

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of

Index No.: /16

DORINE BORRIELLO, for an Order and Judgment
pursuant to BUSINESS CORPORATION LAW §§1104
and/or 1104-a dissolving JERSEY LYNNE FARMS,
INC.,

Date Purchased: /16

VERIFIED PETITION

Petitioner,

-against-

JERSEY LYNNE FARMS, INC., MICHAEL
LOCONTE, DIANE SCHMIDT and MARIA PENNEY
SELIGSON,

Respondents.

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The Petitioner herein, Dorine Borriello, individually and in a representative capacity, by and through her attorneys, Goldberg Weprin Finkel Goldstein LLP, as and for her Verified Petition to dissolve Jersey Lynne Farms, Inc. respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This is a proceeding brought pursuant to Business Corporation Law §§1104 and 1104-a for dissolution of Jersey Lynne Farms, Inc. (“Jersey Lynne” or the “Corporation”), a family owned business that is controlled by the Respondents to the exclusion of Petitioner.

2. Grounds for dissolution under BCL §1104 exist since there is irreconcilable internal dissension among the shareholders who are so divided as to the future of Jersey Lynne that dissolution would be beneficial to the shareholders.

3. Separate grounds for dissolution under BCL §1104-a exist because Jersey Lynne has been operated by the Respondents illegally, fraudulently and in an oppressive manner toward the Petitioner. Among other things, Respondents have failed to provide Petitioner with any financial information regarding officers' salaries and benefits, and Respondents have hired several outside business consultants without Petitioner's consent or dissemination of their findings or suggestions.

4. Additional grounds for dissolution exist because the assets of Jersey Lynne are being wasted or diverted for non-corporate purposes by the Respondents, who are in control of Jersey Lynne, to the detriment of the Corporation and Petitioner. Whereas the Corporation showed positive retained earnings prior to Petitioner being terminated from working at Jersey Lynne in 2011, the Corporation is now losing money. A copy of current financial statement of Jersey Lynne is annexed hereto as Exhibit "A" reflects operating losses over the last two years (\$163,733) for 2015 and (\$174,202) for 2014.

PARTIES

5. Jersey Lynne is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office located at 8801 Foster Avenue, Brooklyn, New York.

6. Petitioner, Dorine Borriello ("Petitioner"), is an individual who resides in Suffolk County, New York.

7. Petitioner is a 25% shareholder in Jersey Lynne.

8. Petitioner's brother, Michael LoConte ("LoConte"), is an individual who resides in Kings County, New York.

9. LoConte is a 35% shareholder in Jersey Lynne.

10. Petitioner's sister, Diane Schmidt ("Schmidt"), is an individual who resides in Nassau County, New York.

11. Schmidt is a 20% shareholder in Jersey Lynne.

12. Petitioner's sister, Maria Penney Seligson ("Seligson")(collectively with LoConte and Schmidt the "Respondents"), is an individual who resides in Morganville, New Jersey.

13. Seligson is a 20% shareholder in Jersey Lynne.

DISSENSION BETWEEN PETITIONER AND RESPONDENTS IN CONMBINATION WITH RESPONENTS' MISMANAGEMENT TO THE DETRIMENT OF PETITIONER WARRANTS THE JUDICIAL DISSOLUTION OF JERSEY LYNNE

14. Jersey Lynne is engaged in the wholesale distribution of food and related products, selling goods to grocery stores, supermarkets and restaurants.

15. At all relevant times, Petitioner and Respondents have owned Jersey Lynne as the sole shareholders.

16. Since 2011, Respondents have controlled, operated and managed the business of Jersey Lynne.

17. In addition to owning Jersey Lynne, Petitioner and Respondents also own another family business, knows as Caterina Realty, LLC ("Caterina"), which owns the real property at 8801 Foster Avenue, Brooklyn, New York from which Jersey Lynne operates its business.

18. Caterina is the subject of a separate dissolution proceeding pending before this Court bearing Index Number 513825/2016, because its members will not be able to agree on the terms of a fair market lease for Jersey Lynne when Jersey Lynne's current lease expires in November 2016. This disagreement is further grounds for the dissolution of Jersey Lynne as well.

