

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX

_____)	Date	Index	Number
)	Purchased		
Application of)			
)			
)			
HUGH W. CAMPBELL, as the Preliminary)	Index No.	17384	-2007
Executor of the)			
THE ESTATE OF EMMA C. BRISBANE)			
)	VERIFIED PETITION		
)			
Petitioner,)			
for the Judicial)	ASSIGNED JUSTICE		
Dissolution of)			
)			
MCCALL'S BRONXWOOD FUNERAL HOME, INC.)			
_____)			

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1. MCCALL'S BRONXWOOD FUNERAL HOME, INC. is a corporation incorporated under the laws of the State of New York (the "Corporation").

2. The certificate of incorporation of the Corporation designates Bronx County, City of New York, New York, as the location of its principal office.

3. Emma C. Brisbane died testate August 31, 2005 domiciled in Westchester County.

4. On July 2, 2007 the Surrogate's Court of Westchester County extended petitioner's Preliminary Letters Testamentary for a period of six months. Attached hereto as evidence of Petitioner's authority to bring this proceeding is a raised seal

original of a Certificate of Appointment of Fiduciary issued by the Surrogate's Court of Westchester County on July 11, 2007.

**FIRST CAUSE OF ACTION
(FOR DISSOLUTION)**

5. Petitioner is the holder of Emma C. Brisbane's Fifty Per Cent (50%) of the shares of stock of the Corporation, amounting to more than 20 percent of all the outstanding shares and petitioners are entitled to vote for the election of directors.

6. None of the shares of the Corporation are listed on a national securities exchange or are regularly quoted in an over-the-counter market by a member of a national or affiliated securities association.

7. The Corporation is a domestic corporation where 50% of the shares were each held by the Ms. Brisbane at her death, and upon information and belief, the other 50% passed under the Will of James H. Alston, Sr. who predeceased Ms. Brisbane.

8. Respondent, James Alston, Jr., Esq. ("Respondent") acts as the putative owner of part or all of his late father's shares of the Corporation.

9. Upon information and belief, Respondent is the managing director, CEO, COO, president and director of the Corporation.

10. Since sometime in the early 1990s to date the Respondent has been privy to and responsible for the detailed day-to-day corporate operations including the financial status of the Corporation. He has knowledge of the general condition, progress and financial situation of the Corporation.

11. Petitioner requests that the Corporation be dissolved pursuant to Section 1104-a of the Business Corporation Law because, upon information and belief, James H. Alston, Jr. who is in control of the Corporation, have been guilty of illegal, fraudulent or oppressive actions towards Petitioner as set forth in paragraphs 12 through 16 below.

12. Despite several requests for ownership information neither he, nor his attorney, has provided Petitioner with any document indicating how title of the shares of James H. Alston, Sr. moved from his ownership to whoever currently owns the shares.

13. The Respondent denied Ms. Brisbane during her lifetime, and continues to deny the Estate access to corporate records directly violating his obligations as director and putative shareholder of the Corporation.

14. After Ms. Brisbane died, Petitioner requested Corporation financial information from the Respondent through his attorneys (Smith, Buss & Jacobs, LLP).

15. Petitioner has received none of the tax information and only some of the financial information.

16. Upon information and belief, the Respondent has no reasonable basis for having withheld proper corporate accounting information regarding the Corporation from the Ms. Brisbane and withholding proper accounting and tax information from the Estate.

17. In addition, Petitioner requests that the Corporation be dissolved because upon information and belief, the property or assets of the Corporation are being looted or wasted or diverted for non-corporate purposes by the Respondent as set forth in paragraphs 18 through 22 below.

18. Upon information and belief, the Respondent looted or wasted or diverted the property or assets of the corporation for non-corporate purposes, as follows:

- a. paying unreasonable salary to himself.
- b. an accountant, Ian M. Nelson, CPA (the "Accountant"), was retained by Ms. Brisbane and found the following when he audited reported transactions during 1996 - 2001, reconciled bank accounts, filed payroll returns, filed income tax returns and attempted to prepare financial statements:

- c. the closing balances on the 1995 tax return appeared to contain amounts that were not verifiable.
- d. The inventory was overstated.
- e. The accounts payable and accounts receivable were not verifiable.
- f. Cash from burials or chapel rentals were never deposited in the bank.
- g. Cash was removed from the safe without being accounted for in daily receipts.
- h. Proper auditing could not take place as bank account statements were withheld and bank accounts could not be reconciled.
- i. The Respondent did not keep records of unpaid insurance claims and thousands of dollars might have been lost through this lapse.
- j. Pages were missing or removed from the receipt books thwarting verification of cash collections.
- k. Money maintained in the Corporation's prepaid burial account, totaling over \$1,000,000.00, including money from people already buried were not transferred by the Respondent to the Corporation's main account as payments for services now rendered. At least

\$50,000.00 improperly remained in the prepaid burial account to the detriment of the Corporation.

- l. Misstatements regarding the number of burials and the decline of burials performed permitting money that should be collected from burials to be diverted elsewhere.
- m. Employee hours were understated and these employees were denied overtime pay and denied their pay due to them for working full time.
- n. As acting general manager, Respondent at times was not on the premises denying the funeral home the benefit of his managerial services.
- o. Payroll irregularities were found causing the funeral home to pay sums to the New York State Department of Taxation and Finance.
- p. For the five year period ending December 31, 2001, collected cash was underreported by \$1,569,000.00.
- q. The twenty-five percent (25%) of the Corporation's intake in cash was not deposited into the Corporation's main Fleet Bank account.
- r. Respondent blocked attempts at accounting and has thwarted efforts to document the financial affairs of the Corporation.

s. Respondent refused cooperation to the Accountant's successor accountant, Mr. Lewis, in similar ways that he prevented the Accountant from accounting for the financial affairs of the Corporation.

t. The Accountant witnessed Respondent paying the Accountant in cash from envelopes used to collect cash in the day-to-day operations of the Corporation.

u. The Corporation was not appraised or the appraised value was not used after the death of Mr. Alston, Sr. and before the Respondent acquired his interest in violation of Federal Estate tax law.

