

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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RICHARD VACCARI AND PETER VACCARI, on  
behalf of themselves and as shareholders owning greater  
than 20% of the issued and outstanding stock of AMETAL  
REALTY CORP.,

Index No.:

Petitioners,

-against-

PAUL VACCARI and AMETAL REALTY CORP.,

**VERIFIED PETITION FOR  
DISSOLUTION OF AMETAL  
REALTY CORP. PURSUANT  
TO B.C.L. §1104-a**

Respondents,

for a judgment Dissolving AMETAL REALTY CORP.  
pursuant to Business Corporation Law Section 1104-a.

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Petitioners, RICHARD VACCARI and PETER VACCARI, by their attorneys, The  
Weinstein Group, P.C., as and for their verified petition for the dissolution of AMETAL REALTY  
CORP., respectfully represent and allege:

**PARTIES**

1. Petitioners each own twelve and one-half percent (12.5%) of AMETAL REALTY CORP. (hereinafter "Ametal"), or collectively, twenty-five percent (25%) of Ametal.
2. The remaining seventy-five percent (75%) is owned by Respondent Paul Vaccari.
3. At all times hereinafter mentioned Ametal was and still is a domestic corporation, maintaining a principal place of business in New York State, County of New York.
4. Petitioners have been owners of Ametal since its inception in 1996.

5. No Shareholder Agreement or Corporate resolution or other such corporate documents were ever approved or circulated that reflect the foregoing shareholder split beyond the designation in the Company's taxes.
6. There have been no corporate elections, but Paul Vaccari has been making all of the decisions for Ametal, to the exclusion of Petitioners.
7. A most recent example is Paul Vaccari's secret application for financing on the assets of Ametal, without notice or other permission from the Petitioners.
8. There is no shareholder or other agreement by and between the shareholders of the Company.

#### **AUTHORITY**

9. Section 1104-a provides a special remedy that allows holders of at least 20 percent of the voting shares of a corporation to petition for the involuntary dissolution of the corporation if, "[t]he directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders." N.Y. Bus. Corp. L. §1104-a(1) (McKinney 1998).

#### **JURISDICTION AND VENUE**

10. BCL Section 1112 provides, in pertinent part, "An action or special proceeding under this article shall be brought in the Supreme Court in the judicial district in which the office of the corporation is located...." N.Y. Bus. Corp. L. § 1112 (McKinney 1962).
11. This Court has jurisdiction over this proceeding because the principal place of business of the corporation is located in New York County, New York.

STATEMENT

12. That Paul Vaccari has undertaken unilateral and oppressive actions, without informing Petitioners of the nature of his actions and decisions or the effects of the same.
13. That upon information and belief, amongst Ametal's assets is a building located at 633 Ninth Avenue, New York, New York, 10036.
14. That a company known as Piccinini Brothers Inc. ("hereafter Piccinini") is or is one of the prime occupants of space in said building owned by Ametal.
15. That on or about July 11, 2012, Richard and Paul Vaccari entered into a Settlement Agreement and Release wherein Richard's interest in Piccinini was purchased by Paul Vaccari.
16. That upon information and belief, Paul Vaccari is the 100% owner of Piccinini.
17. That upon information and belief, Piccinini rents substantial premium commercial space owed by Ametal.
18. That it is Petitioners' belief that Piccinini has failed to pay rent to Ametal for its occupancy in the building owned by Ametal, as no rental income is reported, and Petitioners do not see the payments reported as income in the few and scarce corporate documents that Paul Vaccari has allowed Petitioners to examine.
19. That upon demand by Petitioners to Paul Vaccari for information regarding the status of Piccinini's rental payments that Petitioners believed to be due to Ametal,

Paul explained that Piccinini holds or is in the process of filing for a Mortgage for the space that it occupies and thus does not pay rent.

20. As shareholders of Ametal, Petitioners have never previously been informed of this, nor were they ever shown any documents that reflect a financing of the space located in the building owned by Ametal.
21. In fact, Petitioners cannot be sure whether a space in the building owned by Ametal is being financed, or if the building itself is being financed as information sought has not been provided.
22. That further, Petitioners cannot even be sure who is engaging in any said financing of space in Ametal's building, or the building as a whole.
23. That Paul Vaccari has a fiduciary duty to Petitioners to keep them informed of any major decisions effecting Ametal's interests as well as of the financial condition, assets, transactions, encumbrances, debts, and dealings of the Corporation.
24. That Paul Vaccari is further obligated to keep Petitioners informed of any major decisions effecting Ametal's interests as well as of the financial condition, assets, transactions, and dealings of the Corporation by virtue of the Settlement Agreement and Release signed between Richard and Paul Vaccari on or about July 11, 2012.
25. That pursuant to paragraph 14 of said document, "Paul and Rudy do hereby acknowledge Richard's 12.5% ownership interest in Ametal. They agree to report to Richard, on an annual basis, Ametal's revenues/expenses; and commensurately pay Richard distributions when made to the other shareholders. By execution hereof, Rudy and Paul affirmatively represent that the Property is not encumbered by mortgage, judgment, or lien. Prior to the full satisfaction of the obligations

referenced in Term Note #1 and Term Note #2, neither Rudy nor Paul, nor their agents, shall take any action, or fail to take action, the result of which causes a material devaluation of Paul's Ametal stock pledged to Richard."

