

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of
MOBASHAR ZAFAR,

Petitioner,

DECISION & ORDER
Index No. 3123/2015

For the Judicial Dissolution of:

M&D of Dutchess, LLC

Pursuant to Section 702 of the Limited Liability Company
Law,

-against-

DAWOOD AHMED and M&D OF DUTCHESS, LLC,

Respondents.
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C. A. SPROAT, J.S.C.

Petitioner Mobashar Zafar moves for an order:

1. Disqualifying Corbally, Gartland and Rappleyea, LLP from the representation of respondents Ahmed and M&D of Dutchess, LLC due to conflict of interest and the appearance of impropriety;
2. Granting of a judgment dissolving M&D of Dutchess, LLC pursuant to LLCL § 702 and appointing a liquidating receiver/trustee pursuant to LLCL § 703 to wind-up the affairs of the company and discharge the company's liabilities and distribute to the members any remaining assets of the company; and
3. In the alternative to dissolution of the company, granting a judgment directing an equitable buy-out of respondent Ahmed's 50% interest in M&D of Dutchess, LLC by petitioner or an equitable buy-out of petitioner's 50% interest by respondent Ahmed for

its fair market value as determined by a court-ordered appraisal at the expense of petitioner and respondent Ahmed in equal proportion.

The following papers were read:

Order to Show Cause - Verified Petition - Annexed Exhibits	1-3
Affidavit of Mobashar Zafar - Annexed Exhibits	4-5
Petitioner's Memorandum of Law	6
Affidavits of Service	7
Verified Answer - Sheldon Kahan, Esq.'s Affirmation in Opposition - Annexed Exhibits	8-10
Affidavit of Service	11
Reply Affirmation of Darren H. Fairlie, Esq. - Reply	12-14
Affidavit of Mobashar Zafar - Annexed Exhibits	
Affidavit of Avtar Singh - Annexed Exhibits	15-16

(Respondents Ahmed and M&D of Dutchess, LLC's October 30, 2015 supplementary papers were not considered as they were received after the return date and were objected to by petitioner's counsel.)

Upon the foregoing papers it is hereby ORDERED that petitioner Mobashar Zafar's application is granted to the extent that petitioner is entitled to a judgment dissolving M&D of Dutchess, LLC pursuant to LLCL § 702 and appointing a liquidating receiver/trustee pursuant to LLCL § 703 to wind-up the affairs of the company and discharge the company's liabilities and distribute to the members any remaining assets of the company. The Court notes that the portion of petitioner's application seeking the disqualification of the law firm Corbally, Gartland and Rappleyea, LLP was withdrawn as moot. All other requested relief is denied.

Petitioner Mobashar Zafar seeks the dissolution of respondent M & D of Dutchess, LLC pursuant to § 702 of the Limited Liability Company Law ("LLCL"). Section 702 provides as

follows: "On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree 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 operating agreement." Petitioner Mobashar Zafar and respondent Dawood Ahmed each hold 50% membership interests in M&D of Dutchess, LLC. In addition to being equal members of the LLC, petitioner Zafar and respondent Ahmed are brothers. The LLC was formed by the brothers on November 2, 1999. A single commercial property located at 340 Violet Avenue, Poughkeepsie, New York, was transferred by the brothers to the LLC. No operating agreement was executed by the members. At the time of the transfer of the title to the property, petitioner and respondent Ahmed each owned an equal share of the property as tenants in common. The property was occupied by a gas station and convenience store. It is undisputed that the purpose of the LLC was to lease the property for a profit. Further, it is undisputed that for years respondent Ahmed split the proceeds from the leased premises in proportion to their 50/50 ownership of respondent M&D of Dutchess, LLC.

In 2011, unbeknownst to petitioner Zafar, respondent Ahmed leased the property to Avtar Singh under a lease which did not include respondent M&D of Dutchess, LLC. A review of the lease with Mr. Singh reveals that the landlord is named as "M&D Dutchess Property LLC" and the lease is executed by respondent Ahmed as a member of said LLC. It is undisputed that in 2006 respondent Ahmed, without petitioner's knowledge, formed a new LLC named "M&D Dutchess Properties LLC." It is noted that the LLC created solely by respondent Ahmed uses the singular term for property in its name while the lease with Avtar Singh uses the plural. In any event, pursuant to said lease, Mr. Singh agreed to make payments directly to respondent Ahmed, personally. (See, *Last page of 2011 lease between M&D Dutchess Property, LLC and Avtar Singh.*) Further, it is undisputed that respondent Ahmed received a \$100,000 cash payment from tenant Avtar Singh in accordance with the 2011 lease. (See, *Affidavit of Avtar Singh*, paragraph 9.) Respondent Ahmed never told petitioner about this \$100,000 cash payment made personally to him in connection with the lease of the property. In addition, it is undisputed that respondent Ahmed never shared any part of the \$100,000 cash payment that he received for the tenant's use of respondent LLC's premises.

(See, *Verified Petition*, paragraph 21; *October 20, 2015 Affidavit of Mobashar Zafar*, paragraph 9.) Also, it is uncontroverted that the respondent Ahmed received an additional \$36,000 cash payment from tenant Avtar Sigh in connection with the leasing of the property. (See, *Affidavit of Avtar Singh*, paragraph 5.) Once again, respondent Ahmed never disclosed this \$36,000 cash payment and never shared any portion of such payment with the petitioner. (*October 20, 2015 Affidavit of Mobashar Zafar*, paragraph 11).

The petitioner has submitted uncontroverted evidence of respondent Ahmed's personal exploitation of the LLC's sole asset. The evidence reveals that respondent Ahmed has ceased operation of the respondent LLC in favor of his own competing interests. Specifically, respondent Ahmed has formed "his own corporate entities and sole proprietorships to exploit the [respondent LLC's] Premises for his own use and benefit while diverting leases, business opportunity, money and control away from the [respondent LLC] and the petitioner, its 50% member." (*Verified Petition*, paragraph 24.) Based upon respondent Ahmed's persistent self-dealing and dishonest conduct, together with the 50-50 member deadlock between petitioner and respondent Ahmed, this Court determines that "it is not reasonably practicable to carry on the business [of the LLC] in conformity with [its] articles of organization." (*LLCL § 702*.) The "disagreement or conflict among the members regarding the means, methods, or finances of the company's operations is so fundamental and intractable as to make it unfeasible for the company to carry on its business as originally intended." (*Matter of Fassa Corp.*, 31 Misc.3d 782 (2011) quoting *Matter of 1545 Ocean Ave., LLC*, 72 AD3d 121, 133 [Fisher, J., concurring in part and dissenting in part].) Accordingly, the petitioner's application for dissolution of M&D of Dutchess, LLC must be granted.

Finally, the petitioner "seeks the appointment of a liquidating trustee, pursuant to *LLCL § 703* to wind up the affairs of the LLC and distribute its assets. The Court will make such appointment if the parties cannot agree upon a more appropriate course of action, such as an agreed buyout or a mutually-agreeable broker to market the property." (*Natanel v. Cohen*, 43 Misc.3d 1217 (a) (2014).)

Submit Judgment.

So Ordered.

Dated: December 4, 2015
Poughkeepsie, New York



HON. CHRISTINE A. SPROAT
Supreme Court Justice

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