19. Without access to the books and records of the Corporation it is impossible to determine whether the Respondent has continued or corrected these practices.

20. Upon information and belief, the Respondent has not shown a good faith effort in giving to Ms. Brisbane during her life, nor the Estate afterwards, proper accounting and valuation of the Corporation.

21. Upon information and belief, the Respondent's actions are the substantial factor causing the Estate's stock in the corporation to be diminished and undervalued.

22. There has been a complete deterioration of relations between the parties and dissolution is the only means by which

the Petitioner can gain access to the pertinent books and records of the corporation to establish fair value so that it can sell or recover fair value for its shares.

23. Petitioner needs to recover the fair value for the Estate's shares so that he can distribute the proceeds to the beneficiaries of Ms. Brisbane's estate. Neither beneficiary is interested in operation the business of the Corporation with the Respondent.

**SECOND CAUSE OF ACTION
(FOR SPECIFIC PERFORMANCE AND ACCOUNTING)**

24. Upon information and belief, before her death, Ms. Brisbane had been entitled to receive monthly payments of approximately \$1,747.47 from the Corporation to amortize a note with a balance of \$155,000.00 payable at six per cent (6%) commencing April 1, 1986.

25. The note was secured by a mortgage assignment from Emma Brisbane, as Executrix of the Estate of Herbert T. McCall to Emma Brisbane recorded at Reel 753 Page 1100 on April 16 1987 by the New York City Register for Bronx County.

26. The assignment states "AND the assignor covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of \$142,787.78 with interest

thereon at 6% per centum per annum from the 1 day of March, 1987."

27. Upon information and belief, the source of the note was a 1981 shareholder agreement to buy out the shares of Herbert T. McCall upon his death which occurred on June 21, 1985.

28. Upon information and belief, the note and securing mortgage have not been fully paid or satisfied.

29. No previous application has been made for the relief sought herein.

WHEREFORE, Petitioner requests

- a. judgment pursuant to BCL 1115 (a) (3) that the creditors of the corporation be restrained from beginning any action against the Corporation, or from taking any proceedings in an action theretofore commenced, except by permission of the Court;
- b. judgment pursuant to BCL 1115 (a) (2) that the Corporation and its directors and officers be restrained from collecting or receiving any debt or other property of the Corporation, and from paying out or otherwise transferring or delivering any property of the Corporation, except by permission of the Court;

- c. judgment pursuant to BCL 1115 (a) (1) the Corporation and its directors and officers be restrained from transacting any unauthorized business and from exercising any corporate powers, except by permission of the Court;
- d. on the First Cause of Action, a final order of this Court dissolving the Corporation appointing a receiver of its property and effects;
- e. on the Second Cause of Action an accounting for all amounts paid pursuant to the note and mortgage, and to pay to the petitioner any outstanding balance along with the interest accrued;
- f. and for such other and further relief as may be appropriate, including attorney's fees, costs and disbursements.

Dated: Bronx New York
July 13, 2007

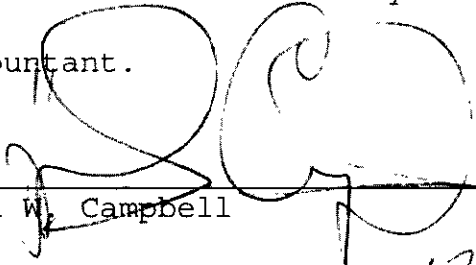
STATE OF NEW YORK
COUNTY OF BRONX ss.:

Hugh W. Campbell, being duly sworn, states:

I am the Petitioner in the above-entitled proceeding. I have read and understand the statements contained in the foregoing

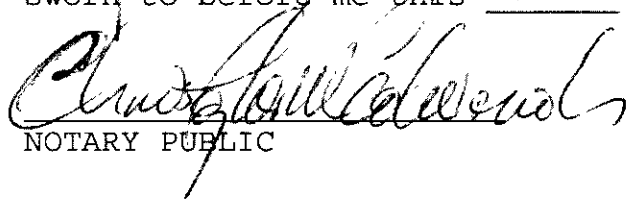
Petition which statements are all true to my own knowledge except as to the matters stated to be alleged on information and belief, and as to those matters I believe them to be true. The source of my information is my files, the files of my attorneys

and conversations with my attorneys, the Respondent and the Accountant.



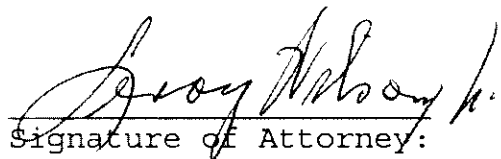
Hugh W. Campbell

Sworn to before me this 12th day of July 2007.



NOTARY PUBLIC

CHRISTOPHER W EDWARDS
NOTARY PUBLIC, STATE OF NEW YORK
NO 02ED6063221
QUALIFIED IN BRONX COUNTY
COMMISSION EXPIRES ~~10/03/09~~ 10/03/09



Signature of Attorney:

Print Name: Leroy Wilson, Jr.

Firm Name: Wilson Jacobson, P.C.

Address of Attorney: 99 Court Street, Suite 2, White Plains, New York 10601-4264

Telephone: (914) 997-0825