26. That in fact, Petitioners have for approximately a year, gone above and beyond to request documents from Ametal, which would indicate its financial condition, assets, transactions and dealings.
27. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to any Shareholders Agreement or other operational Agreement concerning Ametal, signed by some or all of its shareholders.
28. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to any appraisals done or being done within the last five (5) years, together with the documents upon which they are based.
29. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to any leases or subleases that are in place, including but not limited to the lease by Piccinini and any other tenant or subtenant of the building owned by Ametal.
30. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to the amount of rent payable by each tenant and/or subtenant of the building owned by Ametal.
31. That despite the demand, Paul has refused to furnish Petitioners with documents which include but are not limited to whether Ametal utilizes a real estate broker to rent out spaces in the building, and the contact information of any such broker as

well as any report indicating the fair market rental value of a lease space within the building.

32. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to an explanation for the \$26,000 in legal and/or professional fees reflected in the financial reports of Ametal.
33. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to year-to-date financials for the year 2017.
34. That despite demand, Paul has refused to furnish Petitioners with documents which include but are not limited to Ametal's 2016 tax returns, as well as all K-1 documents, or any of the documents that they are based upon.
35. That most recently and most egregiously, Petitioners were asked to provide confidential and personal tax information, and upon inquiring why, were told that Paul was obtaining financing for the Company, but were provided with no other details regarding the same.
36. That despite demand, Paul has refused to furnish Petitioners with an accounting of the Company's assets, spending, debts/encumbrances, and general financial condition.
37. That instead, all Petitioners have received have been self-serving documents that appear to be fabricated print-outs created by Paul Vaccari or his agents.
38. That aside from failing to keep Petitioners informed of Ametal, its financial condition, decision making, debts, income and dealings, Paul Vaccari has failed to properly run the company.

39. That Paul Vaccari has undertaken unilateral and oppressive actions without informing Petitioners, and is causing injury to the Company.
40. That Petitioners having been requesting information about the Company for at least a year and have been denied the same as recently as August 31, 2017, when Petitioners sought information pursuant to §624, a request which was flatly refused by Respondents.
41. That from the few financial documents that Paul Vaccari did produce after months of frequent requests for information, Ametal appears to be showing minimal income and mainly losses which Petitioners believe to be impossible given that it is believed that there are tenants in the building that Ametal owns who pay for the use and occupancy in the building. As a result, Paul Vaccari has demonstrated that working together any further is futile and that Court intervention is necessary to safeguard Ametal's assets.
42. Wherefore, Petitioners respectfully pray for an Order from this Court dissolving Respondent Ametal, and awarding to Petitioners such sums as are determined to be due to Petitioners upon an accounting of the Respondent Corporation.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Judicial Dissolution)**

43. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.

44. That as a result of the foregoing, the Petitioners are entitled to a Judicial Dissolution of the Respondent Corporation due to Paul Vaccari's unilateral and impossibly oppressive actions.
45. That upon such Judicial Dissolution, Petitioners are entitled to receive those profits and assets to which they are entitled from the Corporation and from Paul Vaccari.
46. Wherefore, Petitioners respectfully pray for an Order from this Court dissolving Respondent Ametal Realty Corp., and awarding to Petitioner such sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Accounting)**

47. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.
48. A fiduciary relationship existed between Petitioners and Paul Vaccari with respect to Ametal.
49. During that fiduciary relationship, substantial money, property, and decision making powers of Ametal were entrusted to both Petitioners and Paul Vaccari, though due to Paul Vaccari's actions, Petitioners were denied opportunities to understand the financial health and needs of the Company, to participate in the decision-making for the Company, and to safeguard its wellbeing based upon this information.



50. That Petitioners have orally demanded an accounting of the finances and property entrusted to Paul Vaccari to safeguard as part of his fiduciary duties to Ametal, and in response, Paul Vaccari has refused to provide such an accounting.
51. Based on the foregoing, Petitioners are entitled to a full and complete accounting from Paul Vaccari and Ametal.
52. That further, Petitioners are entitled to an accounting of any entity with which Paul Vaccari has sought to enrich at the expense of Ametal in the form of money, business, rental income, assumption of debt, trade secrets and customers and clients.
53. Wherefore, Petitioners respectfully pray for an Order from this Court dissolving Respondent Ametal and awarding to Petitioners such sums as are determined to be due to Petitioners upon an accounting of the Respondent Corporation.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Breach of Fiduciary Duty)**

54. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.
55. Paul Vaccari, as majority shareholder of Ametal, owed fiduciary duties of care, disclosure and loyalty to both Petitioners who jointly own 25% of the outstanding shares, as well as to the Company.
56. Paul Vaccari breached each of these duties by engaging in the wrongful and oppressive conduct set forth herein and by causing the Company to lose the income to which it is entitled, and for leaving the building, a major asset of Ametal, in disrepair, thereby

causing its value to be wasted.

