knowledge of the financial status of the business.

39. The information regarding the financial status of FOREST HILLS ESTATE and its business enterprises have been deliberately withheld from WEBSTER by FOREST HILLS ESTATE.

40. As the manager of FOREST HILLS ESTATE, OSTREICHER owes a fiduciary duty to WEBSTER.

41. Upon the rendering of an accounting, FOREST HILLS ESTATE should be capable of determining the propriety of all the distributions made and expenses disbursed by FOREST HILLS ESTATE, in furtherance of its respective business activities.

42. FOREST HILLS ESTATE has a duty to account, has failed and refused to do so, and has never rendered an accounting of the financial status and operations in accordance with the Limited Liability Company Law.

43. WEBSTER has been denied access to the books and records of FOREST HILLS ESTATE, although such access has been duly demanded by the plaintiff.

44. As a result of the foregoing, plaintiff, WEBSTER, suffered and will continue to suffer irreparable harm and injury from the aforesaid conduct of the defendant, FOREST HILLS ESTATE.

45. No final settlement of accounts between WEBSTER and FOREST HILLS ESTATE has ever been had and no correct statement of the debts and credits of the business of the LLC has ever been had.

46. Plaintiff has no remedy at law.

**AS AND FOR A THIRD CAUSE OF ACTION
IN FAVOR OF WEBSTER AGAINST LANDA**

47. Plaintiff, WEBSTER, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "46" of this Complaint as if same were more fully set forth at length herein.

48. LANDA is a member of FOREST HILLS CARE and FOREST HILLS ESTATE.

49. LANDA and WEBSTER and their corporations and limited liability companies have and continue to be engaged, as adversaries, in various actions in both the State and Federal Courts in New York.

50. LANDA has asserted dominion and control over the distributions due to WEBSTER in both FOREST HILLS CARE and FOREST HILLS ESTATE.

51. LANDA has received such distributions due WEBSTER in FOREST HILLS CARE and FOREST HILLS ESTATE.

52. LANDA has acknowledged to WEBSTER that LANDA has received such distribution due WEBSTER from FOREST HILLS CARE and FOREST HILLS ESTATE, although LANDA is not legally entitled to such distributions.

53. Plaintiff, WEBSTER, has demanded the payment of such distributions from LANDA and LANDA has refused such a demand.

54. LANDA has interfered with WEBSTER's rights under the Operating Agreements of FOREST HILLS CARE and FOREST HILLS ESTATE.

55. By reason of LANDA's acts, WEBSTER has been damaged in the sum of at least \$150,000.00, together with interest.

**AS AND FOR A FOURTH CAUSE OF ACTION
IN FAVOR OF WEBSTER AGAINST LANDA**

56. Plaintiff, WEBSTER, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "55" of this Complaint as if same were more fully set forth at length herein.

57. Defendant, LANDA, commenced an action in the Supreme Court of the State of New York, County of Nassau entitled Benjamin Landa v. Helen Webster, et al., under Index No. 017269/2004 ("Nassau Action").

58. The Nassau Action was settled by the parties thereto pursuant to the terms of a Settlement Agreement dated as of January 12, 2006 ("Agreement").

59. The Agreement provides in pertinent part as follows:

5. In further consideration of the terms, conditions and mutual covenants hereof, and in order to induce Webster to enter into this Settlement Agreement, Landa hereby agrees to cause each of the nursing home and health care facilities listed on Schedule A annexed hereto to immediately make payment to Webster of distributions (the 'Schedule A Distributions') to which she is entitled to be paid as a member of the respective Schedule A entities. Landa represents and warrants to Webster that the Schedule A Distributions accurately reflect Webster's full proportionate share of all distributions and dividends to which Webster is entitled to be paid with respect to the Schedule A entities as of the date of the execution of this Settlement Agreement. Landa shall cause the Schedule A entities to give access to Webster or her representatives to the books and records of such entities in order to verify the sums due to Webster for previously earned dividends and distributions.

6. Simultaneous with the execution of this Settlement Agreement, Landa shall pay or cause to be paid to Webster, by check(s), the Schedule A Distributions which shall be accepted by Webster in full satisfaction of any and all claims arising out of or related to the withholding of distributions by the Schedule A entities, subject only to an adjustment determined to be required after a review by Webster of her designated representative of the books and records of the respective entities. All future and

further distributions paid by any entity referred to in Schedule A made to any partner, member or stockholder shall be simultaneously paid proportionately to Webster, consistent with her percentage ownership. The payments to be made to Webster from the Schedule A entities are without prejudice to any and all of Webster's rights and claims for distribution with respect to any and all other nursing home and/or healthcare related facilities in which she has or claims an interest, and all of Webster's rights with respect to such claims are specifically preserved. (Emphasis supplied).