19. Petitioner previously worked on a full-time basis for both Caterina and Jersey Lynne for many years and previously served as president during the period 2006-2011. On or about November 26, 2011, Petitioner's employment with Jersey Lynne was abruptly terminated by the Respondents.

20. At the time of Petitioner's employment at Jersey Lynne, the Corporation maintained a relatively healthy retained earnings for its shareholders and operated profitably.

21. After the termination of Petitioner's employment, the parties executed various agreements for severance and other accrued employment-related obligations. Petitioner, however, continues to own a 25% equity interest in both Caterina and Jersey Lynne, and retains full rights as a voting member and shareholder.

22. Petitioner's termination was the culmination of a plan by Respondents to freeze-out Petitioner from Jersey Lynne's affairs.

23. Respondents now control and dominate Jersey Lynne's affairs to the exclusion of Petitioner.

24. The business of Jersey Lynne has deteriorated since Petitioner was terminated and is no longer profitable as evidenced by Exhibit "A".

25. The decline in Jersey Lynne's business has been exacerbated by the death of Ken Seligson in 2015. Mr. Seligson served as Jersey Lynne's COO and CFO. Since his death, Respondents have not replaced Mr. Seligson with a competent financial officer and Jersey Lynne's business has continued to suffer as a result.

26. Upon information and belief, the Respondents have cooperated and colluded to loot, waste, and/or divert the assets of Jersey Lynne for non-corporate purposes.

27. In view of the foregoing, Respondents have rendered Jersey Lynne an unprofitable business. *See Exhibit "A"*.

28. Also in view of the foregoing, Respondents have and will continue to prevent Jersey Lynne from maximizing its revenues.

29. Upon information and belief, that at all the times heretofore mentioned, Respondents have conducted the business of Jersey Lynne in a way that has been financially advantageous to them personally at the expense of Petitioner and Jersey Lynne.

30. Petitioner and Respondents have had a series of discussions to resolve disagreements regarding how best to manage Jersey Lynne.

31. It has been impossible for Petitioner and Respondents to reach any agreement regarding the future management of Jersey Lynne given the dissension and animosity.

32. Respondents have refused to take appropriate steps to properly manage Jersey Lynne's affairs and are again refusing to pursue efforts to realize the full value of the Corporation's assets or return the Corporation to profitability.

33. In fact, Respondents have made management decision that were directly contrary to the wishes expressed by Petitioner and have acted in a manner to thwart Petitioner's ability to meaningfully participate in the management of the Corporation.

34. At this point, Respondents have shut Petitioner out of the affairs of Jersey Lynne.

35. Despite Petitioner's best efforts, such discussions ultimately failed, and it is evident that Petitioner and Respondents can no longer continue in business together.

36. Thus, it is no longer possible to carry on the business of Jersey Lynne in conformity with its governing agreements, and dissolution is appropriate.

37. As a consequence, Petitioner and Respondents can no longer continue in business together.

38. Respondents have made dissolution the only viable course of action left for Jersey Lynne since the Corporation's assets are to be maximized for the benefit of all of its shareholders and not just Respondents.

39. Respondents also control all of the books, records and accounts of Jersey Lynne, and have not provided full or complete financial reports to the Petitioner on a timely basis.

40. Respondents' actions are oppressive within the meaning of New York Business Corporation Law ("BCL") §1104-a because their wrongful conduct as outlined above substantially defeats Petitioner's expectations that, objectively viewed, were both reasonable and central to Petitioner's decision to form Jersey Lynne.

41. Jurisdiction over this matter rests with this Court pursuant to Sections 1104 and 1104-a of the BCL.

AS AND FOR A FIRST CAUSE OF ACTION

42. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1 through 38 of the Petition with the same force and effect as though set forth at length herein.

43. As a result of the improper takeover of Jersey Lynne's affairs, as well as the oppressive nature in which Respondents have seized control of Jersey Lynne and shut out Petitioner from involvement in Jersey Lynne's operations, Jersey Lynne has become so dominated and controlled by Respondents that Petitioner presents this petition seeking dissolution of Jersey Lynne under BCL §§1104 and 1104-a.

44. Jersey Lynne is unable to function under such divided and divisive management as contemplated by the organizational documents.