57. That Petitioners and Ametal have been injured by Paul Vaccari's breach of fiduciary duties.

58. Wherefore, Petitioners demand judgment against the Respondent and awarding to Petitioner such sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Unjust Enrichment)**

59. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.

60. Substantial monetary benefits were conferred on Paul Vaccari at the expense Petitioners and Ametal in the form of lost income to the Company, income which the Petitioners and Ametal expected and to which they were entitled, which includes but is not limited to rental income for use of Ametal's property.

61. Equity and good conscience require the restoration of those monetary benefits to Petitioners and Ametal.

62. Based on the foregoing, Paul Vaccari has been unjustly enriched, and Petitioners are entitled to restitution.

63. Wherefore, Petitioners demand judgment against the Paul Vaccari and awarding to Petitioner such sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**(Conversion and Misappropriation)**

64. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.
65. That as a result of the foregoing, Paul Vaccari wasted, misused, converted and/or diverted monies of Ametal, and thus Petitioners.
66. That as a result of the foregoing, Ametal and Petitioners have suffered damages.
67. Wherefore, Petitioners demand judgment against the Respondent and awarding to Petitioners such sums as are determined to be due to Petitioners upon an accounting of the Respondent Corporation.

**AS AND FOR A SIXTH CAUSE OF ACTION  
(Attorney's Fees)**

68. Petitioners repeat, reiterate, and reallege each and every allegation set forth in the foregoing paragraphs herein, with the same force and effect as if set forth at length herein.
69. That as a result of the Paul Vaccari's conduct herein, and the intentional disregard of his obligations to Petitioners and Ametal, the conduct of Paul Vaccari has been reckless and/or wanton with respect to the Petitioners.
70. Accordingly, Paul Vaccari is liable to the Petitioners for Petitioners' attorneys' fees in connection with this matter.
71. Wherefore, Petitioners demand judgment against the Respondents, awarding to Petitioners such sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.

WHEREFORE, Petitioner demands judgment against the Respondents, and each of them jointly and severally:

- a. In the first cause of action, for an Order dissolving Ametal Realty Corp.;
- b. In the second cause of action, for an accounting of the books and records of Ametal Realty Corp.;
- c. In the third cause of action, in such sums as sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.
- d. In the fourth cause of action, in such sums as sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.
- e. In the fifth cause of action, in such sums as sums as are determined to be due to Petitioner upon an accounting of the Respondent Corporation.
- f. In the sixth cause of action, in such sums as Petitioners expend in legal fees in the prosecution of this matter, an amount unknown, but expected to exceed \$50,000.00;
- g. Each together with the costs, fees, reasonable attorneys' fees and interest as set forth herein; and
- h. for such other and further relief as to this Court may appear just and proper.

Dated: October 6, 2017  
Syosset, New York

Yours, etc.

THE WEINSTEIN GROUP, P.C.



MELISSA A. CAVALIERE, Esq.

*Attorneys for Petitioners*  
6800 Jericho Turnpike, Suite 112W  
Syosset, New York 11791  
Telephone: 516 802 5330

To: AMETAL REALTY CORP.  
633 NINTH AVENUE – 2N  
NEW YORK, NEW YORK, 10036

PAUL VACCARI  
5 ROSE HILL ROAD  
EAST HAMPTON, NEW YORK, 11937

**VERIFICATION**

STATE OF New Jersey )  
 )  
COUNTY OF Bergen ) ss.:

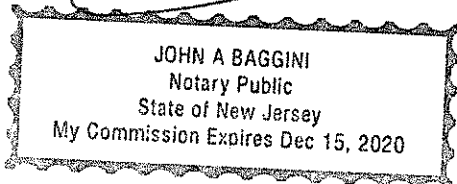
**RICHARD VACCARI**, being duly sworn, deposes and says:

I am a Petitioner in the within action. I have read the foregoing petition for dissolution of Ametal Realty Corp. pursuant to B.C.L. Section 1104-a and know the contents thereof. The allegations set forth therein are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

*Richard P. Vaccari*  
**RICHARD VACCARI**

Sworn to before me this 6<sup>th</sup> day of October 2017

*[Signature]*  
Notary Public



VERIFICATION

STATE OF *NJ* )  
COUNTY OF *Bergen* ) ss.:

PETER VACCARI, being duly sworn, deposes and says:

I am a Petitioner in the within action. I have read the foregoing petition for dissolution of Ametal Realty Corp. pursuant to B.C.L. Section 1104-a and know the contents thereof. The allegations set forth therein are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

*P. Vaccari*  
PETER VACCARI

Sworn to before me this *6* day of *OCT* 2017

*[Signature]*  
Notary Public