* * *

SCHEDULE A

Forest Hills Nursing Home: Distribution \$41,250.00
Owed to Webster as of December 14, 2005

* * *

60. Under the terms of the Agreement, LANDA oversaw the payment to WEBSTER from FOREST HILLS CARE and FOREST HILLS ESTATE from 2005 through 2008.

61. WEBSTER has not received distributions from FOREST HILLS CARE and FOREST HILLS ESTATE from 2009 up to the present time.

62. Other members of FOREST HILLS CARE and FOREST HILLS ESTATE have received distributions from FOREST HILLS CARE and FOREST HILLS ESTATE from 2009 up to the present time.

63. LANDA has failed to comply with the terms of the Agreement as WEBSTER has not received distributions from FOREST HILLS CARE and FOREST HILLS ESTATE from 2009.

64. WEBSTER has fully complied with the terms and provisions of the Agreement.

65. By reason of LANDA's acts, WEBSTER has been damaged in the sum of at least \$150,000.00, together with interest.

**AS AND FOR A FIFTH CAUSE OF ACTION
IN FAVOR OF WEBSTER AGAINST OSTREICHER**

66. Plaintiff, WEBSTER, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "65" of this Complaint as if same were more fully set forth at length herein.

67. OSTREICHER is the manger of FOREST HILLS CARE and FOREST HILLS ESTATE.

68. Each defendant LLC operates under an Operating Agreement which provides for distributions to members.

69. Article 10.4 of each Operating Agreement of the defendant entities provides as follows:

10.4 Distributions in Cash and Proportionate to Economic Interests. All distributions made pursuant to this Article X will be made to the Members and Economic Interest. Owners in proportion to their respective Economic Interests on the record date of such distributions.

70. OSTREICHER caused distributions to be paid to the members of FOREST HILLS ESTATE and FOREST HILLS CARE, but not to WEBSTER.

71. OSTREICHER failed to comply with the provisions of the Operating Agreements.

72. WEBSTER has complied with the provisions of the Operating Agreements.

73. By reason of the foregoing WEBSTER has been damaged in the sum of at least \$150,000.00 together with interest.

WHEREFORE, plaintiff demands judgment against the defendants as follows:

(a) on the First Cause of Action, awarding plaintiff, HELEN WEBSTER, individually, a judgment directing defendants, DVORA OSTREICHER and FOREST HILLS CARE CENTER, LLC, jointly and severally, (i) to provide a full and accurate accounting of FOREST HILLS CARE's affairs to said plaintiff, and (ii) to make available to said plaintiff, her representatives or agents, for inspection and copying, at a mutually agreeable date and during normal business hours, the books and records of FOREST HILLS CARE, and (iii) to disclose to plaintiff at least semi-annually, summary information about FOREST HILLS CARE's affairs during the reporting period, and (iv) to pay to WEBSTER any distributions withheld by FOREST HILLS CARE to WEBSTER;

(b) on the Second Cause of Action, awarding plaintiff, HELEN WEBSTER, individually, a judgment directing defendants, DVORA OSTREICHER and FOREST HILLS ESTATE ASSOCIATES, LLC, jointly and severally, (i) to provide a full and accurate accounting of FOREST HILLS ESTATE's affairs to said plaintiff, and (ii) to make available to said plaintiff, her representatives or agents, for inspection and copying, at a mutually agreeable date and during normal business hours, the books and records of FOREST HILLS ESTATE, and (iii) to disclose to plaintiff, at least semi-annually, summary information about FOREST HILLS ESTATE's affairs

during the reporting period, and (iv) to pay to WEBSTER any distributions withheld by FOREST HILLS ESTATE to WEBSTER;

(c) on the Third Cause of Action, judgment in favor of plaintiff, HELEN WEBSTER, against defendant, BENJAMIN LANDA, in the sum of at least \$150,000.00, together with interest;

(d) on the Fourth Cause of Action, judgment in favor of plaintiff, HELEN WEBSTER, against defendant, BENJAMIN LANDA, in the sum of at least \$150,000.00, together with interest;


(e) on the Fifth Cause of Action, judgment in favor of plaintiff, HELEN WEBSTER, against defendant, DVORA OSTREICHER in the sum of at least \$150,000.00, together with interest;

(f) granting such other and further relief as this Court deems just, proper and equitable, together with the costs and disbursements of this action, including reasonable attorneys' fees.

Dated: Carle Place, New York
September 18, 2014

DOLLINGER, GONSKI & GROSSMAN
Attorneys for Plaintiff

By:



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