45. As a result, it is not reasonably practicable to carry on the business of Jersey Lynne.

46. With no other reasonable alternatives, a judicial dissolution and liquidation of Jersey Lynne is in the best interest of the Corporation.

47. Dissolution of Jersey Lynne will not be injurious to the parties or to the public.

48. Jurisdiction over this matter rests with this court pursuant to Sections 1104 and 1104-a of the Business Corporation Law.

AS AND FOR A SECOND CAUSE OF ACTION

49. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1 through 45 of the Petition with the same force and effect as though set forth at length herein.

50. In the event of dissolution and upon cause shown, the Court may direct the winding up of Jersey Lynne's affairs.

51. By reason of all of the foregoing, there is an urgent need for the prompt appointment of a Receiver to wind up Jersey Lynne's affairs prior to November 2016, when the Lease comes up for renewal.

52. Respondents cannot be entrusted to wind up Jersey Lynne's affairs. They have demonstrated clearly their willingness to subordinate Jersey Lynne's interest to those of their own.

53. Delay in winding up Jersey Lynne's affairs will lead to waste of Jersey Lynne's assets.

54. Leaving Respondents in place to conduct or participate in the winding up of Jersey Lynne's affairs will lead to further waste and loss of Jersey Lynne's assets.

AS AND FOR A THIRD CAUSE OF ACTION

55. Petitioner repeats and realleges each and every allegation contained in Paragraphs 1 through 51 of the Petition with the same force and effect as though set forth at length herein.

56. Respondents also control all of the books, records and accounts of Jersey Lynne, and have not provided full or complete financial reports to the Petitioner on a timely basis.

57. Petitioner cannot properly ascertain the full scope of the financial downturn of Jersey Lynne without Respondents producing the books and records of Jersey Lynne.

58. Petitioner is entitled to inspect the Corporation's books and records.

WHEREFORE, Petitioner respectfully requests a Judgment and Order of this Court as follows:

- (a) On the First Cause of Action, dissolving Jersey Lynne, directing that all of the property of Jersey Lynne be sold in a commercially reasonable manner pursuant to the BCL, directing that the assets of Jersey Lynne be distributed to its shareholders after payment of all of its just debts, in accordance with the BCL; and
- (b) On the Second Cause of Action, pursuant to BCL §1113, the interim appointment of a receiver to manage the affairs of Jersey Lynne pending its dissolution; and
- (c) On the Third Cause of Action, pursuant to BCL §1104-a(c), the production of Jersey Lynne's books and records for inspection by Petitioner as provided in that subdivision; and
- (d) Pursuant to BCL §1115, an injunction preventing Respondents or any agent acting on their behalf from
 - i. transacting any business or exercising any corporate powers and/or authority without the express written consent of Petitioner, the Court or a receiver appointed by the Court;
 - ii. collecting or receiving any asset, debt, or property of Jersey Lynne and from paying out or otherwise transferring any asset or property of Jersey Lynne. and/or encumbering the assets or property of Jersey Lynne, without the express written consent of Petitioner, the Court or a receiver

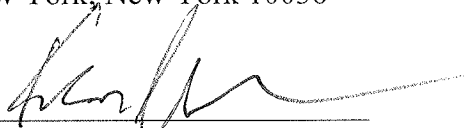
appointed by the Court; and

iii. utilizing Jersey Lynne's funds to pay counsel fees incurred in the defense of this claim; and

(e) For such other and further relief as the Court may deem just and equitable under the circumstances.

Dated: New York, New York
August 30, 2016

**GOLDBERG WEPRIN
FINKEL GOLDSTEIN LLP**
Attorneys for Petitioner
1501 Broadway – 22nd Floor
New York, New York 10036

By: 


Kevin J. Nash
Christopher R. Clarke

VERIFICATION

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

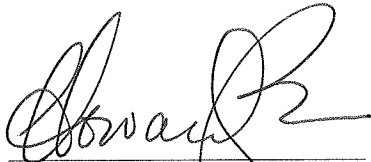
DORINE BORRIELLO, being duly sworn, deposes and says:

I am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof; and the same is true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



DORINE BORRIELLO

Sworn to before me this
30th day of August, 2016



Notary Public

HOWARD BORKAN
NOTARY PUBLIC, State of New York
No. 01BO4721604
Qualified in New York County
Commission Expires June 30, 2018